

ACT 269

H.B. NO. 240

A Bill for an Act Relating to the Commissioner of Financial Institutions.

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

SECTION 1. Chapter 401, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“CHAPTER 401
[BANK EXAMINER]
COMMISSIONER OF FINANCIAL INSTITUTIONS”**

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

“§401-1 [Bank examination division, bank examiner.] Division of financial institutions, commissioner of financial institutions. (a) The director of commerce and consumer affairs with the approval of the governor, shall appoint a fit and competent person to perform the duties of the [bank examiner,] commissioner of financial institutions, whose principal duty will be to examine financial institutions and who shall also be known as the “examiner of financial institutions.” The commissioner [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,] commissioner, the director shall serve as ex officio [bank examiner.] commissioner. The [bank examiner] commissioner shall not be subject to chapters 76 and 77. The [bank examiner] commissioner may appoint one or more [assistant bank] examiners who may make examinations and audits, and, with the approval of the [bank examiner,] commissioner, sign reports of examination or audit.

(b) The salary of the [bank examiner] commissioner shall be set by the director of commerce and consumer affairs but shall not be more than the maximum salary of first deputies to department heads.”

SECTION 3. Section 401-2, Hawaii Revised Statutes, is amended to read as follows:

“§401-2 Disqualifications. No person shall be [a bank] an examiner who is a director in or owner of any interest, or shares of stock, in any company or corporation that may be examined pursuant to this chapter.”

SECTION 4. Section 401-4, Hawaii Revised Statutes, is amended to read as follows:

“§401-4 Powers; report. The [bank examiner] commissioner may when making an examination examine any of the officers of the corporations and agents of the business being examined, on oath, and for such purpose may administer oaths, and may order and cause to be produced by the officers, agents, or employees of the corporation, person, or company so being examined, all books of account, papers, documents, and securities under their possession or

control. Upon the close of the examination by the [bank examiner,] commissioner, he shall make a full and detailed report of the condition of the affairs of the banking and fiduciary companies, corporations, or individuals, that have been examined by him, substantially in the form prescribed by the schedule in section 401-11. The report shall be filed with the records of the [director of regulatory agencies.] division of financial institutions."

SECTION 5. Section 401-12, Hawaii Revised Statutes, is amended to read as follows:

"§401-12 Receiver; application for, appointment; duties. If the [bank examiner] commissioner becomes satisfied that the capital of any corporation subject to the inspection of the [bank examiner] commissioner has become impaired or reduced below the amount required by law, and the impairment or reduction is not made good as by him required, or if the [examiner] commissioner becomes satisfied that the corporation or any person, firm, association, or copartnership subject to the inspection of the [bank examiner] commissioner is conducting its or his business in an unsafe or unauthorized manner so that the continuance of its or his business would be hazardous to the public, or those having funds in its control, or if the corporation, person, firm, association, or copartnership has violated this chapter or any other law relating thereto, or if the corporation, person, firm, association, or copartnership refuses to submit its or his books and papers and concerns to the inspection of the [bank examiner,] commissioner, or his deputy, or if any officer of the corporation, person, firm, association, or copartnership unreasonably delays or refuses to be examined under oath, touching the affairs and condition of the corporation, person, firm, association, or copartnership, or if from any examination made, or report in this chapter provided for, the [bank examiner] commissioner concludes that the corporation, person, firm, association, or copartnership is in an unsound or unsafe condition to transact its or his business so that it is unsafe and inexpedient to continue the same, the [bank examiner] commissioner shall communicate these facts to the governor, and with his concurrence, application may be made by the attorney general, on behalf of the [bank examiner,] commissioner, to a judge or court of competent jurisdiction for the appointment of a receiver.

Upon presentation of such application and upon it being made to appear that any of the facts herein enumerated, as a ground for the application for a receiver exists, the court or judge shall immediately appoint a competent person as receiver and shall determine his bond and prescribe his duties and may make such further order as seems proper; provided, that pending the action, the [bank examiner] commissioner shall immediately take such control of the corporation and all of its property and assets and the property and assets of any such person, firm, association, or copartnership as may be necessary to prevent waste or diversion of assets, and hold possession of the same pending the action. The property and assets, while in his possession, shall not be subject to any levies and attachments.

The receiver, if any is appointed, shall, under the direction of the court, take possession of the books, records, and assets of every description of the corporation, person, firm, association, or copartnership, collect all debts, dues, and claims belonging to it or him and sell or compound all bad or doubtful assets, and sell all the real and personal property of the corporation, person, firm, association, or copartnership on such terms as the court shall direct, and may, if necessary to pay the debts of the corporation, enforce all individual liabilities of stockholders, and shall make a report to the court and [bank

examiner] commissioner of all his acts and proceedings. The compensation of the receiver, which shall be not more than \$15 per day, shall be fixed by the court and shall, together with the expenses of the receivership, be paid out of the assets of the corporation, person, firm, association, or copartnership or the moneys collected by the receiver.”

SECTION 6. Section 401-14, Hawaii Revised Statutes, is amended to read as follows:

“§401-14 Confidentiality of information. (a) Except as otherwise provided in this section or as may be specifically authorized under any law regulating the institutions described in this chapter, neither the [bank examiner,] commissioner, nor any [deputy,] examiner, nor any other person appointed by the [bank examiner] commissioner as provided by law, shall divulge any of the following information nor will it be made available to any person, if that information is:

- (1) Exempt from disclosure by any federal or state statute;
- (2) Contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of, the [bank examiner,] commissioner, relating to the affairs of any bank, trust company, building and loan association, fiduciary company, industrial loan and investment company, or licensee under chapter 409, or affiliate thereof;
- (3) Privileged or related to the business, personal, or financial affairs of any person and is furnished in confidence;
- (4) Contained in investigatory files compiled for law enforcement purposes, including but not limited to, information relating to matters involving:
 - (A) The issuance of an order under section 401-5;
 - (B) The issuance of an order of suspension, revocation, or removal; and
 - (C) The granting or revocation of any approval, permission, or authority;
- (5) Related solely to the internal personnel rules or other internal practices of the [bank examiner,] commissioner;
- (6) Contained in personnel, medical, and similar files (including financial files), the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or
- (7) Contained in inter-agency and intra-agency memoranda or letters that would not be routinely available by law to a private party in litigation with the [bank examiner,] commissioner, including but not limited to memoranda, reports, and other documents prepared by the staff of the [bank examiner,] commissioner.

