

ACT 343

H.B. NO. 3265

A Bill for an Act Relating to Banks.

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

SECTION 1. Section 403-2, Hawaii Revised Statutes, is amended to read as follows:

**“§403-2 [“Bank” and “banking business” defined; classes of banks.]Definitions. For purposes of this chapter:**

[The word “banks”, as used in this chapter,] **“Banks”** means any incorporated banking institution which has been incorporated to conduct the business of discounting and negotiating promissory notes, drafts, bills of exchange, and other evidence of debt; to receive deposits of money and deal in commercial paper; to lend money upon the security of real or personal property; to buy and sell gold and silver bullion, foreign money, or bills of exchange; and to do such other business as may be usual or lawful in a banking business. The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business shall be deemed to be doing a banking business whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook or other writing; provided that nothing in this chapter shall apply to or include money or its equivalent left in escrow or left with an agent, pending investment in real estate or securities for or on account of the agent’s principal. It shall be unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within the State, except by means of a corporation duly organized for such purpose.

Banks are divided into the following classes:

- (1) Commercial banks; and
- (2) Savings banks.

"Commercial bank", when used in this chapter, means any bank which is authorized by law to receive deposits of money, deal in commercial paper, make loans thereon, or to lend money on real or personal property as security, or to purchase or discount bills, notes, or other commercial paper, or to buy, sell, or advertise for purchase or sale such securities as are permissible for investment by commercial banks, gold and silver bullion, or foreign money or bills of exchange. A commercial bank may also act as broker or agent for others in making or procuring loans on real estate located within the State, and receive for these services a reasonable fee or commission; but shall not in any case guarantee either the principal or interest of any such loans, nor guarantee the truth of any statement made by any applicant filing the applicant's application for any of the loans. A commercial bank may transact the business of a savings bank.

"Savings bank", when used in this chapter, means a bank organized for the purposes of accumulating and loaning its funds and the funds of its depositors, and which may loan, invest, and collect the same, with interest; and may repay depositors with or without interest, and having power to invest the funds in such property, securities, and obligations as may be authorized by this chapter; and to pay a stipulated rate of interest on deposits made for a stated period or upon special terms. Where the term "savings bank" is used in this chapter it shall also apply to any commercial bank if it also transacts the business of a savings bank by accepting savings deposits, but the term only applies with regard to the savings bank business transacted by the commercial bank.

"Foreign bank" or "foreign banker" includes: (1) every corporation, except a national bank whose home office is located in the State, not organized under the laws of the State, doing any banking business within the State; (2) every unincorporated company, partnership, or association of two or more individuals organized under or pursuant to the laws of another state, territory, or country doing any banking business as defined in this chapter; and (3) every nonresident of the State doing any banking business in the nonresident's own name and right only.

"Insolvency" defined. A bank shall be deemed to be insolvent when the value of its assets is insufficient to pay its depositors and its creditors. In valuing the bank's assets the commissioner shall follow the same method as prescribed in section 403-162.

"Banking company" means a commercial bank, merchant bank, or other institution that engages in banking activities usual in connection with the business of banking in the jurisdiction or jurisdictions in which such institution is organized and operating.

"Control" means the power, directly or indirectly, to direct the management or policies of a depository institution or banking company or to vote twenty-five per cent or more of any class of voting securities of a banking company or depository institution. "Control" also includes the meaning set forth in section 403-38.8(b)(2).

"Depository institution" means any bank, which is incorporated in the State and lawfully engaging in or transacting a banking business in the State, and any national bank whose home office is located in the State.

"Intrapacific banking company" means a banking company (1) whose home office is located in and whose operations are principally conducted in a reciprocal region, and (2) which is not directly or indirectly owned or controlled by any holding company other than a holding company for an intrapacific banking company.

"Holding company" means a corporation, a partnership, or a joint-stock company that controls a depository institution or banking company.

"Holding company for a intrapacific banking company" means a holding company (1) whose subsidiary banking companies principally conduct their oper-

ations in a reciprocal region, and (2) which is not directly or indirectly owned or controlled by any holding company other than a holding company for an intrapacific banking company.

