

A Bill for an Act Relating to Limited Partnerships.

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

SECTION 1. Section 186-44, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

“Sec. 186-44. Requirements for amendment and for cancellation of certificate. (a) The writing to amend a certificate shall (1) conform to the requirements of section 186-21 as far as necessary to set forth clearly the change in the certificate which it desires to make; and (2) be signed and acknowledged by all the general partners and at least five per cent of the limited partners, but not to exceed ten limited partners unless the certificate requires no limited partner’s signature or such other number of limited partners’ signatures in which event the signatures of the limited partners as provided for in the certificate shall be required. Notwithstanding the previous sentence, in case of an amendment substituting a limited partner, or admitting a limited partner or general partner or permitting a general or limited partner to withdraw from the partnership, the amendment shall be signed and acknowledged also by the member to be substituted or added or who withdraws, and when a limited partner is to be substituted, the amendment shall also be signed and acknowledged by the assigning limited partner.

(b) The writing to cancel a certificate shall be signed and acknowledged by all members; provided however, that if the partnership has 15 or more limited partners and the certificate does not require the signatures of all limited partners then the cancellation may be signed by all the general partners and such percentage of limited partners required by section 186-44(a) or such number of limited partners as required by the certificate.

(c) If any person designated above as a person who must execute the writing refuses to do so, a person desiring the cancellation or amendment of a certificate, may bring a suit in equity, in the circuit court of the circuit in which the principal place of business of the limited partnership is situated, for an order directing the cancellation or amendment thereof.

(d) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the director of regulatory agencies to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed in the office of the director a certified copy of its decree setting forth the amendment.

(e) A certificate is amended or cancelled when there is filed in the office

of the director of regulatory agencies a writing in accordance with the provisions of paragraph (a) or (b), a certified copy of the order of court in accordance with the provisions of paragraph (d).

(f) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this part.”

SECTION 2. A new section is hereby added to chapter 186, part II, to read as follows:

“**Sec. 186-49. Annual statement.** Every limited partnership shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year containing the following information:

- (a) The name of the limited partnership;
- (b) The name and residence address of each partner, and whether he is a general or limited partner;
- (c) The nature of the limited partnership business;
- (d) The location of the principal place of business of the limited partnership in the State and, if the limited partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction and the location of the principal place of business of the partnership;
- (e) The fact that none of the partners is either a minor or an incompetent person.

Each annual statement shall be certified as correct by any general partner.”

SECTION 3. A new section is hereby added to chapter 186, part II, to read as follows:

“**Sec. 186-50. Personal liability and penalty.** (a) Every general partner who neglects or fails to comply with any provision of this part shall be liable severally and individually for all debts and liabilities of the limited partnership, and may be severally sued therefor, without the necessity of joining the other members in any action or suit, and shall also severally forfeit to the State \$25 for each and every month while the default shall continue, to be recovered by action brought in the name of the State by the director of regulatory agencies; provided that as to the forfeiture penalty, the director may, for good cause shown, reduce or waive the same.

(b) Any person who signs and acknowledges or certifies as correct any statement or certificate filed pursuant to this part, knowing the same to be false in any material particular, shall be fined not more than \$5,000.

(c) Any person who negligently but without intent to defraud signs and acknowledges or certifies as correct any statement or certificate filed pursuant to this part, which statement or certificate is false in any material particular, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$500.”

SECTION 4. A new section is hereby added to chapter 186, part II, to read as follows:

“Sec. 186-51. Cancellation of registration. If any limited partnership fails or neglects for a period of two years to file any annual statement as required by this part, the director may cancel the certificate of such limited partnership. The cancellation of such certificate shall not relieve the general partners of liability for the penalties for the failure to file any statement of certificate required by this part.”

SECTION 5. A new part III shall be added to chapter 186, to read as follows:

“PART III. FOREIGN LIMITED PARTNERSHIPS

Sec. 186-60. Registration and annual statements. Every limited partnership formed under the laws of any other territory, possession or state of the United States or of any foreign state or country which undertakes to do or carry on business in the State, shall file in the office of the director of regulatory agencies a registration statement within 30 days after it commences to do business in the State. An annual statement shall be filed on or before March 31 of each year as of December 31 of the preceding year. Every such registration statement shall contain the following information:

- (a) The name of the limited partnership;
- (b) The name and residence of each partner, whether general or limited;
- (c) The nature of the limited partnership business;
- (d) The location of the principal place of business of the limited partnership in the State and the name of the jurisdiction where the limited partnership was formed and the location of the principal place of business of the limited partnership;
- (e) The date the limited partnership was formed and the date the limited partnership commenced business in the State;
- (f) The fact that none of the partners is either a minor or an incompetent person;
- (g) The designation of a person residing within the State as agent for service of process and notice;
- (h) An attached certified copy of the certificate of limited partnership and a certificate of good standing, certified to in each case by the secretary of State or other appropriate official of the state in which the limited partnership was formed.