(b) The [bank examiner] commissioner shall furnish a copy of each report of the regular examination of a bank, trust company, building and loan association, industrial loan and investment company, or licensee under chapter 409 to the financial institution examined.

(c) Reports of examination and other information relating to financial institutions may be made available, upon request, by the [bank examiner] commissioner to:

- (1) Federal governmental agencies having supervision of state-chartered financial institutions;
- (2) State governmental agencies having supervisory authority similar to the [bank examiner,] commissioner; and

- (3) Other agencies of the United States or a state for use where necessary to investigate criminal charges in connection with the affairs of any financial institution under the supervision of the [bank examiner.] commissioner.

All reports or other information made available pursuant to this subsection shall remain the property of the [bank examiner,] division of financial institutions, and no person, institution, agency or authority to whom the information is made available, or any officer, director, or employee thereof, shall disclose any of that information, except published statistical material that would not disclose the identity of any individual or corporation.

(d) The [bank examiner] commissioner may cause to be published in the English language in a newspaper of general circulation in the State a combined statement of the statements of conditions of banks, trust companies, building and loan associations, industrial loan and investment companies, and licensees under chapter 409 in such form as the [bank examiner] commissioner may see fit, using information derived from reports made to the [bank examiner] commissioner by the respective banks, trust companies, building and loan associations, industrial loan and investment companies, and licensees under chapter 409.

(e) [Any bank] An examiner[, deputy bank examiner,] or any other person appointed by the [bank examiner] commissioner as provided by law who violates this section shall be immediately discharged."

SECTION 7. Section 401-15, Hawaii Revised Statutes, is amended to read as follows:

"§401-15 Additional examinations, cost of. Whenever the [bank examiner] commissioner has reason to believe that any person, firm, association, corporation, copartnership, society, or company is so conducting its or such a business as to make the same subject to this chapter, or subject to any law requiring inspection of its or the person's records or affairs or supervision or regulation of its or the person's business by the [bank examiner,] commissioner, then the [bank examiner,] commissioner, deputy[,] commissioner, or any examiner appointed by the [bank examiner] commissioner may make an examination in accordance with this chapter, of the books, records, and accounts of any such person, firm, association, corporation, copartnership, society, or company.

The [bank examiner,] commissioner, deputy[,] commissioner, or any examiner appointed by the [bank examiner] commissioner when making the examinations may examine any such person or the members or employees of the firm, association, copartnership, or society or the officers or employees of the corporation or the agents of the person, firm, association, corporation, copartnership, society, or company on oath, and for such purpose may administer oaths, and may order and cause to be produced by any of the persons, members, officers, employees, or by agents so examined, all books of accounts, papers, documents, and securities under the person's or their possession or control.

If the [bank examiner] commissioner finds that the person, firm, association, corporation, copartnership, society, or company is conducting its or such a business as to make the same subject to the inspection of the [bank examiner,] commissioner, the actual per diem cost and expenses of each person who may be engaged in such examination shall be paid by the person, firm, association, corporation, copartnership, society, or company examined."

SECTION 8. Section 401-18, Hawaii Revised Statutes, is amended to read as follows:

“§401-18 Rules [and regulations]. [Subject to chapter 91, the bank examiner may make, amend, and repeal rules and regulations not inconsistent with sections 401-16 to 401-19, as in his judgment seem appropriate for the carrying out of the destruction of any records. The rules and regulations shall have the force and effect of law.] The commissioner may adopt, amend, or repeal rules pursuant to chapter 91 to effectuate the purpose of all laws within the jurisdiction of the division of financial institutions.”

SECTION 9. Section 402-1, Hawaii Revised Statutes, is amended to read as follows:

“§402-1 Fiduciary company defined. The term “fiduciary company”, as used in this part, means and includes: every bank, other than a national bank; every trust company; every building and loan association; every industrial loan and investment company which issues or which may hereafter issue or have outstanding any certificate or certificates of indebtedness or investment; every company organized for the purpose of accumulating and loaning the funds of its members or depositors, or which may loan or invest the funds or receive deposits of money or loan or invest or collect the funds or deposits with interest, or which may repay the depositors with or without interest, or which has the power to invest the funds or deposits in property, securities, or other obligations, or which has the power to pay interest or any profit on its general deposits or on its deposits made for a stated period or upon special terms.

The term “fiduciary company”, as used in this section, includes any corporation, association, firm, or copartnership that may be carrying on a fiduciary business as above defined but excludes any credit union which lawfully engages only in the business of credit union.

The term “commissioner”, as used in this chapter, means the commissioner of financial institutions.”

SECTION 10. Section 402-5, Hawaii Revised Statutes, is amended to read as follows:

“§402-5 Receiver; application for, appointment, duties; exemption from attachment, etc., pending receivership. If the [bank examiner] commissioner becomes satisfied that the capital of any fiduciary company has become impaired, and the impairment has not been made good as required by him; or if the [examiner] commissioner is satisfied that any fiduciary company is conducting its business in an unsafe or unauthorized manner so that the continuance of its business would be hazardous to the public, or to those having funds in its control; or if any fiduciary company has violated this part; or if the fiduciary company refuses to submit its books and papers and concerns to the inspection of the [bank examiner,] commissioner, or his deputy; or if any officer of the fiduciary company unreasonably delays or refuses to be examined under oath, touching the affairs and condition of the company; or if from any examination made, or report provided in this part, the [bank examiner] commissioner concludes that the company is in an unsound or unsafe condition to transact business so that it is unsafe and inexpedient to continue the same; the [bank examiner] commissioner shall communicate these facts to the director of [regulatory agencies,] commerce and consumer affairs, and with his concurrence, application may be made by the attorney general, on behalf of the [bank examiner,] commissioner, to a judge or court of competent jurisdiction for the appointment of a receiver of the company.

Upon presentation of the application and upon it being made to appear that any of the facts herein enumerated as a ground for the application for a receiver exists, the court or judge may immediately appoint a competent receiver and shall determine his bond and prescribe his duties and may make such further order as seems proper; provided, that pending the action, the [bank examiner] commissioner shall immediately take control of the fiduciary company and all the property and effects thereof as may be necessary to prevent waste or diversion of assets, and hold possession of the same pending the action. The property and effects, while in his possession, shall not be subject to any levies and attachments. The receiver, if any is appointed, shall, under the direction of the court, take possession of the books, records, and assets of every description of the company, collect all debts, dues, and claims belonging to it and sell or compound all bad or doubtful assets and sell all the real and personal property of the company on such terms as the court directs, and may, if necessary to pay the debts of the company, enforce all individual liabilities of stockholders, and shall make a report to the court and [bank examiner] commissioner of all his acts and proceedings.