Operations are “principally conducted” where the largest percentage of aggregate deposits of a depository institution or banking company or all subsidiaries of a holding company which are depository institutions or banking companies are held.

“Reciprocal region” means any one of the territories or countries of Guam, American Samoa, the Federated State of Micronesia, the Republic of Palau, the Commonwealth of the Northern Marianas, or the Republic of the Marshall Islands, so long as all remain U.S. dollar-based economies.

“State branch” means an office or place of business in the State of an intrapacific banking company at which deposits are received.”

SECTION 2. Section 403-3, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 403-4, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 403-5, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 403-6, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 403-16, Hawaii Revised Statutes, is repealed.

SECTION 7. Chapter 403, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§403- Acquisitions by intrapacific banking companies and their holding companies.** (a) No intrapacific banking company or holding company for an intrapacific banking company may acquire control of a depository institution, or otherwise directly or indirectly engage in the business of banking anywhere in the State, except pursuant to sections 403-11, 403- , chapter 405D, or pursuant to this section.

(b) If permissible under subsection (d) of this section, an intrapacific banking company may:

- (1) Establish and operate one or more state branches; or
- (2) Merge or consolidate with a depository institution or acquire and operate one or more state branches.

(c) If permissible under subsection (d) of this section, a holding company for an intrapacific banking company may:

- (1) Acquire control of a depository institution;
- (2) Establish and operate a depository institution; or
- (3) Merge or consolidate with a holding company for a depository institution or acquire the assets of a holding company for a depository institution and thereby acquire control of one or more depository institutions.

(d) Any establishment or acquisition of a state branch or depository institution or holding company for a depository institution, or any acquisition of or merger or consolidation with a depository institution or holding company for a depository institution whose operations are principally conducted in the State, by an intrapacific banking company or holding company for an intrapacific banking company, is permissible only if the reciprocal region in which the intrapacific banking company or holding company for an intrapacific banking company principally conducts its operations has enacted legislation which allows a depository institution or holding

company for a depository institution in the State to establish a banking presence or acquire or merge with a banking company or holding company in that reciprocal region under terms and conditions which are substantially comparable to or less restrictive than those which apply in the State to such commencement of operations, acquisitions, and mergers.

(e) The commissioner may not approve the establishment or acquisition of a State branch or depository institution or holding company for a depository institution, or the acquisition of or merger or consolidation with a depository institution or a holding company, whose operations are principally conducted in the State, by an intrapacific banking company or a holding company for an intrapacific banking company unless the commissioner finds, after notice and opportunity for hearing, that the laws of the reciprocal region in which the intrapacific banking company or holding company principally conducts its operations meet the requirements of subsection (d). The applicant shall have the burden of requesting a hearing in accordance with the rules of the commissioner."

SECTION 8. Chapter 403, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§403- Transactions unlawful without approval.** (a) Unless the commissioner gives prior written approval, no person may:

- (1) Acquire, directly or indirectly, a depository institution or holding company whose operations are principally conducted in the State;
- (2) Vote the stock of a depository institution or holding company acquired in violation of subsection (a);
- (3) Acquire, directly or indirectly, the voting or nonvoting securities of a depository institution or a holding company whose operations are principally conducted in the State if the acquisition would result in that person's obtaining more than twenty-five per cent of the authorized voting securities of the depository institution or holding company if the nonvoting securities were converted into voting securities;
- (4) Establish or operate a state branch; or
- (5) Merge or consolidate with a depository institution or a holding company whose operations are principally conducted in the State.

(b) The commissioner may obtain injunctive relief to prevent any change in control or other violation or impending violation of this section."

SECTION 9. Chapter 403, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§403- Application for approval.** (a) Application to the commissioner for approval must be on a form prescribed by the commissioner and must include:

- (1) Information which the commissioner requires to make the finding specified in subsection (c); and
- (2) Unless the applicant is a resident of the State, a corporation organized in the State, or a foreign corporation admitted to do business in the State, a written consent to service of process on a resident of the State in any action arising out of the applicant's activities in the State.

(b) The commissioner may approve the application subject to any terms and conditions which the commissioner considers necessary to protect the public interest.

