

ACT 196

H.B. NO. 3261

A Bill for an Act Relating to Financial Institutions.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
EMERGENCY ACQUISITION OF FINANCIAL INSTITUTIONS
PART I. GENERAL PROVISIONS**

§ -1 Purpose. The purpose of this chapter is to set forth the provisions which will govern the emergency acquisition of a state-chartered financial institution where it has been determined that the state-chartered financial institution has failed or is in danger of failing.

§ -2 Definitions. As used in this chapter, unless the context otherwise requires:

“Bank holding company” means any company that is a bank holding company under the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841 et. seq.

“Control” means direct or indirect ownership of or to vote twenty-five percent or more of the outstanding voting shares of a state-chartered financial institution or to control in any manner the election of a majority of the directors of a state-chartered financial institution.

“Commissioner” means the State commissioner of financial institutions.

“Division” means the State division of financial institutions within the department of commerce and consumer affairs.

“FDIC” means the Federal Deposit Insurance Corporation.

“State-chartered financial institution” means (1) a state-chartered bank whose deposits are insured by the FDIC; (2) an industrial loan company licensed under chapter 408 whose investment or thrift certificates are insured by the FDIC; or (3) for purposes of participating in any acquisition offered to state-chartered institutions, national banks, whose principal place of business is in this State.

“State-chartered financial institution in danger of failing” means a state-chartered bank or industrial loan company, as those terms are defined in this chapter that:

- (1) Is not likely to be able to meet the demands of its depositors or its investment or thrift certificate holders or pay its obligations in the normal course of business, and there is no reasonable prospect that it will be able to meet such demands or pay such obligations; or
- (2) Has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for the replenishment of the institution’s capital; or
- (3) Is insolvent as defined in section 403-6 as that section now exists or as it may be recodified, amended, or renumbered; or
- (4) Is an institution whose capital is impaired as defined by sections 403-161 and 403-162; or
- (5) Is an institution which the commissioner has determined to be suffering from severe financial conditions and circumstances which threaten the future financial stability of the institution and will require the financial assistance of the FDIC to facilitate an acquisition of its stock, an acquisition of its assets and assumption of its liabilities, or its merger with another corporation; or
- (6) Is an institution which has requested or agreed in a cease and desist order or similar order that the provisions of this chapter can be applied.

“Principal place of business” of a national bank or a bank holding company means that state in which the deposits of the national bank or the total deposits of the bank holding company’s banking subsidiaries are the largest.

PART II. ACQUISITION PROCEDURES

§ -3 Acquisition of a failing state-chartered financial institution. (a) Upon determining that a state-chartered financial institution is in danger of failing, the commissioner shall set forth his decision in writing and deliver a copy of the decision to the institution in question. Upon delivery of his decision, the commissioner shall be entitled to apply any of the provisions set forth in this chapter or in any administrative rules which have been adopted to implement this chapter in order to facilitate the acquisition of the state-chartered financial institution in danger of failing. The commissioner, therefore, may:

- (1) Accept applications from other state-chartered financial institutions or their bank holding companies, as well as national banks whose principal place of business is in this State, to:
 - (A) Acquire all or portions of the assets of the state-chartered financial institution in danger of failing and to assume that institution's liabilities; or
 - (B) Acquire all or portions of the capital stock of the state-chartered financial institution in danger of failing; or all or portions of the capital stock of any bank holding company of the state-chartered financial institution; or
 - (C) Acquire all or portions of the capital stock of an institution organized under section -7 of this chapter which institution (i) has merged or will merge with the state-chartered financial institution in danger of failing, or of the bank holding company of the state-chartered financial institution; or (ii) has acquired or will acquire all or portions of the capital stock of the state-chartered financial institution in danger of failing or of any bank holding company of the state-chartered institution; or (iii) has or will acquire the assets and assume the liabilities of the state-chartered financial institution or of any bank holding company affiliated with the state-chartered financial institution; or
 - (D) Merge with the state-chartered financial institution in danger of failing or with any bank holding company affiliated with the state-chartered financial institution.
- (2) Accept applications from natural persons who are residents of the state to:
 - (A) Acquire all or portions of the capital stock of the state-chartered financial institution in danger of failing; or all or portions of the capital stock of any bank holding company of the state-chartered financial institution; or
 - (B) Acquire all or portions of the capital stock of an institution organized under section -7 of this chapter which institution has (i) merged or will merge with the state-chartered financial institution in danger of failing, or of the bank holding company of the state-chartered financial institution; or (ii) has acquired or will acquire all or portions of the capital stock of the state-chartered financial institution in danger of closing, or of any bank holding company of the state-chartered financial institution; or (iii) has or will acquire the assets and assume the liabilities of the state-chartered financial institution in danger of failing or of any bank holding company of the institution.

