

JAN 24 2013

A BILL FOR AN ACT

RELATING TO FINANCIAL INSTITUTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. Chapter 412, Hawaii Revised Statutes, is
3 amended by adding to article 2 a new section to be
4 appropriately designated and to read as follows:

5 "§412:2- Powers of the commissioner. In addition to
6 any other powers provided by law, the commissioner shall have
7 the authority to:

- 8 (1) Administer and enforce the provisions and
9 requirements of this chapter;
- 10 (2) Adopt, amend, or repeal rules or issue declaratory
11 rulings pursuant to chapter 91 to effectuate the
12 purposes of this chapter;
- 13 (3) Issue informal nonbinding interpretations to
14 effectuate the purposes of this chapter;

- 1 (4) Develop requirements for charter or licensure
2 through rules;
- 3 (5) Investigate and conduct hearings regarding any
4 violation of this chapter or any rule or order of,
5 or agreement with, the commissioner;
- 6 (6) Require a licensed or chartered entity or other
7 entity with a certificate of authority to comply
8 with any rule, guidance, guideline, statement,
9 supervisory policy, or any similar proclamation
10 issued or adopted by the appropriate federal
11 regulatory authority."

12 SECTION 2. Section 412:1-109, Hawaii Revised Statutes,
13 is amended by:

14 (1) Amending the definition of "appropriate federal
15 regulatory agency" to read as follows:

16 "Appropriate federal regulatory agency" means, with
17 respect to a financial institution or financial institution
18 holding company, any one or more regulatory agencies of the
19 federal government referred to in the following sentence which
20 either (1) insures the deposits of the financial institution
21 or financial institution holding company, or (2) has the power
22 and duty to conduct periodic general examinations of the

1 affairs of the financial institution or financial institution
2 holding company by virtue of the legal characterization of the
3 financial institution or financial institution holding company
4 under federal law, and not by virtue of the fact of
5 affiliation of the financial institution or financial
6 institution holding company with any other person or an
7 alleged violation of a specific law. Subject to the preceding
8 sentence, an appropriate federal regulatory agency may [be]
9 include the Federal Deposit Insurance Corporation, the
10 Comptroller of the Currency, the Federal Reserve Board, [~~the~~
11 ~~Office of Thrift Supervision,~~] the National Credit Union
12 Administration, the Consumer Financial Protection Bureau, or
13 any regulatory agency of the federal government which shall
14 succeed to the insurance or supervisory duties of one of the
15 foregoing."

16 (2) Amending the definition of "deposit" or "deposits"
17 to read as follows:

18 "Deposit" or "deposits" means money or its equivalent
19 received or held by a person in the usual course of business
20 and for which it has given or is obligated to give credit,
21 either conditionally or unconditionally, to a demand,
22 checking, savings, time, passbook, negotiable order of

1 withdrawal, thrift, or share account, or which is evidenced by
2 its passbook, certificate of deposit, thrift certificate,
3 investment certificate, certificate of indebtedness, or other
4 similar instrument, or a check, draft, or share draft drawn
5 against a deposit account and certified by a person, on which
6 the person is primarily liable. A deposit includes all funds
7 underlying prepaid access cards or stored value cards, and
8 other nontraditional access mechanisms to the extent that the
9 funds have been placed in a depository institution."

10 SECTION 3. Section 412:3-501, Hawaii Revised Statutes,
11 is amended to read as follows:

12 "§412:3-501 Authorized places of business. (a) A
13 Hawaii financial institution may conduct business at one or
14 more of the following places of business, to the extent
15 authorized:

16 (1) The principal office of a Hawaii financial
17 institution is the place of business that it
18 designates as its executive headquarters in this
19 State. A financial institution may, but need not,
20 conduct other businesses permitted under its charter
21 or license at its principal office; provided that
22 for the purposes of this section, the terms

1 "principal office", "home office", and "main office"
2 are interchangeable;

3 (2) A branch is a place of business open to the public
4 where a financial institution shall be authorized to
5 conduct all businesses permitted under its charter
6 or license, except for the maintenance of its
7 executive headquarters [7]. A branch does not
8 include an automated teller machine or a remote
9 service unit;

10 (3) An agency is a place of business open to the public
11 where a financial institution may conduct only
12 specific businesses approved by the commissioner in
13 writing;

14 (4) An automatic teller machine or ATM is a place of
15 business, either at a fixed location or mobile,
16 consisting of an on-line or off-line, staffed or
17 unstaffed, electronic processing device, including
18 associated equipment and structures, that is
19 situated at a premises separate from a financial
20 institution's principal office, branch, agency, or
21 support facility, at which deposits of cash or
22 instruments, or cash disbursement transactions

1 between a person and one or more financial
2 institutions are accomplished, whether instantaneous
3 or otherwise, through or by means of electronic or
4 automated signals or impulses including the human
5 voice [~~;~~ ~~provided that it shall not mean a telephone~~
6 ~~or an electronic processing device situated at or~~
7 ~~within the premises of a bank customer that is used~~
8 ~~only for transactions between that customer, and the~~
9 ~~financial institution]~~. The term does not include
10 merchant operated terminals [~~and~~], point of sale
11 terminals [~~;~~], and remote service units;

12 (5) A remote service unit is a place of business,
13 consisting of an on-line or off-line, staffed or
14 unstaffed, electronic processing device, including
15 associated equipment and structures, that is used
16 only for transactions between a financial
17 institution customer and the financial institution,
18 and that is situated at premises separate from a
19 financial institution's principal office, branch,
20 agency, or support facility, at which deposits of
21 cash or instruments, or cash disbursement
22 transactions, are accomplished, whether

1 instantaneous or otherwise, through or by means of
2 electronic or automated signals or impulses
3 including the human voice; and

4 [~~(5)~~] (6) A support facility is a place of business that
5 is not generally open to the public, where a
6 financial institution conducts limited types of
7 significant business operations of the financial
8 institution, including but not limited to data
9 processing, clerical activities, and storage.

10 (b) In addition to conducting business at a place of
11 business described in subsection (a), a Hawaii financial
12 institution may conduct business in any other manner or place
13 necessary or convenient; provided that deposits of cash or
14 instruments shall not be received, checks, negotiable orders
15 of withdrawal, or share drafts shall not be paid, and cash
16 shall not be disbursed, except at an authorized principal
17 office, branch [~~or~~], automatic teller machine, or remote
18 service unit, or at any agency or support facility which has
19 been authorized by the commissioner to accept deposits or
20 disburse cash."

1 SECTION 4. Section 412:5-203, Hawaii Revised Statutes,
2 is amended by amending subsections (a) and (b) to read as
3 follows:

4 "(a) "Operating subsidiary" means a corporation other
5 than a corporation referred to in section 412:5-305(g)(2) to
6 (8) of which more than [~~eighty~~] fifty per cent of the voting
7 securities is held directly or indirectly by a bank.

8 (b) An operating subsidiary may engage in activities
9 that are authorized for a bank, including those under section
10 412:5-305 and title 12 Code of Federal Regulations part 362,
11 or that are usual or incidental to the business of a bank."

12 SECTION 5. Section 412:5-302, Hawaii Revised Statutes,
13 is amended to read as follows:

14 "**§412:5-302 Limitations on loans and extensions of**
15 **credit to one borrower.** (a) No bank shall permit a person to
16 become indebted or liable to it, either directly or indirectly
17 on loans and extensions of credit, including any credit
18 exposure arising out of derivative transactions entered into
19 by a bank and its subsidiaries, in a total amount outstanding
20 at any one time in excess of twenty per cent of the capital
21 and surplus of the bank.

1 **(b)** As used in this section, a "derivative transaction"
2 includes any transaction that is a contract, agreement, swap,
3 warrant, note, or option that is based, in whole or in part,
4 on the value of, any interest in, any quantitative measure of
5 or the occurrence of any event relating to, one or more
6 commodities, securities, currencies, interest or other rates,
7 indices, or other assets.

