

ACT 203

S.B. NO. 2399-82

A Bill for an Act Relating to the Department of Regulatory Agencies.

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

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The functions and authority heretofore exercised by the treasurer (except funds custody, cash management, debt management, and administering of veterans loans transferred to the department of budget and finance) as heretofore constituted are transferred to the department of regulatory agencies established by this chapter. The director of regulatory agencies shall also be the [insurance commissioner and] commissioner of securities.”

SECTION 2. Section 401-1, Hawaii Revised Statutes, is amended to read as follows:

“**§401-1 [Ex officio bank examiners; deputy bank examiners.] Bank examination division, bank examiner.** [The director of regulatory agencies and the deputy director shall each be ex officio a bank examiner for the State.] (a) The director of regulatory agencies, with the approval of the governor, shall appoint a fit and competent person [as deputy bank examiner] to perform the duties of the bank examiner, who may be removed by the director with the approval of the

governor[.]; provided that while there is any vacancy in the office of the bank examiner, the director shall serve as ex officio bank examiner. The bank examiner shall not be subject to chapters 76 and 77. The [director] bank examiner may appoint one or more assistant bank examiners who may make examinations and audits, and, with the approval of the bank examiner [or his deputy], sign reports of examination or audit.

(b) The salary of the bank examiner shall be set by the director of regulatory agencies but shall not be more than the maximum salary of first deputies to department heads."

SECTION 3. Title 22, Hawaii Revised Statutes, is amended by substituting the words "bank examiner" wherever the words "director" or "director of regulatory agencies" are used to mean the director of regulatory agencies in that department head's capacity ex officio as, or in the exercise of powers or the performance of duties analogous to those of, the bank examiner, except sections 403-7, 403-14, 405-1, 407-9, 408-2, 408-27, and 409-1, Hawaii Revised Statutes.

SECTION 4. Section 403-7, Hawaii Revised Statutes, is amended to read as follows:

"§403-7 [**"Director of regulatory agencies" defined; administration.**] **Administration of chapter.** [When used in this chapter, the term "director of regulatory agencies" or "director" and equivalent expressions mean the director of regulatory agencies of the State and, unless the context otherwise indicates or requires, include the terms "bank examiner", "examiner", "deputy examiner", "deputy bank examiner", "conservator", or any other subordinate to whom the director may lawfully delegate any of the powers or duties conferred or imposed upon him by this chapter. These terms when necessary to effectuate the full administration of this chapter shall have a similar and interchangeable meaning.] The administration of this chapter shall be vested in the [director.] bank examiner."

SECTION 5. Sections 403-14, Hawaii Revised Statutes, is amended to read as follows:

"§403-14 [**Director; Bank examiner; examinations, powers.** The [director of regulatory agencies or his deputy or] bank examiner may examine the accounts, books, and papers of any person licensed as provided in section 403-13, and may take any action set forth in sections 403-161 and 403-162 relating to capital impairment. He shall make all necessary and appropriate rules [and regulations] governing the use of the terms "investment banker" and "investment banking" by any person and the conduct of business by such person."

SECTION 6. Section 405-1, Hawaii Revised Statutes, is amended to read as follows:

"§405-1 **Definitions.** As used in this chapter, unless the context otherwise requires, "corporation" means a corporation organized pursuant to this chapter, ["director" means the director of regulatory agencies,] and "bank" has the meaning used in section 403-2."

SECTION 7. Section 407-8, Hawaii Revised Statutes, is amended to read as follows:

"§407-8 [**Director; bank examiner.**] Bank examiner; assistants. ["Director"

and "bank examiner" are used interchangeably in this chapter and mean the director of regulatory agencies and bank examiner of the State.] Any duly authorized [deputy director or deputy] assistant bank examiner may perform any act in this chapter authorized or required to be performed by the [director or] bank examiner."

SECTION 8. Section 408-2, Hawaii Revised Statutes, is amended to read as follows:

"§408-2 Definitions. As used in this chapter and unless a different meaning appears from the context:

"Company" means any person, firm, partnership, corporation, and unincorporated association to which this chapter is applicable and includes any foreign corporation doing business in the State;

["Director" means the director of regulatory agencies;]

"Bank examiner" [includes the deputy] means the bank examiner of the State [appointed under section 401-1];

"Industrial loan company" means any person, firm, partnership, corporation, and unincorporated association organized or which may hereafter be organized, and which is engaged in or may hereafter be engaged in the lending of money to be repaid weekly, monthly, or other periodic installments of principal sums as a business; provided[,] that this definition shall not be construed to include banks, trust companies, building and loan associations, or mortgage companies whose principal business consists of loans for the purchase of homes (if investment certificates issued by the mortgage companies are secured by mortgage and if the appraised value of the mortgaged property is thirty-three and one-third per cent in excess of the total of the certificates the mortgage secures), the credit unions, pawn-brokers, or licensees under chapter 409;

"Engaging in the business of an industrial loan company" or "carrying on the business of an industrial loan company" or "the industrial loan business" or any other term of similar import, means and includes the loaning of money to be repaid in weekly, monthly, or other periodical installments of principal sums, and the charging, receiving, or requiring of compensation, interest, discount, fees, or charges of whatever nature or kind for the use of the money, in excess of the charges permitted by section 478-3; provided[,] that direct financing to customers by mercantile firms or persons engaged in the mercantile business shall not be deemed engaging in the business of an industrial loan company; nor shall the loaning by an individual of his own funds be deemed engaging in such business, unless he charges, contracts for, or receives on any loan a greater rate of interest, discount, or consideration than would be permissible under section 478-3;

"Firm" means a partnership or an unincorporated association;

"Principal" or "principal amount" means the face amount of the note or other contract concerned;

"Contract" includes promissory notes;

"Affiliate" means any corporation, partnership, venture, business trust, association, or other similar organization:

- (1) Of which the industrial loan company, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty per cent

of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or

- (2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by shareholders of the industrial loan company who own or control either a majority of the shares of such company or more than fifty per cent of the number of shares voted for the election of directors of such company at the preceding election, or by the trustees for the benefit of the shareholders of any such company; or
- (3) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of the industrial loan company; or
- (4) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of the industrial loan company or more than fifty per cent of the number of shares voted for the election of directors of such company at the preceding election, or controls in any manner the election of a majority of the directors of such company, or for the benefit of whose shareholders all or substantially all the capital stock of such company is held by trustees.