(b) A state-chartered financial institution in danger of failing which seeks to contest the determination of the commissioner may petition the circuit court of the first circuit to hear and review the commissioner's determination. Such a petition

must be filed within five days of the issuance of the commissioner's determination. A hearing on the petition shall be held not more than fifteen days after the petition is filed. A hearing under this subsection may be held privately in chambers and it shall be so held if the state-chartered financial institution or the commissioner so requests. An order made pursuant to this subsection by the court may be appealed to the supreme court. In all proceedings and hearings under this subsection, all records, documents and files of the state-chartered financial institution, the division, and the court, so far as they pertain to or are part of the record of the proceedings, shall be and remain confidential. The court may, after hearing the arguments from the parties in chambers, order disclosure of documents for good cause. Unless otherwise ordered, all papers filed with the court shall be held in a confidential file.

§ -4 Applications. Any application filed with the commissioner under Part II of this chapter shall contain such information as the commissioner may require. Applicants shall be required to meet the criteria established by the commissioner. The commissioner may develop such criteria in conjunction with the FDIC and the primary regulator of the applicant.

§ -5 Evaluation of applicants. In evaluating applications filed under Part II of this chapter, the commissioner shall consider the following factors:

- (1) Whether immediate action is necessary in order to prevent the probable failure of the state-chartered financial institution and to protect the institution's depositors and creditors;
- (2) The financial and managerial resources of the applicants, together with the financial and managerial resources of any parent companies, holding companies or other companies that control, either directly or indirectly, the applicants;
- (3) The future prospects for the viability of the state-chartered financial institution in danger of failing after the acquisition or merger has been completed;
- (4) Whether the FDIC is prepared to offer financial assistance to facilitate the acquisition or merger and the amount of such assistance;
- (5) Whether the proposed acquisition or merger would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize business in the relevant financial market served by the state-chartered financial institution in danger of failing;
- (6) Whether the proposed acquisition or merger would substantially lessen competition or tend to create a monopoly or in any other manner would be a restraint of trade in the relevant financial market served by the state-chartered financial institution in danger of failing, unless the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable benefits of the transaction in meeting the convenience and needs of the relevant financial market to be served;
- (7) The convenience and needs of the people of the State; and
- (8) Any other factors which the commissioner may deem relevant.

§ -6 Granting of application. (a) The commissioner is expressly authorized to grant any application which may be filed under Part II of this chapter. In considering applications submitted under Part II of this chapter, the commissioner shall only consider applications from state-chartered financial institutions, their bank holding companies, national banks whose principal place of business is in this state and natural persons who are residents of this state.

(b) No acquisition which is being made pursuant to this chapter shall be effective without the express written approval of the commissioner. Any financial institution or natural person that makes an acquisition pursuant to this chapter shall comply with the instructions, limitations, restrictions and other directives issued by the commissioner in connection with any approval of the application for acquisition.

§ -7 Provisional charter. (a) To facilitate the taking of action with respect to a state-chartered financial institution in danger of failing as defined in this chapter, a domestic corporation may be organized under this section and chapter 415, solely for the purpose of merging with or acquiring the stock or assets and assuming the liabilities of:

- (1) A state-chartered financial institution in danger of failing, or the bank holding company of that institution; or
- (2) A state-chartered financial institution that has been or is being liquidated by the commissioner pursuant to chapter 403.

