
A BILL FOR AN ACT

RELATING TO BUSINESS REGISTRATION.

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

1 SECTION 1. Section 414-402, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:

3 "(e) If a corporation's period of duration specified in
4 its articles of incorporation has expired, the corporation [~~may~~
5 ~~continue~~] continues its corporate existence but [~~may~~] shall not
6 carry on any business except [~~as~~] that necessary to wind up and
7 liquidate its business and affairs under section 414-385 and
8 notify claimants under sections 414-386 and 414-387."

9 SECTION 2. Section 414-403, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) Within the applicable reinstatement period, should
12 the name of the corporation, or a name substantially identical
13 thereto be registered or reserved by another corporation,
14 partnership, limited partnership, limited liability company, or
15 limited liability partnership, or should the name or a name
16 substantially identical thereto be registered as a trade name,
17 trademark, or service mark, then reinstatement shall be allowed

1 only upon the registration of a new name by the [~~involuntarily~~]
2 administratively dissolved corporation pursuant to the amendment
3 provisions of this chapter."

4 SECTION 3. Section 414D-14, Hawaii Revised Statutes, is
5 amended by adding a new definition to be appropriately inserted
6 and to read as follows:

7 "Electronic transmission" means any form of communication,
8 not directly involving the physical transmission of paper, that
9 creates a record that may be retained, retrieved, and reviewed
10 by a recipient thereof, and that may be directly reproduced in
11 paper form by such a recipient through an automated process."

12 SECTION 4. Section 414D-15, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§414D-15 Notice.** (a) Notice may be oral or written.

15 (b) Notice may be communicated in person; by telephone,
16 telegraph, teletype, or other form of wire or wireless
17 communication; or by mail or private carrier. If these forms of
18 personal notice are impracticable, notice may be communicated by
19 newspaper of general circulation in the area where published; or
20 by radio, television, or other form of public broadcast
21 communication.

1 (c) Oral notice is effective when communicated if
2 communicated in a comprehensible manner.

3 (d) Written notice by a domestic or foreign corporation to
4 its members, if in a comprehensible form, shall be effective
5 when mailed, if mailed postpaid and correctly addressed to the
6 member's address shown in the corporation's current record of
7 members.

8 (e) Except as provided in subsection (d), written notice,
9 if in a comprehensible form, is effective at the earliest of the
10 following:

11 (1) When received;

12 (2) Five days after its deposit with the United States
13 Postal Service, as evidenced by the postmark; provided
14 the notice is mailed with the correct address and with
15 first class postage affixed; or

16 (3) On the date shown on the return receipt, if sent by
17 registered or certified mail, return receipt
18 requested, and the receipt is signed by or on behalf
19 of the addressee.

20 (f) Written notice is correctly addressed to a member of a
21 domestic or foreign corporation if addressed to the member's

1 last known address shown in the corporation's current list of
2 members.

3 (g) A written notice or report delivered as part of a
4 newsletter, magazine, or other publication regularly sent to
5 members shall constitute a written notice or report if addressed
6 or delivered to the member's last known address shown in the
7 corporation's current list of members, or in the case of members
8 who are residents of the same household and who have the same
9 address in the corporation's current list of members, if
10 addressed or delivered to one of the members, at the last known
11 address appearing on the current list of members.

12 (h) Written notice is correctly addressed to a domestic or
13 foreign corporation (authorized to transact business in the
14 State), other than in its capacity as a member, if addressed to
15 its registered agent or to its secretary at its principal office
16 shown in its most recent annual report or, in the case of a
17 foreign corporation that has not yet delivered an annual report,
18 in its application for a certificate of authority.

19 (i) Without limiting the manner by which notice otherwise
20 may be given to members, notice to members given by the
21 corporation under this chapter, or under the articles of
22 incorporation, or the bylaws of the corporation shall be

1 effective if provided by electronic transmission consented to by
2 the member to whom the notice is given. Consent to receive
3 electronic transmission of notice shall be revocable by the
4 member by written notice to the corporation. Consent shall be
5 deemed revoked if:

6 (1) The corporation is unable to deliver by electronic
7 transmission two consecutive notices given by the
8 corporation in accordance with such consent; and

9 (2) The inability to deliver becomes known to the
10 secretary or an assistant secretary of the
11 corporation, to the transfer agent, or to another
12 person responsible for giving notice; provided that
13 the inadvertent failure to treat such inability as a
14 revocation shall not invalidate any meeting or other
15 action.

