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A BILL FOR AN ACT

RELATING TO THE CODE OF FINANCIAL INSTITUTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECTION 1. Chapter 412, Hawaii Revised Statutes, is
2	amended by adding a new section to article 9, part I to be
3	appropriately designated and to read as follows:
4	"§412:9- Display of license. Every financial services
5	loan company shall display a copy of its principal office
6	license in a conspicuous place at its principal office and shall
7	display a copy of a branch office license in a conspicuous place
8	at the branch office designated on the branch office license."
9	SECTION 2. Section 412:2-306, Hawaii Revised Statutes, is
10	amended by amending the title to read as follows:
11	"§412:2-306 Removal or prohibition of institution-
12	affiliated party[+]; grounds."
13	SECTION 3. Section 412:3-201, Hawaii Revised Statutes, is
14	amended by amending subsection (b) to read as follows:
15	"(b) The application shall contain the following
16	information, unless waived by the commissioner:
17	(1) The proposed name of the financial institution;

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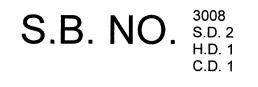
1	(2)	The specific location of its principal office,
2		branches, agencies, and support facilities, and any
3		lease agreements for such principal office, branches,
4		agencies, and support facilities;
5	(3)	Financial statements, employment history, education,
6		management experience, and other biographical
7		information for all applicants, organizers, proposed
8		executive officers, and directors of the financial
9		institution;
10	(4)	The name and address of each proposed subscriber of
11		capital stock in the financial institution;
12	(5)	The proposed capital plan, if capital has not been
13		fully raised, that shall include:
14		(A) A description of any stock options, debentures,
15		and stock warrants offered or proposed to be
16		offered to any person; and
17		(B) Any stock option plan;
18	(6)	The proposed capital stock solicitation plan, if
19		subscriptions for capital stock will be solicited,
20		that shall include:
21		(A) Information regarding the solicitation plan by
22		which the applicant and the proposed financial
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1		institution propose to conduct the solicitation
2		of subscribers;
3	(B)	Information regarding the classes of shares,
4		respective quantities of shares for each class,
5		and the subscription price of each class of
6		stock;
7	(C)	A specimen subscription contract or purchase
8		agreement and other related documents to be
9		executed by subscribers;
10	(D)	Any underwriting agreement or other agreement for
11		the purchase or distribution of the capital
12		stock;
13	(E)	Any escrow agreements or other agreement for the
14		holding of the purchase proceeds of the capital
15		stock;
16	(F)	Proposed advertising materials;
17	(G)	If the offer and sale of the capital stock is
18		subject to the Securities Act of 1933 and
19		regulations thereunder, a copy of the
20		registration statement most recently filed with
21		the federal Securities and Exchange Commission or
22		any other notices or other filings in lieu of
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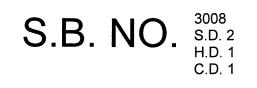
1			registration required or permitted by that Act or
2			regulation and any subsequent amendments thereto;
3		(H)	If the offer and sale of the capital stock is
4			subject to chapter 485A, a copy of the
5			registration or qualification statement most
6			recently filed with the commissioner of
7			securities and any subsequent amendments thereto;
8			and
9		(I)	If the offer and sale of the capital stock is not
10			subject to the Securities Act of 1933 or chapter
11			485A, whether exempted by law or regulation or
12			otherwise, a copy of the most recent version of
13			any prospectus, offering memorandum, offering
14			circular, or other offering document proposed to
15			be delivered to prospective subscribers to the
16			capital stock, and any subsequent amendments
17			thereto;
18	(7)	The	financial institution's proposed policies
19		conc	erning loans and concentrations of credit, asset
20		and	liability management, conflicts of interest,
21		inve	stments, community reinvestment, bank secrecy,
22 .		anti	-money laundering, and customer identification;
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1	(8)	The financial institution's business plan for the
2		first three years of operations;
3	(9)	Financial projections regarding the financial
4		institution's profitability for the first three years
5		of operations;
6	(10)	A market study or letters of support evidencing the
7		need and advisability of granting authority to
8		organize a financial institution;
9	(11)	Except for trust companies, evidence that the
10		financial institution has applied for federal deposit
11		insurance from the Federal Deposit Insurance
12		Corporation or other appropriate federal deposit
13		insurer;
14	(12)	Evidence that the financial institution has applied
15		for fidelity bonds and other insurance appropriate to
16		its size and operations, including the types and the
17		amounts of coverage, and the respective deductible
18		amounts, from insurance companies licensed in the
19		United States;
20	(13)	Evidence that the proposed directors and executive
21		officers of the financial institution have the