8 ~~(b)~~ **(c)** This section applies to all loans and
9 extensions of credit made and to all credit exposure arising
10 out of derivative transactions entered into by a bank and its
11 subsidiaries. It does not apply to loans and extensions of
12 credit made by a bank or its subsidiaries to its affiliates or
13 subsidiaries.

14 ~~(e)~~ **(d)** The limitations set forth in this section
15 shall not apply to:

- 16 (1) A bank's eligible acceptances as described in
17 section 412:5-204(b);
- 18 (2) A bank's purchase or discount of another bank's
19 acceptances of the kinds described in section 13 of
20 the Federal Reserve Act;

- 1 (3) A bank's deposits with a Federal Reserve Bank,
2 Federal Home Loan Bank, or another depository
3 institution made in compliance with this chapter;
- 4 (4) A bank's sale of federal funds to another depository
5 institution with a maturity of one business day or
6 under a continuing contract;
- 7 (5) Loans and extensions of credit secured by the
8 interest-bearing obligations of the United States or
9 those for which the faith and credit of the United
10 States are distinctly pledged to provide for the
11 payment of the principal and interest thereof or of
12 the State or any county or municipal or political
13 subdivision of this State, issued in compliance with
14 the laws of this State, where the market value of
15 the security shall be at any time not less than one
16 hundred five per cent of the face amount of the
17 loans and extensions of credit;
- 18 (6) Loans and extensions of credit to the extent secured
19 by a pledge or security interest in a deposit
20 account in the lending bank; and
- 21 (7) Loans and extensions of credit arising from the
22 discount of negotiable or nonnegotiable credit sales

1 contracts which carry a partial recourse endorsement
2 or limited guarantee by the person transferring the
3 credit sales contracts, if the bank's respective
4 file or the knowledge of its officers of the
5 financial condition of each maker of [~~such~~] the
6 credit sales contract is reasonably adequate, and an
7 officer of the bank certifies in writing that the
8 bank is relying primarily upon the responsibility of
9 each maker for payment of [~~such~~] the credit sales
10 contract, and not upon any partial recourse
11 endorsement or limited guarantee by the transferor.
12 Under these circumstances, [~~such~~] the credit sales
13 contract will be considered a loan and extension of
14 credit to the maker of the credit sales contract
15 rather than the seller of the credit sales contract.

16 ~~(d)~~ (e) In computing the total loans and extensions of
17 credit made by a bank to any person, all loans and extensions
18 of credit by the bank to the person and to any partnership,
19 joint venture, or unincorporated association of which the
20 person is a partner or a member and all credit exposure
21 arising from a derivative transaction with any person and with
22 any partnership, joint venture, or unincorporated association

1 of which the person is a partner or a member shall be included
2 unless the person is a limited partner, but not a general
3 partner, in a limited partnership, or unless the person is a
4 partner in a limited or general partnership, or a member of a
5 joint venture or unincorporated association, if such partner
6 or member, by law, by the terms of the partnership, joint
7 venture, or membership agreement, or by the terms of an
8 agreement with the bank, is not to be held liable to the bank
9 for the debts of the partnership, joint venture, or
10 association. In computing the total loans and extensions [~~ex~~]
11 of credit made by a bank to any firm, partnership, joint
12 venture, or unincorporated association, all loans and
13 extensions of credit to and all credit exposure arising from a
14 derivative transaction with its individual partners or members
15 shall be included unless such individual partner is a limited
16 partner, but not a general partner, in a limited partnership,
17 or unless such individual partner or member, by law, by the
18 terms of the partnership, joint venture, or membership
19 agreement, or by the terms of an agreement with the bank, is
20 not to be held liable to the bank for the debts of the
21 partnership, joint venture, or association.

1 [~~(e)~~] (f) Alternatively, a bank may, with the prior
2 approval of the commissioner, comply with the lending limits
3 applicable to national [~~banking associations,~~] banks, as and
4 to the same extent it would, at the time, be so required by
5 federal law or regulation if it were a national [~~banking~~
6 ~~association.~~] bank. A bank utilizing this alternative shall
7 use a single method for calculating lending limits, including
8 any credit exposure to the person arising from a derivative
9 transaction, repurchase agreement, reverse purchase agreement,
10 securities lending transaction, or securities borrowing
11 transaction between the bank and the person. In monitoring a
12 bank's compliance with the national [~~banking association~~] bank
13 lending limits, the commissioner shall give substantial weight
14 to the Office of the Comptroller of the Currency's regulations
15 and opinions interpreting the national [~~banking association~~]
16 bank lending limits [and], including but not limited to those
17 related to the internal model method or the conversion factor
18 matrix method for calculating credit exposure to derivative
19 transactions as described in title 12 Code of Federal
20 Regulations Part 32 of the Interim Rule as may be amended.
21 The commissioner will regard [~~them~~] the regulations and

1 opinions as strong evidence of safe and sound banking
2 practices."

3 SECTION 6. Section 412:5-305, Hawaii Revised Statutes,
4 is amended by amending subsections (f) and (g) to read as
5 follows:

6 "(f) To the extent specified herein, a bank may
7 purchase, hold, convey, sell, or lease real or personal
8 property as follows:

9 (1) The real property in or on which the business of the
10 bank is carried on, including its banking offices,
11 other space in the same property to rent as a source
12 of income; permanent or vacation residences or
13 recreational facilities for its officers and
14 employees; other real property necessary to the
15 accommodation of the bank's business, including but
16 not limited to parking facilities, data processing
17 centers, and real property held for future banking
18 use where the bank in good faith expects to
19 [~~utilize~~] use the property as bank premises;
20 provided, if the bank ceases to use any real
21 property and improvements thereon for one of the
22 foregoing purposes, it shall, within five years

1 thereafter, sell the real property [~~or~~], cease to
2 carry it or them as an asset[+], or transfer the
3 real property to an operating subsidiary of the bank
4 provided that the bank's investment in such
5 operating subsidiary shall not exceed fifteen per
6 cent of the bank's tier one capital; provided
7 further, such property shall not without the
8 approval of the commissioner exceed seventy-five per
9 cent of the bank's capital and surplus;

10 (2) Personal property used in or necessary to the
11 accommodation of the bank's business, including but
12 not limited to furniture, fixtures, equipment,
13 vaults, and safety deposit boxes. The bank's
14 investment in furniture and fixtures shall not
15 without the approval of the commissioner exceed
16 twenty-five per cent of the bank's capital and
17 surplus;

18 (3) Personal property and fixtures which the bank
19 acquires for purposes of leasing to third parties,
20 and such real property interests as shall be
21 incidental thereto;

1 (4) Such real property or tangible personal property as
2 may come into its possession as security for loans
3 or in the collection of debts; or as may be
4 purchased by or conveyed to the bank in satisfaction
5 of or on account of debts previously contracted in
6 the course of its business, when such property was
7 held as security by the bank; and

8 (5) The seller's interest under an agreement of sale, as
9 that term is defined in sections 501-101.5, and 502-
10 85, including without limitation the reversionary
11 interest in the real estate and the right to income
12 under the agreement of sale, with or without
13 recourse to the seller.

14 Except as otherwise authorized in this section any
15 tangible personal property acquired by a bank pursuant to
16 subsection (f) (4) shall be disposed of as soon as practicable
17 and shall not without the written consent of the commissioner
18 be considered a part of the assets of the bank after the
19 expiration of two years from the date of acquisition.

20 Except as otherwise authorized in this section any real
21 property acquired by a bank pursuant to subsection (f) (4)
22 shall be sold or exchanged for other real property by the bank

1 within five years after title thereto has vested in it by
2 purchase or otherwise, or within such further time as may be
3 granted by the commissioner.

4 Any bank acquiring any real property in any manner other
5 than provided by this section shall immediately, upon
6 receiving notice from the commissioner, charge the same to
7 profit and loss, or otherwise remove the same from assets, and
8 when any loss impairs the capital and surplus of the bank the
9 impairment shall be made good in the manner provided in this
10 chapter.

11 For purposes of this subsection, "tier one capital" has
12 the same meaning as set forth in title 12 Code of Federal
13 Regulations part 325.

