

ACT 283

S.B. NO. 1124

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

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

SECTION 1. Section 412:12-104, Hawaii Revised Statutes, is amended to read as follows:

**“[[§412:12-104]] Authority of out-of-state banks to establish interstate branches in Hawaii by merger.** (a) One or more Hawaii banks may enter into an interstate merger transaction with one or more out-of-state banks under this article, and an out-of-state bank resulting from the transaction may maintain and operate the branches in Hawaii of a Hawaii bank that participated in the transaction, if the conditions and filing requirements of this article are met.

- (b) [(1) An interstate merger transaction resulting in the acquisition by an out-of-state bank of a Hawaii state bank, or of all or substantially all of the branches of a Hawaii state bank, shall not be permitted under this article unless the Hawaii state bank shall have been in continuous operation, on the date of such acquisition, for a period of at least five years.
- (2) For the purposes of paragraph (1), a Hawaii state bank chartered solely for the purpose of acquiring another Hawaii state bank is considered to have been in existence for the same period as the Hawaii state bank to be acquired, so long as it does not open for business at any time before the acquisition.
- (3) The commissioner may waive the restriction in paragraph (1) in the case of a Hawaii state bank that is subject to, or is in danger of becoming subject to supervisory action under article 2 of this chapter or, if applicable, the equivalent provisions of federal law.

(c) Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Hawaii state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay a filing fee of \$9,000, or a greater amount as the commissioner may establish by rule pursuant to chapter 91. The filing fee shall be nonrefundable. Any Hawaii state bank which is a party to an interstate merger transaction shall comply with part VI, article 3, of this chapter to the extent applicable, and with other applicable state and federal laws. If the resulting bank in the interstate merger transaction is an out-of-state state

bank, the director of commerce and consumer affairs shall not file the articles of merger until the out-of-state state bank has filed a confirmation in writing by the commissioner of compliance with this section. If the resulting bank in the interstate merger transaction is an out-of-state bank which is a national banking association, the resulting bank shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of compliance with this section.

[(d)] (c) Any out-of-state state bank which shall be the resulting bank in an interstate merger transaction involving a Hawaii bank shall confirm in writing to the commissioner that as long as it maintains a branch in this State, it shall comply with all applicable laws of this State and provide satisfactory evidence to the commissioner of compliance with applicable requirements of chapter 415 relating to foreign corporations.”

SECTION 2. Section 412:12-105, Hawaii Revised Statutes, is amended to read as follows:

“**[[§412:12-105] Prohibition of out-of-state banks to establish a de novo interstate branch or acquire an interstate branch.** (a) An out-of-state bank that does not operate a branch in this State may not establish and operate a de novo branch in this State.

(b) An out-of-state bank that does not operate a branch in this State may not establish and operate a branch in this State through the acquisition of a branch.

(c) Notwithstanding subsection (b), the commissioner may approve the acquisition of a branch by an out-of-state bank in the case of a bank that is subject to, or is in danger of becoming subject to supervisory action under article 2 of this chapter or, if applicable, the equivalent provisions of federal law or the law of the out-of-state bank’s home state.] **Authority of out-of-state banks to establish a de novo interstate branch or acquire an interstate branch.** (a) An out-of-state bank that does not operate a branch in this State and that meets the requirements of this article may establish and operate a branch in this State.

(b) An out-of-state bank that does not operate a branch in this State and that meets the requirements of this article may establish and operate a branch in this State through the acquisition of a branch.

(c) An out-of-state bank desiring to establish and operate a branch or to acquire and operate a branch in this State pursuant to this section shall provide to the commissioner written notice of the proposed transaction not later than the date on which the bank applies to the responsible federal bank supervisory agency for approval to establish or acquire the branch. The filing of the notice shall be accompanied by a filing fee of \$9,000 or a greater amount as the commissioner may establish by rule pursuant to chapter 91. The filing fee shall be non-refundable.

(d) No branch of an out-of-state bank may be established or acquired in this State under this section, unless:

- (1) The out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch in this State, it shall comply with all applicable laws of this State;
- (2) The applicant provides to the commissioner satisfactory evidence of compliance with the applicable requirements of chapter 415 relating to foreign corporations; and
- (3) The commissioner, acting within thirty days after receiving notice of an application under subsection (c), certifies to the responsible federal bank supervisory agency that the requirements of this article have been met.”

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SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall take effect on January 1, 2001.

(Approved July 6, 1999.)