

JAN 27 2021

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**A BILL FOR AN ACT**

RELATING TO NONDEPOSITORY TRUSTS.

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

1           SECTION 1. Chapter 412, Hawaii Revised Statutes, is  
2 amended by adding to article 8 a new part to be appropriately  
3 designated and to read as follows:

4                   **"PART . NONDEPOSITORY TRUST COMPANIES**

5           **§412:8- Powers and duties.** (a) Unless otherwise  
6 prohibited or restricted by this section or any other law, a  
7 nondepository trust company shall have the general powers  
8 specified in section 412:8-200.

9           (b) Notwithstanding any other provision in this chapter, a  
10 nondepository trust company shall not:

- 11           (1) Solicit, accept, or hold deposits;
- 12           (2) Engage in banking business;
- 13           (3) Engage in business for which a real estate broker's  
14 license is required;
- 15           (4) Engage in any business for which an insurance producer  
16 license is required; or
- 17           (5) Engage in any business of a securities broker or  
18 dealer.

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1 (c) A nondepository trust company shall not itself  
2 perform, and instead shall contract for, the following services  
3 for its clients, if needed:

- 4 (1) Financial advisors for client investments;
- 5 (2) Property management for client rental properties; or
- 6 (3) Real estate brokerages for client real estate  
7 transactions.

8 (d) A nondepository trust company shall be responsible for  
9 the performance of the service providers that it engages for its  
10 clients."

11 SECTION 2. Section 412:1-109, Hawaii Revised Statutes, is  
12 amended by adding a new definition to be appropriately inserted  
13 and to read as follows:

14 "Total assets under management" means the total market  
15 value of the assets that a trust company oversees, administers,  
16 or manages on behalf of its clients pursuant to its fiduciary  
17 and trust powers in article 8, including assets for which a  
18 trust company has engaged a third-party platform investment,  
19 property management services, or real estate services."

20 SECTION 3. Section 412:2-105.2, Hawaii Revised Statutes,  
21 is amended to read as follows:

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1           "**§412:2-105.2 Hawaii financial institutions; assessments;**

2 **fees; penalty.** (a) Beginning January 1, 2014, every Hawaii

3 financial institution shall be assessed a yearly fee in

4 accordance with the following:

5           (1) For financial institutions with total assets under  
6                 \$750,000, the assessment shall be the sum of \$1,000  
7                 plus the product of 0.00029111 times total assets;

8           (2) For financial institutions with total assets of at  
9                 least \$750,000 but under \$7,500,000, the assessment  
10                shall be the sum of \$2,000 plus the product of  
11                0.00029111 times total assets;

12           (3) For financial institutions with total assets of at  
13                 least \$7,500,000 but under \$20,000,000, the assessment  
14                 shall be the sum of \$4,800 plus the product of  
15                 0.00029111 times total assets;

16           (4) For financial institutions with total assets of at  
17                 least \$20,000,000 but under \$75,000,000, the  
18                 assessment shall be the sum of \$9,900 plus the product  
19                 of 0.000064 times total assets;

20           (5) For financial institutions with total assets of at  
21                 least \$75,000,000 but under \$200,000,000, the

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1           assessment shall be the sum of \$15,000 plus the  
2           product of 0.00005333 times total assets;  
3           (6) For financial institutions with total assets of at  
4           least \$200,000,000 but under \$1,000,000,000, the  
5           assessment shall be the sum of \$21,100 plus the  
6           product of 0.00004750 times total assets;  
7           (7) For financial institutions with total assets of at  
8           least \$1,000,000,000 but under \$20,000,000,000, the  
9           assessment shall be the sum of \$29,000 plus the  
10          product of 0.00004 times total assets;  
11         provided that the yearly fee assessed for financial institutions  
12         with total assets of at least \$2,000,000,000 but less than  
13         \$10,000,000,000 shall be no more than \$100,000, and the yearly  
14         fee assessed for financial institutions with total assets of at  
15         least \$10,000,000,000 shall be no more than \$150,000.

16         (b) Beginning July 1, 2021, subsection (a) shall not apply  
17         to nondepository trusts, and nondepository trusts shall be  
18         assessed a yearly fee in accordance with the following:

19         (1) For nondepository trusts with total assets under  
20         management under \$750,000, the assessment shall be the  
21         sum of \$1,000 plus the product of 0.00029111 times  
22         total assets under management;

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- 1        (2) For nondepository trusts with total assets under  
2        management of at least \$750,000 but under \$7,500,000,  
3        the assessment shall be the sum of \$2,000 plus the  
4        product of 0.00029111 times total assets under  
5        management;
- 6        (3) For nondepository trusts with total assets under  
7        management of at least \$7,500,000 but under  
8        \$20,000,000, the assessment shall be the sum of \$4,800  
9        plus the product of 0.00029111 times total assets  
10       under management;
- 11       (4) For nondepository trusts with total assets under  
12       management of at least \$20,000,000 but under  
13       \$75,000,000, the assessment shall be the sum of \$9,900  
14       plus the product of 0.000064 times total assets under  
15       management;
- 16       (5) For nondepository trusts with total assets under  
17       management of at least \$75,000,000 but under  
18       \$200,000,000, the assessment shall be the sum of  
19       \$15,000 plus the product of 0.00005333 times total  
20       assets under management;
- 21       (6) For nondepository trusts with total assets under  
22       management of at least \$200,000,000 but under