14 (g) A bank may own or control [~~the capital stock~~]:

15 (1) [~~Of operating~~] Operating subsidiaries, or the parent
16 of the operating subsidiary, as set forth in this
17 article;

18 (2) [~~Of a~~] A corporation, partnership, or limited
19 liability company, organized and existing for the
20 ownership of real or personal property used or which
21 the bank in good faith expects to be used in the

- 1 bank's business[+] or used for a permitted purpose
2 under title 12 Code of Federal Regulations part 362;
- 3 (3) [~~of~~] The capital stock of the Federal National
4 Mortgage Association, the Student Loan Marketing
5 Association, Federal Home Loan Mortgage Corporation,
6 or of any other corporation organized for
7 substantially the same purposes; provided that this
8 subsection shall be deemed to authorize subscription
9 for as well as purchase of the stock;
- 10 (4) [~~of~~] A small business investment [~~companies~~] company
11 operating under the Federal Small Business
12 Investment Act of 1958;
- 13 (5) [~~of bank~~] Bank service corporations, subject to the
14 Bank Service [~~Corporation~~] Company Act, 12 U.S.C.
15 §§1861-1862;
- 16 (6) [~~of a~~] A corporation whose stock is acquired or
17 purchased to save a loss on a preexisting debt
18 secured by such stock; provided, that the stock
19 shall be sold within twelve months of the date
20 acquired or purchased, or within such further time
21 as may be granted by the commissioner;

1 (7) ~~[Of an]~~ An international banking corporation
2 established pursuant to article 5A ~~[of this chapter]~~
3 or an Edge corporation or an Agreement corporation
4 established or authorized pursuant to section 25a of
5 the Federal Reserve Act, 12 U.S.C. §631;

6 (8) ~~[Of a]~~ A captive insurance company incorporated
7 under the laws of the United States, or any state or
8 territory thereof, or the District of Columbia;

9 (9) ~~[Of a]~~ A company transacting a business of insurance
10 or the sale of annuities pursuant to the authority
11 conferred in section 412:5-205.5; and

12 (10) ~~[Of a]~~ A company engaging in securities activities
13 pursuant to the authority conferred in section
14 412:5-205.7."

15 SECTION 7. Section 412:6-303, Hawaii Revised Statutes,
16 is amended to read as follows:

17 "**§412:6-303 Limitations on loans and extensions of**
18 **credit to one borrower.** (a) No savings bank shall permit a
19 person to become indebted or liable to it, either directly or
20 indirectly, on loans and extensions of credit, including any
21 credit exposure arising out of derivative transactions entered
22 into by a savings bank and its subsidiaries, in a total amount

1 outstanding at any one time in excess of twenty per cent of
2 the capital and surplus of the savings bank.

3 (b) As used in this section, a "derivative transaction"
4 includes any transaction that is a contract, agreement, swap,
5 warrant, note, or option that is based, in whole or in part,
6 on the value of, any interest in, any quantitative measure of
7 or the occurrence of any event relating to, one or more
8 commodities, securities, currencies, interest or other rates,
9 indices, or other assets.

10 ~~[(b)]~~ (c) This section applies to all loans ~~[and]~~,
11 extensions of credit made, and credit exposure arising out of
12 derivative transactions entered into, by a savings bank and
13 its subsidiaries. It does not apply to loans and extensions
14 of credit made by a savings bank or its subsidiaries to its
15 affiliates or subsidiaries.

16 ~~[(e)]~~ (d) The limitations set forth in this section
17 shall not apply to:

18 (1) A savings bank's deposits with a Federal Reserve
19 Bank, Federal Home Loan Bank, or another depository
20 institution made in compliance with this chapter;

- 1 (2) A savings bank's sale of federal funds to another
2 depository institution with a maturity of one
3 business day or under a continuing contract;
- 4 (3) Loans and extensions of credit secured by the
5 interest-bearing obligations of the United States or
6 those for which the faith and credit of the United
7 States are distinctly pledged to provide for the
8 payment of the principal and interest thereof or of
9 the State or any county or municipal or political
10 subdivision of this State, issued in compliance with
11 the laws of this State, where the market value of
12 the security shall be at any time not less than one
13 hundred five per cent of the face amount of the
14 loans and extensions of credit;
- 15 (4) Loans and extensions of credit to the extent secured
16 by a pledge or security interest in a deposit
17 account in the savings bank serving as the lender;
18 and
- 19 (5) Loans and extensions of credit arising from the
20 discount of negotiable or nonnegotiable credit sales
21 contracts which carry a partial recourse endorsement
22 or limited guarantee by the person transferring the

1 credit sales contract, if the savings bank's
2 respective file or the knowledge of its officers of
3 the financial condition of each maker of [~~such~~] the
4 consumer paper is reasonably adequate, and an
5 officer of the savings bank certifies in writing
6 that the savings bank is relying primarily upon the
7 responsibility of each maker for payment of [~~such~~]
8 the credit sales contract, and not upon any partial
9 recourse endorsement or limited guarantee by the
10 transferor. Under these circumstances, [~~such~~] the
11 credit sales contract will be considered a loan and
12 extension of credit to the maker of the credit sales
13 contract rather than the seller of the credit sales
14 contract.

15 [~~(d)~~] (e) In computing the total loans and extensions of
16 credit made by a savings bank to any person, all loans and
17 extensions of credit by the savings bank to the person and to
18 any partnership, joint venture, or unincorporated association
19 of which the person is a partner or a member and all credit
20 exposure arising from a derivative transaction with any person
21 and with any partnership, joint venture, or unincorporated
22 association of which the person is a partner or a member shall

1 be included unless the person is a limited partner, but not a
2 general partner, in a limited partnership, or unless the
3 person is a partner in a limited or general partnership, or a
4 member of a joint venture or unincorporated association, if
5 such partner or member, by law, by the terms of the
6 partnership, joint venture, or membership agreement, or by the
7 terms of an agreement with the savings bank, is not to be held
8 liable to the savings bank for the debts of the partnership,
9 joint venture, or association. In computing the total loans
10 and extensions [†]of[†] credit made by a savings bank to any
11 firm, partnership, joint venture, or unincorporated
12 association, all loans and extensions of credit to and all
13 credit exposure arising from a derivative transaction with its
14 individual partners or members shall be included unless such
15 individual partner is a limited partner, but not a general
16 partner, in a limited partnership, or unless such individual
17 partner or member, by law, by the terms of the partnership,
18 joint venture, or membership agreement, or by the terms of an
19 agreement with the savings bank, is not to be held liable to
20 the savings bank for the debts of the partnership, joint
21 venture, or association.

1 [~~(e)~~] (f) Alternatively, a savings bank may, with the
2 prior approval of the commissioner, comply with the lending
3 limits applicable to national [~~banking associations,~~] banks,
4 as and to the same extent it would, at the time, be so
5 required by federal law or regulation if it were a national
6 [~~banking association.~~] bank. A savings bank utilizing this
7 alternative shall use a single method for calculating lending
8 limits, including any credit exposure to the person arising
9 from a derivative transaction, repurchase agreement, reverse
10 purchase agreement, securities lending transaction, or
11 securities borrowing transaction between the savings bank and
12 the person. In monitoring a savings bank's compliance with
13 the national [~~banking association~~] bank lending limits, the
14 commissioner shall give substantial weight to the Office of
15 the Comptroller of the Currency's regulations and opinions
16 interpreting the national [~~banking association~~] bank lending
17 limits [~~and~~], including but not limited to those related to
18 the internal model method or the conversion factor matrix
19 method for calculating credit exposure to derivative
20 transactions as described in title 12 Code of Federal
21 Regulations Part 32 of the Interim Rule as may be amended.
22 The commissioner will regard [~~them~~] the regulations and

1 opinions as strong evidence of safe and sound banking
2 practices."

