

ACT 17

S.B. NO. 3272

A Bill for an Act Relating to Emergency Acquisition of Financial Institutions.

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

SECTION 1. Section 411-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Out-of-state financial institution” means (1) a state-chartered bank, state-chartered savings and loan association, national banking association, or federally chartered thrift whose deposits are insured by the FDIC and whose principal place of business is located in a state in the twelfth Federal Reserve District

as designated in 12 U.S.C. §222, other than Hawaii; or (2) a bank holding company whose operations of its banking subsidiaries is largest in terms of total deposits in a state in the twelfth Federal Reserve District as designated in 12 U.S.C. §222, other than Hawaii."

SECTION 2. Section 411-2, Hawaii Revised Statutes, is amended by amending the definitions of "state-chartered financial institution" and "state-chartered financial institution in danger of failing" to read as follows:

"State-chartered financial institution" means (1) a state-chartered commercial bank, savings bank, or savings and loan whose deposits are insured by the FDIC; (2) a financial services 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,] banking associations, or federally chartered thrifts, whose principal place of business is in this State.

"State-chartered financial institution in danger of failing" means a state-chartered bank or financial services 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] 403-2 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."

SECTION 3. Section 411-3, Hawaii Revised Statutes, is amended to read as follows:

"§411-3¹ Acquisition of a [failing] state-chartered financial institution[.] in danger of failing. (a) Upon determining that a state-chartered financial institution is failing or 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] banking associations, or federally chartered thrifts whose principal place of business is in this State, or out-of-state financial institutions, 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 411-7 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] that owns the state-chartered financial institution[;] in danger of failing; or (iii) has or will acquire the assets and assume the liabilities of the state-chartered financial institution [or of] that owns any bank holding company [affiliated with] controlling the state-chartered financial institution[;] in danger of failing; or
 - (D) Merge with the state-chartered financial institution in danger of failing or with any bank holding company [affiliated with] controlling 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] that owns the state-chartered financial institution; or
 - (B) Acquire all or portions of the capital stock of an institution organized under section 411-7 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] that owns 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,] failing or of any bank holding company [of] that owns 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] that owns the financial 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

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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."

SECTION 4. Section 411-5, Hawaii Revised Statutes, is amended to read as follows:

"§411-5¹ Evaluation of applicants. In evaluating applications filed under [Part] 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 applicant²;
- (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) The principal place of business of an acquiring out-of-state financial institution and the current business relationships of the out-of-state financial institution with Hawaii based businesses; and
- [(8)] (9) Any other factors which the commissioner may deem relevant."

SECTION 5. Section 411-6, Hawaii Revised Statutes, is amended to read as follows:

"§411-6¹ Granting of application. (a) The commissioner is expressly authorized to grant any application which may be filed under [Part] part II of this chapter. In considering applications submitted under [Part] 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.] give priority: first to State of Hawaii chartered commercial banks, savings banks, or savings and loans or their bank holding companies, as well as national banking associations or federally chartered thrifts whose principal place of business is in this State, or a bank holding company whose operations, in terms of total deposits, are principally conducted in this State, or a State of Hawaii licensed financial services loan company whose deposits are insured by the Federal Deposit Insurance Corporation, or residents of this State; and second to out-of-state financial institutions.

(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.

(c) It is the express intent of the legislature to specifically authorize the acquisition of a failing financial institution or a financial institution in danger of failing only, notwithstanding the restrictions set forth in the Bank Holding Company Act of 1956, as amended (12 U.S.C. §§1841 et seq.).

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 10, 1992.)

Notes

1. So in original.
2. Prior to amendment "applicants" appeared here.