
A BILL FOR AN ACT

RELATING TO THE CODE OF FINANCIAL INSTITUTIONS.

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

1 SECTION 1. Section 412:2-306, Hawaii Revised Statutes, is
2 amended by amending the title to read as follows:

3 "**§412:2-306 Removal or prohibition of institution-**
4 **affiliated party[+]; grounds.**"

5 SECTION 2. Section 412:3-201, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

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

- 9 (1) The proposed name of the financial institution;
- 10 (2) The specific location of its principal office,
11 branches, agencies, and support facilities, and any
12 lease agreements for such principal office, branches,
13 agencies, and support facilities;
- 14 (3) Financial statements, employment history, education,
15 management experience, and other biographical
16 information for all applicants, organizers, proposed
17 executive officers, and directors of the financial
18 institution;



- 1 (4) The name and address of each proposed subscriber of
2 capital stock in the financial institution;
- 3 (5) The proposed capital plan, if capital has not been
4 fully raised, that shall include:
- 5 (A) A description of any stock options, debentures,
6 and stock warrants offered or proposed to be
7 offered to any person; and
- 8 (B) Any stock option plan;
- 9 (6) The proposed capital stock solicitation plan, if
10 subscriptions for capital stock will be solicited,
11 that shall include:
- 12 (A) Information regarding the solicitation plan by
13 which the applicant and the proposed financial
14 institution propose to conduct the solicitation
15 of subscribers;
- 16 (B) Information regarding the classes of shares,
17 respective quantities of shares for each class,
18 and the subscription price of each class of
19 stock;
- 20 (C) A specimen subscription contract or purchase
21 agreement and other related documents to be
22 executed by subscribers;



- 1 (D) Any underwriting agreement or other agreement for
2 the purchase or distribution of the capital
3 stock;
- 4 (E) Any escrow agreements or other agreement for the
5 holding of the purchase proceeds of the capital
6 stock;
- 7 (F) Proposed advertising materials;
- 8 (G) If the offer and sale of the capital stock is
9 subject to the Securities Act of 1933 and
10 regulations thereunder, a copy of the
11 registration statement most recently filed with
12 the federal Securities and Exchange Commission or
13 any other notices or other filings in lieu of
14 registration required or permitted by that Act or
15 regulation and any subsequent amendments thereto;
- 16 (H) If the offer and sale of the capital stock is
17 subject to chapter 485, a copy of the
18 registration or qualification statement most
19 recently filed with the commissioner of
20 securities and any subsequent amendments thereto;
21 and



- 1 (I) If the offer and sale of the capital stock is not
2 subject to the Securities Act of 1933 or chapter
3 485, whether exempted by law or regulation or
4 otherwise, a copy of the most recent version of
5 any prospectus, offering memorandum, offering
6 circular, or other offering document proposed to
7 be delivered to prospective subscribers to the
8 capital stock, and any subsequent amendments
9 thereto;
- 10 (7) The financial institution's proposed policies
11 concerning loans and concentrations of credit, asset
12 and liability management, conflicts of interest,
13 investments, community reinvestment, bank secrecy,
14 anti-money laundering, and customer identification;
- 15 (8) The financial institution's business plan for the
16 first three years of operations;
- 17 (9) Financial projections regarding the financial
18 institution's profitability for the first three years
19 of operations;
- 20 (10) A market study or letters of support evidencing the
21 need and advisability of granting authority to
22 organize a financial institution;



- 1 (11) Except for trust companies, evidence that the
2 financial institution has applied for federal deposit
3 insurance from the Federal Deposit Insurance
4 Corporation or other appropriate federal deposit
5 insurer;
- 6 (12) Evidence that the financial institution has applied
7 for fidelity bonds and other insurance appropriate to
8 its size and operations, including the types and the
9 amounts of coverage, and the respective deductible
10 amounts, from insurance companies licensed in the
11 United States;
- 12 (13) Evidence that the proposed directors and executive
13 officers of the financial institution have the
14 financial ability, responsibility, and experience to
15 engage in the business of a financial institution;
- 16 (14) The employment agreements for all proposed executive
17 officers of the financial institution;
- 18 (15) The proposed articles of incorporation and bylaws of
19 the financial institution;
- 20 (16) A description of any existing or proposed service
21 corporation, affiliate, or subsidiary; [and]



1 (17) Information for each of the proposed directors and
2 executive officers of the financial institution,
3 accompanied by the appropriate payment of the
4 applicable fee for each criminal history record check
5 to be conducted in accordance with section 846-2.7;
6 and

7 [~~17~~] (18) Any other information that the commissioner may
8 require."