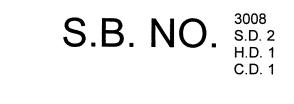


1		financial ability, responsibility, and experience to
2		engage in the business of a financial institution;
3	(14)	The employment agreements for all proposed executive
4		officers of the financial institution;
5	(15)	The proposed articles of incorporation and bylaws of
6		the financial institution;
7	(16)	A description of any existing or proposed service
8		corporation, affiliate, or subsidiary; [and]
9	(17)	Information necessary to conduct a criminal history
10		record check in accordance with section 846-2.7 of
11		each of the proposed directors and executive officers
12		of the financial institution, accompanied by payment
13		of the applicable fee for each record check to be
14		conducted; and
15	[(17)]	(18) Any other information that the commissioner may
16		require."
17	SECT	ION 4. Section 412:3-301, Hawaii Revised Statutes, is
18	amended by	y amending subsection (b) to read as follows:
19	"(b)	The application shall contain the following
20	informatio	on, unless waived by the commissioner:
21	(1)	The proposed name of the nondepository financial
22		services loan company, the location of its principal
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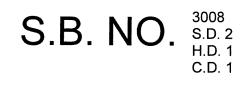


1		offi	ce, and any lease agreements for [such] <u>the</u>
2		prin	cipal office;
3	(2)	Any	intended or existing affiliates, subsidiaries, and
4		hold	ing company of the proposed nondepository
5		fina	ncial services loan company and the extent and
6		natu	re of the holding company's control over the
7		oper	ations of the proposed nondepository financial
8		serv	ices loan company;
9	(3)	A bu	siness plan which shall contain the following:
10		(A)	A written description of the company's proposed
11			financial products;
12		(B)	A written statement which explains how the scope
13			of the proposed business complies with article 9
14			and why any existing lines of business do not
15			conflict with [the provisions of] article 9;
16		(C)	A written description of the company's proposed
17			plan of marketing its products, whether through
18			affiliates, subsidiaries, service corporations,
19			or holding company;
20		(D)	Financial projections regarding the nondepository
21			financial services loan company's profitability;
22			and





1		(E) Any and all contractual arrangements which are
2		intended to be executed between the nondepository
3		financial services loan company and its holding
4		company, affiliates, and subsidiaries;
5	(4)	Financial statements, employment history, education,
6		management experience, and other biographical
7		information for the proposed executive officers and
8		directors of the nondepository financial services loan
9		company and its holding company, if any;
10	(5)	Proposed policies regarding loans, investments,
11		operations, accounting, recordkeeping, and compliance
12		with applicable federal and state consumer laws;
13	(6)	The name and address of each proposed subscriber of
14		capital stock in the nondepository financial services
15		loan company or the majority shareholders in any
16		holding company;
17	(7)	A copy of the nondepository financial services loan
18		company's articles of incorporation and bylaws; [and]
19	(8)	Information necessary to conduct a criminal history
20		record check in accordance with section 846-2.7 of
21		each of the proposed directors and executive officers
22		of the nondepository financial services loan company,
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1	accompanied by payment of the applicable fee for each
2	record check to be conducted; and
3	[(8)] <u>(9)</u> Any other information that the commissioner may
4	require."
5	SECTION 5. Section 412:3-507, Hawaii Revised Statutes, is
6	amended to read as follows:
7	"§412:3-507 Closing branch or agency[+]; temporary
8	<u>closures.</u> (a) A Hawaii financial institution shall give the
9	commissioner prior notice of its intent to close any branch or
10	agency at least thirty days prior to the closing. The notice
11	shall specify the intended date of closing, the reasons for the
12	closing, and a certification by the secretary or other
13	authorized officer of the institution that the decision to close
14	was duly approved by its board of directors. This notice may be
15	satisfied by delivery to the commissioner of a copy of any
16	notice pertaining to the closure given to the financial
17	institution's appropriate federal regulatory agency.
18	(b) A Hawaii financial institution may temporarily close a
19	branch or agency in the event of an emergency for a period of
20	time up to one hundred eighty days, or a longer time period as
21	determined necessary by the commissioner. For purposes of this
22	section, an emergency means a situation of an unusual or
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1	compelling urgency that creates a threat to life, public health,
2	welfare, or safety by reason of major natural disaster,
3	epidemic, riot, fire, or other reason as determined by the
4	commissioner. Written notice shall be provided to the
5	commissioner upon closure as soon as practicable, and notice
6	shall be provided to the Hawaii financial institution's
7	customers in the form of a sign posted at the primary public
8	entrance of the branch or agency. The written notices shall
9	state the reasons for the closure, the expected date of
10	reopening, and information regarding where and how customers of
11	the closed branch or agency will be accommodated during the
12	temporary closure. Notice of the reopening shall be provided to
13	the commissioner within five days of the reopening."
14	SECTION 6. Section 412:8-103, Hawaii Revised Statutes, is
15	amended to read as follows:
16	"§412:8-103 Authority to serve as trustee. Unless
17	chartered as a trust company under this chapter or otherwise
18	specifically authorized by the laws of this State, no person[$ au$
19	except an individual acting as a co-trustee,] shall hold itself
20	out to the general public as being available to serve as a
21	trustee or trust company, whether or not for compensation. No

