

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. Chapter 412, Hawaii Revised Statutes, is amended by adding a new section to article 9, part I to be appropriately designated and to read as follows:

“§412:9- Display of license. Every financial services loan company shall display a copy of its principal office license in a conspicuous place at its principal office and shall display a copy of a branch office license in a conspicuous place at the branch office designated on the branch office license.”

SECTION 2. Section 412:2-306, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“§412:2-306 Removal or prohibition of institution-affiliated party[-]; grounds.”

SECTION 3. Section 412:3-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the financial institution;
- (2) The specific location of its principal office, branches, agencies, and support facilities, and any lease agreements for such principal office, branches, agencies, and support facilities;
- (3) Financial statements, employment history, education, management experience, and other biographical information for all applicants, organizers, proposed executive officers, and directors of the financial institution;
- (4) The name and address of each proposed subscriber of capital stock in the financial institution;
- (5) The proposed capital plan, if capital has not been fully raised, that shall include:
 - (A) A description of any stock options, debentures, and stock warrants offered or proposed to be offered to any person; and
 - (B) Any stock option plan;
- (6) The proposed capital stock solicitation plan, if subscriptions for capital stock will be solicited, that shall include:
 - (A) Information regarding the solicitation plan by which the applicant and the proposed financial institution propose to conduct the solicitation of subscribers;
 - (B) Information regarding the classes of shares, respective quantities of shares for each class, and the subscription price of each class of stock;
 - (C) A specimen subscription contract or purchase agreement and other related documents to be executed by subscribers;
 - (D) Any underwriting agreement or other agreement for the purchase or distribution of the capital stock;
 - (E) Any escrow agreements or other agreement for the holding of the purchase proceeds of the capital stock;
 - (F) Proposed advertising materials;

- (G) If the offer and sale of the capital stock is subject to the Securities Act of 1933 and regulations thereunder, a copy of the registration statement most recently filed with the federal Securities and Exchange Commission or any other notices or other filings in lieu of registration required or permitted by that Act or regulation and any subsequent amendments thereto;
 - (H) If the offer and sale of the capital stock is subject to chapter 485A, a copy of the registration or qualification statement most recently filed with the commissioner of securities and any subsequent amendments thereto; and
 - (I) If the offer and sale of the capital stock is not subject to the Securities Act of 1933 or chapter 485A, whether exempted by law or regulation or otherwise, a copy of the most recent version of any prospectus, offering memorandum, offering circular, or other offering document proposed to be delivered to prospective subscribers to the capital stock, and any subsequent amendments thereto;
- (7) The financial institution's proposed policies concerning loans and concentrations of credit, asset and liability management, conflicts of interest, investments, community reinvestment, bank secrecy, anti-money laundering, and customer identification;
 - (8) The financial institution's business plan for the first three years of operations;
 - (9) Financial projections regarding the financial institution's profitability for the first three years of operations;
 - (10) A market study or letters of support evidencing the need and advisability of granting authority to organize a financial institution;
 - (11) Except for trust companies, evidence that the financial institution has applied for federal deposit insurance from the Federal Deposit Insurance Corporation or other appropriate federal deposit insurer;
 - (12) Evidence that the financial institution has applied for fidelity bonds and other insurance appropriate to its size and operations, including the types and the amounts of coverage, and the respective deductible amounts, from insurance companies licensed in the United States;
 - (13) Evidence that the proposed directors and executive officers of the financial institution have the financial ability, responsibility, and experience to engage in the business of a financial institution;
 - (14) The employment agreements for all proposed executive officers of the financial institution;
 - (15) The proposed articles of incorporation and bylaws of the financial institution;
 - (16) A description of any existing or proposed service corporation, affiliate, or subsidiary; ~~and~~
 - (17) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each of the proposed directors and executive officers of the financial institution, accompanied by payment of the applicable fee for each record check to be conducted; and
- [(17)] (18) Any other information that the commissioner may require."

SECTION 4. Section 412:3-301, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the nondepository financial services loan company, the location of its principal office, and any lease agreements for ~~[such]~~ the principal office;
- (2) Any intended or existing affiliates, subsidiaries, and holding company of the proposed nondepository financial services loan company and the extent and nature of the holding company's control over the operations of the proposed nondepository financial services loan company;
- (3) A business plan which shall contain the following:
 - (A) A written description of the company's proposed financial products;
 - (B) A written statement which explains how the scope of the proposed business complies with article 9 and why any existing lines of business do not conflict with ~~[the provisions of]~~ article 9;
 - (C) A written description of the company's proposed plan of marketing its products, whether through affiliates, subsidiaries, service corporations, or holding company;
 - (D) Financial projections regarding the nondepository financial services loan company's profitability; and
 - (E) Any and all contractual arrangements which are intended to be executed between the nondepository financial services loan company and its holding company, affiliates, and subsidiaries;
- (4) Financial statements, employment history, education, management experience, and other biographical information for the proposed executive officers and directors of the nondepository financial services loan company and its holding company, if any;
- (5) Proposed policies regarding loans, investments, operations, accounting, recordkeeping, and compliance with applicable federal and state consumer laws;
- (6) The name and address of each proposed subscriber of capital stock in the nondepository financial services loan company or the majority shareholders in any holding company;
- (7) A copy of the nondepository financial services loan company's articles of incorporation and bylaws; ~~and~~
- (8) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each of the proposed directors and executive officers of the nondepository financial services loan company, accompanied by payment of the applicable fee for each record check to be conducted; and
- ~~(8)~~ (9) Any other information that the commissioner may require."