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

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

13 (1) The proposed name of the nondepository financial
14 services loan company, the location of its principal
15 office, and any lease agreements for such principal
16 office;

17 (2) Any intended or existing affiliates, subsidiaries, and
18 holding company of the proposed nondepository
19 financial services loan company and the extent and
20 nature of the holding company's control over the
21 operations of the proposed nondepository financial
22 services loan company;



- 1 (3) A business plan which shall contain the following:
- 2 (A) A written description of the company's proposed
- 3 financial products;
- 4 (B) A written statement which explains how the scope
- 5 of the proposed business complies with article 9
- 6 and why any existing lines of business do not
- 7 conflict with the provisions of article 9;
- 8 (C) A written description of the company's proposed
- 9 plan of marketing its products, whether through
- 10 affiliates, subsidiaries, service corporations,
- 11 or holding company;
- 12 (D) Financial projections regarding the nondepository
- 13 financial services loan company's profitability;
- 14 and
- 15 (E) Any and all contractual arrangements which are
- 16 intended to be executed between the nondepository
- 17 financial services loan company and its holding
- 18 company, affiliates, and subsidiaries;
- 19 (4) Financial statements, employment history, education,
- 20 management experience, and other biographical
- 21 information for the proposed executive officers and



1 directors of the nondepository financial services loan
2 company and its holding company, if any;

3 (5) Proposed policies regarding loans, investments,
4 operations, accounting, recordkeeping, and compliance
5 with applicable federal and state consumer laws;

6 (6) The name and address of each proposed subscriber of
7 capital stock in the nondepository financial services
8 loan company or the majority shareholders in any
9 holding company;

10 (7) A copy of the nondepository financial services loan
11 company's articles of incorporation and bylaws; ~~and~~

12 (8) Information for each of the proposed directors and
13 executive officers of the nondepository financial
14 services loan company, accompanied by the appropriate
15 payment of the applicable fee for each criminal
16 history record check to be conducted in accordance
17 with section 846-2.7; and

18 ~~(8)~~ (9) Any other information that the commissioner may
19 require."

20 SECTION 4. Section 412:8-103, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§412:8-103 Authority to serve as trustee.** Unless
2 chartered as a trust company under this chapter or otherwise
3 specifically authorized by the laws of this State, no person[~~r~~
4 ~~except an individual acting as a co-trustee,~~] shall hold itself
5 out to the general public as being available to serve as a
6 trustee or trust company, whether or not for compensation. No
7 person shall use the term "trust company" as part of its name
8 unless chartered as a trust company pursuant to this chapter."

9 SECTION 5. Section 412:10-103, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

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

- 13 (1) The proposed name of the credit union;
- 14 (2) Proposed lease agreements for its principal office;
- 15 (3) The territory in which the proposed credit union will
16 operate;
- 17 (4) A business plan;
- 18 (5) Employment history, education, management experience,
19 and other biographical information for all original
20 chartering applicants, and proposed executive officers
21 of the credit union;



- 1 (6) Proposed policies regarding loans, investments,
2 operations, accounting, recordkeeping, and applicable
3 federal and state consumer laws; [~~and~~]
- 4 (7) Information for each of the original chartering
5 applicants and proposed executive officers of the
6 credit union, accompanied by the appropriate payment
7 of the applicable fee for each criminal history record
8 check to be conducted in accordance with section
9 846-2.7; and
- 10 [~~(7)~~] (8) Any other information that the commissioner may
11 require."

12 SECTION 6. Section 412:11-102, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§412:11-102 Examination of financial institution holding**
15 **company.** The commissioner may from time to time conduct such
16 reasonable examinations of any financial institution holding
17 company as may be necessary or appropriate to determine whether
18 the condition or activities of the company are jeopardizing the
19 safety or soundness of the operations of its financial
20 institution subsidiary. [~~The commissioner shall not conduct~~
21 ~~such examinations of holding companies unless the commissioner~~
22 ~~has good cause to believe that a holding company is experiencing~~



1 ~~financial adversity which will have a material negative impact~~
2 ~~on the safety and soundness of its financial institution~~
3 ~~subsidiary.]~~ The cost of such examinations shall be assessed
4 against and paid by the financial institution holding company in
5 the same manner as financial institutions under section
6 412:2-105."

7 SECTION 7. Section 412:13-222, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

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

- 14 (1) The relocation will be less than one mile from the
15 foreign bank's present place of business;
16 (2) The foreign bank gives the commissioner written notice
17 at least twenty days prior to the move;
18 (3) The type of business carried on at the new place of
19 business will be the same as at the present place of
20 business; and
21 (4) There will be no financial involvement in the
22 relocation by a director, executive officer, or



1 principal shareholder, or a related interest of any of
2 these persons."