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person shall use the term "trust company" as part of its name 1 2 unless chartered as a trust company pursuant to this chapter." SECTION 7. Section 412:9-304, Hawaii Revised Statutes, is 3 4 amended to read as follows: 5 "§412:9-304 Consumer loan charges. Unless specifically 6 authorized in this article or by rule adopted by the 7 commissioner, a financial services loan company shall only have 8 the right to charge, contract for, and receive in advance or 9 otherwise, the following charges in addition to the interest 10 permitted in section 412:9-302 for a consumer loan made under 11 this article[+], including but not limited to a first-lien 12 mortgage loan: 13 (1)Late charges under the consumer loan on any delinquent 14 installment, or portion of the delinquent installment 15 where there has been no extension or deferment. 16 Delinquency occurs when the installment or payment is 17 not paid on the due date. Late charges shall not be 18 collected more than once for the same delinquent 19 installment. Late charges on any consumer loan shall 20 not exceed five per cent of the delinquent 21 installment, and late charges shall not be assessed on



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1		any consumer loan after acceleration of the maturity
2		of the consumer loan;
3	(2)	A prepayment penalty as provided in the note or other
4		form of contract signed by the borrower on any amount
5		that is voluntarily prepaid; provided that:
6		(A) The prepayment penalty on any consumer loan with
7		a term of five years or more that is primarily
8		secured by an interest in real property and in
9		which the interest rate is computed under section
10		412:9-301(2) and which is prepaid within five
11		years of the date of the loan shall be computed
12		on the amount prepaid in excess of twenty per
13		cent of the original principal amount of the loan
14		in any twelve-month period measured from the date
15		of the loan or from any anniversary of the loan
16		date. The prepayment penalty may be charged only
17		on amounts in excess of the twenty per cent
18		amount in each twelve-month period in such five-
19		year period and shall not exceed six months of
20		interest at the [maximum] then-applicable loan
21		interest rate [permissible for the consumer loan
22		by law] on the amount prepaid; provided that the





1			interest rate is permissible under applicable
2			usury law;
3		(B)	The prepayment penalty shall not be charged on a
4			consumer loan that is a variable rate or open-end
5			loan, on a precomputed loan on which interest is
6			computed under section 412:9-301(1), or on loans
7			that are not secured by real estate; and
8		(C)	The prepayment penalty shall not be charged on
9			any amount that is paid because of the exercise
10			of any acceleration provision by the financial
11			services loan company;
12	(3)	Exte	nsion or deferment charges on any payment on
13		acco	unt of the principal balance of a loan, or a
14		port	ion thereof, that is due on a particular date, but
15		is e	xtended or deferred to a later date by mutual
16		agre	ement. The charges shall be based upon the amount
17		so e	xtended or deferred at interest not exceeding that
18		perm	itted upon the original loan under section
19		412:	9-302, for the actual period of the extension or
20		defe	rment. The extension or deferment charges may be
21		colle	ected either in advance at the commencement of the
22		perio	od of extension or deferment or otherwise as





