

ACT 54

H.B. NO. 1933

A Bill for an Act Relating to Clarifying the Requirements of the Code of Financial Institutions as it Relates to the Hawaii Business Corporation Act in Conversion, Merger, or Consolidation Situations.

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

SECTION 1. Section 412:3-606, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Upon the effective date of the conversion as determined under federal law, the institution’s state charter or license shall terminate without further notice, and the institution shall cease to be regulated by the commissioner. Within ten days after receipt of the federal charter, license, certificate, or other approval, the resulting financial institution shall deliver a copy thereof to the commissioner. The resulting financial institution shall also file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the conversion, together with the appropriate filing fee pursuant to chapter 415.”

SECTION 2. Section 412:3-607, Hawaii Revised Statutes, is amended by amending subsections (c), (d), and (e) to read as follows:

“(c) The commissioner may require notice to be given to the public as may [seem] be deemed appropriate. The commissioner may conduct an examination of the institution as provided under article 2, part II. The cost of any examination shall be assessed against and paid by the institution pursuant to section 412:2-105.

(d) The charter shall be granted only if the commissioner is satisfied that the granting of the charter will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include, but not be limited to, the appropriate location of offices, capital structure, business experience, [and] the character of its executive officers and directors[.], and compliance with all applicable provisions of chapter 415. The director of commerce and consumer affairs shall not file the articles of incorporation until the application for a charter to engage in business as a Hawaii financial institution shall have been approved by the commissioner in writing. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.

(e) The conversion shall be effective [upon the effective date of the new charter granted by the commissioner] upon the filing of articles of incorporation by the director of commerce and consumer affairs after all provisions of this section and applicable federal law have been complied with in full.”

SECTION 3. Section 412:3-608, Hawaii Revised Statutes, is amended by amending subsections (d) and (e)¹ to read as follows:

“(d) The commissioner may require notice to be given to the public as may [seem] be deemed appropriate. The commissioner may conduct an examination of the institution as provided under article 2, part II. The cost of any examination shall be assessed against and paid by the institution pursuant to section 412:2-105.

(e) The charter or license shall be granted only if the commissioner is satisfied that the granting of the charter or license will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include, but not be limited to, the appropriate location of offices, capital structure, business experience, [and] the character of its executive officers and directors[.] and compliance with all applicable provisions of chapter 415. If the resulting Hawaii financial institution is a new corporation to be formed under chapter 415, the director of commerce and consumer affairs shall not file the articles of incorporation until the application for a charter to engage in the business of the type of financial institution to which it will convert shall have been approved by the commissioner in writing. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.

(f) [The] If the resulting Hawaii financial institution is an existing corporation formed under chapter 415, the conversion shall be effective upon the effective date of the new charter or license granted by the commissioner after all provisions of this section and of federal law shall have been complied with in full. If the resulting Hawaii financial institution is a new corporation to be formed under chapter 415, the effective date of the new charter or license shall be the date of filing of the articles of incorporation by the director of commerce and consumer affairs.”

SECTION 4. Section 412:3-609, Hawaii Revised Statutes, is amended by amending subsections (b), (c), (d), and (e) to read as follows:

“(b) Any merger or consolidation of Hawaii stock financial institutions shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more corporations pursuant to chapter 415; except that the vote by the shareholders of each of the participating institutions to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604 and that the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner[.] in writing.

(c) One or more federal financial institutions whose operations are conducted principally in this State and one or more Hawaii financial institutions may be merged or consolidated, with the federal financial institution, the Hawaii financial institution or a new consolidated financial institution being the resulting institution, if the merger or consolidation is permitted by federal law. The federal financial institution shall comply with all requirements, conditions and limitations imposed by federal law or regulation with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter 415, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604[.], and that if the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner[.]. The resulting financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter 415.

(d) One or more financial institutions chartered or licensed under the laws of or whose operations are conducted principally in any state other than Hawaii, in any possession or territory of the United States or in any foreign country and one or more Hawaii financial institutions may be merged or consolidated, but only where the financial institution resulting from any merger or consolidation pursuant to this subsection is chartered or licensed under the laws of and conducts its operations principally in this State or is a federal financial institution which conducts its operations principally in this State. The financial institution chartered or licensed under the laws of any state other than Hawaii, any possession or territory of the United States or any foreign country shall comply with all requirements, conditions and limitations imposed by the law of the jurisdiction under which the financial institution is chartered with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter 415, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604[.], and that[.]. If the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner[.] in writing. If the resulting institution is a federal financial institution, the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing and the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter 415.

(e) A Hawaii mutual savings and loan association may merge into a Hawaii stock financial institution or a federal financial institution whose operations are principally conducted in this State, or may consolidate with a Hawaii stock financial institution or a federal financial institution whose operations are conducted princi-

pally in this State into a new resulting institution; provided that the resulting institution shall be a Hawaii stock financial institution or a federal financial institution, and shall not be a Hawaii mutual savings and loan association. The merger or consolidation shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more stock financial institutions pursuant to this section and to chapter 415, as though the Hawaii mutual savings and loan association was a stock financial institution; except that the members of the participating Hawaii mutual savings and loan association shall approve the plan of merger or consolidation at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605. If the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing. If the resulting institution is a federal financial institution, the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter 415.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 25, 1995.)

Note

1. So in original.