3 SECTION 8. Section 846-2.7, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

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

6 (1) The department of health on operators of adult foster
7 homes or developmental disabilities domiciliary homes
8 and their employees, as provided by section 333F-22;

9 (2) The department of health on prospective employees,
10 persons seeking to serve as providers, or
11 subcontractors in positions that place them in direct
12 contact with clients when providing non-witnessed
13 direct mental health services as provided by section
14 321-171.5;

15 (3) The department of health on all applicants for
16 licensure for, operators for, and prospective
17 employees, and volunteers at one or more of the
18 following: skilled nursing facility, intermediate
19 care facility, adult residential care home, expanded
20 adult residential care homes, assisted living
21 facility, home health agency, hospice, adult day
22 health center, special treatment facility, therapeutic



1 living program, intermediate care facility for the
2 mentally retarded, hospital, rural health center and
3 rehabilitation agency, and, in the case of any of the
4 above-related facilities operating in a private
5 residence, on any adult living in the facility other
6 than the client as provided by section 321-15.2;

7 (4) The department of education on employees, prospective
8 employees, and teacher trainees in any public school
9 in positions that necessitate close proximity to
10 children as provided by section 302A-601.5;

11 (5) The counties on employees and prospective employees
12 who may be in positions that place them in close
13 proximity to children in recreation or child care
14 programs and services;

15 (6) The county liquor commissions on applicants for liquor
16 licenses as provided by section 281-53.5;

17 (7) The department of human services on operators and
18 employees of child caring institutions, child placing
19 organizations, and foster boarding homes as provided
20 by section 346-17;



- 1 (8) The department of human services on prospective
2 adoptive parents as established under section
3 346-19.7;
- 4 (9) The department of human services on applicants to
5 operate child care facilities, prospective employees
6 of the applicant, and new employees of the provider
7 after registration or licensure as provided by section
8 346-154;
- 9 (10) The department of human services on persons exempt
10 pursuant to section 346-152 to be eligible to provide
11 child care and receive child care subsidies as
12 provided by section 346-152.5;
- 13 (11) The department of human services on operators and
14 employees of home and community-based case management
15 agencies and operators and other adults, except for
16 adults in care, residing in foster family homes as
17 provided by section 346-335;
- 18 (12) The department of human services on staff members of
19 the Hawaii youth correctional facility as provided by
20 section 352-5.5;
- 21 (13) The department of human services on employees,
22 prospective employees, and volunteers of contracted



1 providers and subcontractors in positions that place
2 them in close proximity to youth when providing
3 services on behalf of the office or the Hawaii youth
4 correctional facility as provided by section 352D-4.3;
5 (14) The judiciary on employees and applicants at detention
6 and shelter facilities as provided by section 571-34;
7 (15) The department of public safety on employees and
8 prospective employees who are directly involved with
9 the treatment and care of persons committed to a
10 correctional facility or who possess police powers
11 including the power of arrest as provided by section
12 353C-5;
13 (16) The department of commerce and consumer affairs on
14 applicants for private detective or private guard
15 licensure as provided by section 463-9;
16 (17) Private schools and designated organizations on
17 employees and prospective employees who may be in
18 positions that necessitate close proximity to
19 children; provided that private schools and designated
20 organizations receive only indications of the states
21 from which the national criminal history record



- 1 information was provided as provided by section
2 302C-1;
- 3 (18) The public library system on employees and prospective
4 employees whose positions place them in close
5 proximity to children as provided by section
6 302A-601.5;
- 7 (19) The State or any of its branches, political
8 subdivisions, or agencies on applicants and employees
9 holding a position that has the same type of contact
10 with children, dependent adults, or persons committed
11 to a correctional facility as other public employees
12 who hold positions that are authorized by law to
13 require criminal history record checks as a condition
14 of employment as provided by section 78-2.7;
- 15 (20) The department of human services on licensed adult day
16 care center operators, employees, new employees,
17 subcontracted service providers and their employees,
18 and adult volunteers as provided by section 346-97;
- 19 (21) The department of human services on purchase of
20 service contracted and subcontracted service providers
21 and their employees serving clients of the adult and



1 community care services branch, as provided by section
2 346-97;

3 (22) The department of human services on foster grandparent
4 program, senior companion program, and respite
5 companion program participants as provided by section
6 346-97;

7 (23) The department of human services on contracted and
8 subcontracted service providers and their current and
9 prospective employees that provide home and community-
10 based services under Section 1915(c) of the Social
11 Security Act (42 U.S.C. §1396n(c)), as provided by
12 section 346-97; [~~and~~]

13 (24) The department of commerce and consumer affairs on
14 proposed directors and executive officers of a bank,
15 savings bank, savings and loan association, trust
16 company, and depository financial services loan
17 company as provided by section 412:3-201;

18 (25) The department of commerce and consumer affairs on
19 proposed directors and executive officers of a
20 nondepository financial services loan company as
21 provided by section 412:3-301;



1 (26) The department of commerce and consumer affairs on the
2 original chartering applicants and proposed executive
3 officers of a credit union as provided by section
4 412:10-103; and

5 [~~24~~] (27) Any other organization, entity, or the State,
6 its branches, political subdivisions, or agencies as
7 may be authorized by state law."

8 SECTION 9. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 10. This Act shall take effect upon its approval.



Report Title:

Financial Institutions

Description:

Eliminates obsolete requirements and improves procedures for the licensing and regulation of financial institutions. (SD1)

