

## ACT 105

H.B. NO. 943

A Bill for an Act Relating to Nondepository Trusts.

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

SECTION 1. Chapter 412, Hawaii Revised Statutes, is amended by adding a new part to article 8 to be appropriately designated and to read as follows:

**“PART . NONDEPOSITORY TRUST COMPANIES**

**§412:8- Powers and duties.** (a) Unless otherwise prohibited or restricted by this section or any other law, a nondepository trust company shall have the general powers specified in section 412:8-200.

(b) Notwithstanding any other provision in this chapter, a nondepository trust company shall not:

- (1) Solicit, accept, or hold deposits;
- (2) Engage in banking business;
- (3) Engage in business for which a real estate broker’s license is required;
- (4) Engage in any business for which an insurance producer license is required; or
- (5) Engage in any business of a securities broker or dealer.

(c) A nondepository trust company shall not itself perform, and instead shall contract for, the following services for its clients, if needed:

- (1) Financial advisors for client investments;
- (2) Property management for client rental properties; or
- (3) Real estate brokerages for client real estate transactions.

(d) A nondepository trust company shall be responsible for the performance of the service providers that it engages for its clients.”

SECTION 2. Section 412:2-105.2, Hawaii Revised Statutes, is amended to read as follows:

**“§412:2-105.2 Hawaii financial institutions; assessments; fees; penalty.**

(a) Beginning January 1, 2014, every Hawaii financial institution shall be assessed a yearly fee in accordance with the following:

- (1) For financial institutions with total assets under \$750,000, the assessment shall be the sum of \$1,000 plus the product of 0.00029111 [~~times~~] multiplied by total assets;

- (2) For financial institutions with total assets of at least \$750,000 but under \$7,500,000, the assessment shall be the sum of \$2,000 plus the product of 0.00029111 ~~[times]~~ multiplied by total assets;
- (3) For financial institutions with total assets of at least \$7,500,000 but under \$20,000,000, the assessment shall be the sum of \$4,800 plus the product of 0.00029111 ~~[times]~~ multiplied by total assets;
- (4) For financial institutions with total assets of at least \$20,000,000 but under \$75,000,000, the assessment shall be the sum of \$9,900 plus the product of 0.000064 ~~[times]~~ multiplied by total assets;
- (5) For financial institutions with total assets of at least \$75,000,000 but under \$200,000,000, the assessment shall be the sum of \$15,000 plus the product of 0.00005333 ~~[times]~~ multiplied by total assets;
- (6) For financial institutions with total assets of at least \$200,000,000 but under \$1,000,000,000, the assessment shall be the sum of \$21,100 plus the product of 0.00004750 ~~[times]~~ multiplied by total assets; and
- (7) For financial institutions with total assets of at least \$1,000,000,000 but under \$20,000,000,000, the assessment shall be the sum of \$29,000 plus the product of 0.00004 ~~[times]~~ multiplied by total assets;

provided that the yearly fee assessed for financial institutions with total assets of at least \$2,000,000,000 but less than \$10,000,000,000 shall be no more than \$100,000, and the yearly fee assessed for financial institutions with total assets of at least \$10,000,000,000 shall be no more than \$150,000.

(b) Beginning July 1, 2021, subsection (a) shall not apply to nondepository trusts, and nondepository trusts shall be assessed a yearly fee in accordance with the following:

- (1) For nondepository trusts with total assets under management under \$750,000, the assessment shall be the sum of \$1,000 plus the product of 0.00029111 multiplied by total assets under management;
- (2) For nondepository trusts with total assets under management of at least \$750,000 but under \$7,500,000, the assessment shall be the sum of \$2,000 plus the product of 0.00029111 multiplied by total assets under management;
- (3) For nondepository trusts with total assets under management of at least \$7,500,000 but under \$20,000,000, the assessment shall be the sum of \$4,800 plus the product of 0.00029111 multiplied by total assets under management;
- (4) For nondepository trusts with total assets under management of at least \$20,000,000 but under \$75,000,000, the assessment shall be the sum of \$9,900 plus the product of 0.000064 multiplied by total assets under management;
- (5) For nondepository trusts with total assets under management of at least \$75,000,000 but under \$200,000,000, the assessment shall be the sum of \$15,000 plus the product of 0.00005333 multiplied by total assets under management;
- (6) For nondepository trusts with total assets under management of at least \$200,000,000 but under \$1,000,000,000, the assessment shall be the sum of \$21,100 plus the product of 0.00004750 multiplied by total assets under management; and
- (7) For nondepository trusts with total assets under management of at least \$1,000,000,000 but under \$20,000,000,000, the assessment shall be the sum of \$29,000 plus the product of 0.00004 multiplied by total assets under management;

provided that the yearly fee assessed for nondepository trusts with total assets under management of at least \$2,000,000,000 but under \$10,000,000,000 shall be no more than \$100,000, and the yearly fee assessed for nondepository trusts with total assets under management of at least \$10,000,000,000 shall be no more than \$150,000.

~~[(b)]~~ (c) The assessments shall be paid semiannually on March 1 and September 1 of each year based on the institution's total assets or total assets under management reported as of the previous December 31 and June 30, respectively.

