

**ACT 313**

**H.B. NO. 2189-86**

A Bill for an Act Relating to Savings and Loan Associations.

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

**SECTION 1.** Chapter 407, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§407- Definitions.** For purposes of sections 407- to 407- :

“Acting in concert” means (1) knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement; (2) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise, or (3) action in concert with a person or company which shall also be deemed to be action in concert with any person or company that is acting in concert with such other person or company.

“Association” means an association organized under the laws of the State pursuant to the provisions of this chapter and does not include foreign association or corporation as referred to in section 407-22.

“Commissioner” means the commissioner of financial institutions.

“Control” shall mean when a person, directly or indirectly, or through one or more subsidiaries, or through one or more transactions, or acting in concert with one or more persons:

- (1) Owns, controls, or holds with power to vote twenty-five per cent or more of any class of voting stock of an association, foreign association, savings and loan holding company, or foreign holding company; or
- (2) Holds general, irrevocable proxies representing twenty-five per cent or more of any class of voting stock of an association, foreign association, savings and loan holding company, or foreign holding company; or
- (3) Controls in any manner the election of a majority of the directors of an association, foreign association, savings and loan holding company, or foreign holding company; or
- (4) After notice and opportunity for a hearing, the commissioner finds that the person has the power directly or indirectly to exercise a controlling influence over the management of an association, foreign association, savings and loan holding company, or foreign holding company.

“Foreign association” means any association referred to in section 407-22.

“Foreign holding company” means any individual not residing in the State or any other entity not chartered or otherwise organized under the laws of the State who directly or indirectly controls an association or foreign association.

“Person” means any individual or any other entity.

“Savings and loan holding company” means any individual residing in the State or any other entity chartered or otherwise organized under the laws of the State who directly or indirectly controls an association.

“Voting stock” means stock or shares in any corporation or association (whether represented by a certificate or passbook), general or limited partnership shares or interests, or similar interests if the stock, shares, or interests, by statute, charter or in any manner, entitle the holder:

- (1) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the association);
- (2) To vote or to direct the conduct of the operations or other significant policies of the association; provided that stock, limited partnership shares, or interests, or securities are not “voting stock” if:
  - (A) Voting rights associated with the stock, shares, or interests are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect

the rights or preference of the stock, security, or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the stock, security, or interest, the dissolution of the issuer, or the payment of dividends by the issuer when preferred dividends are in arrears; or

- (B) The stock, shares, or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuer; or
- (C) The stock, shares, or interests do not entitle the holder, by statute, charter, or otherwise to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuer; provided that notwithstanding the foregoing, "voting stock" shall include stock and other securities that, upon transfer or otherwise, are convertible into voting stock or exercisable to acquire voting stock where the holder of the stock, convertible security, or right to acquire voting stock has the preponderant economic risk in the underlying voting stock. Securities immediately convertible into voting stock at the option of the holder without payment of additional consideration shall be deemed to constitute the voting stock into which they are convertible; other convertible securities and rights to acquire stock shall not be deemed to vest the holder with the preponderant economic risk in the underlying voting stock if the holder has paid less than fifty per cent of the consideration required to directly acquire the voting stock and has no other economic interest in the underlying voting stock.

**§407- Restrictions on acquiring control.** (a) A person who is not already in control of an association, foreign association, savings and loan holding company, or foreign holding company, shall not acquire control of any such entities, directly or indirectly, individually or in concert with others, unless the commissioner shall have given prior approval to the proposed acquisition.

(b) The proposed acquirer shall submit a written application for such approval in such form as may be prescribed by the commissioner. The application shall be verified under oath and shall contain such information regarding the proposed acquirer and such details concerning the acquisition as the commissioner shall require. Within fifteen business days after receiving the application, the commissioner may request the production of any additional information necessary in deciding whether to approve the acquisition, and the proposed acquirer shall submit such information within a reasonable time thereafter, as may be specified by the commissioner.

(c) After receiving the proposed acquirer's application for approval, the commissioner shall promptly forward a copy of the application to the affected association, foreign association, savings and loan holding company, or foreign holding company. Such entities shall have ten days after receipt of such copy within which to submit any relevant information to the commissioner regarding the proposed acquisition, and shall be entitled to appear and be heard at any hearing on the application.

(d) Any person submitting information to the commissioner pursuant to this section may request that such information be kept confidential. Such request shall be made in writing and shall set forth the specific items sought to be kept confidential and the basis for the request. The commissioner may, pursuant to

such request or otherwise, determine that good cause exists to keep such information confidential, and may thereupon keep the same confidential and not subject to public disclosure.