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1           \$1,000,000,000, the assessment shall be the sum of  
2           \$21,100 plus the product of 0.00004750 times total  
3           assets under management;

4           (7) For nondepository trusts with total assets under  
5           management of at least \$1,000,000,000 but under  
6           \$20,000,000,000, the assessment shall be the sum of  
7           \$29,000 plus the product of 0.00004 times total assets  
8           under management;

9           provided that the yearly fee assessed for nondepository trusts  
10          with total assets under management of at least \$2,000,000,000  
11          but less than \$10,000,000,000 shall be no more than \$100,000,  
12          and the yearly fee assessed for nondepository trusts with total  
13          assets under management of at least \$10,000,000,000 shall be no  
14          more than \$150,000.

15          [~~(b)~~] (c) The assessments shall be paid semiannually on  
16          March 1 and September 1 of each year based on the institution's  
17          total assets or total assets under management reported as of the  
18          previous December 31 and June 30, respectively.

19          [~~(e)~~] (d) In addition to the assessments established in  
20          subsection (a), a financial institution or financial institution  
21          applicant shall pay fees as follows:

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- 1           (1) A nonrefundable fee of \$10,000 for an application for  
2           preliminary approval by the commissioner for the  
3           organization of a Hawaii financial institution  
4           pursuant to section 412:3-201, 412:3-202, 412:3-206,  
5           or 412:3-301;
- 6           (2) A nonrefundable fee of \$9,000 for an application for  
7           preliminary approval by the commissioner for the  
8           organization of a Hawaii financial institution  
9           pursuant to section 412:5-402;
- 10          (3) A nonrefundable fee of \$2,500 for a final application  
11          for a charter or license to engage in the business of  
12          a Hawaii financial institution pursuant to section  
13          412:3-212;
- 14          (4) A nonrefundable fee of \$10,000 for an application for  
15          a merger or consolidation or acquisition of control  
16          involving a Hawaii financial institution;
- 17          (5) A nonrefundable fee of \$2,500 for an application for  
18          the conversion of a federal financial institution to a  
19          Hawaii financial institution or the conversion of a  
20          Hawaii financial institution to another Hawaii  
21          financial institution charter;

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- 1           (6) A nonrefundable fee of \$5,000 for an application of a  
2                   bank to conduct a trust business through a subsidiary,  
3                   division, or department of the bank pursuant to  
4                   section 412:5-205;
- 5           (7) A nonrefundable fee of \$5,000 for an application of a  
6                   bank to conduct insurance activities pursuant to  
7                   section 412:5-205.5;
- 8           (8) A nonrefundable fee of \$5,000 for an application of a  
9                   bank to engage in securities activities pursuant to  
10                  section 412:5-205.7;
- 11          (9) A nonrefundable fee of \$2,000 for an application for a  
12                  bank, savings bank, or depository financial services  
13                  loan company to comply with lending limits applicable  
14                  to federal financial institutions pursuant to section  
15                  412:5-302, 412:6-303, or 412:9-404;
- 16          (10) A nonrefundable fee of \$2,000 for an application to  
17                  exceed certain permitted investment limits pursuant to  
18                  sections 412:5-305(f) and (h), 412:6-306(f) and (h),  
19                  412:7-306(f) and (h), 412:8-301(f), 412:9-409(f) and  
20                  (i), and 412:10-502(g); and
- 21          (11) A nonrefundable fee of \$2,500 for an application to  
22                  engage in the business of a credit union.

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1           ~~(d)~~ (e) The annual fee for each intra-Pacific financial  
2 institution and interstate branch of out-of-state banks is the  
3 sum of \$1,000 for each office, agency, and branch office  
4 maintained by the financial institution, payment of which shall  
5 be made before December 31 of each year. The commissioner may  
6 establish, increase, decrease, or repeal this fee pursuant to  
7 rules adopted in accordance with chapter 91.

8           ~~(e)~~ (f) Intra-Pacific bank fees shall be as follows:

- 9           (1) A nonrefundable fee of \$9,000 to establish an initial  
10           branch pursuant to section 412:5-401;
- 11           (2) A nonrefundable fee of \$750 to establish an additional  
12           branch or agency of an intra-Pacific bank; and
- 13           (3) A nonrefundable fee of \$500 for an application to  
14           relocate a branch or agency of an intra-Pacific bank  
15           established or acquired pursuant to section 412:5-401.