SECTION 5. Section 412:3-507, Hawaii Revised Statutes, is amended to read as follows:

"§412:3-507 Closing branch or agency[-]; temporary closures. (a) A Hawaii financial institution shall give the commissioner prior notice of its intent to close any branch or agency at least thirty days prior to the closing. The notice shall specify the intended date of closing, the reasons for the closing, and a certification by the secretary or other authorized officer of the institution that the decision to close was duly approved by its board of directors. This notice may be satisfied by delivery to the commissioner of a copy of any notice pertaining to the closure given to the financial institution's appropriate federal regulatory agency.

(b) A Hawaii financial institution may temporarily close a branch or agency in the event of an emergency for a period of time up to one hundred eighty days, or a longer time period as determined necessary by the commissioner. For purposes of

this section, an emergency means a situation of an unusual or compelling urgency that creates a threat to life, public health, welfare, or safety by reason of major natural disaster, epidemic, riot, fire, or other reason as determined by the commissioner. Written notice shall be provided to the commissioner upon closure as soon as practicable, and notice shall be provided to the Hawaii financial institution's customers in the form of a sign posted at the primary public entrance of the branch or agency. The written notices shall state the reasons for the closure, the expected date of reopening, and information regarding where and how customers of the closed branch or agency will be accommodated during the temporary closure. Notice of the reopening shall be provided to the commissioner within five days of the reopening."

SECTION 6. Section 412:8-103, Hawaii Revised Statutes, is amended to read as follows:

"§412:8-103 Authority to serve as trustee. Unless chartered as a trust company under this chapter or otherwise specifically authorized by the laws of this State, no person~~[-, except an individual acting as a co-trustee,]~~ shall hold itself out to the general public as being available to serve as a trustee or trust company, whether or not for compensation. No person shall use the term "trust company" as part of its name unless chartered as a trust company pursuant to this chapter."

SECTION 7. Section 412:9-304, Hawaii Revised Statutes, is amended to read as follows:

"§412:9-304 Consumer loan charges. Unless specifically authorized in this article or by rule adopted by the commissioner, a financial services loan company shall only have the right to charge, contract for, and receive in advance or otherwise, the following charges in addition to the interest permitted in section 412:9-302 for a consumer loan made under this article~~[?]~~, including but not limited to a first-lien mortgage loan:

- (1) Late charges under the consumer loan on any delinquent installment, or portion of the delinquent installment where there has been no extension or deferment. Delinquency occurs when the installment or payment is not paid on the due date. Late charges shall not be collected more than once for the same delinquent installment. Late charges on any consumer loan shall not exceed five per cent of the delinquent installment, and late charges shall not be assessed on any consumer loan after acceleration of the maturity of the consumer loan;
- (2) A prepayment penalty as provided in the note or other form of contract signed by the borrower on any amount that is voluntarily prepaid; provided that:
 - (A) The prepayment penalty on any consumer loan with a term of five years or more that is primarily secured by an interest in real property and in which the interest rate is computed under section 412:9-301(2) and which is prepaid within five years of the date of the loan shall be computed on the amount prepaid in excess of twenty per cent of the original principal amount of the loan in any twelve-month period measured from the date of the loan or from any anniversary of the loan date. The prepayment penalty may be charged only on amounts in excess of the twenty per cent amount in each twelve-month period in such five-year period and shall not exceed six months of interest at the ~~[maximum]~~ then-applicable loan interest rate ~~[permissible for the consumer loan by law]~~ on

the amount prepaid; provided that the interest rate is permissible under applicable usury law;