The compensation of a receiver shall be fixed by the court."

SECTION 11. Section 403-7, Hawaii Revised Statutes, is amended to read as follows:

"§403-7 Administration of chapter. The administration of this chapter shall be vested in the [bank examiner.] commissioner of financial institutions. As used in this chapter, "commissioner" means the commissioner of financial institutions."

SECTION 12. Section 403-11, Hawaii Revised Statutes, is amended to read as follows:

"§403-11 Terms implying conducting of banking business; restrictions on use; penalty. No person (including firm, company, association, copartnership, or corporation, either domestic or foreign, except national banks) without having received a certificate of authority from the [director of regulatory agencies:] commissioner; shall advertise that he or it is receiving or accepting money or savings and issuing notes or certificates of deposit or passbooks therefor; or make use of any office sign having any name or bearing any word or words indicating that its office or place of business is the office or place of business of a bank or that deposits are received there or payments made on check, or that any other form of banking business is transacted; or make use of or circulate any letterheads, blank notes, blank receipts, certificates, or circulars or other paper whatever, whether written or printed, having thereon any name, word, or words indicating that it is engaged in any banking business. Nor shall any such person or any agent of a foreign corporation solicit or receive deposits or transact any business in the way or manner of a banking business or in such a way or manner as to lead the public to believe that it is so engaged. Nor shall any such person or agent transact business under any name, title, or descriptive term which contains the word "bank", or "banker", or "bankers", or "banking", or "savings bank", or "savings", or any other word in any language having the same or a similar meaning. The [director] commissioner [or his deputy] or an examiner may examine the accounts, books, and papers of every such person or agent to ascertain whether this section has been or is being violated.

Any person, violating this section, shall forfeit to the State \$100 a day for every day or part thereof during which the violation continues. Upon action brought by the [director] commissioner the court may issue an injunction

restraining any person or agent from further violating this section or from further acting in any way or manner as to imply or lead the public to believe that its business is of a banking character, as well during the pendency of such action as for all time, and may make such other order or decree as may be proper."

SECTION 13. Section 403-64, Hawaii Revised Statutes, is amended to read as follows:

"§403-64 Oath of directors. Each director when appointed or elected shall take an oath that he will, as far as the duty devolves upon him, diligently and honestly administer the affairs of the bank and will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to the bank, and that he is the owner in good faith and in his own right of shares of stock of the par value required in section 403-63 subscribed by him or standing in his name on the books of the bank, and that the same to an amount equal to the par value of at least \$1,000 is not hypothecated or in any way pledged as security for any loan or debt. The oath shall be subscribed by the director making it, certified by the notarial officer before whom it is taken, and immediately transmitted to the [director of regulatory agencies] commissioner and filed and preserved in [his office.] the division of financial institutions. The managers or agents residing in the State, of a foreign corporation transacting any banking business in the State, shall take oath that they will, as far as the duty devolves on them, diligently and honestly administer the affairs of the bank, and will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to the bank. The oath shall be subscribed by the managers or agents taking it, certified by the officer before whom it is taken, and immediately transmitted to the [director] commissioner and filed and preserved in his office."

SECTION 14. Section 403-149, Hawaii Revised Statutes, is amended to read as follows:

"§403-149 Witness; failure to testify or produce records; penalty. Any person who neglects or refuses to attend and testify or answer any lawful inquiry or to produce books, papers, accounts, records, contracts, or documents, if in his power to do so, in obedience to the subpoena or lawful requirements of the [director of regulatory agencies,] commissioner, or [any deputy or] an examiner employed by the [director,] commissioner, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

SECTION 15. Section 403-161, Hawaii Revised Statutes, is amended to read as follows:

"§403-161 Capital impairment, procedure. Whenever the capital of a bank is impaired and the [director of regulatory agencies] commissioner determines such fact, from either his own examination or that of any duly authorized [deputy bank] examiner, or from the report made by the bank, the bank shall be dealt with in the manner provided by section 403-162; provided, that nothing in this section and in section 403-162 shall prevent the [director] commissioner from appointing a conservator for the bank and otherwise dealing with the same pursuant to sections 403-172 to 403-179, if in his judgment the action is necessary to conserve the assets of the bank for the benefit of the depositors and other creditors thereof, pending the action to be taken by the directors and stockholders of the bank under section 403-162."

SECTION 16. Section 403-162, Hawaii Revised Statutes, is amended to read as follows:

"§403-162 Capital impaired. The capital of a bank shall be deemed impaired when any shrinkage occurs in the surplus which it is at the time required to have pursuant to section 403-21, or in its capital. In determining whether a shrinkage has occurred, obligations of the United States, direct or indirect, bonds of the State or its political subdivisions, and other bonds which the [bank examiner] commissioner finds to be of similar quality shall be valued at par if their respective cash market values are less than par. Other assets shall be valued at cash market value unless the [bank examiner] commissioner determines that by virtue of extraordinary market conditions then prevailing their cash market value is greater or less than their true value, in which event he may adopt such other method of valuation as he finds to be acceptable to and consonant with then prevailing principles of sound banking practice.

Whenever it appears to the [director of regulatory agencies,] commissioner, either from his own examination or the examination of any duly appointed [bank] examiner or from any report made by any bank to the [director] commissioner that the capital of the bank is impaired, the [director] commissioner shall notify the bank to make good the impairment. The directors of the bank receiving this notice shall immediately call a meeting of the shareholders of the bank for the purpose of making good the impairment, which meeting shall be within fifteen days of the date of the receipt of the notice. The shareholders at the meeting shall take action within the time specified by the [director] commissioner to make up the impairment. The impairment shall be made up when the bank has obtained through the sale of additional stock or by other capital contribution, cash in an amount equal to the impairment. Upon making up the impairment, if the surplus of the bank is then less than fifty per cent of the capital, the bank shall not be deemed in violation of section 403-21, but the bank shall thereafter augment its surplus as in section 403-21 provided. Any further shrinkage in surplus or capital which occurs after an impairment has been made up shall also be deemed an impairment and subject to this section. The failure to call a meeting of the shareholders, or the failure to hold the meeting, or the failure of the stockholders to take such action to cover the impairment within the time prescribed by the [director,] commissioner, shall entitle the [director] commissioner to immediately close the bank and take possession of its assets and proceed with the liquidation of the bank; provided the bank may, with the consent of the [director,] commissioner, later resume business upon such conditions as the [director] commissioner may approve."

