

## ACT 114

S. B. NO. 1123

A Bill for an Act Relating to Foreign Corporations.

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

SECTION 1. Part I of Chapter 418, Hawaii Revised Statutes is hereby amended to read as follows:

**“PART I. FOREIGN CORPORATIONS GENERALLY**

**Sec. 418-1. Declaration.** Every corporation organized under the laws of any other jurisdiction which undertakes to do or transact business in this State shall file in the office of the director of regulatory agencies:

- (1) A declaration sworn to on oath by two authorized officers of the corporation stating:
  - (A) The name of the corporation;
  - (B) The state wherein it was incorporated;
  - (C) The address of its principal office;
  - (D) The address of its proposed branch office or offices in the State;
  - (E) The names and addresses of its officers and directors;
  - (F) The amount of its paid up capital stock;
  - (G) The total value of the property owned and used by it in its business;
  - (H) The nature and total value of the property to be acquired by it for use in the State within the following 12 months;
  - (I) The total dollar amount of business transacted by it during its preceding fiscal year;
  - (J) The nature of the business to be transacted in the State;
  - (K) The name and business address of the person residing within the State upon whom legal notice and process from the courts of the State, or notices from officials of the State, may be served.
- (2) A copy of the articles of incorporation as amended to the date of the declaration, certified to by the proper officer of the state where the corporation was organized, which certificate shall also state that the corporation is in good standing if that is the fact.

**“Sec. 418-2. Same; by nonprofit corporation.** Any corporation organized without capital stock under the laws of any other jurisdiction for any lawful purpose except the carrying on of a business, trade, avocation or profession for profit which undertakes to do or transact business in this State shall file in the office of director of regulatory agencies:

- (1) A declaration sworn to on oath by two authorized officers of the corporation stating:
  - (A) The name of the corporation;
  - (B) The state wherein it was incorporated;
  - (C) The address of its principal office;
  - (D) The address of its proposed branch office or offices in the State;
  - (E) The name and addresses of its officers and directors, if any;
  - (F) The nature of the business to be transacted in the State;
  - (G) The name and business address of the person residing within the State upon whom legal notice and process from the courts of the State, or notices from officials of the State, may be served;
  - (H) That the corporation is not organized for profit and that it will not issue any stock, and no part of its assets, income, or earnings shall be distributed to its members, directors, or officers, except for services actually rendered to the corporation.
- (2) A copy of the articles of incorporation as amended to the date of the declaration, certified to by the proper officer of the state wherein the corporation was organized, which certificate shall also state that the corporation is in good standing if that is the fact.

**Sec. 418-3. Registered agent, change of agent.** Every foreign corporation authorized to transact business in this State shall have and continuously maintain in this State an agent for service of process. A foreign corporation authorized to transact business in this State may change its agent to accept service of process in this State by filing with the director of regulatory agencies a statement of such change verified by any authorized officer. Upon the filing of such verified statement, the appointment shall become effective. Any person authorized as agent to accept service of process of a foreign corporation may resign as such agent upon filing a written notice thereof executed in duplicate with the director of regulatory agencies who shall forthwith mail a copy thereof to the corporation at its principal office. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the director of regulatory agencies. If any agent designated by a foreign corporation shall die or remove from the State or resign then the foreign corporation shall, within 30 days after the death, removal or resignation of the agent, substitute, designate and certify to the director of regulatory agencies another agent.

**Sec. 418-4. Declaration not acceptable, when.** No declaration of a corporation required to file a declaration under section 418-1 or 418-2 shall be accepted by the director of regulatory agencies if the name of the corporation is the same as the name of any corporation or copartnership, 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. No declaration of a corporation required to file a declaration under Section 418-1 shall be accepted by the director if the paid-in capital as shown on the declaration is less than \$1,000.00.

**Sec. 418-5. Additional requirements in case of amendment of charter,**

**merger or consolidation.** Every foreign corporation qualified to do business in this State which shall amend its charter or shall be a party to a merger or consolidation shall, within 30 days after the time the amendment or merger or consolidation becomes effective, file with the director of regulatory agencies a copy of the amendment or a copy of the articles of merger or consolidation, duly certified by the proper officer of the jurisdiction in which the corporation shall have been incorporated or under the laws of which the merger or consolidation was effected.