3 SECTION 8. Section 412:9-200, Hawaii Revised Statutes,
4 is amended to read as follows:

5 "§412:9-200 **General powers.** Except as expressly
6 prohibited or limited by this chapter, a financial services
7 loan company shall have the power to make loans where the
8 interest charged, contracted for, or received is in excess of
9 rates permitted by law, other than this article, and to engage
10 in other activities that are usual or incidental to the
11 business for which it is licensed, and shall have all rights,
12 powers, and privileges of a corporation organized under the
13 laws of this State, including but not limited to, the power
14 to:

- 15 (1) Make loans and extensions of credit of any kind,
16 whether unsecured or secured by real or personal
17 property of any kind or description;
- 18 (2) Borrow money from any source within or without this
19 State;
- 20 (3) Charge or retain a fee for the originating, selling,
21 brokering, or servicing of loans and extensions of
22 credit;

- 1 (4) Discount, purchase, or acquire loans, including but
2 not limited to notes, credit sales contracts,
3 mortgage loans, or other instruments;
- 4 (5) Become the legal or beneficial owner of tangible
5 personal property and fixtures and such other real
6 property interests as shall be incidental thereto,
7 to lease such property, to obtain an assignment of a
8 lessor's interest in a lease of the property, and
9 to incur obligations incidental to the financial
10 services loan company 's position as the legal or
11 beneficial owner and the lessor of the property;
- 12 (6) Sell or refer credit related insurance products, and
13 collect premiums or fees for the sale or referral
14 thereof, including, but not limited to, credit life
15 insurance, credit disability insurance, accident,
16 and health or sickness insurance, involuntary
17 unemployment insurance, personal property insurance,
18 and mortgage protection insurance;
- 19 (7) Make investments as permitted under this article;
20 [and]

1 (8) Charge to a borrower a returned check fee if a check
2 that has been tendered by the borrower in payment on
3 account of a loan is returned unpaid; provided that:

4 (A) The fee shall not exceed \$20;

5 (B) The fee shall be imposed under a separate
6 billing, and shall not be added to a borrower
7 's outstanding loan balance nor deducted from
8 a loan payment; and

9 (C) A failure to pay the fee shall not constitute a
10 default under any outstanding loan agreement
11 between the borrower and the financial services
12 loan company[-]; and

13 (9) Charge to a borrower a "below minimum draft fee" of
14 \$10.00 per draft, for the processing costs involved
15 on a draft written below the minimum amount
16 established on an open-ended loan."

17 SECTION 9. Section 412:9-404, Hawaii Revised Statutes,
18 is amended to read as follows:

19 "**§412:9-404 Limitations** on loans and extensions of
20 **credit to one borrower.** (a) No depository financial services
21 loan company shall permit a person to become indebted or
22 liable to it, either directly or indirectly, on loans and

1 extensions of credit, including any credit exposure arising
2 out of derivative transactions entered into by a depository
3 financial services loan company and its subsidiaries, in a
4 total amount outstanding at any one time in excess of twenty
5 per cent of the depository financial services loan company's
6 capital, and surplus; provided that such aggregate amount may
7 be increased to one hundred per cent of the depository
8 financial services loan company's capital and surplus if the
9 loans, and extensions of credit made to the person in excess
10 of twenty per cent of the depository financial services loan
11 company's capital and surplus are fully secured by real
12 property as provided in section 412:9-405.

13 (b) As used in this section, a "derivative transaction"
14 includes any transaction that is a contract, agreement, swap,
15 warrant, note, or option that is based, in whole or in part,
16 on the value of, any interest in, any quantitative measure of
17 the occurrence of any event relating to, one or more
18 commodities, securities, currencies, interest or other rates,
19 indices, or other assets.

20 ~~(b)~~ (c) The limitations set forth in this section
21 shall not apply to:

1 (1) Loans and extensions of credit to the extent secured
2 by a pledge or security interest in a deposit
3 account in the lending depository financial services
4 loan company; and

5 (2) Loans and extensions of credit secured by the
6 interest-bearing obligations of the United States or
7 those for which the faith and credit of the United
8 States are distinctly pledged to provide for the
9 payment of principal and interest thereof or of the
10 State or any county or municipal or political
11 subdivision of this State, issued in compliance with
12 the laws of this State, where the market value of
13 the security shall be at any time not less than one
14 hundred five per cent of the face amount of the
15 loans and extensions of credit.

16 (d) In computing the total loans and extensions of
17 credit made by a depository financial services loan company to
18 any person, all loans and extensions of credit by the
19 depository financial services loan company to the person and
20 to any partnership, joint venture, or unincorporated
21 association of which the person is a partner or a member and
22 all credit exposure arising from a derivative transaction with

1 any person and with any partnership, joint venture, or
2 unincorporated association of which the person is a partner or
3 a member shall be included unless the person is a limited
4 partner, but not a general partner, in a limited partnership,
5 or unless the person is a partner in a limited or general
6 partnership, or a member of a joint venture or unincorporated
7 association, if such partner or member, by law, by the terms
8 of the partnership, joint venture, or membership agreement, or
9 by the terms of an agreement with the depository financial
10 services loan company, is not to be held liable to the
11 depository financial services loan company for the debts of
12 the partnership, joint venture, or association. In computing
13 the total loans and extensions of credit made by a depository
14 financial services loan company to any firm, partnership,
15 joint venture, or unincorporated association, all loans and
16 extensions of credit to and all credit exposure arising from a
17 derivative transaction with its individual partners or members
18 shall be included unless such individual partner is a limited
19 partner, but not a general partner, in a limited partnership,
20 or unless such individual partner or member, by law, by the
21 terms of the partnership, joint venture, or membership
22 agreement, or by the terms of an agreement with the depository

1 financial services loan company, is not to be held liable to
2 the depository financial services loan company for the debts
3 of the partnership, joint venture, or association.

4 (e) Alternatively, a depository financial services loan
5 company may, with the prior approval of the commissioner,
6 comply with the lending limits applicable to national banks,
7 as and to the same extent it would, at the time, be so
8 required by federal law or regulation if it were a national
9 bank. A depository financial services loan company utilizing
10 this alternative shall use a single method for calculating
11 lending limits, including any credit exposure to the person
12 arising from a derivative transaction, repurchase agreement,
13 reverse purchase agreement, securities lending transaction, or
14 securities borrowing transaction between the depository
15 financial services loan company and the person. In monitoring
16 a depository financial services loan company's compliance with
17 the national bank lending limits, the commissioner shall give
18 substantial weight to the Office of the Comptroller of the
19 Currency's regulations and opinions interpreting the national
20 bank lending limits, including but not limited to those
21 related to the internal model method or the conversion factor
22 matrix method for calculating credit exposure to derivative

1 transactions as described in title 12 Code of Federal
2 Regulations Part 32 of the Interim Rule as may be amended.
3 The commissioner will regard the regulations and opinions as
4 strong evidence of safe and sound banking practices."

5 PART II

6 SECTION 10. Chapter 412, Hawaii Revised Statutes, is
7 amended by adding to article 2 a new section to be
8 appropriately designated, and to read as follows:

9 "§412:2- Hawaii financial institutions; assessments;

10 fees; penalty. (a) Beginning calendar year 2014, every

11 Hawaii financial institution shall be assessed a yearly fee in
12 accordance with the following:

13 (1) For financial institutions with total assets under
14 \$750,000, the assessment shall be \$1,000 plus
15 0.00029111 times total assets;

16 (2) For financial institutions with total assets of at
17 least \$750,000 but under \$7,500,000, the assessment
18 shall be \$2,000 plus 0.00029111 times total assets;

19 (3) For financial institutions with total assets of at
20 least \$7,500,000 but under \$20,000,000, the
21 assessment shall be \$4,800 plus 0.00029111 times
22 total assets;

1 (4) For financial institutions with total assets of at
2 least \$20,000,000 but under \$75,000,000, the
3 assessment shall be \$9,900 plus 0.000064 times
4 total assets;

5 (5) For financial institutions with total assets of at
6 least \$75,000,000 but under \$200,000,000, the
7 assessment shall be \$15,000 plus 0.00005333 times
8 total assets;

9 (6) For financial institutions with total assets of at
10 least \$200,000,000 but under \$1,000,000,000, the
11 assessment shall be \$21,100 plus 0.00004750 times
12 total assets;

13 (7) For financial institutions with total assets of at
14 least \$1,000,000,000 but under \$20,000,000,000, the
15 assessment shall be \$29,000 plus 0.00004 times
16 total assets;

17 provided however that the yearly fee assessed for financial
18 institutions with total assets of:

19 (1) At least \$2,000,000,000 but less than
20 \$10,000,000,000, shall be no more than \$100,000; and

21 (2) At least \$10,000,000,000, shall be no more than
22 \$150,000.