(e) If the commissioner intends to disapprove of the proposed acquisition of control, the commissioner shall send to the proposed acquirer a written notice of such intent. Such notice must be sent within sixty days following the commissioner's receipt of the application (or thirty days, in the event the proposed acquisition will be accomplished by way of a tender offer); provided, however, that if the commissioner has requested additional information from the proposed acquirer, such sixty-day period (or thirty-day period, in the case of a tender offer as aforesaid) shall not commence until all such additional information shall have been submitted by the proposed acquirer; provided further that if such notice of intent to disapprove is not sent within the time specified, the commissioner shall be deemed to have approved the application.

Within ten days after receipt of the commissioner's notice of intent to disapprove the application, the proposed acquirer may request an administrative hearing, to be held in accordance with chapter 91. If no such request is made, the commissioner's disapproval shall become final. If after such hearing the commissioner finally disapproves the proposed acquisition, the proposed acquirer may, within thirty days of the date of said final decision, appeal to the circuit court of the first circuit as provided in chapter 91.

(f) As a condition for approving the proposed acquisition, the commissioner shall impose a reasonable time period, not to exceed six months, within which the acquisition must occur.

(g) This section shall not apply to:

- (1) Any acquisition or proposed acquisition of control which affects any association or foreign association that has been placed into receivership or conservatorship, or which is, in whole or in part, initiated or approved for supervisory assistance purposes by the commissioner or any other state agency or by the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, or any Federal Home Loan Bank; or
- (2) Any acquisition or proposed acquisition of control by a donee pursuant to an inter vivos gift (provided that said gift is not made or created or intended to avoid this section and provided further that notice of the acquisition and such further information as may be required by the commissioner is given to the commissioner at least thirty days prior to the consummation of the acquisition), or by a distributee as defined in chapter 560.

**§407- Basis for disapproval.** (a) The commissioner may disapprove any proposed acquisition of an association, foreign association, savings and loan holding company, or foreign holding company upon a determination that:

- (1) The experience, character, general fitness, financial responsibility, and resources and managerial resources of the acquiring person and of the officers, directors, and controlling shareholders of a corporation or the partners, members, or principals of an entity other than a corporation are not such as to command the confidence of the community and do not warrant belief that the business of the affected association will be operated honestly, fairly, and efficiently within the purposes of this chapter; or
- (2) The convenience, needs, and advantage of the locality or community in which the affected association or foreign association conducts its business will not be promoted by allowing the acquiring person

- to acquire control, directly or indirectly, of the affected association or foreign association; or
- (3) The proposed acquisition of control by the acquiring persons will substantially lessen competition or tend to create a monopoly or in any other manner tend to be a restraint of trade or have any other anti-competitive effect in the savings and loan industry in the State, provided that the anti-competitive effects are not clearly outweighed by the public interest in meeting the convenience and needs of the community to be served; or
  - (4) The financial condition of the acquiring person is such as might jeopardize the financial stability of the association, foreign association, savings and loan holding company, or foreign holding company or prejudice the interests of the depositors of the association; or
  - (5) The competence, experience, or integrity of the acquiring person or any of the proposed management personnel indicates that it would not be in the best interests of the depositors of the association or foreign association involved or the public to permit the acquiring person to control the association, foreign association, savings and loan holding company, or foreign holding company; or
  - (6) The acquiring person has failed or refused to furnish information requested by the commissioner.

**§407- Enforcement and penalties.** (a) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of sections 407- to 407- , the commissioner, in the commissioner's sole discretion, may refer such evidence to the attorney general who may bring an action in any court of competent jurisdiction to enjoin such act or practice, to enforce compliance with aforesaid sections, and to impose a civil penalty not to exceed \$100,000. The affected association, foreign association, savings and loan holding company, or foreign holding company shall have standing to bring an action in any court of competent jurisdiction to enjoin any person from any act or practice which constitutes a violation of any provision of sections 407- to 407- , and to obtain such other relief as the court may deem appropriate.

(b) Upon a proper showing, the court may:

- (1) Grant a permanent or temporary injunction or restraining order;
- (2) Order rescission of any sales or purchases of voting securities or assets determined to be unlawful under this section;
- (3) Impose a civil penalty not to exceed \$100,000;
- (4) Award damages to any injured person; and
- (5) Award such other relief as the court deems just and proper, including directing the affected association to refuse to transfer such securities on its books and to refuse to recognize any vote with respect to such securities.