“Person” means not only individuals but also partnerships, corporations, firms, associations, and federal, state, and municipal governments.

“Primary obligor” means a person legally bound to comply with a demand for satisfaction of any security. This definition shall include the maker or endorser of a note, the corporate issuer of stock, and the issuer of any security or of any other evidence of indebtedness.

“Open-end loan” means a loan made by a licensee under this chapter pursuant to an agreement between the licensee and the borrower whereby:

- (1) The licensee may permit the borrower to obtain advances of money to the borrower from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;
- (2) The amount of each advance and permitted interest and other charges are debited to the borrower’s open-end loan account and payments and other credits are credited to the same account;
- (3) Interest and charges are computed on the unpaid principal balance or balances of the open-end loan account from time to time; and
- (4) The borrower has the privilege of paying either the full amount of the open-end loan account or periodic installments of fixed or determinable amounts as provided in the agreement.

“Billing cycle” means the time interval between periodic billing dates. Such intervals may be considered equal intervals of time unless the billing date varies by more than four days from the regular billing date.”

SECTION 9. Section 408-27, Hawaii Revised Statutes, is amended to read as follows:

“§408-27 Not to divulge information. The [director of regulatory agencies,] bank examiner, [or his assistants, or] assistant bank examiners, and any other person appointed by the bank examiner as provided by this chapter, shall not

divulge any information acquired by them in the discharge of their duties, except insofar as the same may be rendered necessary by this chapter or any other law or under order of court in the action involving the bank examiner or in any criminal actions or proceedings; provided that any such information may be furnished to the board of directors of the Thrift Guaranty Corporation of Hawaii in response to a written request by the board."

SECTION 10. Section 409-1, Hawaii Revised Statutes, is amended to read as follows:

"§409-1 [Definitions.] Bank examiner.¹ As used in this chapter, ["director" means the director of regulatory agencies, and "deputy bank examiner"] "bank examiner" means the [deputy] bank examiner [appointed under section 401-1.] of the State."

SECTION 11. Chapter 409, Hawaii Revised Statutes, is amended by substituting the words "bank examiner" wherever the words "director" or "director of regulatory agencies", or either in conjunction with "deputy bank examiner", appear and by deleting the word "deputy" wherever the words "deputy bank examiner" appear not in conjunction with "director" or "director of regulatory agencies".

SECTION 12. Section 431-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [The director of regulatory agencies shall be the insurance commissioner.] The insurance division is established within the department of regulatory agencies. The insurance division shall be under the supervision and control of an administrator who shall be known as the [assistant] insurance commissioner. The director of regulatory agencies shall, with the approval of the governor, appoint the [assistant] insurance commissioner[.] who shall not be subject to chapters 76 and 77. The [assistant] insurance commissioner shall hold his office at the pleasure of the director of regulatory agencies, and shall be responsible for the performance of the duties imposed upon the division."

SECTION 13. Section 431-33, Hawaii Revised Statutes, is amended to read as follows:

"§431-33 Salary. [The insurance commissioner shall not receive any salary in addition to his salary as director of regulatory agencies. The salary of the assistant insurance commissioner shall be not more than \$37,500, to be set by the director of regulatory agencies.] The salary of the insurance commissioner shall be set by the director of regulatory agencies but shall not be more than the maximum salary of first deputies to department heads."

SECTION 14. Section 435-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Definitions. For the purpose of this chapter:

- (1) "Commissioner" means the [director of regulatory agencies in his capacity as] insurance commissioner[.] of this State;
- (2) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transactions;
- (3) "Credit disability insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit

- transaction while the debtor is disabled as defined in the policy;
- (4) "Creditor" means the lender of money or vendor or lessor of goods, services, or property, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any such lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer, or employee of any of them or any other person in any way associated with any of them;
 - (5) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction;
 - (6) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction."

SECTION 15. Section 435E-1, Hawaii Revised Statutes, is amended to read:
 "[~~§~~**435E-1**] **Definitions.** Unless the context clearly requires otherwise:
 ["Director" means the director of regulatory agencies.]

"Commissioner" means the insurance commissioner of this State.

"Physician" or "surgeon" means any person licensed under chapter 453; or any professional corporation, partnership, or other entity whose stockholders or partners are comprised solely of persons licensed under chapter 453."

SECTION 16. Chapter 435E, Hawaii Revised Statutes, is amended by substituting the word "commissioner" wherever the words "director" or "director of regulatory agencies" appear.

SECTION 17. Chapter 671, Part III, Hawaii Revised Statutes, is amended by substituting the word "director" or "director of regulatory agencies" wherever the words "commissioner" or "insurance commissioner" appear.

SECTION 18. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 19. The substantive provisions of this Act shall amend any other conflicting Act enacted by the regular session of 1982, but nonsubstantive amendments made by this Act shall not supersede any substantive amendments made to section 26-9, Hawaii Revised Statutes, by any other Act enacted by the regular session of 1982.

SECTION 20. This Act shall take effect upon its approval.

(Approved June 10, 1982.)

Note

- 1. Should be underscored.