- (B) The prepayment penalty shall not be charged on a consumer loan that is a variable rate or open-end loan, on a precomputed loan on which interest is computed under section 412:9-301(1), or on loans that are not secured by real estate; and
 - (C) The prepayment penalty shall not be charged on any amount that is paid because of the exercise of any acceleration provision by the financial services loan company;
- (3) Extension or deferment charges on any payment on account of the principal balance of a loan, or a portion thereof, that is due on a particular date, but is extended or deferred to a later date by mutual agreement. The charges shall be based upon the amount so extended or deferred at interest not exceeding that permitted upon the original loan under section 412:9-302, for the actual period of the extension or deferment. The extension or deferment charges may be collected either in advance at the commencement of the period of extension or deferment or otherwise as agreed. The term and conditions of the extension or deferment, including the amount of the consumer loan so extended or deferred, and the period of, and the charge for the extension or deferment shall be set forth in writing and signed by the borrower with one copy given to the borrower;
- (4) Nonrefundable discount, points, loan fees, and loan origination charges; provided that:
- (A) Discount, points, loan fees, and loan origination charges shall not be charged on precomputed loans on which interest is computed under section 412:9-301(1); and
 - (B) The nonrefundable discount, points, loan fees, and loan origination charges shall be permitted on consumer loans on which interest is computed under section 412:9-301(2) if the consumer loan is secured by an interest in real property or if the consumer loan is made to a lessee of land subject to the Hawaiian Homes Commission Act and the loan, but for the provisions of the Act, would be secured by a mortgage on the leasehold interest. Provided further that, except for open-end loans, the nonrefundable discount, points, loan fees, and origination charges shall be included as interest to determine compliance of the loan with the interest rate limits under section 412:9-302(b)(2) when the consumer loan is made.
- The nonrefundable discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan commitment agreement or other form of contract is executed and the commitment fee paid, or on the date the consumer loan is made, and shall not be subject to refund on prepayment of the consumer loan;
- (5) Fees, charges, and expenses reasonably related to the consumer loan that are retained by the financial services loan company; provided that the fees, charges, and expenses are charged only on consumer loans that are secured by an interest in real property; and provided further that the total dollar amount of the fees, charges, and expenses, whether or not itemized, shall not exceed one per cent of the principal amount of the loan. The fees, charges, and expenses may include but are not limited to notary fees, appraisal fees, appraisal review fees, and fees for the development, processing, and preparation of loan documents, including

deeds, promissory notes, mortgages, and reconveyance, settlement, and similar documents;

- (6) Fees, charges, and expenses reasonably related to the consumer loan that are actually paid to third parties, affiliates, or subsidiaries for services actually rendered, no portion of which is rebated, refunded, or paid directly or indirectly to the financial services loan company by the third parties, affiliates, or subsidiaries. The fees, charges, and expenses may include but are not limited to charges for credit reports, actual taxes, and fees charged by a governmental agency for recording, filing, or entering of record any security agreements or instruments, including the partial or complete release of such security agreements or instruments, insurance premiums of the kind and to the extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z of the Board of Governors of the Federal Reserve System and to the extent that the insurance premium does not exceed \$20, appraisal fees, appraisal review fees, title report or title insurance fees, mortgage reserve funds to be used for payment of taxes, insurance, lease rent and condominium assessments, real property tax services fees, wire transfer fees, and attorney's fees and expenses for documentation of the consumer loan or for the collection of any consumer loan in default."

SECTION 8. Section 412:10-103, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the credit union;
- (2) Proposed lease agreements for its principal office;
- (3) The territory in which the proposed credit union will operate;
- (4) A business plan;
- (5) Employment history, education, management experience, and other biographical information for all original chartering applicants, and proposed executive officers of the credit union;
- (6) Proposed policies regarding loans, investments, operations, accounting, recordkeeping, and applicable federal and state consumer laws; ~~and~~
- (7) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each of the original chartering applicants and proposed executive officers of the credit union, accompanied by payment of the applicable fee for each record check to be conducted; and
- (~~7~~) (8) Any other information that the commissioner may require."

SECTION 9. Section 412:11-102, Hawaii Revised Statutes, is amended to read as follows:

"§412:11-102 Examination of financial institution holding company. The commissioner may from time to time conduct [such] reasonable examinations of any financial institution holding company that directly owns twenty-five per cent or more of any class of voting securities of a Hawaii financial institution as may be necessary or appropriate to determine whether the condition or activities of the company are jeopardizing the safety or soundness of the operations of its financial institution subsidiary. The commissioner shall not conduct [such examinations] an examination of any financial institution holding [companies] company that indirectly controls a Hawaii financial institution through one or more financial institution holding companies unless the commissioner has good cause to believe that [a] the financial

institution holding company indirectly controlling the Hawaii financial institution is experiencing financial adversity [which] that will have a material negative impact on the safety and soundness of [its] the Hawaii financial institution [subsidiary]. The cost of [such] the examinations shall be assessed against and paid by the financial institution holding company in the same manner as financial institutions under section 412:2-105.”

SECTION 10. Section 412:13-222, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall relocate any Hawaii office without the commissioner’s prior written approval[-]; provided that approval shall not be required if:

- (1) The relocation will be less than one mile from the foreign bank’s present place of business;
- (2) The foreign bank gives the commissioner written notice at least twenty days prior to the move;
- (3) The type of business carried on at the new place of business will be the same as at the present place of business; and
- (4) There will be no financial involvement in the relocation by a director, executive officer, or principal shareholder, or a related interest of any of these persons.”

SECTION 11. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care homes, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;

- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;

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- (22) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)), as provided by section 346-97; ~~[and]~~
- ~~(24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;~~
- ~~(25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;~~
- ~~(26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103; and~~
- ~~[(24)]~~ (27) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 13. This Act shall take effect on July 1, 2008.

(Approved June 19, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.