

A Bill for an Act Relating to the Industrial Loan Company Guaranty Act.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to eliminate, upon the occurrence of certain events, the requirement that an industrial loan company pay to Thrift Guaranty Corporation of Hawaii the membership assessments provided in sections 408A-9 and 408A-10, Hawaii Revised Statutes. This Act also authorizes a loan by the State of Hawaii to Thrift Guaranty Corporation of Hawaii in order to permit a prompt payment to account holders of industrial loan companies presently in bankruptcy.

SECTION 2. Section 408A-5, Hawaii Revised Statutes, is amended to read as follows:

“§408A-5 Voting rights of members[.]; and election of directors. Any other law to the contrary notwithstanding, any action by the members of the guaranty corporation, including the election of a board of directors, shall be taken after a vote of the members in accordance with this section. Each member company shall be entitled to one vote plus an additional vote for each [\$1,000 of assessments, rounded to the nearest \$1,000, which such member shall have actually paid to the guaranty fund in accordance with section 408A-10; provided that no member shall be entitled to more votes than is represented by fifteen per cent of the aggregate assessments. For purposes of any actions taken prior to the initial assessment required by section 408A-10(1), including the initial election of the board, voting rights of members shall be calculated as if each member had paid the initial assessment required by section 408A-10(1).] \$1,000,000 of the member’s outstanding thrift account obligations, rounded to the nearest \$1,000,000, but no member shall be entitled to more than one representative on the board of directors of the corporation.”

SECTION 3. Section 408A-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Receivers [or], liquidators, or trustees and debtors in possession under the Bankruptcy Code of members shall be entitled to offer the assets of such members for sale to the guaranty corporation or as security for loans from the guaranty corporation. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such members. The guaranty corporation with the approval of the bank examiner may make loans on the security of or may purchase and liquidate or sell any part of the assets of a member which [may hereafter be] has been placed in receivership or [adjudicated bankrupt,] made subject to a case under the Bankruptcy Code, but in any case in which the

guaranty corporation is acting as receiver of a member, no such loan or purchase shall be made without the approval of a court of competent jurisdiction.”

SECTION 4. Section 408A-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read as follows:

“(a) [When] If a member has [been adjudicated bankrupt] sought relief under the Bankruptcy Code or has been or is in receivership, the bank examiner shall either:

- (1) Direct the guaranty corporation to forthwith pay to each thrift account holder of the member up to \$10,000 as specified in section 408A-9; or
- (2) Withhold any direction to the guaranty corporation until it has been determined that the proceeds of the receivership or bankruptcy are insufficient to pay up to \$10,000 of each thrift account obligation as specified in section 408A-9; upon such determination the bank examiner shall direct the guaranty corporation to pay each such deficiency.”

2. Subsection (c) is amended to read as follows:

“(c) Whenever the guaranty corporation makes payments in accordance with section 408A-14(a), it shall be subrogated to all rights of the thrift account holder up to the amount of its payment, and shall be entitled to repayment in full from the estate of the member prior to any distribution to the thrift account holder to whom it has made payment. The guaranty corporation may waive, release, or modify in any way its right to such repayment from the estate of the member with the approval of the bank examiner.”

SECTION 5. The sum of \$10,500,000, or so much thereof as may be necessary for fiscal years 1985-1986 and 1986-1987, is appropriated or authorized from the general revenues of the State of Hawaii, or from the issuance of general obligation bonds, or any combination thereof deemed in the best interest of the State. The sums appropriated shall be expended, and the bonds authorized shall be issued by the department of budget and finance for the purposes of this Act.

When requested by the bank examiner, the director of finance shall issue such general obligation bonds as provided by law, the proceeds of which shall be used, together with any general revenues of the State, to make loans to Thrift Guaranty Corporation of Hawaii (the “guaranty corporation”), without interest and to be repaid over a term not to exceed twenty years. The loans may be made, as and when necessary, only to make payments pursuant to a plan of reorganization or liquidation that has been confirmed by the court in the bankruptcy proceedings involving Manoa Finance Company, Inc. (“Manoa Finance”), Great Hawaiian Financial Corporation (“Great Hawaiian”), and Commercial Finance, Limited (“Commercial Finance”); provided that up to \$1,000,000 of the amount herein appropriated shall be used only to make payment to thrift account holders of Commercial Finance of up to the guaranty amount provided by section 408A-9, Hawaii Revised Statutes, should a majority of those account holders so request; and provided further that the bank examiner is satisfied that the following conditions have been met:

(1) Such plan of reorganization or liquidation must provide that:

- (A) The amount that each thrift account holder of such member company will receive out of the debtor’s estate, when added to any guaranty payments to be made by the guaranty corpora-