SECTION 17. Section 403-182, Hawaii Revised Statutes, is amended to read as follows:

"§403-182 Placing business in hands of [director,] commissioner; notice. Any bank doing business in the State subject to this chapter may place its business and assets under the control of the [director of regulatory agencies,] commissioner, to be liquidated, as herein provided, by posting a notice on its door as follows: "This bank is in the hands of the [director of regulatory agencies] commissioner of financial institutions of the State." Immediately upon posting this notice an executive officer of the bank shall notify the [director] commissioner of the action in person, by mail and wireless, or other expeditious means of communication. The posting of the notice of possession of any bank by the [director] commissioner shall be sufficient to place all of its assets and property of whatever nature in the legal possession of the [director] commissioner and shall operate as a bar and dissolution to any attachment proceedings."

SECTION 18. Section 404-1, Hawaii Revised Statutes, is amended by adding the definition of "commissioner" to read as follows:

“(7) ‘‘Commissioner’’ means the commissioner of financial institutions of the State.”

SECTION 19. Section 404-4, Hawaii Revised Statutes, is amended to read as follows:

“§404-4 Merger procedure; resulting state bank. (a) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

- (1) The name of each merging bank and location of each office;
- (2) With respect to the resulting bank:
 - (A) The name and location of the principal and the other offices;
 - (B) The name and residence of each director to serve until the next annual meeting of the stockholders;
 - (C) The name and residence of each officer;
 - (D) The amount of capital, the number of shares and the par value of each share;
 - (E) Whether preferred stock is to be issued and the amount, terms, and preferences;
 - (F) The amendments to its charter and bylaws;
- (3) Provisions governing the manner of converting the shares of the merging banks into shares of the resulting state bank or of distributing cash or any other property, in whole or in part, in lieu of or partially in lieu of shares of the resulting state bank to stockholders of the merging banks or any class of them;
- (4) A statement that the agreement is subject to approval by the [director of regulatory agencies] commissioner and by the stockholders of each merging bank;
- (5) Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting shareholders of merging banks;
- (6) Such other provisions as the [director] commissioner requires to enable him to discharge his duties with respect to the merger.

(b) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the [director] commissioner for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board, and together with evidence of proper action by the board of directors of any merging national bank.

(c) Within thirty days after receipt by the [director] commissioner of the papers specified in subsection (a) the [director] commissioner shall approve or disapprove the merger agreement, and if no action is taken, the agreement shall be deemed approved. The [director] commissioner shall approve the agreement if it appears that:

- (1) The resulting state bank meets the requirements of state law as to the formation of a new state bank;
- (2) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken;
- (3) The agreement is fair;
- (4) The merger is not contrary to the public interest.

(d) If the [director] commissioner disapproves an agreement, he shall state his objections and give an opportunity to the merging banks to amend the merger agreement to obviate the objections.

(e) Nothing in this chapter shall be construed to require the approval by any state authority for any state bank to convert into and merge or consolidate with national banking associations as provided by federal law."

SECTION 20. 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, "commissioner" means the commissioner of financial institutions, and "bank" has the meaning used in section 403-2."

SECTION 21. Section 405-19, Hawaii Revised Statutes, is amended to read as follows:

"§405-19 Power of [director] commissioner to take possession; grounds. Whenever it appears to the [director of regulatory agencies] commissioner that any corporation has violated its articles of incorporation or any law of this State, or is conducting its business in an unsafe or unauthorized manner, or if the capital of the corporation is impaired, or if the corporation refuses to submit its books, papers, and concerns to the inspection of any [bank] examiner of the department of commerce and consumer affairs or if any officers thereof refuse to be examined upon oath touching the concerns of the corporation or if the corporation suspends payment of its obligations, or if from any examination or report provided for by this chapter the [director] commissioner has reason to conclude that the corporation is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any corporation neglects or refuses to observe any order of the [director,] commissioner, the [director] commissioner may forthwith take possession of the property and business of the corporation and retain possession until the corporation resumes business, or its affairs are finally liquidated as provided by chapter 403 for the liquidation of banks."

SECTION 22. Section 405A-2, Hawaii Revised Statutes, is amended to read as follows:

"§405A-2 International banking facilities, establishment of; notice to [bank examiner,] commissioner of financial institutions, quarterly reports. (a) A depository institution, an Edge or Agreement Corporation or United States branch or agency of a foreign bank may establish an international banking facility for the purpose of:

- (1) Making, arranging for, placing, or servicing loans to foreign persons; provided that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is eighty per cent or more owned or controlled, either directly or indirectly, by one or more domestic corporations (other than a bank), domestic partnership, or resident individual, all the proceeds of the loan shall be for use outside of the United States;
- (2) Making or placing deposits of foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities;

(3) Entering into foreign exchange trading or hedging transactions related to any other transactions described in this paragraph; and

(4) Accepting deposits from foreign persons.

(b) International banking facilities may be located in any county.

(c) At least fourteen days prior to the first reserve computation period that any institution intends to establish an international banking facility, the institution shall provide the [bank examiner] commissioner with a copy of the statement of intention required under Regulation D (12 CFR Part 204) of the Board of Governors of the Federal Reserve System.

(d) An institution which establishes an international banking facility shall provide the [bank examiner] commissioner with a copy of each quarterly report concerning the operations of its international banking facility which is required under Regulation D (12 CFR Part 204) of the Board of Governors of the Federal Reserve System."

SECTION 23. Section 406-1, Hawaii Revised Statutes, is amended to read as follows:

"§406-1 Trust company defined. The term "trust company" as used in this chapter means any corporation or joint-stock company, organized under the general laws of the State, which has obtained from the [director of regulatory agencies] commissioner of financial institutions a certificate that it is qualified to act as a trust company under section 406-1.5."

SECTION 24. Chapter 406, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§406- Rules. The commissioner may adopt, amend, or repeal rules pursuant to chapter 91 to fully effectuate this chapter."

SECTION 25. Section 407-8, Hawaii Revised Statutes, is amended to read as follows:

"§407-8 [Bank examiner; assistants.] Commissioner of financial institutions; examiners. Any duly authorized [assistant bank] examiner may perform any act in this chapter authorized or required to be performed by the [bank examiner.] commissioner of financial institutions. As used in this chapter "commissioner" means the commissioner of financial institutions."