**Sec. 418-6. Activities not constituting doing business in State.** Without excluding other activities which may not constitute doing or carrying on business in the State, a corporation formed or organized under the laws of any territory, possession, or other state of the United States, or of any foreign state or country shall not be considered to be doing or carrying on business in the State for the purposes of this chapter by reason of carrying on in the State any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceedings or effecting the settlement thereof or the settlement of claims or disputes.
- (2) Holding meeting of its directors or shareholders or carrying on other activities concerning its internal affairs.
- (3) Maintaining bank accounts.
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining agents, trustees, or depositories with relation to its securities.
- (5) Effecting sales through independent contractors.
- (6) Soliciting or procuring orders whether by mail or through employees or agents or otherwise where the orders require acceptance without the State before becoming binding contracts.
- (7) Creating evidences of debt, mortgages, or liens on real or personal property.
- (8) Securing or collecting debts or enforcing any rights in property securing the same.
- (9) Transacting any business in interstate commerce.
- (10) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

**Sec. 418-7. Powers and liabilities; fees.** Every foreign corporation, other than nonprofit, on complying with section 418-1 and paying to the director of regulatory agencies a fee of \$50 shall, subject to sections 418-9 and 418-13, have the same powers and privileges and be subject to the same disabilities as are by law conferred on corporations constituted under the laws of the State, and shall, for the purposes for which it is constituted, have full power to hold, take, and convey by way of sale, mortgage, or otherwise, real, personal, and mixed estate in the State; provided, that the purposes for which the corporation is constituted are not repugnant to or in conflict with any law of the State. Nothing herein shall be construed to give any corporation any of the special powers conferred by law upon railroad or banking corporations constituted under the laws of the State.

**Sec. 418-8. Powers and liabilities; foreign nonprofit corporation.** Every foreign nonprofit corporation on complying with section 418-2 and paying to the director of regulatory agencies a fee of \$10 shall, subject to section 418-13, have the same powers and privileges and be subject to the same disabilities as are by law conferred on nonprofit corporations constituted under the laws of the State, and shall, for the purposes for which it is constituted, have full power to hold, take, and convey by way of sale, mortgage, or otherwise real, personal, and mixed estate in the State; provided, that the purposes for which the corporation is constituted are not repugnant to or in conflict with any law of the State.

**Sec. 418-9. Annual license mandatory, exceptions; fees.** No foreign corporation except foreign insurance companies and foreign nonprofit corporations which does not invest and use all its capital in the State shall do or carry on business in the State unless it shall first have obtained from the director of regulatory agencies an annual license to do so. Every corporation shall pay to the director of regulatory agencies an annual license fee of \$100. The license fee shall be assessed on the basis of the fiscal year from July 1 to June 30. The first license fee due upon qualification shall be prorated according to the month of qualification and shall be as follows:

July	\$100.00	January	50.00
August	91.67	February	41.67
September	83.33	March	33.33
October	75.00	April	25.00
November	66.67	May	16.67
December	58.33	June	8.33

The director may settle and collect an account against any corporation violating this section for the amount of the license fee together with a penalty of fifty per cent for failure to pay the same; provided, that no license shall be necessary for any corporation while solely employed by the government of the United States. The director may, for good cause shown, reduce or waive the penalty.

**Sec. 418-10. Penalties.** Every person acting as agent, or assuming to act as agent, of any foreign corporation which has failed to comply with any of the statutes regarding foreign corporations, shall forfeit to the State \$100 for every violation, neglect, or failure, to be recovered by action brought in the name of the State by the director of regulatory agencies.

Any corporation violating or neglecting or failing in any particular to conform to or comply with any of the provisions of this chapter shall be subject to a forfeiture of an amount to be determined by the director not exceeding \$100 for every such violation, neglect or failure, to be recovered by action brought in the name of the State by the director. A continuance of a delinquency shall be a separate offense for each 30 days of the continuance. The director may, for good cause shown, reduce or waive the penalties imposed by this section.

**Sec. 418-11. Annual exhibit.**

(1) Every corporation qualified under Section 418-1 shall file with the

director of regulatory agencies a full and accurate exhibit of its state of affairs within 180 days immediately following the end of its fiscal period together with a remittance of \$10 to cover the filing fee.

- (2). Every corporation qualifying under Section 418-2 shall file with the director of regulatory agencies a full and accurate exhibit of its state of affairs within 180 days immediately following the end of its fiscal period together with a remittance of \$1 to cover the filing fee.