16 (j) Notice given pursuant to subsection (i) shall be
17 deemed given:

18 (1) If by facsimile telecommunication, when directed to a
19 number at which the member has consented to receive
20 notice;

1 (2) If by electronic mail, when directed to an electronic
2 mail address at which the member has consented to
3 receive notice;

4 (3) If by posting on an electronic network together with
5 separate notice to the member of such specific
6 posting, upon the later of the posting and the giving
7 of such separate notice; and

8 (4) If by any other form of electronic transmission, when
9 directed to the member.

10 An affidavit of the secretary, assistant secretary, transfer
11 agent, or other agent of the corporation that the notice has
12 been given by a form of electronic transmission, in the absence
13 of fraud, shall be prima facie evidence of the facts stated
14 therein.

15 [~~(i)~~] (k) If section 414D-105(b) or any other provision of
16 this chapter prescribes notice requirements for particular
17 circumstances, those requirements shall govern. If articles or
18 bylaws prescribe notice requirements, not inconsistent with this
19 section or other provisions of this chapter, those requirements
20 shall govern."

21 SECTION 5. Section 414D-249, Hawaii Revised Statutes, is
22 amended by amending subsection (e) to read as follows:

1 "(e) If a corporation's period of duration specified in
2 its articles of incorporation has expired, the corporation [~~may~~
3 ~~continue~~] continues its corporate existence but [~~may~~] shall not
4 carry on any activities except those necessary to wind up and
5 liquidate its business and affairs under [~~section~~] sections
6 414D-245 and 414D-245.5 and notify claimants under sections
7 414D-246 and 414D-247."

8 SECTION 6. Section 414D-250, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) Within the applicable reinstatement period, should
11 the name of the corporation, or a name substantially identical
12 thereto be registered or reserved by another corporation,
13 partnership, limited partnership, limited liability company, or
14 limited liability partnership, or should the name or a name
15 substantially identical thereto be registered as a trade name,
16 trademark, or service mark, then reinstatement shall be allowed
17 only upon the registration of a new name by the [~~involuntarily~~]
18 administratively dissolved corporation pursuant to the amendment
19 provisions of this chapter."

20 SECTION 7. Section 415A-16.6, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:

1 "(b) The articles of conversion shall be delivered to the
2 director. The converted entity, if a domestic corporation,
3 domestic professional corporation, domestic nonprofit
4 corporation, [~~foreign corporation,~~] general partnership, limited
5 partnership, or domestic limited liability company, shall attach
6 a copy of its respective registration documents with the
7 articles of conversion."

8 SECTION 8. Section 415A-18, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By amending subsection (c) to read:

11 "(c) A professional corporation that is administratively
12 dissolved [~~may continue~~] continues its corporate existence but
13 [~~may~~] shall not carry on any business except [~~as~~] that necessary
14 to wind up and liquidate its business and affairs under section
15 414-385 and notify claimants under sections 414-386 and 414-
16 387."

17 2. By amending subsection (f) to read:

18 "(f) If a professional corporation's period of duration
19 specified in its articles of incorporation has expired, the
20 professional corporation [~~may continue~~] continues its corporate
21 existence but [~~may~~] shall not carry on any business except [~~as~~]
22 that necessary to wind up and liquidate its business and affairs

1 under section 414-385 and notify claimants under sections 414-
2 386 and 414-387."

3 SECTION 9. Section 425-14, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§425-14 Cancellation of registration.** (a) The director
6 may commence a proceeding to cancel the registration of a
7 domestic or foreign general partnership if the partnership fails
8 to:

- 9 (1) Pay any fees prescribed by law;
10 (2) File its annual statement for a period of two years;
11 (3) Appoint and maintain an agent for service of process
12 as required; or
13 (4) File a statement of a change in the name or business
14 address of the agent as required under this chapter.