SECTION 26. Section 407-13, Hawaii Revised Statutes, is amended to read as follows:

"§407-13 Investigation by [bank examiner;] commissioner; allowance or disallowance, procedure. Upon the filing of the application, if the [bank examiner] commissioner upon investigation finds (1) that the financial responsibility, experience, character, and general fitness of the applicants and of the officers or members thereof are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter; (2) that allowing the applicants to engage in this business will promote the convenience and advantage of the locality or community in which the business of the applicants is to be conducted; and (3) that capital stock in excess of \$25,000 has been subscribed for and ten per cent paid to the applicants in cash; he shall write upon the face of the application the fact that he has approved the same, together with the date, and affix his signature. The application shall then be returned to the applicants who shall upon receipt of the approved application transmit the same within thirty days to the [director of regulatory agencies.] commissioner,

together with the articles of association, and pay to the [director] commissioner the corporation and other filing fees required by law.

No application shall be disapproved except after the applicants have had notice of a hearing on the application and an opportunity to be heard thereon. If the application is denied, the [bank examiner] commissioner shall, within twenty days thereafter, prepare and keep on file in his office, a written order or denial thereof, which shall contain his findings with respect thereto and the reasons supporting the denial, and forthwith serve upon the applicants a copy thereof. Within ten days after the receipt of the copy the applicants may appeal from the order of denial to a board consisting of the [director,] director of commerce and consumer affairs, comptroller, and director of taxation by filing with the comptroller a notice of appeal. After notice by mail to the applicants and after a hearing at which the applicants shall be entitled to be present and to be heard, the board shall file with the comptroller its decision in writing either ordering the [bank examiner] commissioner to approve the application or affirming his action in disapproving the same. A copy of the decision or order of the board shall forthwith be served upon the applicants by the [bank examiner.] commissioner. The applicants may appeal from an adverse decision of the board to the circuit court of the circuit in which the applicants propose to engage in business, as provided in chapter 91."

SECTION 27. Section 407-42, Hawaii Revised Statutes, is amended to read as follows:

"§407-42 "Branch", "agency" defined; powers, termination; appeals. A branch office is a legally established place of business of the association, other than the home office or any agency, authorized by the board of directors and approved by the [bank examiner,] commissioner, at which payments on accounts and loan payments may be accepted and applications for loans may be received and in those instances allowed by this section, be approved, and at which passbooks and share or investment certificates may be issued and loans, books and share or investment certificates may be issued and loans, when properly approved, may be closed.

An agency of an association is the place of business, other than the home office or a branch office, at which an agent or agents of the association transact authorized business of the association. At any agency payments on accounts and loan payments may be received solely for transmission to the home office or a branch office of the association, but may not be accepted for or on behalf of the association. At any agency an agent or agents may, however, perform such other special duties as may be directed from time to time by the home office or a branch office. No agency shall be authorized, however, to issue passbooks and share or investment certificates.

No loan may be approved at any agency of the association.

Any branch office of the association may approve loans authorized to be made pursuant to sections 407-83, 407-84, 407-85, 407-86 and 407-89 after approval of the board of directors or authorized committee. No other loans may be approved at any branch office but solely at the main office in the State after approval by the board of directors or authorized committee.

The [bank examiner] commissioner may revoke his approval of the maintenance of any branch office or agency by a written notice to the association fixing a reasonable time after which the association shall cease to use and maintain its branch office or agency.

Any association aggrieved by any action of the [bank examiner] commissioner under sections 407-41 and 407-42 may appeal to a board,

consisting of the director of [regulatory agencies,] commerce and consumer affairs, comptroller, and director of taxation by filing with the comptroller a notice of appeal."

SECTION 28. Section 407-97, Hawaii Revised Statutes, is amended to read as follows:

"[[§407-97 Rules [and regulations].]] [Rules and regulations may be promulgated by the bank examiner in order to effectuate the purposes of sections 407-95 and 407-96.] The commissioner may adopt, amend, or repeal rules pursuant to chapter 91 to fully effectuate this chapter."

SECTION 29. Section 407-102, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

"§407-102 Inspection by [director;] commissioner; appointment and powers of conservator or receiver. (a) Inspection. The [director of regulatory agencies] commissioner may at any time, without previous notice, in person or by any person by him appointed, examine into the business and affairs of every building and loan association, and shall have free access to all of its books, papers, records, and securities, to ascertain the condition of the association in any respect and whether it is operating conformably with law. For this purpose he may summon and compel the attendance of any director, officer, agent, or employee of the association, and examine them under oath.

(b) Conservator. If the [director,] commissioner, as a result of such examination, or from any report made to him finds that any building and loan association is violating its articles of association or bylaws or the laws of this State or of the United States, or any lawful order of the [director,] commissioner, or is conducting its business in an unsafe manner, he may, by an order, direct discontinuance of the violation or unsafe practice, and conformance with all requirements of law. If any such association refuses or neglects to comply with such order within the time specified therein, or if it appears to the [director] commissioner that any such association is in an unsafe condition or is conducting its business in an unsafe manner, or if he finds that an impairment of capital exists to such an extent that it threatens loss to the members or investment certificate holders, or if any association refuses to submit its books, papers, and accounts to the inspection of the [director] commissioner or his representative, the [director] commissioner may appoint a conservator to take charge of the association and manage its business until the [director] commissioner permits the board of directors to resume management of the business or reorganizes the association, or until a receiver is appointed by the [director] commissioner to liquidate its affairs. Any conservator appointed by the [director] commissioner shall have all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association.

The conservator shall not liquidate assets except in the ordinary course of operations, or incur any expenses other than normal operating expenses, except that he may retain special counsel to assist, advise, or represent him in the performance of his duties hereunder.

The directors and officers shall remain in office and the employees shall remain in their respective positions, but the conservator may remove any director, officer, or employee provided the order of removal of a director or officer shall be approved in writing by the [director of regulatory agencies.] commissioner. While the association is in the charge of a conservator, members and investment certificate holders of the association shall continue to make payments to the association in accordance with the terms and conditions of their

contracts, and the conservator, in his discretion, may permit holders of withdrawable shares or investment certificates to withdraw such shares or investment certificates from the association as in the ordinary course of business, or under, and subject to, such rules and regulations as the [director] commissioner may prescribe, and the conservator may accept payments on shares or investment certificates, but the payments thereon received by the conservator may be segregated if the [director] commissioner so orders in writing, and if so ordered, the payments shall not be subject to offset, and shall not be used to liquidate any indebtedness or the association existing at the time the conservator was appointed for it, or any subsequent indebtedness incurred for the purposes of liquidating the indebtedness of the association existing at the time the conservator was appointed. All expenses of the association during the conservatorship shall be paid by the association. The appointment of a conservator shall be evidenced by the [director] commissioner issuing a certificate under the seal of his office delivered to the board of directors of the association, certifying that a conservator has been appointed pursuant to this chapter.

