

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

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

SECTION 1. Section 403-25, Hawaii Revised Statutes, is amended to read as follows:

“§403-25 Hearing and investigation; ruling of commissioner. Upon the hearing of the application the commissioner shall make investigation of the facts and conditions referred to in the application or pertinent thereto, and hear any objections thereto. At any hearing the burden of proof shall be upon the applicants. The commissioner may prescribe rules and regulations for the proceedings in connection with the hearing.

If the result of the hearing satisfies the commissioner:

- (1) That the proposed bank is to be formed for legitimate objects as contemplated by this chapter;
- (2) That the character, financial responsibility, and general fitness of the persons named in the application are such as to command the confidence of the community in which the proposed bank is to be located and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted;
- (3) That the proposed directors and officers are competent to successfully manage a banking business;
- (4) That the organization of the proposed bank is justified; and
- (5) That the public convenience and advantage will be promoted by the opening of the proposed bank;

then the commissioner shall approve the application, and shall endorse on each of the duplicate original applications the date and the word “approved” over the commissioner’s official signature.

If the commissioner is not satisfied or believes that the public interest will be endangered or that the approval of the application is not otherwise advisable the commissioner shall endorse with the date the word “disapproved” thereon. One of the duplicate original applications shall be filed in the commissioner’s office and the other returned by mail to the applicants. [The commissioner may grant a conditional approval of any application requiring the applicants to make such additional showing or such changes in the proposed bank as the commissioner may consider advisable.] Any decision of the commissioner adverse to the applicants shall be reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91.”

SECTION 2. Section 404-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If the commissioner disapproves an agreement, the commissioner shall state the commissioner’s objections [and give an opportunity to the merging banks to amend the merger agreement to obviate the objections]. Any decision of the commissioner adverse to the merging banks shall be

reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91.”

SECTION 3. Section 406-3, Hawaii Revised Statutes, is amended to read as follows:

“§406-3 Conditions precedent to qualification. No corporation or joint-stock company shall become qualified to do business as a trust company, and the certificate provided for in section 406-1.5 shall not be issued to any corporation or joint-stock company, until the commissioner is satisfied with or without a hearing on the application: (1) that the proposed trust company is to be qualified for legitimate objects as contemplated by this chapter; (2) that the character, financial responsibility, and general fitness of the officers and the directors of the proposed trust company are such as to command the confidence of the community in which the proposed trust company is to be located and to warrant the belief that the business of the proposed trust company will be honestly and efficiently conducted; and (3) that data and facts submitted support reasonable assurances of the profitability of the operation of the proposed trust company. The commissioner may prescribe rules and regulations for the implementation of this chapter, including rules and regulations governing proceedings in connection with any hearing or investigation. Any decision of the commissioner adverse to the applicant shall be reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91. [The court shall hear the appeal de novo without a jury.]”

SECTION 4. Section 407-13, Hawaii Revised Statutes, is amended to read as follows:

“§407-13 Investigation by commissioner; allowance or disallowance, procedure. Upon the filing of the application, if the 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; the commissioner shall write upon the face of the application the fact that the commissioner has approved the same, together with the date, and affix the commissioner's 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 commissioner, together with the articles of association, and pay to the 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 commissioner shall, within twenty days thereafter, prepare and keep on file in the commissioner's office, a written order [or] of denial thereof, which shall contain the commissioner's 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 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

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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 commissioner to approve the application or affirming the commissioner's action in disapproving the same. A copy of the decision or order of the board shall forthwith be served upon the applicants by the 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.] Any decision of the commissioner adverse to the applicants shall be reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91."

SECTION 5. Section 408-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) If the commissioner is not satisfied that the applicant meets all the criteria set forth in subsection (c), the commissioner shall hold a hearing on the application, at which time the applicant shall be given an opportunity to be heard. If the application is denied, the commissioner shall serve upon the applicant a copy of the order of denial, as well as the findings and reasons in support of the denial. [Within ten days after the receipt of the order, the applicant may appeal from the order of denial to a board consisting of the director of commerce and consumer affairs, comptroller, and attorney general by filing with the comptroller a notice of appeal. After notice by mail to the applicant and after a hearing at which the applicant shall be entitled to be present and to be heard, the board shall file with the comptroller its decision in writing either ordering the commissioner to approve the application or affirming the denial. A copy of the decision or order of the board shall forthwith be served upon the applicant by the commissioner. The applicant may appeal from an adverse decision of the board to the circuit court of the circuit in which the applicant proposes to establish an office.] Any decision of the commissioner adverse to the applicant shall be reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91."

SECTION 6. Section 449-7, Hawaii Revised Statutes, is amended to read as follows:

"§449-7 Investigation and ruling. The commissioner shall make an investigation into the information furnished by the applicant and may require the applicant to furnish additional information. If the commissioner is satisfied, with or without a hearing upon the application, that the character, financial responsibility, experience, ability, and general fitness of the officers and directors are such as to command the confidence of the business community in the State and to warrant the beliefs that the officers and directors are competent to successfully manage an escrow business and that the applicant will be an honest and efficient escrow depository, the commissioner shall approve the application. The commissioner shall not disapprove an application without giving the applicant a hearing thereupon. [The hearing and any appeal from a ruling of disapproval shall be conducted in accordance with chapter 91, and rules adopted by the commissioner in accordance with that chapter.] Any decision of the commissioner adverse to the applicant shall be reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91."

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved April 22, 1987.)