15 The cancellation of such registration or certificate shall not
16 relieve the partners of liability for the penalties for the
17 failure to file any statement or certificates required by this
18 part.

19 (b) Within two years after the administrative cancellation
20 of a domestic general partnership under this section, the
21 registration statement of the domestic general partnership may
22 be reinstated by the director upon written application executed

1 by any partner of the domestic general partnership. The
2 application shall:

- 3 (1) Recite the name of the domestic general partnership
4 and the effective date of its administrative
5 cancellation;
- 6 (2) Contain all statements due and unfiled;
- 7 (3) Contain the payment of all delinquent fees and
8 penalties; and
- 9 (4) Contain a certificate from the department of taxation
10 indicating that all taxes owed by the domestic general
11 partnership have been paid, a payment arrangement has
12 been entered into, or the unpaid tax liabilities are
13 being contested in an administrative or judicial
14 appeal with the department of taxation.

15 (c) Within the applicable reinstatement period, should the
16 name of the domestic general partnership, or a name
17 substantially identical thereto be registered or reserved by
18 another corporation, partnership, limited partnership, limited
19 liability company, or limited liability partnership, or should
20 such name or a name substantially identical thereto be
21 registered as a trade name, trademark, or service mark, then
22 reinstatement shall be allowed only upon the registration of a

1 new name by the [~~involuntarily~~] administratively canceled
2 domestic general partnership pursuant to the amendment
3 provisions of this chapter.

4 (d) When the reinstatement is effective, it relates back
5 to and takes effect as of the effective date of the
6 [~~involuntary~~] administrative cancellation and the domestic
7 general partnership may resume its business as if the
8 [~~involuntary~~] administrative cancellation had never occurred."

9 SECTION 10. Section 425-164, Hawaii Revised Statutes, is
10 amended by amending subsections (c) and (d) to read as follows:

11 "(c) A partnership whose statement of qualification [~~or~~
12 ~~statement of foreign qualification~~] has been administratively
13 revoked may apply to the director for reinstatement within two
14 years after the effective date of the revocation. The
15 application shall:

16 (1) Recite the name of the partnership and the effective
17 date of the revocation;

18 (2) Contain all reports due and unfiled;

19 (3) Contain the payment of all delinquent fees and
20 penalties; and

21 (4) Contain a certificate from the department of taxation
22 indicating that all taxes owed by the partnership have

1 been paid, a payment arrangement has been entered
2 into, or the unpaid tax liabilities are being
3 contested in an administrative or judicial appeal with
4 the department of taxation.

5 (d) A reinstatement under subsection (c) shall relate back
6 to and take effect as of the effective date of the revocation,
7 and the partnership's status as a limited liability partnership
8 [~~or foreign limited liability partnership~~] shall continue upon
9 reinstatement as if the revocation had never occurred."

10 SECTION 11. Section 425-193, Hawaii Revised Statutes, is
11 amended by amending subsection (c) to read as follows:

12 "(c) The converted entity, if a domestic corporation,
13 domestic professional corporation, [~~foreign corporation,~~]
14 domestic nonprofit corporation, general partnership, limited
15 partnership, or domestic limited liability company shall attach
16 a copy of its respective registration documents with the
17 articles of conversion."

18 SECTION 12. Section 425E-1103, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) The converted entity, if a domestic corporation,
21 domestic professional corporation, [~~foreign corporation,~~]
22 domestic nonprofit corporation, domestic general partnership,

1 domestic limited partnership, or domestic limited liability
2 company shall attach a copy of its respective registration
3 documents to the articles of conversion."

4 SECTION 13. Section 428-902.6, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) The articles of conversion shall be delivered to the
7 director. The converted entity, if a domestic corporation,
8 domestic professional corporation, [~~foreign corporation,~~]
9 domestic nonprofit corporation, general partnership, limited
10 partnership, or domestic limited liability company shall attach
11 a copy of its respective registration documents with the
12 articles of conversion."

13 SECTION 14. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 15. This Act shall take effect on July 1, 2009.

Report Title:

Business Registration

Description:

Proposes housekeeping amendments to clarify and streamline business registration laws. (SD1)