~~[(e)]~~ (d) In addition to the assessments established in subsection (a), a financial institution or financial institution applicant shall pay fees as follows:

- (1) A nonrefundable fee of \$10,000 for an application for preliminary approval by the commissioner for the organization of a Hawaii financial institution pursuant to section 412:3-201, 412:3-202, 412:3-206, or 412:3-301;
- (2) A nonrefundable fee of \$9,000 for an application for preliminary approval by the commissioner for the organization of a Hawaii financial institution pursuant to section 412:5-402;
- (3) A nonrefundable fee of \$2,500 for a final application for a charter or license to engage in the business of a Hawaii financial institution pursuant to section 412:3-212;
- (4) A nonrefundable fee of \$10,000 for an application for a merger or consolidation or acquisition of control involving a Hawaii financial institution;
- (5) A nonrefundable fee of \$2,500 for an application for the conversion of a federal financial institution to a Hawaii financial institution or the conversion of a Hawaii financial institution to another Hawaii financial institution charter;
- (6) A nonrefundable fee of \$5,000 for an application of a bank to conduct a trust business through a subsidiary, division, or department of the bank pursuant to section 412:5-205;
- (7) A nonrefundable fee of \$5,000 for an application of a bank to conduct insurance activities pursuant to section 412:5-205.5;
- (8) A nonrefundable fee of \$5,000 for an application of a bank to engage in securities activities pursuant to section 412:5-205.7;
- (9) A nonrefundable fee of \$2,000 for an application for a bank, savings bank, or depository financial services loan company to comply with lending limits applicable to federal financial institutions pursuant to section 412:5-302, 412:6-303, or 412:9-404;
- (10) A nonrefundable fee of \$2,000 for an application to exceed certain permitted investment limits pursuant to sections 412:5-305(f) and (h), 412:6-306(f) and (h), 412:7-306(f) and (h), 412:8-301(f), 412:9-409(f) and (i), and 412:10-502(g); and
- (11) A nonrefundable fee of \$2,500 for an application to engage in the business of a credit union.

~~[(d)]~~ (e) The annual fee for each intra-Pacific financial institution and interstate branch of out-of-state banks is the sum of \$1,000 for each office, agency, and branch office maintained by the financial institution, payment of which shall be made before December 31 of each year. The commissioner may establish, increase, decrease, or repeal this fee pursuant to rules adopted in accordance with chapter 91.

~~[(e)]~~ (f) Intra-Pacific bank fees shall be as follows:

- (1) A nonrefundable fee of \$9,000 to establish an initial branch pursuant to section 412:5-401;

- (2) A nonrefundable fee of \$750 to establish an additional branch or agency of an intra-Pacific bank; and
- (3) A nonrefundable fee of \$500 for an application to relocate a branch or agency of an intra-Pacific bank established or acquired pursuant to section 412:5-401.

~~[(f)]~~ (g) A nonrefundable fee of \$500 shall be assessed for an application to relocate a branch or office established pursuant to section 412:12-107.

~~[(g)]~~ (h) A nonrefundable fee of \$100 shall be assessed for each certificate of good standing for any Hawaii financial institution; provided that an additional fee of \$100 shall be assessed for each certificate of good standing that is requested to be provided in two business days from receipt of request.

~~[(h)]~~ (i) All assessments and fees shall be deposited into the compliance resolution fund established pursuant to section 26-9(o).

~~[(i)]~~ (j) For purposes of this section ~~[-“total”~~; “Total assets” means for an insured depository institution the total assets reported in the financial institution’s quarterly reports of condition, or call reports, which are required to be filed pursuant to section 7(a)(3) of the Federal Deposit Insurance Act or in the unaudited financial statements filed pursuant to section 412:3-112.

“Total assets under management” means the total market value of the assets that a trust company oversees, administers, or manages on behalf of its clients pursuant to its fiduciary and trust powers in article 8, including assets for which a trust company has engaged a third-party platform investment service, property management services, or real estate services.

~~[(j)]~~ (k) A Hawaii financial institution that fails to make a payment required by this section shall be subject to an administrative fine of not more than \$250 per day for each day it is in violation of this section, which fine, together with the amount due under this section, may be recovered pursuant to section 412:2-611 and shall be deposited into the compliance resolution fund established pursuant to section 26-9(o).”

SECTION 3. Section 412:3-209, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every financial institution existing or organized under the laws of this State shall at all times, and every applicant in organization shall, before filing the final application for a charter or license under this part and at all times thereafter, have paid-in capital and surplus of not less than the following amounts for each type of institution specified below:

Banks	\$5,000,000
Savings banks	\$3,000,000
Savings and loan associations	\$2,000,000
Trust companies	\$1,500,000
<u>Nondepository trust companies</u>	<u>\$1,000,000</u>
Depository financial services loan companies	\$1,000,000”

SECTION 4. Section 412:8-101, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Nondepository trust company” means a type of trust company that is not authorized to accept deposits.”

SECTION 5. Section 412:8-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A trust company may act as an agent ~~[in]~~ on behalf of a principal in the transaction of any business or in the management of any property, real, personal or mixed, with such powers as the trust company may exercise under sections 412:8-200 ~~[and]~~, 412:8-201~~;~~, and 412:8-\_\_\_\_\_; provided~~[.]~~ that its duties as ~~[such]~~ agent and the terms and conditions of the agency or power are set forth either specifically or generally in a written memorandum signed by the principal.”

SECTION 6. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$4,000 or so much thereof as may be necessary for fiscal year 2021-2022 and the same sum or so much thereof as may be necessary for fiscal year 2022-2023 for the division of financial institutions of the department of commerce and consumer affairs to administer nondepository trusts under this Act.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2021.

(Approved June 28, 2021.)