Restoration, when. Within six months from the date upon which the conservator takes charge of an association, the [director] commissioner shall determine whether or not he shall restore the management of the association to the board of directors. The determination shall be evidenced by the [director's] commissioner's certificate under the seal of his office, delivered to the board of directors reciting that the conservator forthwith is redelivering the management to the board of directors of the association then in office. After the management of the association has been redelivered to the board of directors, the association shall henceforth be managed and operated as though no conservator had been appointed.

Reorganization, when. At any time before the redelivery of the management to the board of directors, the [director] commissioner shall determine whether the association shall be required to reorganize. The determination shall be evidenced by the [director's] commissioner's certificate under the seal of his office, delivered to the association, reciting that unless the association reorganize under the laws of the State within a period of ninety days from the date of the certificate, or within such further time as the [director] commissioner shall approve, the [director] commissioner will proceed to liquidate the association. If the association has the insurance protection provided by Title IV of the National Housing Act, as now or hereafter amended, a signed and sealed copy of each certificate mentioned in this section shall be promptly sent by the [director] commissioner by registered mail to the Federal Savings and Loan Insurance Corporation, Washington, D.C."

SECTION 30. Section 408-2, Hawaii Revised Statutes, is amended by amending the definition of "bank examiner" to read:

"["Bank examiner"] "Commissioner" means the [bank examiner] commissioner of financial institutions of the State."

SECTION 31. Section 408-24, Hawaii Revised Statutes, is amended to read as follows:

"§408-24 False entries; penalty. Any director, officer, agent, or employee of any corporation, or any licensee hereunder, or agent, member, or employee of any licensee, who knowingly or wilfully makes any false certificate, entry, or memorandum upon any of the books or the papers of any company or upon any statement filed or offered to be filed in the [bank examiner's] commissioner's

office or used in the course of an examination, inquiry, or investigation with the intent to deceive the director of [regulatory agencies] commerce and consumer affairs or the [bank examiner,] commissioner, or his assistants, shall be fined not more than \$1,000 or imprisoned not more than six months, or both."

SECTION 32. Section 408-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The fees to be paid for examinations of industrial loan companies shall be the same as those charged for examination of banks, trust companies, and all fiduciary companies as provided by section 401-8[; provided that for foreign corporations the fees shall be \$20 per day, or the actual cost thereof whichever is the greater, but not to exceed \$250 for any one examination]. All fees shall be paid directly to the [director of regulatory agencies] commissioner upon receipt of a bill from the [bank examiner.] commissioner."

SECTION 33. Section 408-27, Hawaii Revised Statutes, is amended to read as follows:

"§408-27 Not to divulge information. The [bank examiner,] commissioner, [assistant bank] examiners, and any other person appointed by the [bank examiner] commissioner as provided by this chapter, shall not divulge any information acquired by them in the discharge of their duties, except to the extent permitted by section 401-14; provided any 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 34. Section 408-29.5, Hawaii Revised Statutes, is amended to read as follows:

"[[§408-29.5[]] **Good faith reliance.** If a contract is made or any other act is done or omitted in good faith reliance on an interpretation of this chapter made by the supreme court of this State or in a rule or regulation duly adopted by the [bank examiner] commissioner [or the examiner's authorized deputy] pursuant to chapter 91, no penalty imposed by this chapter shall apply, notwithstanding that after such contract is made, such interpretation, rule, or regulation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason."

SECTION 35. Section 408A-3, Hawaii Revised Statutes, is amended by amending the definitions of "bank examiner" and "applicant" to read as follows:

"(a) ["Bank examiner"] "Commissioner" means the [bank examiner] commissioner of financial institutions as provided in section 401-1.

(d) "Applicant" means an industrial loan company which subsequent to [[]April 1, 1977,[]] obtains the written approval of the [bank examiner] commissioner to issue thrift account obligations."

SECTION 36. Section 409-1, Hawaii Revised Statutes, is amended to read as follows:

"§409-1 [Bank examiner.] **Commissioner of financial institutions.** As used in this chapter, ["bank examiner"] "commissioner" means the [bank examiner] commissioner of financial institutions of the State."

SECTION 37. Section 409-4, Hawaii Revised Statutes, is amended to read as follows:

"§409-4 Application for license; fees; assets. Application for a license shall be in writing, under oath, and in the form prescribed by the [director of regulatory agencies,] commissioner, and shall contain the name and address (both of the residence and place of business) of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further information as the [director] commissioner may require. The applicant shall, at the time of filing of the application, pay to the [director] commissioner the sum of \$37.50 for investigating the application. Upon notification by the [director] commissioner of approval of the application, the applicant shall pay, within twenty days of notification of approval of application, as the initial license fee (1) the sum of \$50 if the approval occurs between January 2 and June 30, inclusive, or (2) the sum of \$25 if the approval of application occurs between July 1 and December 31, inclusive. Thereafter, on or before December 31, the licensee shall annually pay the sum of \$50 to the [director,] commissioner, as the annual license fee for the ensuing year. A licensee whose application was approved in December may pay to the [director] commissioner his first annual fee of \$50 for the ensuing year on or before the expiration of thirty days after receiving notice of approval of his application.

Every applicant, except an individual loaning his own money, shall also prove, in form satisfactory to the [director,] commissioner, that he or it has available for the operation of such business at the location specified in the application, liquid assets of at least \$15,000."

SECTION 38. Section 409-12, Hawaii Revised Statutes, is amended to read as follows:

"§409-12 Revocation of license; suspension; surrender. The [deputy bank examiner] commissioner shall, upon ten days' notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he finds that:

- (1) The licensee has failed to pay the annual license fee or to maintain in effect the bond or bonds required under this chapter or to comply with any demand, ruling, or requirement of the [deputy bank examiner] commissioner lawfully made pursuant to and within the authority of this chapter; or that
- (2) The licensee has violated any provision of this chapter or any rule or regulation lawfully made by the [deputy bank examiner] commissioner under and within the authority of this chapter; or that
- (3) Any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the [director of regulatory agencies] commissioner in refusing originally to issue the license.

The [deputy bank examiner] commissioner may, without notice or hearing suspend any license for a period not exceeding thirty days, pending investigation.