1 (b) The assessments shall be paid semiannually on
2 February 15 and August 15 of each year based on the
3 institution's total assets reported as of the previous
4 December 31 and June 30, respectively; provided however, the
5 payments of the assessment shall commence on February 15,
6 2014.

7 (c) In addition to the assessments established in
8 subsection (a), a financial institution or financial
9 institution applicant shall pay fees as follows:

10 (1) A nonrefundable fee of \$10,000 for an application
11 for preliminary approval by the commissioner for the
12 organization of a Hawaii financial institution
13 pursuant to section 412:3-201, 412:3-202, 412:3-206,
14 412:3-301, or 412:5-205;

15 (2) A nonrefundable fee of \$9,000 for an application for
16 preliminary approval by the commissioner for the
17 organization of a Hawaii financial institution
18 pursuant to section 412:5-402;

19 (3) A nonrefundable fee of \$2,500 for a final
20 application for a charter or license to engage in
21 the business of a Hawaii financial institution
22 pursuant to section 412:3-212;

- 1 (4) A nonrefundable fee of \$2,500 for a final
2 application for a charter or license to engage in
3 the business of a savings bank pursuant to section
4 412:6-101;
- 5 (5) A nonrefundable fee of \$2,500 for a final
6 application for a charter or license to engage in
7 the business of a trust company pursuant to section
8 412:8-102;
- 9 (6) A nonrefundable fee of \$10,000 for an application
10 for a merger or consolidation or acquisition of
11 control involving a Hawaii financial institution;
- 12 (7) A nonrefundable fee of \$10,000 for an application
13 for the acquisition of control of a Hawaii financial
14 institution;
- 15 (8) A nonrefundable fee of \$2,500 for an application for
16 the conversion of a federal financial institution to
17 a Hawaii financial institution or the conversion of
18 a Hawaii financial institution to another Hawaii
19 financial institution charter;
- 20 (9) A nonrefundable fee of \$5,000 for an application of
21 a bank to conduct a trust business through a

1 subsidiary, division, or department of the bank

2 pursuant to 412:5-205;

3 (10) A nonrefundable fee of \$5,000 for an application of

4 a bank to conduct insurance activities pursuant to

5 section 412:5-205.5;

6 (11) A nonrefundable fee of \$5,000 for an application of

7 a bank to engage in securities activities pursuant

8 to section 412:5-205.7;

9 (12) A nonrefundable fee of \$2,000 for an application for

10 a bank or savings bank to comply with lending limits

11 applicable to national banking associations pursuant

12 to section 412:5-302 or section 412:6-303;

13 (13) A nonrefundable fee of \$2,000 for an application to

14 exceed certain permitted investment limits pursuant

15 to sections 412:5-305(f) and (h), 412:6-306(f) and

16 (h), 412:7-306(f) and (h), 412:8-301(f), 412:9-

17 409(f) and (i), and 412:10-502(g); and

18 (14) A nonrefundable fee of \$2,500 for an application for

19 a charter of a credit union.

20 (d) Beginning calendar year 2014, the annual fee for

21 each intra-Pacific financial institution and interstate branch

22 of out of state banks is the sum of \$1,000 for each office,

1 agency, and branch office maintained by the financial
2 institution, payment of which shall be made before December 31
3 of each calendar year. The commissioner may establish,
4 increase, decrease, or repeal this fee pursuant to rules
5 adopted in accordance with chapter 91.

6 (e) Intra-Pacific bank fees shall be as follows:

7 (1) A nonrefundable fee of \$750 for an application for a
8 branch, subsidiary, or subsidiary of a holding
9 company of an intra-Pacific bank pursuant to section
10 412:5-402; and

11 (2) A nonrefundable fee of \$500 for an application to
12 relocate a branch, subsidiary, or subsidiary of a
13 holding company of an intra-Pacific bank pursuant to
14 section 412:5-401.

15 (f) A nonrefundable fee of \$500 for an application to
16 relocate a branch pursuant to section 412:12-107.

17 (g) A nonrefundable fee of \$100 for each certificate of
18 good standing for any Hawaii financial institution; provided
19 that an additional fee of \$100 for each certificate in which a
20 certificate of good standing is requested to be provided in
21 two business days from receipt of request.

1 (h) All assessments and fees shall be deposited into the
2 compliance resolution fund established pursuant to section 26-
3 9(o).

4 (i) For purposes of this section, "total assets" means
5 for an insured depository institution the total assets
6 reported in the financial institution's quarterly reports of
7 condition, or call reports, which are required to be filed
8 pursuant to section 7(a)(3) of the Federal Deposit Insurance
9 Act or in the unaudited financial statements filed pursuant to
10 section 412:3-112.

11 (j) A Hawaii financial institution that fails to make a
12 payment required by this section shall be subject to an
13 administrative fine of not more than \$250 per day for each day
14 it is in violation of this section, which fine, together with
15 the amount due under this section, may be recovered pursuant
16 to section 412:2-611, and shall be deposited into the
17 compliance resolution fund established pursuant to section 26-
18 9(o)."

19 SECTION 11. Section 412:2-105, Hawaii Revised Statutes,
20 is amended to read as follows:

21 "**§412:2-105 Fees [and assessments].** [~~(a)~~—The
22 ~~commissioner may charge an examination fee based upon the cost~~

1 ~~per hour per examiner for all financial institutions examined~~
2 ~~by the commissioner or the commissioner's staff. Effective~~
3 ~~July 1, [1995], the hourly fee shall be \$40. After July 1,~~
4 ~~1996, the commissioner may establish, increase, decrease, or~~
5 ~~repeal the hourly fee when necessary pursuant to rules adopted~~
6 ~~in accordance with chapter 91.~~

7 ~~(b) In addition to the examination fee, the] (a) The~~
8 commissioner ~~[may]~~ shall charge any financial institution
9 examined or investigated by the commissioner or the
10 commissioner's staff, ~~[additional amounts]~~ an amount for
11 travel, per diem, mileage, and other reasonable expenses
12 incurred in connection with the examination~~[-]~~ or
13 investigation.

14 ~~[-e)] (b)~~ The commissioner shall bill the affected
15 financial institution for ~~[examination fees, and]~~ expenses as
16 soon as feasible after the close of the examination or
17 investigation. The affected financial institution shall pay
18 the division ~~[of financial institutions]~~ within thirty days
19 following the billing. All such payments shall be deposited
20 to the compliance resolution fund established pursuant to
21 section 26-9(o). All disputes relating to these billings
22 between the affected financial institution and the

1 commissioner shall be resolved in accordance with the
2 procedures for contested cases under chapter 91.

3 ~~[(d) The commissioner, by rules adopted in accordance~~
4 ~~with chapter 91, may set reasonable fee amounts to be~~
5 ~~collected by the division in connection with its regulatory~~
6 ~~functions, including, without limitation, any fees for~~
7 ~~renewals, applications, licenses, and charters. Unless~~
8 ~~otherwise provided by statute, all such fees shall be~~
9 ~~deposited into the compliance resolution fund established~~
10 ~~pursuant to section 26-9(o).]~~

11 ~~[(e)]~~ (c) A Hawaii financial institution that fails to
12 make a payment required by this section shall be subject to an
13 administrative fine of not more than \$250 per day for each day
14 it is in violation of this section, which fine, together with
15 the amount due under this section, may be recovered pursuant
16 to section 412:2-611, and shall be deposited into the
17 compliance resolution fund established pursuant to section 26-
18 9(o)."