**Sec. 418-12. Examination by director.** The director of regulatory agencies may at any time either by himself or by one or more commissioners appointed by him, call for the production of the books and papers of any foreign corporation doing business in the State, and examine its officers, members, and others touching its affairs, under oath; and the director may, in his discretion, lay before the governor and also publish the annual reports and statement of the examination.

**Sec. 418-13. Procedure to compel examination.** In case any foreign corporation refuses or fails to present the annual exhibit of its affairs to the director of regulatory agencies or to produce its books and papers upon the request of the director, or of the commissioner appointed by him, or if any of the officers or members of the corporation refuses to be examined on oath touching the affairs of the same, the director or the commissioner may apply to a circuit judge at chambers for an order to compel the production of the books and papers, or the examination of the officers and members thereof, and the judge may enforce obedience to the order as in the case of its ordinary decrees and orders; and the corporation shall be denied the benefit of the laws of the State, particularly the statute limiting the time for the commencement of civil actions, and shall not be entitled to sue in any court of the State for any cause of action, while the neglect or refusal continues.

**Sec. 418- Penalty for false statements.** Any person who makes a false statement in any declaration, exhibit, statement or affidavit shall be fined not more than \$5,000.

**Sec. 418-14. Withdrawal procedure; notice to creditors, etc.; taxes, etc.; service of process on.** Any foreign corporation which has qualified to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director of regulatory agencies a certificate of withdrawal, in the manner hereinafter provided. The corporation shall file in the office of the director:

- (1) A certificate executed and acknowledged by its president or vice-president, and secretary or treasurer, setting forth:
- (A) That it surrenders its authority to transact business in this State,
  - (B) That it irrevocably consents that process against it in any action or suit upon any liability or obligation incurred within this State before the issuance of the certificate of withdrawal may be served upon the director and that service of process upon the director shall be deemed sufficient service upon it, and
  - (C) A post office address to which the director may mail a copy of

any process against the corporation that may be so served upon him;

- (2) 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 to all creditors of the corporation that it intends to apply, within sixty days from the first publication of the notice, to the director 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 corporation or company to present their claims;
- (3) Satisfactory proof that not less than fifteen days have elapsed since the last publication of the notice;
- (4) Satisfactory proof showing that all creditors of the corporation, resident or located within the State, have been paid; and
- (5) A valid certificate or certificates showing that all of the taxes, imposts, license fees, and assessments theretofore levied upon, due or payable by the corporation to the State have been fully paid and discharged.

Upon the filing with and the approval by the director of the aforesaid certificates and proofs and after payment of a fee of \$3 for the certificate, the director shall issue to the corporation a certificate stating that it has withdrawn and surrendered its right to engage in business within this State. No corporation may withdraw from this State without complying with the aforesaid conditions and until such compliance service of legal notices and processes upon the person designated by it under section 418-1 or 418-2 shall be deemed sufficient service upon it, or if the designated person does not continue to reside in the State at the designated business address, service of the notices and processes upon the director shall be deemed sufficient service of the notices and processes upon it.

**Sec. 418-15. Cancellation of registration.** (a) If any corporation which has complied with section 418-1 or 418-2 has failed or neglected for a period of two years to file an annual exhibit as required by law, the director of regulatory agencies may cancel the registration of the corporation. At least sixty days prior to the cancellation, the director shall cause notice thereof to be given to the person named in the declaration required by section 418-1 or 418-2 as the person residing within the State upon whom notice and process from the courts of the State or notices from officials of the State may be served, and shall cause notice thereof to the creditors of the corporation to be published once in each of two successive weeks in a daily newspaper of general circulation in the State. The expenses of the notice, whether given by personal service, by mailing, by publication, or by all thereof, shall be a charge against and may be collected by action against the corporation concerned. Any corporation, the registration of which is canceled pursuant to this section, shall be deemed no longer qualified under this part to transact business in this State, and shall not be registered hereunder except upon compliance with the provisions hereof as if for the first time.

**Sec. 418-16. Fraternal benefit societies exempt from chapter.** Fraternal benefit societies licensed under chapter 434 shall not be subject to this chapter.”

SECTION 2. All foreign corporation bonds in effect, on the effective date of this Act, are hereby cancelled.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 25, 1971.)