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H.B. NO. 583

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. Chapter 412, Hawaii Revised Statutes, is amended by adding two new sections to part I of article 2 to be appropriately designated and to read as follows:

“**§412:2- Emergency applications.** Notwithstanding any law to the contrary, an application may be approved by the commissioner without investigation, notice, comment, or hearing in any case in which the commissioner determines to be an emergency arising from the insolvency of an existing institution or to prevent the failure of an existing institution. No emergency application may be granted unless the commissioner determines that the relevant statutory criteria have been met. Notwithstanding the granting of any approval, if the commissioner discovers good cause why an approval should not have been granted, the approval may be revoked by giving written notice of revocation to the applicant.

§412:2- Commissioner’s power to subpoena. In the course of an investigation of matters affecting the interest of consumers or depositors or of any other matter within the jurisdiction of the division, the commissioner may summon persons and subpoena witnesses, compel their attendance, administer oaths and examine any person under oath, and require the production of books, papers, documents, or objects that the commissioner deems relevant or material to the inquiry. Any summons or subpoena may be served by certified mail with return receipt requested. Powers granted under this section may be enforced by the circuit court.”

SECTION 2. Section 412:1-109, Hawaii Revised Statutes, is amended by amending the definition of “financial institution holding company” to read as follows:

““Financial institution holding company” [is] means a holding company which controls a Hawaii financial institution or which controls another financial institution holding company. The following persons shall not be deemed to come within the definition of a financial institution holding company:

- (1) A registered dealer who acts as an underwriter or member of a selling group in a public offering of the voting securities of a financial institution or of a financial institution holding company;
- (2) A person who acts as proxy for the sole purpose of voting at a designated meeting of the security holders of a financial institution or of a financial institution holding company;
- (3) A person who acquires control of a financial institution or of a financial institution holding company by devise or descent; or

- (4) A pledgee of a voting security of a financial institution or of a financial institution holding company who does not have the right, as pledgee, to vote such voting security.”

SECTION 3. Section 412:2-306, Hawaii Revised Statutes, is amended to read as follows:

“§412:2-306 Removal or prohibition of institution-affiliated party; grounds. (a) The commissioner may order the removal of any institution-affiliated party from office or employment with a Hawaii financial institution and the prohibition of [sueh] the party’s affiliation or participation in the affairs of [sueh] the financial institution if the commissioner determines that all three of the following circumstances exist:

- (1) The institution-affiliated party has violated this chapter or any rules issued pursuant to this chapter, violated a cease and desist order which has become effective, engaged or participated in an unsafe or unsound practice in connection with the financial institution, or breached a fiduciary duty owed to the financial institution;
- (2) By reason of such violation, practice, or breach the financial institution has suffered or will probably suffer financial loss or other damage, the interests of the financial institution’s depositors have been or may be prejudiced, or the institution-affiliated party has received financial gain or other benefit as a result of [sueh] the violation, practice, or breach; and
- (3) The violation, practice, or breach involves the institution-affiliated party’s personal dishonesty, or demonstrates [sueh] the party’s willful or continuing disregard for the safety or soundness of the financial institution.

(b) The commissioner may also order the removal of any institution-affiliated party from office or employment with a Hawaii financial institution and the prohibition of the party’s affiliation or participation in the affairs of the financial institution if the commissioner determines that:

- (1) The institution-affiliated party has been charged in any information, indictment, or complaint authorized by a United States attorney, state attorney general, or similar legal officer, with the commission of, or participation, in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under state or federal law; and
- (2) The continued service by the institution-affiliated party may pose a threat to the interests of the institution’s depositors or may threaten to impair public confidence in the institution.”

SECTION 4. Section 412:2-311, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may revoke or suspend any charter or license issued hereunder if the commissioner finds that:

- (1) Any information or representations submitted by an applicant in connection with the issuance of the charter or license were materially false when made;
- (2) Grounds exist for the appointment of a conservator or receiver under this article; [øf]
- (3) The Hawaii financial institution, for a period of six months or more, has ceased to engage in the business for which its charter or license was granted[-]; or

- (4) The Hawaii financial institution has violated or is violating state or federal laws, rules, or regulations, or has committed or is committing an unsafe or unsound practice.”