19 SECTION 12. Section 412:2-508, Hawaii Revised Statutes,
20 is amended by amending subsection (b) to read as follows:

21 "(b) Applications for a provisional approval shall be
22 filed with the commissioner, and shall provide the information

1 required by this chapter for preliminary approval to organize
2 the type of financial institution that will result from the
3 merger or acquisition under this part. The applicant shall
4 also furnish such other information as the commissioner may
5 require, and an application fee [~~as established by the~~
6 ~~commissioner.~~] pursuant to section 412:2-_____."

7 SECTION 13. Section 412:3-102, Hawaii Revised Statutes,
8 is amended to read as follows:

9 "**§412:3-102 Change of name.** To change its name, a
10 Hawaii financial institution shall file an application with
11 the commissioner [~~and pay the fees as the commissioner may~~
12 ~~establish~~]. The application shall be approved if the
13 commissioner is satisfied that the new name complies with this
14 chapter and chapter 414. Any change of name of a stock
15 financial institution pursuant to this section shall be
16 effected in accordance with chapter 414. Any change of name
17 shall not affect a financial institution's rights,
18 liabilities, or obligations existing prior to the effective
19 date thereof, and no documents of transfer shall be necessary
20 to preserve the rights, liabilities, or obligations; provided
21 that the commissioner may require notice to be given to the
22 public and other governmental agencies."

1 SECTION 14. Section 412:3-212, Hawaii Revised Statutes,
2 is amended by amending subsection (c) to read as follows:

3 "(c) If the commissioner is satisfied that the financial
4 institution and, if applicable, its holding company have
5 fulfilled all the requirements of law and the grounds for
6 preliminary approval, and that the financial institution is
7 qualified to engage in the business of a financial
8 institution, the commissioner shall issue a written decision
9 and order approving the application. The order may restrict
10 the payment of dividends for a period of up to three years,
11 and may contain any other conditions and restrictions on the
12 financial institution that are in the public interest,
13 including but not limited to the divestment of any contractual
14 arrangement with an affiliate or subsidiary involving any type
15 of business not permitted under this chapter. Upon the
16 satisfactory fulfillment by the financial institution and, if
17 applicable, its holding company of the conditions in the
18 written decision and order approving the application and upon
19 the payment by a depository financial services loan company of
20 ~~[an] the~~ initial license fee ~~[established by rule pursuant to~~
21 ~~chapter 91,~~ pursuant to section 412:2- , the commissioner
22 shall issue to the financial institution a charter or license

1 to engage in the business of a financial institution under
2 this chapter."

3 SECTION 15. Section 412:3-301, Hawaii Revised Statutes,
4 is amended by amending subsection (c) to read as follows:

5 "(c) The application shall be submitted on a form
6 prescribed by the commissioner [~~. The application~~], and shall
7 be accompanied by an application fee [~~of \$5,000, or such~~
8 ~~greater amount as the commissioner shall establish by rule~~
9 ~~pursuant to chapter 91. The application fee shall not be~~
10 ~~refundable.~~] pursuant to section 412:2- ."

11 SECTION 16. Section 412:3-304, Hawaii Revised Statutes,
12 is amended by amending subsection (b) to read as follows:

13 "(b) If the commissioner is satisfied that the applicant
14 has fulfilled all the requirements of law and is qualified to
15 engage in the business of a nondepository financial services
16 loan company, the commissioner shall issue a written decision
17 and order approving the application. Upon the approval of the
18 application, [~~the payment of an initial license fee~~
19 ~~established by rule pursuant to chapter 91,~~] and, if
20 applicable, upon providing satisfactory evidence to the
21 commissioner of compliance with the requirements of chapter
22 414 relating to foreign corporations, the commissioner shall

1 issue to the applicant a license to engage in the business of
2 a nondepository financial services loan company under this
3 chapter."

4 SECTION 17. Section 412:3-505, Hawaii Revised Statutes,
5 is amended to read as follows:

6 "**§412:3-505 Opening or relocating out-of-state branch or**
7 **agency.** With the commissioner's prior written approval, a
8 Hawaii financial institution may open or relocate a branch or
9 agency that is outside of this State, including but not
10 limited to any state, possession, or territory of the United
11 States or any foreign country. An application to open or
12 relocate an out-of-state branch or agency shall be filed in
13 accordance with section 412:3-503 [~~and the commissioner may~~
14 ~~assess the financial institution any additional expenses as~~
15 ~~may be reasonably necessary to consider the application.~~]."

16 SECTION 18. Section 412:3-603, Hawaii Revised Statutes,
17 is amended to read as follows:

18 "**§412:3-603 Procedure for applications pursuant to this**
19 **part.** Whenever the written approval of the commissioner is
20 required with respect to any transaction covered by this part,
21 the following procedures shall apply:

- 1 (1) An application for approval by the commissioner
2 pursuant to this part shall be on a form prescribed
3 by the commissioner and shall contain any
4 information, data, and records as the commissioner
5 may require~~[-]~~, and shall be accompanied by a
6 nonrefundable application fee pursuant to section
7 412:2- . As far as possible consistent with the
8 effective discharge of the commissioner's
9 responsibilities, the commissioner shall prescribe
10 the use of forms currently prescribed by the
11 appropriate federal regulatory agency of financial
12 institutions and financial institution holding
13 companies for identical or similar types of
14 transactions~~[-. The application shall be accompanied~~
15 ~~by an application fee established by the~~
16 ~~commissioner pursuant to section 412:2-105. The~~
17 ~~application fee shall not be refundable]~~;
18 (2) If any material change occurs in the facts set forth
19 in an application, or if for any other reason the
20 applicant desires to amend the application, an
21 amendment setting forth any change, together with
22 copies of all documents and other material relevant

1 to the change, shall be filed with the
2 commissioner. Within twenty days after receiving an
3 application or any amendment thereto, the
4 commissioner may request any additional information
5 necessary in deciding whether to approve a proposed
6 transaction pursuant to this part. The applicant
7 shall submit the additional information in a
8 reasonable time thereafter, as may be specified by
9 the commissioner;

10 (3) If the commissioner would approve a plan of
11 conversion, merger, or consolidation, an acquisition
12 of assets or assumption of liabilities, an
13 acquisition of control, or a voluntary cessation of
14 business or voluntary dissolution, but on terms
15 different than contained in the application, the
16 commissioner may give notice to the applicant of the
17 nature of the changes [~~which~~] that would be
18 approved, and the applicant may submit an amended
19 application;

20 (4) If the commissioner intends to disapprove an
21 application, the commissioner shall deliver to the
22 applicant a written notice of the intent to

1 disapprove. Within ten days after receipt of the
2 commissioner's notice of intent to disapprove an
3 application, the applicant may request an
4 administrative hearing, to be held in accordance
5 with chapter 91. If no request for a hearing is
6 made, the commissioner's disapproval shall become
7 final. If after the hearing the commissioner
8 finally disapproves the application, the applicant
9 may, within thirty days of the date of the final
10 decision, appeal to the circuit court as provided in
11 chapter 91;

12 (5) Notwithstanding any other provision of this part,
13 any complete application [~~which~~] that is not
14 approved or denied by the commissioner within a
15 period of sixty days after the application is filed
16 with the commissioner or, if the applicant consents
17 to an extension of the period within which the
18 commissioner may act, within the extended period,
19 shall be deemed to be approved by the commissioner
20 as of the first day after the period of sixty days
21 or the extended period. If the commissioner gives
22 notice of an informational and comment proceeding on

1 the application, the sixty-day period shall be
2 extended to a date as may be fixed by order of the
3 commissioner. For purposes of this section, an
4 application is deemed to be filed with the
5 commissioner at the time when the complete
6 application, including any amendments or
7 supplements, containing all of the information in
8 the form required by the commissioner, is received,
9 and accepted by the commissioner; and

- 10 (6) Any applicant submitting information to the
11 commissioner pursuant to this part may request that
12 the information, or any part thereof, be kept
13 confidential. The request shall be made in writing
14 and shall set forth the specific items sought to be
15 kept confidential and the reasons and authority for
16 the confidential treatment. The commissioner may,
17 pursuant to a request or otherwise, determine that
18 good cause exists to keep some or all of the
19 information confidential, and shall keep the
20 information confidential and not subject to public
21 disclosure. In connection with an application for
22 the acquisition of control pursuant to section

1 412:3-612, the commissioner may release information
2 to the affected financial institution or financial
3 institution holding company with a directive that
4 some or all of the information be kept
5 confidential."

