

## ACT 245

S.B. NO. 1125

A Bill for an Act Relating to the Code of Financial Institutions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 412:1-109, Hawaii Revised Statutes, is amended by amending the definition of "Hawaii financial institution" to read as follows:

““Hawaii financial institution” means [a]:

- (1) A corporation or credit union which holds a charter or license under this chapter or under prior Hawaii law, authorizing it to accept deposits, to make loans in excess of the rates permitted in chapter 478, or to engage in the business of a trust company[.]; or
- (2) A resulting bank as defined in article 12,

and includes a corporation, mutual savings and loan association, or credit union existing and chartered as a Hawaii financial institution or licensed to transact business in this State on July 1, 1993. A Hawaii financial institution may be a bank, resulting bank as defined in article 12, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, or intra-Pacific bank.”

SECTION 2. Section 412:2-503, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If the failing financial institution is a bank, savings bank, or depository financial services loan company that is a Hawaii financial institution, or if the institution to result from the acquisition proposed in the application is to be any of the foregoing, the commissioner may accept an application under this part only from:

- (1) A Hawaii financial institution;
- (2) A federal financial institution whose operations are principally conducted in this State (unless the operations of any holding company of such an applicant are principally conducted elsewhere than in Hawaii [or a qualifying state]);
- [(3) A financial institution whose operations are principally conducted in a qualifying state (unless the operations of any holding company of such an applicant are principally conducted elsewhere than in Hawaii or a qualifying state);]
- (3) A resulting bank as defined in article 12;
- (4) An out-of-state bank as defined in article 12;
- [(4)] (5) The holding company of any of the foregoing, if any [(unless the operations of such holding company or any holding company of such holding company are principally conducted elsewhere than in Hawaii or a qualifying state)]; and
- [(5)] (6) A person that is not a company[; and
- (6) Notwithstanding any other limitations in this section, a bank holding company as defined under the Bank Holding Company Act of 1956, as amended, that is adequately capitalized and adequately managed].

(b) No application shall be accepted which provides for a merger or consolidation of a failing financial institution or a purchase of its assets or assumption of its liabilities, or a purchase of its capital stock if, as a result of such merger, consolidation, purchase or assumption, any person would be eligible to receive deposits in this State other than through a Hawaii financial institution [or], a federal financial

institution whose operations are principally conducted in this State[.], or a resulting bank as defined in article 12.”

SECTION 3. Section 412:2-507, Hawaii Revised Statutes, is amended to read as follows:

“**§412:2-507 Expedited approvals.** If the commissioner finds that immediate action is necessary in order to prevent the probable failure of the Hawaii financial institution, as determined by section 412:2-501, the commissioner shall have the power to issue an expedited approval authorizing the following:

- (1) In the case of a Hawaii financial institution seeking to acquire the failing financial institution, expedited approval for the establishment of a branch;
- (2) In the case of a new corporation[,] or for a qualified bidder [from a qualifying state], a charter for a bank or savings bank or a license to engage in the business of a depository financial services loan company; provided that the applicant has secured provisional approval to organize as required in section 412:2-508.”

SECTION 4. Section 412:3-112, Hawaii Revised Statutes, is amended by amending subsection (a)<sup>1</sup> to read as follows:

“**§412:3-112 Submissions to commissioner.** (a) Every Hawaii financial institution, at its own expense, shall file the following written reports with the commissioner:

- (1) An independent audit report of its financial statements as of the close of its fiscal year shall be filed by a Hawaii financial institution, other than a nondepository financial services loan company or credit union, within one hundred twenty days of the close of its fiscal year; provided that the commissioner for good cause shown may grant a reasonable extension of not more than forty-five days. For depository institutions, the independent audit report specified in this paragraph shall comply with the requirements for annual reports under section 36 of the Federal Deposit Insurance Act (12 U.S.C. §1831m), as amended; provided that for a depository institution which, in any fiscal year, is a small depository institution within the meaning of section 36(j) of the Federal Deposit Insurance Act, or any implementing regulations thereunder, the independent audit report specified in this paragraph shall comply with the requirements for annual independent audits of financial statements under section 36(d). For trust companies, the independent audit report shall contain audited financial statements prepared in accordance with generally accepted accounting principles and shall be based on an audit performed in accordance with generally accepted auditing standards, the independent auditor’s report on the fair presentation of the financial statements and any qualification to the report, any management letter, and any other report. Hawaii financial institutions that are subsidiaries of a financial institution holding company may satisfy the requirements of this paragraph by filing an independent audit report of the financial institution holding company;
- (2) Unaudited financial statements as of the following dates shall be filed by a Hawaii financial institution within thirty days of the date of the financial statement as follows:

- (A) For a [nondepository financial services loan company,] trust company[,] or credit union, the statements shall be filed as of June 30 and December 31 of each year; [and]
- (B) For a Hawaii financial institution, other than a nondepository financial services loan company, trust company, or credit union, the statements shall be filed as of March 31, June 30, September 30, and December 31 of each year; and
- (C) For a nondepository financial services loan company, the statement shall be filed as of the last day of the sixth month and the last day of the twelfth month of each fiscal or calendar year; provided that the commissioner for good cause shown may grant a reasonable extension of not more than forty-five days.

The reports shall be in a form prescribed by the commissioner and prepared in accordance with section 412:3-108. In the alternative, the institution may file the Call Reports, Consolidated Reports of Condition and Reports of Income, or Thrift Financial Reports as of those dates which are submitted to the appropriate federal regulatory agency of the institution;

- (3) A notice of any change in the office of the person who has primary responsibility for the operation and management of the financial institution shall be filed by a Hawaii financial institution within ten days of the change. The notice shall specify the name and address of the person, who shall be designated that institution's "chief executive officer"; and
- (4) Any other reports and other information that the commissioner may require with respect to any financial institution at the times and in the form as the commissioner deems appropriate for the proper supervision and regulation of the institution.