SECTION 5. Section 412:3-304, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the commissioner is satisfied that the applicant has fulfilled all the requirements of law and is qualified to engage in the business of a nondepository financial services loan company, the commissioner shall issue a written decision and order approving the application. Upon ~~approving~~ the approval of the application [and upon], the payment of an initial license fee established by rule pursuant to chapter 91, and, if applicable, upon providing satisfactory evidence to the commissioner of compliance with the requirements of chapter 415 relating to foreign corporations, the commissioner shall issue to the applicant a license to engage in the business of a nondepository financial services loan company under this chapter.”

SECTION 6. 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 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] to have been 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;
- (3) 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 withdrawals of

- shares, share certificates, share drafts, deposits, and deposit certificates, (except for the transfer of shares or deposits to loans and interest), the making of 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. Transfer of deposits or shares to loans and interest, collection of loans and interest, and the payment of necessary expenses of operation shall continue upon authorization by the board of directors or the liquidating agent during liquidation;
- (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]~~ the 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;
 - (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;
 - (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;
 - (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]~~ the certificate, the board or the liquidating agent, whichever is applicable, shall file ~~[such]~~ the 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 7. Section 412:5-305, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[To the extent specified herein, a]~~ A bank may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.”

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SECTION 8. Section 412:6-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[To the extent specified herein, a]~~ A savings bank may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.”

SECTION 9. Section 412:7-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[To the extent specified herein, a]~~ A savings and loan association may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.”

SECTION 10. Section 412:8-301, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[To the extent specified herein, a]~~ A trust company may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.”

SECTION 11. Section 412:9-401, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Other securities used as reserves shall be limited to obligations of the United States and its agencies and of this State and its counties that qualify as permitted investments under sections 412:9-409(a)(1) and ~~[(a)](2)~~ and 412:9-409(b), reverse repurchase agreements whereby the depository financial services loan company has purchased obligations of the United States under terms which require the seller to repurchase the obligations of the United States for cash on demand or in not less than thirty days, bankers acceptances, irrevocable lines of credit of one year or more approved by the commissioner, and securities listed on the New York or the American stock exchanges or the ~~[Nasdaq]~~ National Market System of the Nasdaq Stock Market. Not more than twenty-five per cent of the total reserve shall be held in securities listed on the New York or American stock exchanges, or the ~~[Nasdaq]~~ National Market System of the Nasdaq Stock Market.”

SECTION 12. Section 412:9-409, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[To the extent specified in this subsection, a]~~ A depository financial services loan company may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.”

SECTION 13. Section 412:10-502, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[To the extent specified herein, a]~~ A credit union may invest its own assets in bonds, securities, or similar obligations issued by this State~~[s]~~ or any county of this State, through an appropriate agency or instrumentality.”

SECTION 14. Section 412:13-202, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§412:13-202[H] Application to establish and maintain a branch or agency; contents.** A foreign bank, in order to procure a license under this article to establish and maintain a Hawaii state branch or Hawaii state agency, shall submit an application to the commissioner, together with the application fee prescribed in section 412:13-206. The application shall contain:

- (1) The same information as required by the Board of Governors of the Federal Reserve System for an application to establish a branch or agency, as the case may be, in the United States;
- (2) [A] If applicable, a statement under oath appointing an agent in this State for receipt of service of process in accordance with section 415-113, if the license is granted; and
- (3) Any additional information that the commissioner may require.”