Every such annual statement shall contain the information specified in subparagraphs (a), (b), (c), (d), and (f) above. The registration statement shall be acknowledged by at least one general partner, and the annual statement shall be certified as correct by any general partner.

Sec. 186-61. Registration not acceptable, when. No registration for a limited partnership shall be accepted by the director if the name of such limited partnership is the same as the name of any corporation or partnership, whether general or limited, domestic or foreign, previously authorized or qualified to do business under the laws of the State, or with any trade name previously registered under the laws of the State, or so nearly similar thereto as to lead to confusion and uncertainty.

Sec. 186-62. Powers and liabilities. Every foreign limited partnership on complying with the provisions of section 186-60 and paying to the director a fee of \$50 shall have the same powers and privileges and be subject to the same disabilities as are by law conferred on limited partnerships constituted under the laws of the State; provided, that the purposes for which the limited partnership is constituted are not repugnant to or in conflict with any law of the State.

Sec. 186-63. Withdrawal procedure; notice to creditors, taxes; service of process on. Any foreign limited partnership which has qualified to transact business in this State may withdraw and surrender its right to engage in business within the State by securing from the director of regulatory agencies a certificate of withdrawal, in the manner hereinafter provided. Any such limited partnership shall file in the office of the director:

(a) A certificate executed and acknowledged by at least one general partner setting forth: (1) that it surrenders its authority to transact intrastate business in this State, (2) that it irrevocably consents that process against it in any action or suit upon any liability of obligation incurred within this State prior to the issuance of the certificate of withdrawal may be served upon the director of regulatory agencies and that service of such process upon the director shall be deemed sufficient service upon it, (3) a post office address to which the director may mail a copy of any process against such limited partnership that may be so served upon him, and (4) a list of the names and resident addresses of all general partners.

(b) Satisfactory proof showing that, within sixty days last past, it has advertised in a daily newspaper of general circulation in the State, once in each of four successive weeks (four publications), a notice in English to all creditors of the limited partnership that it intends to apply, within sixty days from the first publication of the notice, to the director of regulatory agencies for a certificate of withdrawal and intends to withdraw from and surrender its right to engage in business within this State and notifying all creditors of the limited partnership to present their claims;

(c) Satisfactory proof that not less than fifteen days have elapsed since the last publication of the notice;

(d) Satisfactory proof showing that all creditors of the limited partnership, resident or located within the State, have been paid; and

(e) A valid certificate or certificates showing that all of the taxes, imposts, license fees and assessments theretofore levied upon, due or payable by the limited partnership to the State or any of its municipal subdivisions have been fully paid and discharged.

Upon the filing with and the approval by the director of the aforesaid certificate and proofs and after payment of a fee of \$3 for such certificate, the director shall issue to such limited partnership a certificate stating that it has withdrawn and surrendered its right to engage in business within this State. No such limited partnership may withdraw from this State without complying with the aforesaid conditions and until such compliance service of legal notices and processes may be made on any agent of the limited partnership within the

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State, or if none can be found, service of such notices and processes upon the director of regulatory agencies shall be deemed sufficient service of such notices and processes upon it.

Sec. 186-64. Cancellation of registration. If any limited partnership fails or neglects for a period of two years to file any annual statement as required by this part, the director may cancel the registration of such partnership. The cancellation of such registration shall not relieve the general partners of liability for the penalty for failure to file any statement or certificate required by this part.

Sec. 186-65. Personal liability and penalty. (a) If any general partner neglects or fails to comply with any provision of this part, all general partners shall be liable jointly and severally for all debts and liabilities of the limited partnership, and may be severally sued therefor without the necessity of joining the other members in any action or suit, and shall also severally forfeit to the State \$25 for each and every month while a default shall continue, to be recovered by action brought in the name of the State by the director of regulatory agencies; provided that as to the forfeiture penalty, the director may, for good cause shown, reduce or waive the same.

(b) Any person who signs and acknowledges or certifies as correct any statement or certificate filed pursuant to this part, knowing the same to be false in any material particular, shall be fined not more than \$5,000.

(c) Any person who negligently but without intent to defraud signs and acknowledges or certifies as correct any statement or certificate filed pursuant to this part, which statement or certificate is false in any material particular, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$500.

Sec. 186-66. Filing changes in registration or annual statements. Whenever any change occurs in any of the facts set forth in any registration statement or annual statement filed under section 186-60, or any amendment to the certificate of limited partnership, a verified statement setting forth such change or a certified copy of the amendment to the certificate of limited partnership shall be filed with the director of regulatory agencies."

SECTION 6. This Act shall take effect upon its approval.

(Approved July 14, 1969.)