16           ~~(f)~~ (g) A nonrefundable fee of \$500 shall be assessed  
17 for an application to relocate a branch or office established  
18 pursuant to section 412:12-107.

19           ~~(g)~~ (h) A nonrefundable fee of \$100 shall be assessed  
20 for each certificate of good standing for any Hawaii financial  
21 institution; provided that an additional fee of \$100 shall be

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1 assessed for each certificate of good standing that is requested  
2 to be provided in two business days from receipt of request.

3 ~~[(h)]~~ (i) All assessments and fees shall be deposited into  
4 the compliance resolution fund established pursuant to section  
5 26-9(o).

6 ~~[(i)]~~ (j) For purposes of this section, "total assets"  
7 means for an insured depository institution the total assets  
8 reported in the financial institution's quarterly reports of  
9 condition, or call reports, which are required to be filed  
10 pursuant to section 7(a)(3) of the Federal Deposit Insurance Act  
11 or in the unaudited financial statements filed pursuant to  
12 section 412:3-112.

13 ~~[(j)]~~ (k) A Hawaii financial institution that fails to  
14 make a payment required by this section shall be subject to an  
15 administrative fine of not more than \$250 per day for each day  
16 it is in violation of this section, which fine, together with  
17 the amount due under this section, may be recovered pursuant to  
18 section 412:2-611 and shall be deposited into the compliance  
19 resolution fund established pursuant to section 26-9(o)."

20 SECTION 4. Section 412:3-209, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:

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1           "(a) Every financial institution existing or organized  
2 under the laws of this State shall at all times, and every  
3 applicant in organization shall before filing the final  
4 application for a charter or license under this part and at all  
5 times thereafter, have paid-in capital and surplus of not less  
6 than the following amounts for each type of institution  
7 specified below:

8	Banks	\$5,000,000
9	Savings banks	\$3,000,000
10	Savings and loan associations	\$2,000,000
11	Trust companies	\$1,500,000
12	<u>Nondepository trust companies</u>	<u>\$1,000,000</u>
13	Depository financial services	
14	loan companies	\$1,000,000"

15           SECTION 5. Section 412:8-101, Hawaii Revised Statutes, is  
16 amended by adding a new definition to be appropriately inserted  
17 and to read as follows:

18           "Nondepository trust company" means a type of trust  
19 company that is not authorized to accept deposits."

20           SECTION 6. Section 412:8-202, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:

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1           "(a) A trust company may act as an agent [~~in~~] on behalf of  
2 a principal in the transaction of any business or in the  
3 management of any property, real, personal or mixed, with such  
4 powers as the trust company may exercise under sections  
5 412:8-200 [~~and~~], 412:8-201[+], and 412:8- ; provided that its  
6 duties as such agent and the terms and conditions of the agency  
7 or power are set forth either specifically or generally in a  
8 written memorandum signed by the principal."

9           SECTION 7. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11           SECTION 8. This Act, upon its approval, shall take effect  
12 on July 1, 2021.

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INTRODUCED BY:           *Ann D. Chi*          

BY REQUEST

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**Report Title:**

Financial Institutions; Nondepository Trust Companies; Powers and Duties; Assessments; Fees; Paid-in-capital and Surplus; Agent; Chapter 412

**Description:**

Establishes provisions concerning nondepository trust companies.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

# SB. NO. 1097

## JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO NONDEPOSITORY TRUSTS.

PURPOSE: To establish provisions concerning nondepository trust companies.

MEANS: Add a new part to article 8 of chapter 412, Hawaii Revised Statutes (HRS), and amend sections 412:1-109, 412:2-105.2, 412:3-209(a), 412:8-101, and 412:8-202(a), HRS.

JUSTIFICATION: There is a growing "gap" group of consumers in Hawaii who need assistance with managing their assets but who do not qualify for services by banks or large investment firms. These consumers, who are likely to be elderly and/or have a mental and/or physical impairment, may not have trusted family or friends to manage their finances in the event they become incapacitated.

Consumers who can no longer manage their finances are likely to make financial mistakes, which can be costly and have devastating effects. For example, an individual who forgets to make mortgage payments on a home can lose the home to foreclosure. Mistakes can also lead to evictions, utility shut-offs, and damaged credit.

This bill will allow qualified nondepository trust companies to act as a trustee or guardian in the administration of funds, estates, and other related services for the unserved or underserved in Hawaii. These companies will serve as fiduciaries with a duty to manage assets in the best interests of their clients.

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Impact on the public: This bill will positively impact the public by bringing peace of mind to consumers who are no longer able to manage their own assets. Through the critical services provided by nondepository trust companies, these consumers can be better prepared for the future as their need for trusted formal asset management will be fulfilled.

Impact on the department and other agencies: This bill will impact the Department of Commerce and Consumer Affairs, as its Division of Financial Institutions will be responsible for the regulatory oversight of these companies.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-104.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2021.