SECTION 15. Section 412:13-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign bank making an application under this article for a license to establish and maintain a Hawaii state branch or Hawaii state agency shall deliver to the commissioner[;:

- (1) ~~Three duplicate originals of the foreign bank’s application, or a greater number as the commissioner may require by rule; and~~
- (2) Three, together with the application, two copies of its charter or articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the country of the foreign bank’s organization, or a greater number of copies as the commissioner may require by rule. If the charter, articles of incorporation, or amendments are in a foreign language, [~~three~~] two copies (or a greater number of copies as the commissioner may require by rule) of an English translation of the documents under the oath of the translator shall accompany the charter, articles of incorporation, or amendments.”

SECTION 16. Section 412:13-203, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii state branch or Hawaii state agency, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the [~~applicable~~] requirements of chapter 415 relating to foreign corporations[;], if applicable. The commissioner shall then[;:

- (1) ~~Endorse on each document filed as part of the application the word “Filed”, and the date of the filing thereof and return to the foreign bank a copy of each document so endorsed;~~
- (2) ~~File in the commissioner’s office one of the originals of the application and copies of the charter or articles of incorporation and amendments thereto; and~~
- (3) ~~Issue~~ issue a license to establish and maintain a Hawaii state branch or Hawaii state agency to the foreign bank.”

SECTION 17. Section 412:13-216, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [~~Each~~] An application to establish and maintain a Hawaii representative office shall include, if applicable, a statement under oath appointing an agent in this State for receipt of service of process in accordance with section 415-113, if the license is granted.”

SECTION 18. Section 412:13-217, Hawaii Revised Statutes, is amended to read as follows:

“[~~H~~§412:13-217[~~H~~] **Representative office; factors for approval of application.** [~~(a)~~] A foreign bank making an application for a license to establish and maintain a Hawaii representative office shall deliver to the commissioner three

~~duplicate originals, or a greater number as the commissioner may require by rule, of the foreign bank's application.~~

~~(b)~~ (a) The commissioner shall issue a license to a foreign bank to establish and maintain a Hawaii representative office if the commissioner finds that:

- (1) The foreign bank is in good standing under the laws of the country in which it is organized and is in sound financial condition;
- (2) The management of the foreign bank and the proposed management of the Hawaii representative office are of good moral character, competent, and sufficiently experienced; and
- (3) The convenience and needs of persons to be served by the proposed Hawaii representative office will be promoted.

~~[(e)]~~ (b) In considering whether the management of the foreign bank and the proposed management of the Hawaii representative office is of good moral character for the purposes of subsection ~~[(b);]~~ (a), the commissioner may presume that in the absence of creditable evidence to the contrary, the management is of good moral character. The presumption may be rebutted by evidence to the contrary, including, but not limited to, a finding that a person has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
- (3) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
- (4) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or
- (5) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter.

~~[(d)]~~ (c) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii representative office, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the ~~[applicable]~~ requirements of chapter 415[;] relating to foreign corporations[;], ~~if applicable~~. The commissioner shall then[;]

- ~~(1) Endorse on each original of the application the word "Filed", and the date of the filing thereof and return to the foreign bank one original so endorsed;~~
- ~~(2) File in the commissioner's office one of the originals of the application; and~~
- (3) Issue] issue a license to establish and maintain a Hawaii representative office to the foreign bank.

~~[(e)]~~ (d) Each license issued to a foreign bank to establish and maintain a Hawaii representative office shall state fully the name of the foreign bank to which the license is issued, the address or addresses at which the Hawaii representative office is to be located, and any other information as the commissioner may require.”

SECTION 19. Section 412:13-222, Hawaii Revised Statutes, is amended to read as follows:

“§412:13-222 Relocation of office; written 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 files a written application with the commissioner and the commissioner approves the relocation.]~~ without the commissioner’s prior written approval.

(b) The [written application filed by a] foreign bank [under this section] shall file an application with the commissioner. The application 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.

(c) If after appropriate examination and investigation, the commissioner is satisfied that the proposed relocation is justified and proper, the commissioner shall approve the application in writing, with any conditions that the commissioner deems appropriate.’’

SECTION 20. Section 412:2-605, Hawaii Revised Statutes, is repealed.

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 22. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.