

ACT 251

S.B. NO. 3100

A Bill for an Act Relating to the Recodification of the Financial Institutions Laws.

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

SECTION 1. Chapter 401, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§401- Administrative penalty.** (a) The commissioner may impose administrative penalties on any financial institution and any institution-affiliated party as provided in this section.

(b) Except as provided in subsections (c), (d), and (e), any financial institution or institution-affiliated party that commits any of the following violations shall be subject to an administrative penalty of not more than \$1,000 for each day the violation continues:

- (1) A material violation of any statute or rule;
- (2) A material violation of any order issued by the commissioner;
- (3) A material violation of any condition imposed in writing by the commissioner in connection with the grant of any application or other request by the financial institution; or
- (4) A material violation of any written agreement between the financial institution and the commissioner.

(c) Any financial institution or institution-affiliated party that commits any violation specified in subsection (b), recklessly engages in an unsafe or unsound practice in conducting the affairs of the financial institution, or breaches any fiduciary duty, shall be subject to an administrative penalty of not more than \$15,000 for each day the violation, practice, or breach continues if the violation, practice, or breach:

- (1) Is part of a pattern of misconduct;
- (2) Causes or is likely to cause more than a minimal loss to the financial institution; or
- (3) Was committed by an institution-affiliated party and results in pecuniary gain or other benefit to the institution-affiliated party.

(d) Notwithstanding subsections (b) and (c), any financial institution or institution-affiliated party that knowingly commits any violation specified in subsection (b), engages in any unsafe or unsound practice in conducting the affairs of the financial institution, or breaches any fiduciary duty, and knowingly or recklessly causes a substantial loss to the financial institution, or in the case of an institution-related party, a substantial pecuniary gain or other benefit to the institution-related party results by reason of the violation, practice, or breach, shall be subject to an administrative penalty in an amount not to exceed the maximum amount provided under this subsection, for each day the violation, practice, or breach continues. The maximum daily amount of any administrative penalty

which may be assessed pursuant to this subsection for any violation, practice, or breach described in this subsection is as follows:

- (1) In the case of any person other than a financial institution, an amount not to exceed \$500,000; or
- (2) In the case of any savings institution, an amount not to exceed the lesser of \$500,000 or one per cent of the total assets of the institution.

(e) Any administrative penalty imposed under this section may be assessed and collected by the commissioner by written notice. If with respect to any assessment a hearing is not requested pursuant to subsection (h) within the period of time allowed, the assessment shall constitute a final and unappealable order.

(f) The commissioner may compromise, modify, or remit any administrative penalty which may be assessed or which has been assessed pursuant to this section.

(g) In determining the amount of any administrative penalty imposed under this section, the commissioner shall take into account the appropriateness of the penalty with respect to all of the following:

- (1) The size of financial resources and good faith of the financial institution or the person charged;
- (2) The gravity of the violation, practice, or breach;
- (3) The history of previous violations, unsafe or unsound practices, or breaches of fiduciary duty;
- (4) Whether a federal regulatory agency has imposed or is threatening to impose a penalty for similar conduct pursuant to federal law; and
- (5) Such other matters as justice may require.

(h) The financial institution or other person against whom any administrative penalty is assessed under this section shall be afforded a hearing if the financial institution or person submits a request for a hearing within twenty days after the issuance of the notice of assessment.

(i) If any financial institution or institution-affiliated party fails to pay an assessment after any administrative penalty assessed under this section has become final, the commissioner shall recover the amount assessed by action in circuit court, in which case, the commissioner shall be entitled to an award of reasonable attorney's fees and costs.

(j) "Institution-affiliated party" as used in this section means any director, officer, employee, controlling stockholder, or agent of a federally insured bank, savings and loan, credit union, financial services loan company, or state-chartered trust company. The term includes any independent contractor, including any attorney, appraiser or accountant, joint venturer, consultant, or agent."

SECTION 2. Section 401-11, Hawaii Revised Statutes, is amended to read as follows:

**"§401-11 Semiannual and special reports; publication; penalty.** Every bank, trust company, [building] savings and loan association, fiduciary company, industrial loan and investment company<sup>1</sup>, financial services loan company, or licensee under chapter 409 shall submit to the commissioner semiannual reports as of June 30 and December 31. The reports shall be filed within thirty days after these dates; provided that the commissioner [may], for good cause shown, may grant a reasonable extension of not more than forty-five days for making and filing [such] the report. The reports shall be made in the form prescribed by the commissioner and shall show the assets and liabilities, all losses sustained,

expenses and taxes paid, gross earnings and profits, losses recovered since last reported, payments made by stockholders, and all amounts carried to surplus, undivided profits, or dividends paid.

Every [such] bank, association, licensee, or company shall furnish in writing to the commissioner any special or supplementary reports, covering all or any of the items or matters or classes thereof which are or might be required to be covered by a semiannual report, in such form, at such time or times, and within such reasonable period or periods after request therefor, as the commissioner deems necessary or expedient in the interest of the public [and requires in writing].

Every bank, trust company, [building] savings and loan association, fiduciary company, [or] industrial loan and investment company<sup>1</sup>, or financial services loan company with deposits that are federally insured, shall publish in the English language on or before the last Monday of January and July in every year, a statement of its assets and liabilities as of December 31 and June 30, respectively, in a form prescribed by the commissioner, or as soon thereafter as circumstances will permit.

Failure of any bank, banker, trust company, [building] savings and loan association, fiduciary company, industrial loan and investment company<sup>1</sup>, financial services loan company, or licensee under chapter 409 to make and submit any of the reports required by this section shall subject the bank, banker, company, association, or licensee to a penalty of [\$10] \$1,000 for each day the reports are delayed beyond the time allowed by this section.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1992.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.