1 The term and conditions of the extension or agreed. 2 deferment, including the amount of the consumer loan 3 so extended or deferred, and the period of, and the charge for the extension or deferment shall be set 4 5 forth in writing and signed by the borrower with one 6 copy given to the borrower; 7 (4) Nonrefundable discount, points, loan fees, and loan 8 origination charges; provided that: 9 (A) Discount, points, loan fees, and loan origination 10 charges shall not be charged on precomputed loans on which interest is computed under section 11 12 412:9-301(1); and 13 The nonrefundable discount, points, loan fees, (B) 14 and loan origination charges shall be permitted 15 on consumer loans on which interest is computed 16 under section 412:9-301(2) if the consumer loan 17 is secured by an interest in real property or if 18 the consumer loan is made to a lessee of land 19 subject to the Hawaiian Homes Commission Act and 20 the loan, but for the provisions of the Act, 21 would be secured by a mortgage on the leasehold 22 interest. Provided further that, except for



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1		open-end loans, the nonrefundable discount,
2		points, loan fees, and origination charges shall
3		be included as interest to determine compliance
4		of the loan with the interest rate limits under
5		section 412:9-302(b)(2) when the consumer loan is
6		made.
7		The nonrefundable discount, points, loan fees, and
8		loan origination charges shall be fully earned on the
9		date the loan commitment agreement or other form of
10		contract is executed and the commitment fee paid, or
11		on the date the consumer loan is made, and shall not
12		be subject to refund on prepayment of the consumer
13		loan;
14	(5)	Fees, charges, and expenses reasonably related to the
15		consumer loan that are retained by the financial
16		services loan company; provided that the fees,
17		charges, and expenses are charged only on consumer
18		loans that are secured by an interest in real
19		property; and provided further that the total dollar
20		amount of the fees, charges, and expenses, whether or
21		not itemized, shall not exceed one per cent of the
22		principal amount of the loan. The fees, charges, and



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1 expenses may include but are not limited to notary 2 fees, appraisal fees, appraisal review fees, and fees 3 for the development, processing, and preparation of 4 loan documents, including deeds, promissory notes, 5 mortgages, and reconveyance, settlement, and similar 6 documents;

7 (6) Fees, charges, and expenses reasonably related to the 8 consumer loan that are actually paid to third parties, 9 affiliates, or subsidiaries for services actually 10 rendered, no portion of which is rebated, refunded, or 11 paid directly or indirectly to the financial services 12 loan company by the third parties, affiliates, or 13 subsidiaries. The fees, charges, and expenses may 14 include but are not limited to charges for credit 15 reports, actual taxes, and fees charged by a 16 governmental agency for recording, filing, or entering 17 of record any security agreements or instruments, 18 including the partial or complete release of such 19 security agreements or instruments, insurance premiums 20 of the kind and to the extent described in paragraph 21 (2) of subsection (e) of Section 226.4 of Regulation Z 22 of the Board of Governors of the Federal Reserve



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1		System and to the extent that the insurance premium
2		does not exceed \$20, appraisal fees, appraisal review
3		fees, title report or title insurance fees, mortgage
4		reserve funds to be used for payment of taxes,
5		insurance, lease rent and condominium assessments,
6		real property tax services fees, wire transfer fees,
7		and attorney's fees and expenses for documentation of
8		the consumer loan or for the collection of any
9		consumer loan in default."
10	SECT	ION 8. Section 412:10-103, Hawaii Revised Statutes, is
11	amended by	y amending subsection (b) to read as follows:
12	"(b)	The application shall contain the following
13	informatio	on, unless waived by the commissioner:
14	(1)	The proposed name of the credit union;
15	(2)	Proposed lease agreements for its principal office;
16	(3)	The territory in which the proposed credit union will
17		operate;
18	(4)	A business plan;
19	(5)	Employment history, education, management experience,
20		and other biographical information for all original
21		chartering applicants, and proposed executive officers
22		of the credit union;