(c) A person who successfully brings an action under this section shall be entitled to recover reasonable costs and attorney's fees.

(d) The rights and remedies of this section are in addition to any other rights or remedies that may exist at law or in equity."

**SECTION 2.** The title of chapter 443A, Hawaii Revised Statutes, is amended to read as follows:

“[ ] CHAPTER 443A [ ]  
 [COLLECTION AGENCIES]  
 DEBT COLLECTION PRACTICES”

SECTION 3. Section 443A-1, Hawaii Revised Statutes, is amended to read as follows:

“§443A-1 Definitions. As used in this chapter:

- [(1) “Person” includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons, or any combination thereof.
- (2) “Collection agency” means any person who by himself or through others offers to undertake or holds himself out as being able to undertake or does undertake to collect for another person, claims or money due on accounts or other forms of indebtedness for a commission, fixed fee, or a portion of the sums so collected.

[(3)] “Collection agency” includes:

[(A)] (1) Any [person] debt collector using any name other than his own in collecting his own claims with the intention of conveying, or which tends to convey the impression that a third party has been employed;

[(B)] (2) Any [person] debt collector who, in the conduct of his business for a fee, regularly repossesses any merchandise or chattels for another;

[(C)] (3) Any [person] debt collector who regularly accepts the assignment of claims or money due on accounts or other forms of indebtedness and brings suits upon such assigned claims or money due on accounts or other forms of indebtedness in his own name, provided that any such suits shall be initiated and prosecuted by an attorney who shall have been appointed by the assignor; provided[,] further[,] that any person who by himself or through others offers to undertake or holds himself out as being able to undertake or does undertake to collect for another person the amounts due under any agreement which provides for installment payments and which is secured by an interest in real property, including without limitation, mortgage loans and agreements of sale, whether or not such collection servicing agent receives any compensation or other consideration for his services, shall fall within the purview of chapter 454D.

[(4) “Collection agency” does not include attorneys at law or district court practitioners acting within the scope of their profession, licensed real estate brokers and salesmen residing in this State when engaged in the regular practice of their respective profession, nor banks, trust companies, building and loan associations, companies doing an escrow business, individuals regularly employed on a regular wage or salary in the capacity of credit men or in other similar capacity for a single employer who is not a collection agency, for any person doing business subject to public supervision and regulation, and any public officer or any person acting under an order of court.]

“Consumer collector” means any person who regularly collects or attempts to collect, directly or indirectly, debts of a natural person incurred primarily for personal, family, or household purposes owed or due or asserted to be owed or due either to the collector or another.

“Debt collector” means a collection agency or a consumer collector.

“Person” includes an individual, partnership, joint venture, corporation, association, business, trust, savings and loan association, or any organized group of persons, or any combination thereof.

[(5)] “Principal collector” means a person who has been designated by a collection agency to assume responsibility for the operations and activities of its agency.”

SECTION 4. Section 443A-6, Hawaii Revised Statutes, is amended to read as follows:

“[ [ ]§443A-6[ ] ] Fees. A [collection agency] debt collector shall not collect, or attempt to collect, any collection fee or attorney’s fee or commission from any debtor; provided attorney’s fee or commission may be collected after filing of a suit against any debtor and such fee or commission shall not be in excess of twenty-five per cent of the unpaid principal balance. All attorney’s fees or commissions collected by a [collection agency] debt collector shall be remitted to the attorney [and no portion of said collection shall be retained by the collection agency].”

SECTION 5. Section 443A-12, Hawaii Revised Statutes, is amended to read as follows:

“[ [ ]§443A-12[ ] ] Threats or coercion. No [collection agency] debt collector shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion, or attempt to coerce, including any conduct which is described as follows:

- (1) The use, or express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person;
- (2) The accusation or threat to falsely accuse any person of fraud or any crime or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or any conduct which, if true, would tend to disgrace such other person or in any way subject him to the ridicule or contempt of society;
- (3) False accusations made to another person, including any credit reporting agency that a debtor or an alleged debtor has not paid a just debt, or threat to so make such false accusations;
- (4) The threat to sell or assign to another the obligation of a debtor or an alleged debtor with an attending representation or implication that the result of such sale or assignment would be that the debtor or alleged debtor would lose any defense to the claim or would be subjected to harsh, vindictive, or abusive collection attempt; and
- (5) The threat that nonpayment of an alleged claim will result in the arrest of any person.”