(c) The commissioner shall approve an application if the commissioner finds:

- (1) That the proposed transaction would not be detrimental to the safety and soundness of the applicant or to any depository institution;

- (2) The applicant, its executive officers, directors, or principal stockholders have established a record of sound performance, efficient management, financial responsibility and integrity so that it would be in the interest of the depositors, other customers, creditors, or shareholders of a depository institution, or the public to authorize the proposed transaction;
- (3) The financial condition of the applicant or any depository institution or banking company which is a participant in the proposed transaction would not jeopardize the financial stability of the applicant or depository institution or banking company, or prejudice the interests of the depositors or other customers of the applicant or other depository institution or banking company;
- (4) The consummation of the proposed transaction will not tend to lessen competition substantially, unless the commissioner finds that the anticompetitive effects of the proposed transaction are clearly outweighed by the benefit of meeting the convenience and needs of the relevant market or markets to be served; or
- (5) The applicant has established a record of meeting the needs for credit of the communities which it or its subsidiary depository institution or institutions or its subsidiary banking company or banking companies serves."

SECTION 10. Chapter 403, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§403- Examination, supervision, and regulation.** (a) The commissioner may examine and supervise any intrapacific banking company or holding company for an intrapacific banking company which has been authorized to do business in the State pursuant to section 403- . Such banking company and holding companies are subject to regulation in the same manner as depository institutions and holding companies organized under the laws of the State and must pay the same fees for supervision and examination. Any intrapacific banking company taking deposits in this State shall be insured by the FDIC.

(b) If any intrapacific banking company or holding company for an intrapacific banking company, by virtue of any action, ceases to be an intrapacific banking company or holding company for an intrapacific banking company, and it does not become a depository institution, the commissioner shall order the entity to immediately divest itself of its direct or indirect ownership or control of the stock of any depository institution or holding company for a depository institution acquired by its<sup>1</sup> pursuant to this section."

SECTION 11. Chapter 403, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§403- Equality of rights, powers, and privileges.** Any depository institution or holding company for a depository institution acquired, or the resulting institution in a merger, under the provisions of this section has all the rights, powers, and privileges of any other such depository institution or holding company for a depository institution under the laws of the State, the rules of the commissioner, the applicable laws of the United States, and the rules and regulations of the relevant federal regulatory agencies having jurisdiction over that type of institution. These right<sup>1</sup>, powers, and privileges include, but are not limited to, acquiring control of, merging with, acquiring all or a portion of the assets of, or assuming all or a portion of the liabilities of, a depository institution or holding company."

SECTION 12. Chapter 403, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§403- Provisions not severable.** (a) The legislature intends to allow a banking company in a reciprocal region or a holding company for an intrapacific banking company which controls a banking company in a reciprocal region to acquire a depository institution in the State or engage in the business of banking in the State only under the conditions and limitations imposed in sections 403- through 403- , inclusive, of this chapter, and to this end, those provisions are not severable. If any provisions of section 403- to 403- , inclusive, or any application thereof to any person, thing or circumstance is held invalid, the other provisions of sections 403- to 403- , inclusive, become ineffective.

(b) If a banking company or a holding company for an intrapacific banking company has received the commissioner’s approval pursuant to section 403- to acquire a depository institution or to engage in the business of banking in this State and has acquired the depository institution or has commenced engaging in the business of banking in the State and a provision of sections 403- to 403- , inclusive, is subsequently held invalid, the banking company or holding company for an intrapacific banking company may maintain ownership of the depository institution or continue to engage in the business of banking in this State, as the case may be, subject to the provisions of sections 403- to 403- , inclusive, which can be given effect without the provisions declared invalid by the court. The approval given by the commissioner remains effective if the banking company or holding company and the depository institution continue to exercise only those powers granted by this chapter.”

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 14. This Act shall take effect upon its approval; provided that the repeal of any of the provisions of Chapter 403, Hawaii Revised Statutes, shall not affect any licenses or charters which have been granted, any rights or duties that matured, any rules which have been adopted by the Commissioner, any proceedings that were begun, any penalties that were incurred, nor any privileges, immunities, or transactions that were effected prior to the effective date of this Act.

(Approved June 13, 1988.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.