Each report shall be signed by an officer authorized by the institution's board of directors to sign the report, and shall contain a declaration of the officer's authority and a statement that the report is true and correct."

SECTION 5. Section 412:3-617, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Subject to the approval of the commissioner, a solvent credit union whose capital is not impaired and which has not received a notice of charges and proposed order of suspension or revocation pursuant to section 412:2-312 may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section[.];

- (1) The board of directors shall adopt a resolution adopting a plan of liquidation and dissolution, recommending the voluntary dissolution of the credit union, and directing that the question of the dissolution be submitted to the commissioner for approval and, if approved, requesting that the liquidation question be submitted to the members[.];. The plan of liquidation and dissolution shall include but not be limited to provisions for the orderly payment or assumption of the credit union's deposits, shares, and other liabilities;
- (2) Not later than ten days after [the board of directors decides to submit the liquidation question to the members, the chairperson shall notify the commissioner and] the meeting of the board of directors described in paragraph (1), the credit union shall file an application with the commissioner pursuant to section 412:3-603, for approval to cease business and dissolve. The application shall be accompanied by a copy of the

plan of liquidation and dissolution, certified by two executive officers of the credit union, and duly adopted by the board, and shall include any other information that the commissioner may require. A copy of the notice shall be delivered contemporaneously to any government agency or other organization insuring member accounts thereof, in writing, setting forth the reasons for the proposed liquidation[. Not later than ten days after the members act on the liquidation question, the chairperson of the board of directors shall notify the commissioner and any government agency or other organization insuring member accounts, in writing, of the action of the members on the liquidation question];

- (3) [As] The commissioner shall approve the application to cease business and dissolve if the commissioner is satisfied that the depositors, beneficiaries, and creditors will be adequately protected under the plan, the credit union is not insolvent or in danger of becoming insolvent, its capital is not impaired and is not in danger of becoming impaired, and no other reason exists to deny the application. The commissioner may impose any restrictions and conditions as the commissioner deems appropriate;
- (4) Upon receipt of the commissioner's approval to cease business and dissolve and as soon as the board of directors decides to submit the liquidation question to the members, all business affairs of the credit union, including[,] but not limited to[,] payments on and [withdrawal] withdrawals of shares, share certificates, share drafts, deposits, and deposit certificates, (except for the transfer of shares or deposits to loans and interest), [making] investments of any kind, (other than short-term investments), and the issuing of loans, shall be suspended until the members act on the liquidation question. Upon approval by the members, all business transactions of the credit union shall be permanently discontinued. [Necessary] Transfer of deposits or shares to loans and interest, collection of loans and interest, and the payment of necessary expenses of operation[, however,] shall continue [to be paid] upon authorization by the board of directors or the liquidating agent during liquidation;
- [(4)] (5) An affirmative majority vote by the members by ballot, in person, by letter, or other written communication, is necessary for a credit union to enter into voluntary liquidation. Whenever authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least ten days prior to such meeting;
- (6) Not later than ten days after the members act on the liquidation question, the chairperson of the board of directors shall notify the commissioner and any government agency or other organization insuring member accounts, in writing, of the action of the members on the liquidation question;
- [(5)] (7) A liquidating credit union shall remain in existence for the purpose of discharging its debts, collecting its loans, distributing its assets, and any other necessary functions in order to conclude its business. A liquidating credit union may sue or be sued for the purpose of enforcing its debts and obligations until its affairs are complete;
- [(6)] (8) The board of directors or the liquidating agent who may be the insurer shall use the assets of the credit union to pay:
  - (A) First, the expenses incidental to liquidation including any surety bonds required during liquidation;
  - (B) Second, any liability due to nonmembers;

- (C) Third, the deposits and deposit certificates of the members of the credit union; and
- (D) Fourth, the remaining assets shall be distributed to the members in proportion to the number of shares held by each member on the date dissolution was approved by the members; [and]
- [7] (9) When the board of directors or the liquidating agent determines that all assets of the credit union having a reasonable expectancy of realization have been liquidated and distributed as provided in this section, the board or the liquidating agent, whichever is applicable, shall complete a certificate of dissolution on a form prescribed by the commissioner. Upon the completion of such certificate, the board or the liquidating agent, whichever is applicable, shall file such certificate with the commissioner for the complete dissolution and liquidation of the credit union[.]; and
- (10) Any credit union whose capital is impaired or in danger of becoming impaired, and any credit union that is insolvent or in danger of becoming insolvent, may not undergo a voluntary dissolution."

SECTION 6. Section 412:13-222, Hawaii Revised Statutes, is amended to read as follows:

**“[[§412:13-222]] Relocation of office; written [notice] application necessary.** (a) No foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall relocate any Hawaii office unless the foreign bank [provides prior] files a written [notice to] application with [[the]] commissioner and the commissioner [has approved] approves the relocation.

(b) [Written notice provided] The written application filed by a foreign bank under this section shall be in a form and contain any information as the commissioner shall require and shall be accompanied by a fee, the amount of which shall be established by rule.”

SECTION 7. Section 412:2-500, Hawaii Revised Statutes, is amended by repealing the definition of “qualifying state”.

[““Qualifying state” means a state, other than Hawaii, in the Twelfth Federal Reserve District as designated in 12 United States Code section 222.”]

SECTION 8. Section 412:2-512, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed.<sup>2</sup> New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.