SECTION 6. Section 443A-13, Hawaii Revised Statutes, is amended to read as follows:

“[ [ ]§443A-13[ ] ] Harassment and abuse. No [collection agency] debt collector shall oppress, harass, or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another in any of the following ways:

- (1) The use of profane or obscene language that is intended to abuse the hearer or reader;

- (2) The placement of telephone calls without disclosure of the caller's identity or with the intent to harass, or threaten any person at the called number; and
- (3) Causing expense to any person in the form of long distance telephone tolls, telegram fees, or other charge incurred by a medium of communication, by concealment of the true purpose of the notice, letter, message, or communication."

SECTION 7. Section 443A-14, Hawaii Revised Statutes, is amended to read as follows:

"[ [ §443A-14[ ] ] **Unreasonable publication.** No [collection agency] debt collector shall unreasonably publicize information relating to any alleged indebtedness or debtor, in any of the following ways:

- (1) The disclosure, publication, or communication of any false information relating to the indebtedness of a debtor or alleged debtor to any employer or his agent;
- (2) The disclosure, publication, or communication of false information relating to the indebtedness of a debtor or alleged debtor to any relative or family member of the debtor or alleged debtor;
- (3) The disclosure, publication, or communication of any information by a collection agency relating to the indebtedness of a debtor or alleged debtor by publishing or posting any list of debtors, except for the publication of "stop lists" to point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through proper legal action, process, or proceeding; and
- (4) The use of any form of communication by a collection agency to the debtor or alleged debtor, which ordinarily may be seen by any other person, that displays or conveys any information about the alleged claim other than the name, address, and phone number of the collection agency."

SECTION 8. Section 443A-15, Hawaii Revised Statutes, is amended to read as follows:

"[ [ §443A-15[ ] ] **Fraudulent, deceptive, or misleading representations.** No [collection agency] debt collector shall use any fraudulent, deceptive, or misleading representation or means to collect, or attempt to collect, claims or to obtain information concerning a debtor or alleged debtor, including any conduct which is described as follows:

- (1) The use of any company name while engaged in the collection of claims other than the true name of the collection agency;
- (2) The failure to clearly disclose in all written communication made to collect, or attempt to collect, a claim or to obtain, or attempt to obtain, information about a debtor or alleged debtor that the collection agency is attempting to collect a claim and that any information obtained will be used for that purpose;
- (3) Any false representation that the collection agency has in his possession information or something of value for the debtor or alleged debtor that is made to solicit or discover information about the debtor or alleged debtor;
- (4) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection or to



- whom the claim is owed at the time of making any demand for money;
- (5) Any false representation or implication of the character, extent, or amount of a claim against a debtor or alleged debtor, or of its status in any legal proceeding;
  - (6) Any false representation or false impression that any collection agency is vouched for, bonded by, affiliated with, or an instrumentality, agent, or official of, this State or any agency of federal, state, or local government;
  - (7) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval;
  - (8) Any representation that an existing obligation of the debtor or alleged debtor may be increased by the addition of attorney's fees, investigation fees, service fees, and any other fees or charges when in fact such fees or charges may not legally be added to the existing obligations; or
  - (9) Any false representation or false impression about the status or true nature of, or the services rendered by, the collection agency or its business."

SECTION 9. Section 443A-16, Hawaii Revised Statutes, is amended to read as follows:

"[ ]§443A-16[ ] Unfair or unconscionable means. No [collection agency] debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim in any of the following ways:

- (1) The seeking or obtaining of any written statement or acknowledgment in any form that a debtor or alleged debtor's obligation is one incurred for necessities of life where the original obligation was not in fact incurred for such necessities;
- (2) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a debtor or alleged debtor who has been declared bankrupt, without clearly disclosing the nature and consequences of the affirmation and the fact that the debtor or alleged debtor is not legally obligated to make the affirmation;
- (3) The collection of or the attempt to collect from a debtor or alleged debtor all or any part of the collection agency's fees or charges for services rendered;
- (4) The collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless the interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the debtor or alleged debtor; or unless such interest or incidental fee, charge, or expense is expressly authorized by law; and
- (5) Any communication with a debtor or alleged debtor whenever it appears that he is represented by an attorney and the attorney's name and address are known."

SECTION 10. Section 443A-17, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§443A-17]]~~ **Unfair competition, unfair or deceptive acts or practices.** A violation of this chapter by a [collection agency] debt collector shall constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce for the purpose of section 480-2.”

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 14. This Act shall take effect upon its approval.

(Approved May 30, 1986.)

**Note**

1. Edited pursuant to HRS §23G-16.5.