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1	(6)	Proposed policies regarding loans, investments,
2		operations, accounting, recordkeeping, and applicable
3		federal and state consumer laws; [and]
4	(7)	Information necessary to conduct a criminal history
5		record check in accordance with section 846-2.7 of
6		each of the original chartering applicants and
7		proposed executive officers of the credit union,
8		accompanied by payment of the applicable fee for each
9		record check to be conducted; and
10	[(7)]	(8) Any other information that the commissioner may
11		require."
12	SECT	ION 9. Section 412:11-102, Hawaii Revised Statutes, is
13	amended to	o read as follows:
14	"§41:	2:11-102 Examination of financial institution holding
15	company.	The commissioner may from time to time conduct [such]
16	reasonable	e examinations of any financial institution holding
17	company <u>t</u>	hat directly owns twenty-five per cent or more of any
18	class of	voting securities of a Hawaii financial institution as
19	may be nee	cessary or appropriate to determine whether the
20	condition	or activities of the company are jeopardizing the
21	safety or	soundness of the operations of its financial
22	institutio	on subsidiary. The commissioner shall not conduct
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1	[such examinations] an examination of any financial institution
2	holding [companies] <u>company that indirectly controls a Hawaii</u>
3	financial institution through one or more financial institution
4	holding companies unless the commissioner has good cause to
5	believe that [a] the financial institution holding company
6	indirectly controlling the Hawaii financial institution is
7	experiencing financial adversity [which] <u>that</u> will have a
8	material negative impact on the safety and soundness of [its]
9	the Hawaii financial institution [subsidiary]. The cost of
10	[such] <u>the</u> examinations shall be assessed against and paid by
11	the financial institution holding company in the same manner as
12	financial institutions under section 412:2-105."
13	SECTION 10. Section 412:13-222, Hawaii Revised Statutes,
14	is amended by amending subsection (a) to read as follows:
15	"(a) No foreign bank that is licensed to establish and
16	maintain a Hawaii state branch, Hawaii state agency, or Hawaii
17	representative office shall relocate any Hawaii office without
18	the commissioner's prior written $approval[-]$; provided that
19	approval shall not be required if:
20	(1) The relocation will be less than one mile from the
21	foreign bank's present place of business;



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1	(2)	The foreign bank gives the commissioner written notice
2		at least twenty days prior to the move;
3	(3)	The type of business carried on at the new place of
4		business will be the same as at the present place of
5		business; and
6	(4)	There will be no financial involvement in the
7		relocation by a director, executive officer, or
8		principal shareholder, or a related interest of any of
9		these persons."
10	SECT	ION 11. Section 846-2.7, Hawaii Revised Statutes, is
11	amended by	y amending subsection (b) to read as follows:
12	"(b)	Criminal history record checks may be conducted by:
13	(1)	The department of health on operators of adult foster
14		homes or developmental disabilities domiciliary homes
15		and their employees, as provided by section 333F-22;
16	(2)	The department of health on prospective employees,
17		persons seeking to serve as providers, or
18		subcontractors in positions that place them in direct
19		contact with clients when providing non-witnessed
20		direct mental health services as provided by section
21		321-171.5;

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1 The department of health on all applicants for (3) 2 licensure for, operators for, and prospective 3 employees, and volunteers at one or more of the 4 following: skilled nursing facility, intermediate 5 care facility, adult residential care home, expanded 6 adult residential care homes, assisted living 7 facility, home health agency, hospice, adult day 8 health center, special treatment facility, therapeutic 9 living program, intermediate care facility for the 10 mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the 11 12 above-related facilities operating in a private 13 residence, on any adult living in the facility other than the client as provided by section 321-15.2; 14 The department of education on employees, prospective 15 (4)16 employees, and teacher trainees in any public school 17 in positions that necessitate close proximity to 18 children as provided by section 302A-601.5; 19 (5) The counties on employees and prospective employees 20 who may be in positions that place them in close 21 proximity to children in recreation or child care 22 programs and services;



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1	(6)	The county liquor commissions on applicants for liquor
2		licenses as provided by section 281-53.5;
3	(7)	The department of human services on operators and
4		employees of child caring institutions, child placing
5		organizations, and foster boarding homes as provided
6		by section 346-17;
7	(8)	The department of human services on prospective
8		adoptive parents as established under section 346-
9		19.7;
10	(9)	The department of human services on applicants to
11		operate child care facilities, prospective employees
12		of the applicant, and new employees of the provider
13		after registration or licensure as provided by section
14		346-154;
15	(10)	The department of human services on persons exempt
16		pursuant to section 346-152 to be eligible to provide
17		child care and receive child care subsidies as
18		provided by section 346-152.5;
19	(11)	The department of human services on operators and
20		employees of home and community-based case management
21		agencies and operators and other adults, except for

