

## A Bill for an Act Relating to Closed Banks.

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

SECTION 1. Chapter 403, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read:

**“§403- Priority of expenses and claims.** In the event of the insolvency or voluntary or involuntary liquidation of any bank under this chapter, the expenses and claims shall have priority in the following order:

- (1) Administrative expenses;
- (2) Unsecured claims for wages, salaries, or commissions, including vacation, severance or sick leave pay, earned by an individual within ninety days before the date of the commissioner's possession in an amount not exceeding \$2,000 for each individual;
- (3) Claims of depositors. Any corporation guaranteeing or insuring the deposits is subrogated to all rights of the owners of such deposits to the extent of payment. The right of any agency of the United States insuring deposits to be subrogated to the rights of depositors upon payment of their claims may not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payments to depositors of national banks;
- (4) All other unsecured claims in amounts allowed by the court, including claims of secured creditors to the extent the amount of their claims exceed the present fair market value of their collateral. The claim of a lessor for damages resulting from the termination of a lease of property may not be allowed in an amount in excess of the rent reserved by the lease, without acceleration, for sixty days after the lessor repossessed the leased property, or the leased property was surrendered to the lessor, whichever first occurs, whether before or after the commissioner took possession of the institution, plus any unpaid rent due under the lease, without acceleration, on the date of possession or surrender. A claim for damages resulting from the termination of an employment contract, may not be allowed in an amount in excess of the compensation provided by the contract, without acceleration, for ninety days after the employee was directed to terminate or the employee terminated performance under the contract, whichever first occurs, whether before or after the commissioner took possession of the institution, plus any unpaid compensation due under the contract, without acceleration, on the date the employee was directed to terminate or the employee terminated performance. Claims for damages resulting from the termination of employment contracts of persons who were in control of the institution are not entitled to priority under this subsection;
- (5) Claims for debts that are subordinated under the provisions of a subordination agreement or other instrument;
- (6) Claims of depositors who are controlling persons;
- (7) Claims of persons who were at any time in control of the institution;
- (8) All other claims.”

2. By amending section 403-192 to read:

**“§403-192 Liquidation; administration by commissioner; court supervision; appeals.** Whenever the commissioner takes and holds possession of the property or business of a bank to liquidate its affairs, the liquidation shall be effected as in this chapter provided. Jurisdiction is conferred upon the circuit court of the circuit in which the principal office of any bank is located, upon petition filed by the commissioner or by any other party interested, or upon any request of the commissioner for instructions, to hear and determine any matter which by this part is stated to be subject to judicial review or approval in connection with the liquidation of any bank. From every order made by any circuit judge under this section an appeal shall lie to the supreme court in like manner as an appeal lies from an order or decision of a circuit court. The appeal shall not stay any order of the circuit judge unless the supreme court shall so order.

[Notice. In all such proceedings, such notice shall be given to depositors, creditors, and other interested persons as the judge may deem necessary under the circumstances to constitute due process, or may deem otherwise proper; the notice may, where the parties are numerous, be given by mail addressed to the persons to be notified at their last known places of business or other addresses, respectively, or by publication in a newspaper or newspapers of general circulation in the State in the manner provided by sections 634-23(3) and 634-26 or by both; provided that it shall not be necessary in any such cases that the entire petition or application be included in the notice, but only the designation of the cause by title (in full or abbreviated) and docket number, and the substance of the matter involved in a form approved by the judge and such other matters as the judge shall require, need be so included, and that the judge may authorize mailed notices to be authenticated merely by the stamped facsimile signature of the clerk of the court. In addition, the judge may, if the judge deems it advisable, appoint one or more persons to represent any interested persons who cannot be served or who are not otherwise represented in the proceedings.] Injunction. Within ten days after the taking of possession of the property and business of the bank by the commissioner, the bank may file in the circuit court of the circuit in which the principal office of the bank is located to enjoin further proceedings.”

3. By amending section 403-197 to read:

**“§403-197 Deputies; bond.** The commissioner may appoint and employ in the work of liquidation of any bank one or more deputies or agents, each of whom shall be required to execute a bond to the commissioner in the amount of \$10,000, if the total assets under the control of the deputy are less than \$25,000, or if the assets exceed \$25,000 the deputy's bond shall be in such greater amount as shall on application be approved by the court, the bond in any case to be satisfactory to the commissioner as to its form and sufficiency, and to be conditioned that the deputy will faithfully perform the deputy's duties in the premises. The cost of the bond shall be paid out of the funds of the bank in liquidation. The Federal Deposit Insurance Corporation is exempted from the requirement of posting a bond.”

4. By repealing section 403-196.

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 3. This Act shall take effect upon its approval.**

(Approved June 24, 1987.)

**Note**

1. Edited pursuant to HRS §23G-16.5.