A BILL FOR AN ACT

RELATING TO NONDEPOSITORY TRUSTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. The legislature finds that there is a growing "gap group" of consumers who need their assets to be responsibly managed for them, but typically would not meet asset qualifications to be serviced by banks or large investment firms. These consumers may have no family member qualified or available to help them manage their assets. A nondepository trust charter would allow a qualified company to fulfill a fiduciary responsibility to consumers and provide investment oversight. Usually independent business, these trust companies operate similarly to the trust department of a bank but do not take deposits or make loans. The nondepository trust company's focus is fiduciary, acting as a trustee or guardian in the administration of funds, estates, and other related services. These nondepository trust companies, also known as independent or corporate trust companies, are different than family trusts because they are chartered to provide fiduciary services to the public.
Accordingly, the purpose of this Act is to establish:

(1) Yearly assessments for nondepository trusts beginning July 1, 2021; 

(2) Paid-in-capital and surplus requirements for nondepository trust companies; and 

(3) Powers and duties of nondepository trust companies. 

SECTION 2. 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 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 3. Section 412:1-109, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:
""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 of this chapter, including such assets for which a trust company has engaged a third-party
platform investment, property management services, or real estate services."

SECTION 4. 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 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 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 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 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 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 total assets;

(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 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 times 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 times 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 times 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 times 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 times 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 times total assets under management;

(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 times 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 less than $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.

(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.

(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.

(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.

(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.

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

(j) For purposes of this section, "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.

[(+)] (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 5. 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
1. Savings banks $3,000,000
2. Savings and loan associations $2,000,000
3. Trust companies $1,500,000
4. Nondepository trust companies $1,000,000
5. Depository financial services loan companies $1,000,000

SECTION 6. 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 7. 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 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, 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 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2020.

INTRODUCED BY:  

[Signature]

[Signature]
Report Title:
Financial Institutions; Nondepository Trust Companies; Powers and Duties; Assessments; Fees; Paid-in-capital and Surplus; Agent

Description:
Establishes provisions concerning nondepository trust companies.

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