(b) Except as otherwise provided in this section, an institution organized under this section may not engage in nor transact a banking, industrial loan or trust business.

(c) Applications for a provisional charter shall be filed by a corporation and shall provide such information which the commissioner shall require along with an application fee of \$1,000.

(d) The purpose of the institution shall be limited to the purposes specified in this section. However, if the corporation is to be the resulting or surviving bank or industrial loan company in a merger or other acquisition, the articles of incorporation may also contain all purposes allowed a state-chartered institution under chapters 403 or 408, if the implementation of such purposes are conditioned upon the consummation of the merger or acquisition. Upon issuance of its articles of incorporation and with the approval of the commissioner, the corporate existence of the corporation shall begin and the corporation may issue stock.

(e) A provisional charter issued pursuant to this section shall expire one year after its date of issuance. However, the commissioner may extend the expiration period for good cause. If the acquisition or merger for which the institution was organized is not consummated before the provisional charter expires, the interim corporation shall cease to exist and its articles of incorporation and charter shall be void. If the acquisition or merger is consummated, the commissioner shall issue to the corporation a charter or license to do business pursuant to chapters 403 or 408.

§ -8 Disapproval of acquisition. The commissioner may disapprove or deny an application which has been filed pursuant to this chapter if any provisions of this chapter or any rules implementing this chapter have not been complied with. The commissioner may also deny an application for any of the grounds which would justify a denial or disapproval under chapters 403 or 408 or any administrative rules implementing those chapters.

§ -9 Powers and privileges of state-chartered financial institution after acquisition. A state-chartered financial institution in danger of failing or a state-chartered bank that has been liquidated by the commissioner and which, in either case has been acquired pursuant to this chapter shall have the same rights, powers, and privileges as an institution holding a state charter or license issued pursuant to chapters 403 or 408.

§ -10 Construction of chapter. This chapter shall not be construed to limit, modify, or restrain any other powers now granted to the commissioner or the division

of financial institutions. In construing this chapter, the provisions set forth shall be considered to supplement and provide an alternative to any other authority presently granted to the commissioner in dealing with state-chartered financial institutions. This chapter shall also apply to the extent permitted by federal law, to any national bank whose principal place of business is in this State which is in danger of failing.

§ -11 Rule-making. The commissioner is authorized to adopt administrative rules in accordance with chapter 91, to implement the purposes of this chapter. The commissioner is also authorized to adopt new application forms or to modify any existing application forms to implement this chapter.

§ -12 Modification of time periods. Any time periods requiring action by the commissioner as set forth in this chapter or as established by administrative rules implementing this chapter may be shortened or extended when the commissioner, in his discretion, determines that good cause for such a modification exists.

§ -13 Examination, supervision and regulation. The commissioner may examine and supervise any state-chartered financial institution or its bank holding company, if any, which has been authorized to do business pursuant to this chapter. Such institutions and holding companies are subject to regulation, supervision, examination and examination fees in accordance with chapters 403 or 408.

§ -14 Severability. (a) The legislature intends to allow the emergency acquisition of state-chartered financial institutions only under the conditions set forth in this chapter. If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional before an acquisition has been effected under this chapter, then it is the intent of the legislature that no acquisitions shall be allowed except as was provided under existing State law prior to the enactment of this chapter.

(b) In the event any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional after an acquisition has been effected under this chapter, then it is the intent of the legislature that the remainder of the chapter shall not be affected thereby and it shall be conclusively presumed that the legislature would have enacted the remainder of this chapter without such invalid or unconstitutional provision. To the extent permissible the court may issue such orders and instructions which it deems just and equitable to prevent divestiture¹ of any acquisition which has been effected after the enactment of this chapter.

§ -15 Discretionary function. In the absence of actual malice, the State, the commissioner, the division and its employees, agents and attorneys will not be subject to civil liability for libel, slander, or any other cause of action by virtue of their examinations or conduct in implementing this chapter."

SECTION 2. This Act shall take effect upon approval.

(Approved June 7, 1988.)

Note

1. Should probably read "divestiture".