The [deputy bank examiner] commissioner may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he finds that the grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by the licensee, he shall revoke or suspend all of the licenses issued to the licensee or such licenses as such grounds apply to, as the case may be.

Any licensee may surrender any license by delivering to the [director] commissioner written notice that he surrenders his license, but the surrender shall not affect the licensee's civil or criminal liability for acts committed before the surrender, or entitle the licensee to a return of any part of the annual license fee or affect his bond or bonds.

No revocation or suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

Every license issued hereunder shall remain in force and effect until it is surrendered, revoked or suspended in accordance with this chapter, but the [director] commissioner shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses have been revoked if no fact or condition then exists which clearly would have warranted the [director] commissioner in refusing originally to issue the license under this chapter.

Whenever the [deputy bank examiner] commissioner revokes or suspends a license issued pursuant to this chapter, he shall forthwith file in the [office of the director] division of financial institutions a written order to that effect and findings with respect thereto containing the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof. The order may be reviewed in the manner provided in section 409-13."

SECTION 39. Section 409-27, Hawaii Revised Statutes, is amended to read as follows:

"§409-27 Powers to subpoena; circuit judge to enforce. The [director of regulatory agencies and the deputy bank examiner] commissioner shall [each] be vested with the power to subpoena and examine witnesses under oath relating to any matter mentioned in sections 409-6 to 409-8, 409-12, and 409-24. For the purposes of this chapter [they] the commissioner shall [each] have the power to administer oaths. A circuit judge of the circuit in which any hearing or examination is held may enforce by proper proceedings the attendance and testimony of witnesses."

SECTION 40. Section 409-29, Hawaii Revised Statutes, is amended to read as follows:

"§409-29 Regulations, rulings, findings, etc. The [deputy bank examiner] commissioner may make and enforce such general rules and regulations and specific directions, orders, decisions, and findings as may be necessary for the execution and enforcement of this chapter and the purposes sought to be attained herein, in addition thereto and not inconsistent therewith. All the rules, regulations, directions, orders, decisions, and findings shall be filed and entered by the [deputy bank examiner] commissioner in the [office of the director of regulatory agencies] division of financial institutions in an indexed, permanent book or record, with the effective date thereof suitably indicated, and the book or record shall be a public document. Copies of all findings, orders, and decisions shall be mailed to the parties affected thereby by United States mail, within five days of their filing, except as otherwise provided herein."

SECTION 41. Chapter 409, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§409- Rules. The commissioner may adopt, amend, or repeal rules pursuant to chapter 91 to fully effectuate this chapter."

SECTION 42. Section 410-2, Hawaii Revised Statutes, is amended by amending the definition of "commissioner" to read:

"“Commissioner” means the [director of commerce and consumer affairs.] commissioner of financial institutions.”

SECTION 43. Section 410-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The [director of commerce and consumer affairs] commissioner of financial institutions shall be the commissioner.”

SECTION 44. Section 410-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Supervision fee. Not later than January 31 of each calendar year, each credit union shall pay to the [credit union] division of financial institutions of the department of commerce and consumer affairs for the preceding calendar year, a supervision fee in accordance with a graduated scale prescribed by this subsection on the basis of assets as of December 31 of such preceding year, but the fee shall in no event be less than \$10, as follows:

<u>Total Assets</u>	<u>Maximum Fee</u>
\$500,000 or less.....	25 cents per \$1,000
Over \$500,000 and not over \$1,000,000	\$125 plus 20 cents per \$1,000 in excess of \$500,000
Over \$1,000,000 and not over \$2,000,000	\$225 plus 15 cents per \$1,000 in excess of \$1,000,000
Over \$2,000,000 and not over \$5,000,000	\$375 plus 10 cents per \$1,000 in excess of \$2,000,000
Over 5,000,000	\$675 plus 5 cents per \$1,000 in excess of \$5,000,000

No annual supervision fee shall be payable by the credit union with respect to the year in which its charter is issued except in cases of conversion from a credit union chartered under the Federal Credit Union Act to a credit union chartered under this chapter, or in which final distribution is made in its liquidation or the charter is otherwise canceled.

Failure of any credit union to pay any amount required by this subsection shall be grounds for the revocation of the charter of the credit union failing to make the payment.

Fees collected under this section shall be deposited to the credit of a general fund and be available for the purposes of administering this chapter.”

SECTION 45. Section 410-35, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The compensation of the liquidating agent, counsel, and other employees and assistants, and all expenses of supervision and liquidation shall be fixed by the commissioner, subject to the approval of the circuit court for the county in which the credit union is located, and shall upon the certificate of the commissioner be paid out of the funds of the credit union. Expenses of supervision and liquidation shall include the cost of the service rendered by the [credit union] division of financial institutions to the credit union being

liquidated and shall be determined from time to time by the commissioner and shall be paid to the office of the commissioner from the assets of the credit union as other expenses of liquidation are paid. The moneys collected by the liquidating agent shall be from time to time deposited in one or more banks or corporate credit union domiciled in the State."

SECTION 46. Section 410-40, Hawaii Revised Statutes, is amended to read as follows:

"**[]§410-40[] Immunity of the commissioner.** The commissioner [of credit unions] shall not be subject to any civil liability or penalty, nor to any criminal prosecution, for any error in judgment or discretion made in good faith and upon reasonable grounds in any action taken or omitted by him in his official capacity under this chapter."

SECTION 47. Section 420-10, Hawaii Revised Statutes, is amended to read as follows:

"**§420-10 Articles; amendments.** The articles may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and the amendments shall require approval of the affirmative vote of two-thirds of the votes to which the stockholders are entitled and two-thirds of the votes to which the members are entitled; provided, that no amendment of the articles which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the director of commerce and consumer affairs to examine the corporation or the obligation of the corporation to make reports as provided in section 420-14, shall be made without amendment of this chapter; and provided further, that no amendment of the articles which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided in section 420-8, or affects a member's voting rights as provided in section 420-9, shall be made without the consent of each member affected by the amendment.

Within thirty days after any meeting at which amendment of the articles has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth the amendment and the due adoption thereof, shall be submitted to the [director,] commissioner of financial institutions, who shall examine them and if he finds that they conform to the requirements of this chapter, shall so certify and endorse his approval thereon. Thereupon, the articles of amendment shall be filed in the office of the [director] commissioner and no amendment shall take effect until the articles of amendment have been filed."