- tion, shall be at least equal to the full guaranty amount required by section 408A-9(a), Hawaii Revised Statutes, less any advance or other payment previously received by such account holder from the guaranty corporation, receiver, trustee in bankruptcy, or debtor in possession; and
- (B) Any payments made by the guaranty corporation under the plan of reorganization or liquidation shall be limited to the aggregate of: (i) the amount appropriated under this section; (ii) amounts loaned by member companies specifically for the plan; and (iii) not more than \$2,000,000 of other funds belonging to the guaranty corporation.
- (2) Such plan must be confirmed within a reasonable time, not to exceed one year following the effective date of this Act, and if any such order of confirmation shall be appealed, such appeal shall have been dismissed not later than sixty days after the end of such one-year period.
- (3) Payment to the account holders must commence within a reasonable time, not to exceed ninety days after court confirmation of the plan.
- (4) Assets of the guaranty corporation and assets acquired by the guaranty corporation from Manoa Finance or Great Hawaiian shall secure the loans made by the State pursuant to this Act and any loans made by the member companies specifically for the plans of reorganization contemplated by this Act, in the following manner: The bank examiner and the member companies shall mutually designate separate and identifiable pools of such assets. The State shall have a lien, immediately senior to the lien of the member companies, in one such pool of assets, the fair estimated value of which shall not be less than the amount of loans made by the State pursuant to this Act. The member companies shall have a lien, immediately senior to the lien of the State, in the remaining pool of assets; provided that the pool of assets designated for the member companies shall include, at the minimum, the real estate owned by Manoa Finance. The State and member companies shall each have a junior lien position in the pool of assets in which the other party holds the more senior lien position. If Commercial Finance participates in a plan of reorganization pursuant to this section, the assets of Commercial Finance acquired by the guaranty corporation shall be divided into two pools of assets and shall secure the respective loans of the State and the member companies in the foregoing manner. The guaranty corporation shall sell, collect, or liquidate all assets so acquired and divided as soon as prudently and economically feasible; provided that the terms and conditions of all such sales shall be subject to the prior approval of the bank examiner. The assets of the guaranty corporation not acquired from Manoa Finance and Great Hawaiian shall not be used to pay any of the expenses of such sales, collections, or liquidations; and the net proceeds or recoveries from such sales, collections, or liquidations shall not be used to pay any expenses of the guaranty corporation, except those in connection with such sales, collections, or liquidations. Until substantial completion of the sale, collection, or liquidation of such assets, and based upon the most recent data available, the bank examiner shall provide to the legislature by

February 1 of each year a status report regarding such sales, collections, or liquidation.

- (5) The guaranty corporation, the State of Hawaii and their officers, agents, directors, and employees, shall have received a full and complete release and discharge, in a manner and form satisfactory to all parties, from or binding upon all the thrift account holders of each company for which such a plan is confirmed, releasing the aforesaid parties from any and all liability with respect to any and all claims directly or indirectly arising out of or in connection with the account holder's thrift account at such member company or the guaranty of such account. Any and all lawsuits pending against any of the aforesaid parties by thrift account holders shall have been dismissed with prejudice.
- (6) The member companies shall have paid when due their annual assessments to be levied in 1985, in accordance with sections 408A-9 and 408A-10, Hawaii Revised Statutes.

Pending the receipt of the funds from the issuance and sale of general obligation bonds, the amount required for any such loan shall be advanced from the general fund of the State. Upon the receipt of the proceeds of the general obligation bonds funds, the general fund shall be reimbursed. The issuance of general obligation bonds in accordance with the authorization of this Act and for purposes of making loans to the guaranty corporation is found and determined to be for a public purpose.

SECTION 6. The obligation of members to pay the annual assessments required under sections 408A-9 and 408A-10, Hawaii Revised Statutes, shall permanently terminate if the bank examiner determines that the conditions have been met for making the loans described in Section 5. The guaranty corporation or any member of the guaranty corporation may apply to the bank examiner for a determination that such conditions have been met and for an order terminating liability for assessment, at any time. The bank examiner shall make an order terminating the assessment or denying such application within thirty days. The guaranty corporation or any member deeming itself aggrieved by the order of the bank examiner under this section, may apply to the Circuit Court of the First Circuit for an order requiring the bank examiner to terminate the member's obligation to pay assessments if the conditions set forth in Section 5 have been met. The court, after citing the bank examiner to show cause why such order should not be issued, and after a hearing and a determination of whether the conditions set forth in Section 5 have been met, may dismiss such application, order the bank examiner to issue an order terminating assessment liability, or make such further order as may be just. If the bank examiner enters an order terminating the assessment liability of the members, whether voluntarily or pursuant to court order, the termination shall be effective as of the earlier of the date of the application by the guaranty corporation or a member, as the case may be, or the date of the bank examiner's order. Any levy of assessment made after the effective date shall be rendered void, and any amounts paid on account of the levy shall be returned to the paying member.

SECTION 7. The assets of the guaranty corporation, including assets of Manoa Finance, Great Hawaiian, and Commercial Finance, if Commercial Finance participates in a plan of reorganization pursuant to Section 5, shall be available, after satisfaction of the respective liens of the State and the member companies provided pursuant to Section 5, for repayment of the loans made by the State to the guaranty corporation in the years 1977 to 1983, which shall not

be discharged by this Act; provided that assets of the guaranty corporation may be used to pay the full guaranteed amount to the account holders of Commercial Finance under sections 408A-9 and 408A-14, Hawaii Revised Statutes, if Commercial Finance does not participate in a plan of reorganization pursuant to Section 5.

SECTION 8. Any loan made by any member company of the guaranty corporation to the guaranty corporation specifically for the plan of reorganization or liquidation described in Section 5 shall be deemed to constitute a loan complying with the requirements of sections 408-14.5, 408-14.6, and 408-14.7, Hawaii Revised Statutes, or any other provision of state law relating to limitations or requirements on loans by industrial loan companies.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 3, 1985.)