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1		adults in care, residing in foster family homes as
2		provided by section 346-335;
3	(12)	The department of human services on staff members of
4		the Hawaii youth correctional facility as provided by
5		section 352-5.5;
6	(13)	The department of human services on employees,
7		prospective employees, and volunteers of contracted
8		providers and subcontractors in positions that place
9		them in close proximity to youth when providing
10		services on behalf of the office or the Hawaii youth
11		correctional facility as provided by section 352D-4.3;
12	(14)	The judiciary on employees and applicants at detention
13		and shelter facilities as provided by section 571-34;
14	(15)	The department of public safety on employees and
15		prospective employees who are directly involved with
16		the treatment and care of persons committed to a
17		correctional facility or who possess police powers
18		including the power of arrest as provided by section
19		353C-5;
20	(16)	The department of commerce and consumer affairs on

21 applicants for private detective or private guard
22 licensure as provided by section 463-9;



1	(17)	Private schools and designated organizations on
2		employees and prospective employees who may be in
3		positions that necessitate close proximity to
4		children; provided that private schools and designated
5		organizations receive only indications of the states
6		from which the national criminal history record
7		information was provided as provided by section
8		302C-1;
9	(18)	The public library system on employees and prospective
10 .		employees whose positions place them in close
11		proximity to children as provided by section
12		302A-601.5;
13	(19)	The State or any of its branches, political
14		subdivisions, or agencies on applicants and employees
15		holding a position that has the same type of contact
16		with children, dependent adults, or persons committed
17		to a correctional facility as other public employees
18		who hold positions that are authorized by law to
19		require criminal history record checks as a condition
20		of employment as provided by section 78-2.7;
21	(20)	The department of human services on licensed adult day
22		care center operators, employees, new employees,

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1		subcontracted service providers and their employees,
2		and adult volunteers as provided by section 346-97;
3	(21)	The department of human services on purchase of
4		service contracted and subcontracted service providers
5		and their employees serving clients of the adult and
6		community care services branch, as provided by section
7		346-97;
8	(22)	The department of human services on foster grandparent
9		program, senior companion program, and respite
10		companion program participants as provided by section
11		346-97;
12	(23)	The department of human services on contracted and
13		subcontracted service providers and their current and
14		prospective employees that provide home and community-
15		based services under Section 1915(c) of the Social
16		Security Act (42 U.S.C. §1396n(c)), as provided by
17		section 346-97; [and]
18	(24)	The department of commerce and consumer affairs on
19		proposed directors and executive officers of a bank,
20		savings bank, savings and loan association, trust
21		company, and depository financial services loan
22		company as provided by section 412:3-201;



1	(25)	The department of commerce and consumer affairs on
2		proposed directors and executive officers of a
3		nondepository financial services loan company as
4		provided by section 412:3-301;
5	(26)	The department of commerce and consumer affairs on the
6		original chartering applicants and proposed executive
7		officers of a credit union as provided by section
8		<u>412:10-103; and</u>
9	[-(24) -]	(27) Any other organization, entity, or the State,
10		its branches, political subdivisions, or agencies as
11		may be authorized by state law."
12	SECT	ION 12. Statutory material to be repealed is bracketed
13	and stric	ken. New statutory material is underscored.
14	SECT	ION 13. This Act shall take effect on July 1, 2008.



Report Title:

Code of Financial Institutions; Updates; Housekeeping Amendments

Description:

Updates Hawaii's Code of Financial Institutions by requiring licenses to be conspicuously displayed, addresses temporary closures during emergencies, clarifies the authority of a person to serve as a trustee or trust company, clarifies how prepayment penalties are calculated, clarifies when the Commissioner of Financial Institutions may examine a financial institution holding company, places a Hawaii licensed foreign bank on equal footing with a Hawaii state-chartered financial institution when relocating its place of business, allows the collection of information for criminal history record checks, and allows the DCCA to conduct criminal history record checks on certain financial institution officers. (CD1)

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