SECTION 48. Section 420-14, Hawaii Revised Statutes, is amended to read as follows:

"**§420-14 Examination by [bank examiners.] commissioner of financial institutions.** The corporation shall be subject to the examination of the [bank examiners,] commissioner of financial institutions, and shall make reports of its condition not less than annually to the [examiners,] commissioner, who in turn shall make copies of the reports available to the director of commerce and consumer affairs and to the governor, and the corporation shall also furnish such other information as may from time to time be required by the [director.] commissioner."

SECTION 49. Section 449-1, Hawaii Revised Statutes, is amended by amending the definition of "bank examiner" to read as follows:

"(1) ["Bank examiner"] "Commissioner" means the [bank examiner] commissioner of financial institutions of this State."

SECTION 50. Sections 401-3, 401-5, 401-6, 401-7, 401-8, 401-9, 401-10, 401-11, 401-13, 401-16, 402-6, 402-11, 402-18, 403-14, 403-38.8, 403-53, 403-68, 403-75, 403-111, 403-209, 403-221, 406-14, 406-22, 406-24, 406-40, 407-11, 407-12, 407-14, 407-31, 407-34, 407-41, 407-55, 407-61, 407-72, 407-81, 407-83, 407-88, 407-90, 407-91, 407-95, 407-101, 407-104, 407-105, 407-113, 408-2.1, 408-8, 408-11.1, 408-14, 408-14.5, 408-15, 408-21, 408-21.5, 408-22, 408-23, 408-25, 408-32, 408A-4, 408A-6, 408A-7, 408A-8, 408A-9, 408A-10, 408A-12, 408A-13, 408A-14, 408A-15, 408A-16, 408A-17, 408A-18, 408A-19, 408A-21, 408A-22, 408A-24, 408A-25, 408A-26, 408A-28, 408A-31, 409-17, 409-28, 410-15.5, 449-2, 449-5, 449-6, 449-7, 449-7.5, 449-8, 449-9, 449-10, 449-11, 449-12, 449-13, 449-14, 449-15, 449-16, and 449-17, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the term "bank examiner" appears, as the context requires.

SECTION 51. Sections 402-3, 403-8, 403-13, 403-16, 403-23, 403-24, 403-25, 403-28, 403-29, 403-30, 403-31, 403-32, 403-33, 403-37, 403-40, 403-41, 403-44, 403-45, 403-46, 403-54, 403-55, 403-71, 403-73, 403-74, 403-75, 403-92, 403-171, 403-172, 403-173, 403-175, 403-178, 403-180, 403-181, 403-183, 403-184, 403-185, 403-192, 403-197, 403-198, 403-199, 403-200, 403-201, 403-202, 403-203, 403-205, 403-207, 403-208, 403-209, 403-210, 403-212, 403-213, 403-221, 404-6, 404-7, 405-2, 405-3, 405-8, 405-12, 405-20, 405-24, 405-27, 405-28, 406-3, 406-11, 406-12, 406-35, 406-37, 406-39, 406-51, 407-14, 407-15, 407-23, 407-35, 407-47, 407-48, 407-49, 407-94, 407-103, 408-10, 408-11, 409-5, 409-7, 409-10, and 409-11, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the term "director of regulatory agencies" or "director" appears, as the context requires.

SECTION 52. Sections 402-4, 402-7, 403-6, 403-26, 403-27, 403-34, 403-47.1, 403-49, 403-53, 403-67, 403-82, 403-93, 403-95, 403-96, 403-97, 403-98, 403-99, 403-103, 403-104, 403-105, 403-128, 403-141, 403-148, 403-174, 403-176, 403-177, 403-204, 403-206, 404-3, 404-10, 404-11, 404-12, 405-4, 405-5, 405-6, 405-9, 405-22, 405-26, 405-30, 405-31, 405-32, 406-1.5, 406-4, 406-22, 406-36, 406-61, 407-11, 407-46, 407-82, 407-105, 408-12, 409-3, and 409-13, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the term "director of regulatory agencies" appears, as the context requires.

SECTION 53. Sections 403-56, 407-102(c) and (d), 409-6, 409-9, and 409-13, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the term "director" appears, as the context requires.

SECTION 54. Sections 409-6, 409-9, 409-13, 409-14, 409-15, 409-18, 409-24, 409-25, and 409-30, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the term "director of regulatory agencies or the deputy bank examiner", "director or deputy bank examiner", or "deputy bank examiner" appears, as the context requires.

SECTION 55. Sections 53-34, 408-19, 416-33, 417-9, 417-16, 417E-1, 417E-3, 433-16, 441-24.5, and 478-8 are amended by substituting the term "commissioner of financial institutions" wherever the term "bank examiner" appears, as the context requires.

SECTION 56. Section 418-6, Hawaii Revised Statutes, is amended to read as follows:

"§418-6 Activities not constituting doing business in State. (a) Without excluding other activities which may not constitute doing or carrying on business in the State, a corporation formed or organized under the laws of any territory, possession, or other state of the United States, or of any foreign state or country shall not be considered to be doing or carrying on business in the State for the purposes of this chapter by reason of carrying on in the State any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceedings or effecting the settlement thereof or the settlement of claims or disputes.
- (2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.
- (3) Maintaining bank accounts.
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining agents, trustees, or depositories with relation to its securities.
- (5) Effecting sales through independent contractors.
- (6) Soliciting or procuring orders whether by mail or through employees or agents or otherwise where the orders require acceptance without the State before becoming binding contracts.
- (7) Creating evidences of debt, mortgages, or liens on real or personal property.
- (8) Securing or collecting debts or enforcing any rights in property securing the same.
- (9) Transacting any business in interstate commerce.
- (10) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(b) A foreign financial institution whose principal office is not within this State and which is federally or state chartered and federally-insured, which by law is subject to periodic examination by its regulatory authority and to the requirement of periodic audit, shall not be considered to be doing business in this State by reason of engaging in the advertising or solicitation of savings accounts or investment or other certificates in this State by mail, radio, television, magazines, newspapers or any other media that are published or circulated within this State; provided that in any advertising or solicitation by mail, or in any media which is directed primarily to persons in this State, there shall be a conspicuous statement made that the institution is not supervised or regulated by this State. Such financial institution shall not thereby become subject to chapters 401, 402, 403, 406, 407 or 408. This subsection shall not apply to any financial institution doing business in Hawaii, chartered or licensed pursuant to chapters 401, 402, 403, 406, 407 or 408."

SECTION 57. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 58. This Act shall take effect upon its approval.

(Approved June 6, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.