6 SECTION 19. Section 412:5-203, Hawaii Revised Statutes,
7 is amended by amending subsection (d) to read as follows:

8 "(d) The bank shall file an application with the
9 commissioner in a form approved by the commissioner. The
10 application shall be accompanied by a fee [~~the amount of which~~
11 ~~shall be prescribed by rule.~~] pursuant to section 412:2- .

12 The application shall contain the following information
13 concerning the proposed operating subsidiary:

- 14 (1) The name and date for commencement of operations;
- 15 (2) The specific location;
- 16 (3) The activities and nature of business;
- 17 (4) The ownership, amount, and nature of the investment;
- 18 and
- 19 (5) Any other information that the commissioner may
20 require."

21 SECTION 20. Section 412:5-205, Hawaii Revised Statutes,
22 is amended by amending subsection (b) to read as follows:

1 "(b) The bank shall file an application for such
2 approval with the commissioner on a form prescribed by the
3 commissioner, together with an application fee [~~of \$5,000, or~~
4 ~~such greater amount as the commissioner shall establish, no~~
5 ~~part of which shall be refundable.~~] pursuant to section 412:2-
6 ___. The application shall contain the following information:

- 7 (1) Appropriate board resolutions authorizing the
8 establishment of a trust company, division, or
9 department;
- 10 (2) Employment history, education, management
11 experience, and other biographical information for
12 all executive officers, trust officers, and managers
13 of the trust company, division, or department;
- 14 (3) Proposed policies concerning common trust funds,
15 overdrafts, disaster recovery plans, dividends,
16 management of assets and liabilities, conflicts of
17 interest, investments, and fee schedules. The
18 commissioner may consider any existing bank policies
19 that will be adapted and [~~utilized~~] used for its
20 trust business;
- 21 (4) A business plan and financial projections regarding
22 profitability of the proposed trust business;

- 1 (5) Evidence that the bank has or will have the
2 financial ability, responsibility, and experience to
3 engage in the trust business; and
4 (6) Any other information [~~which~~] that the commissioner
5 may require."

6 SECTION 21. Section 412:5-205.5, Hawaii Revised
7 Statutes, is amended by amending subsection (c) to read as
8 follows:

9 "(c) The bank shall file an application for approval
10 with the commissioner in a form prescribed by the
11 commissioner. The application shall be accompanied by a fee
12 [~~the amount of which shall be prescribed by rule.~~] pursuant to
13 section 412:2- . The application shall contain:

- 14 (1) A description of the activities to be conducted;
15 (2) The experience and qualifications of the proposed
16 managers;
17 (3) The specific location where the activities will be
18 conducted; and
19 (4) Any other information that the commissioner may
20 require.

21 If the bank proposes to engage in the business of insurance
22 through a subsidiary or affiliate, then the application shall

1 also contain information regarding the experience and
2 qualifications of the proposed executive officers and
3 directors of the subsidiary or affiliate and the ownership,
4 amount, and nature of the bank's investment in and advances to
5 the subsidiary or affiliate. Upon being satisfied that the
6 application is complete, that the conduct of the insurance
7 business will not affect the safety or soundness of the bank
8 or harm the public interest, and that the bank and its
9 subsidiary or affiliate, if applicable, have sufficient
10 experience, qualifications, and financial capability to engage
11 in the activities authorized by this section, the commissioner
12 shall approve the application. The commissioner may impose
13 any terms and conditions [~~which~~] that the commissioner
14 considers necessary to protect the bank, the customers of the
15 bank, and the public interest."

16 SECTION 22. Section 412:5-205.7, Hawaii Revised
17 Statutes, is amended by amending subsection (c) to read as
18 follows:

19 "(c) The bank shall file an application for approval
20 with the commissioner in a form prescribed by the
21 commissioner [~~. The application shall be~~], and accompanied by

- 1 a fee [~~the amount of which shall be prescribed by rule.~~]
2 pursuant to section 412:2- . The application shall contain:
3 (1) A description of the activities to be conducted;
4 (2) The experience and qualifications of the proposed
5 managers;
6 (3) The specific location where the activities will be
7 conducted; and
8 (4) Any other information that the commissioner may
9 require.

10 If the bank proposes to engage in securities activities
11 through a subsidiary or affiliate, then the application shall
12 also contain information regarding the experience and
13 qualifications of the proposed executive officers and
14 directors of the subsidiary or affiliate and the ownership,
15 amount, and nature of the bank's investment in and advances to
16 the subsidiary or affiliate. Upon being satisfied that the
17 application is complete, that the conduct of the securities
18 activities will not affect the safety or soundness of the bank
19 or harm the public interest, and that the bank and its
20 subsidiary or affiliate, if applicable, have sufficient
21 experience, qualifications, and financial capability to engage
22 in the activities authorized by this section, the commissioner

1 shall approve the application. The commissioner may impose
2 any terms and conditions [~~which~~] that the commissioner
3 considers necessary to protect the bank, the customers of the
4 bank, and the public interest."

5 SECTION 23. Section 412:5-402, Hawaii Revised Statutes,
6 is amended by amending subsection (a) to read as follows:

7 "(a) In order to obtain prior approval of the
8 commissioner, the applicant shall file the application
9 required by and comply with the provisions of article 3. The
10 application shall be accompanied by the application fee
11 pursuant to section 412:2- . The application shall contain
12 the following information:

- 13 (1) The applicant's articles of incorporation and
14 bylaws, or other basic governing documents;
15 (2) A certificate from the appropriate regulatory body
16 where its home office is located, indicating that
17 the applicant is in good standing in that
18 jurisdiction; and
19 (3) Any other information required by the commissioner."

20 SECTION 24. Section 412:6-201, Hawaii Revised Statutes,
21 is amended by amending subsection (b) to read as follows:

1 SECTION 26. Chapter 412, Hawaii Revised Statutes, is
2 amended by adding to article 2 a new section to be
3 appropriately designated and to read as follows:

4 "§412:2- Hawaii financial institutions; fees;

5 penalty. (a) A financial institution or financial
6 institution applicant shall pay fees as follows:

7 (1) A nonrefundable fee of \$10,000 for an application
8 for preliminary approval by the commissioner for the
9 organization of a Hawaii financial institution
10 pursuant to section 412:3-201, 412:3-202, 412:3-206,
11 412:3-301, or 412:5-205;

12 (2) A nonrefundable fee of \$9,000 for an application for
13 preliminary approval by the commissioner for the
14 organization of a Hawaii financial institution
15 pursuant to section 412:5-402;

16 (3) A nonrefundable fee of \$2,500 for a final
17 application for a charter or license to engage in
18 the business of a Hawaii financial institution
19 pursuant to section 412:3-212;

20 (4) A nonrefundable fee of \$2,500 for a final
21 application for a charter or license to engage in

- 1 the business of a savings bank pursuant to section
2 412:6-101;
- 3 (5) A nonrefundable fee of \$2,500 for a final
4 application for a charter or license to engage in
5 the business of a trust company pursuant to section
6 412:8-102;
- 7 (6) A nonrefundable fee of \$10,000 for an application
8 for a merger or consolidation or acquisition of
9 control involving a Hawaii financial institution;
- 10 (7) A nonrefundable fee of \$10,000 for an application
11 for the acquisition of control of a Hawaii financial
12 institution;
- 13 (8) A nonrefundable fee of \$2,500 for an application for
14 the conversion of a federal financial institution to
15 a Hawaii financial institution or the conversion of
16 a Hawaii financial institution to another Hawaii
17 financial institution charter;
- 18 (9) A nonrefundable fee of \$5,000 for an application of
19 a bank to conduct a trust business through a
20 subsidiary, division, or department of the bank
21 pursuant to 412:5-205;

- 1 (10) A nonrefundable fee of \$5,000 for an application of
2 a bank to conduct insurance activities pursuant to
3 section 412:5-205.5;
- 4 (11) A nonrefundable fee of \$5,000 for an application of
5 a bank to engage in securities activities pursuant
6 to section 412:5-205.7;
- 7 (12) A nonrefundable fee of \$2,000 for an application for
8 a bank or savings bank to comply with lending limits
9 applicable to national banking associations pursuant
10 to section 412:5-302 or section 412:6-303;
- 11 (13) A nonrefundable fee of \$2,000 for an application to
12 exceed certain permitted investment limits pursuant
13 to sections 412:5-305(f) and (h), 412:6-306(f) and
14 (h), 412:7-306(f) and (h), 412:8-301(f), 412:9-
15 409(f) and (i), and 412:10-502(g); and
- 16 (14) A nonrefundable fee of \$2,500 for an application for
17 a charter of a credit union.
- 18 (b) Intra-Pacific bank fees shall be as follows:
- 19 (1) A nonrefundable fee of \$750 for an application for a
20 branch, subsidiary, or subsidiary of a holding
21 company of an intra-Pacific bank pursuant to section
22 412:5-402; and

1 (2) A nonrefundable fee of \$500 for an application to
2 relocate a branch, subsidiary, or subsidiary of a
3 holding company of an intra-Pacific bank pursuant to
4 section 412:5-401.

5 (c) A nonrefundable fee of \$500 for an application to
6 relocate a branch pursuant to section 412:12-107.

7 (d) A nonrefundable fee of \$100 for each certificate of
8 good standing for any Hawaii financial institution; provided
9 however, an additional fee of \$100 for each certificate of
10 good standing is requested to be provided in two business days
11 from receipt of request.

12 (e) All assessments and fees shall be deposited into the
13 compliance resolution fund established pursuant to section 26-
14 9(o).

15 (f) For purposes of this section, "total assets" means
16 for an insured depository institution the total assets
17 reported in the financial institution's quarterly reports of
18 condition, or call reports, which are required to be filed
19 pursuant to section 7(a)(3) of the Federal Deposit Insurance
20 Act or in the unaudited financial statements filed pursuant to
21 section 412:3-112.

1 (g) A Hawaii financial institution that fails to make a
2 payment required by this section shall be subject to an
3 administrative fine of not more than \$250 per day for each day
4 it is in violation of this section, which fine, together with
5 the amount due under this section, may be recovered pursuant
6 to section 412:2-611, and shall be deposited into the
7 compliance resolution fund established pursuant to section 26-
8 9(o)."

9 SECTION 27. Statutory material to be repealed is
10 bracketed and stricken. New statutory material is
11 underscored.

12 SECTION 28. This Act shall take effect upon its
13 approval; provided Part II shall take effect on January 1,
14 2014, and Part III shall be repealed on January 1, 2014;
15 provided further that Section 10 shall take effect on January
16 1, 2014.

INTRODUCED BY: 

BY REQUEST

Report Title:

Financial Institutions; Hawaii Banks; Powers; Fees.

Description:

Replaces individual fees for Hawaii banks, and nondepositories for specific regulatory items with one assessment. Increases, and clarifies bank powers. Clarifies the authority of the Commissioner of Financial Institutions.

The summary description of legislation appearing on this page is for informational purposes only, and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO FINANCIAL INSTITUTIONS.

PURPOSE: The purpose of this bill is to amend chapter 412, Hawaii Revised Statutes (HRS), to modernize the law in light of the changes made to federal laws, including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Part I - Housekeeping
Section 1 adds new powers of the commissioner and clarifies current powers to administer and enforce the chapter and to provide adequate oversight to licensees.

Section 2 updates the definition of "deposit" to include such nontraditional mechanisms for access as prepaid access cards and stored value cards.

Section 3 clarifies the type of places at which a financial institution may conduct business. Specifically, this section clarifies that automatic teller machines do not include remote service units and defines remote service unit and what activities may be carried out, in those locations.

Section 4 changes the percentage of voting securities held directly or indirectly by a bank of a corporation to be considered an operating subsidiary from eighty to fifty. This section also expands the activities authorized for a bank to engage in that are usual or incidental to banking.

Section 5 clarifies that credit exposure arising out of derivative transactions entered into by a bank and its subsidiaries is included in the limit on indebtedness or liability of any person to a bank. The

section defines "derivative transaction" as used in §412:5-302 and provides detailed guidance on calculation of the credit exposure arising from a derivative transaction for purposes of determining lending limits.

Section 6 expands the types of capital stock a bank may own or control by authorizing banks to:

- (1) Not only sell real property, or cease to carry it as an asset as required when a bank ceases to use it for a valid purpose, but to also transfer the real property to an operating subsidiary of the bank as long as the bank's investment in the operating subsidiary does not exceed 15% of the bank's tier one capital; and
- (2) Own or control the parent of an operating subsidiary which is owned or controlled by a bank;
- (3) Own or control a partnership or limited liability company organized and existing for the ownership of real or personal property used in a bank's business or for any federally permitted purpose.

Section 7 applies the same provisions as in section 6 above to savings banks.

Section 8 expands the powers of financial services loan companies to include charging a borrower a \$10 fee to process a draft written below the minimum amount established on an open-ended loan.

Section 9 applies the same provisions as in section 6 above to financial services loan companies.

Part II - annual assessment structure

Section 10 establishes new assessments for financial institutions to take effect on January 1, 2014, that will take the place of most of the specific fees charged financial

institutions. These assessments are based on the total assets of each financial institution with a cap for the very largest institutions. This section also provides some specific fees for specific applications and certifications. This is to ensure that the initial costs to the Division of reviewing these applications and the cost of certifications are covered fairly by the institutions using the Division's resources.

Sections 11 to 25 are conforming amendments to delete references to specific fees.

Section 11 also makes it mandatory that the Commissioner charge travel, per diem, mileage and other reasonable expenses, and includes such expenses for investigations as are currently provided for examination.

Part III - new fee assessment

Section 26 provides that the specific application and certification fees as established are applicable upon approval of the Act.

MEANS:

Add three new sections to chapter 412; amend sections 412:1-109, 412:2-105, 412:2-508, 412:5-205.5, 412:5-205.7, 412:5-402, 412:3-102, 412:3-212, 412:3-301, 412:3-304, 412:3-501, 412:3-505, 412:3-603, 412:5-203, 412:5-203, 412:5-205, 412:5-302, 412:5-305, 412:6-201, 412:6-303, 412:9-200, 412:9-404; and repeal 412:9-102, HRS.

JUSTIFICATION:

The bill modernizes the law to allow the Commissioner of Financial Institutions to supervise and regulate state chartered financial institutions in Hawaii. The last comprehensive review of financial institutions laws was in 1993. This bill is the compilation of meetings with the industry over the summer of 2012 to review and modernize the law to reflect the changes in federal law.

New definitions were added and some existing definitions were amended to reflect the changes in the federal laws over the last 19 years.

This bill proposes to adjust fees to reflect the additional regulatory requirements and monitoring required for these licensees. Several federal laws were created and amended over the years which increase the amount of supervision, regulation and examination over state chartered financial institutions. Some of these laws include, the Gramm Leach Bliley Act, Bank Secrecy Act/Anti Money Laundering, Federal Deposit Insurance Corp. Act, Equal Credit Opportunity Act, Servicemembers Civil Relief Act, Fair and Accurate Credit Transaction Act, Fair Credit Reporting Act, Electronic Funds Transfer, Real Estate Settlement Procedures Act, Truth In Lending Act, Check Clearing for the 21st Century Act, Truth In Savings Act, Secure And Fair Enforcement for Mortgage Licensing Act, and Dodd-Frank Wall Street Reform and Consumer Protection Act . A new federal regulatory partner has also been created, the Consumer Financial Protection Bureau.

Impact on the public: Continues to protect the public and strengthens the laws on financial institutions.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-104.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2013; with new annual assessment to take effect on January 1, 2014.