

ACT 259

H.B. NO. 1985-80

A Bill for an Act Relating to Corporations.

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

SECTION 1. Section 416-4, Hawaii Revised Statutes, is amended to read:

**“Sec. 416-4 Directors, qualifications of.** The directors of every corporation shall be one or more in number, if the corporation has only one stockholder. If the corporation has two stockholders, the corporation shall have two or more directors. If the corporation has three or more stockholders or any number of members, the corporation shall have three or more directors. In any event, at least one member of every board of directors shall be a resident of the State. In the absence of one such

member, no board of directors shall function.

An act done in derogation of the above shall be void in any action brought by any stockholder or member.”

SECTION 2. Section 416-11, Hawaii Revised Statutes, is amended to read:

“**Sec. 416-11 Creation by articles of incorporation.** Any number of persons not less than one desiring to form a corporation shall execute articles of incorporation and acknowledge the same before any officer authorized to take acknowledgements. The articles shall contain the following particulars:

- (1) The name of the corporation, which shall include as the last word thereof the word “Limited”, “Incorporated”, or “Corporation” or the abbreviation “Ltd.”, “Inc.”, or “Corp.”;
- (2) The place of its principal office in Hawaii and also the street or mailing address (including zip code) of the initial office;
- (3) The period of duration, which may be perpetual;
- (4) The primary specific purpose, and such other purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this chapter;
- (5) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of authorized shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value; and if the privilege of subsequent extensions of the authorized capital stock is reserved the limit of the extension.
- (6) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;
- (7) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
- (8) If any preemptive right is to be granted to shareholders, the provisions therefor;
- (9) The number of directors constituting the initial board of directors and the names and residence addresses of the persons who are to serve as officers and directors until the first annual meeting of shareholders or until their successors be elected and qualify;
- (10) The names of the initial subscribers for shares of each class and the number of shares subscribed for;
- (11) The subscription price or prices for the shares of each class subscribed for by each initial subscriber, and, if it is to be paid in other than cash, the

- consideration in which it is to be paid;
- (12) The amount of capital and paid-in surplus, if any, paid in by each initial subscriber, separately stating the amount paid in cash and in property.”

SECTION 3. Section 416-15, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 416-16, Hawaii Revised Statutes, is amended to read:

“**Sec. 416-16 Powers and liabilities.** On the filing of the articles of association the persons who have subscribed the articles, their associates, successors, and assigns, shall thereafter be deemed to be and be a body corporate by the name and style provided in the articles, shall have succession and corporate existence for such period of duration as is agreed upon, which may be perpetual; shall have all of the powers and be subject to all of the liabilities provided by law for corporations; and shall be subject to all general laws then in effect or thereafter enacted in regard to corporations.”

SECTION 5. Section 416-17, Hawaii Revised Statutes, is amended to read:

“**Sec. 416-17 Capital necessary to engage in business; liability of directors.** No corporation for profit shall upon the incorporation thereof engage in business in the State until not less than \$1,000 of its authorized capital stock has been paid in by the acquisition of cash or by the acquisition of property of a net value of not less than \$1,000. In case of any violation of this section by any corporation, the incorporators and the directors thereof at the time the corporation commences to engage in business shall in their individual and private capacities be jointly and severally liable to the corporation and the stockholders and creditors thereof in the event of its bankruptcy or insolvency or in the event of its dissolution for any loss suffered by the corporation or its stockholders or creditors unless the incorporators and directors can establish that the loss did not occur by reason of the violation.”

SECTION 6. Section 416-19, Hawaii Revised Statutes, is amended to read:

“**Sec. 416-19 Nonprofit corporations; charter grant of.** The director of regulatory agencies shall grant to all applicants who file petitions in conformity with section 416-20, charters of incorporation for the establishment and conduct of any lawful purpose, except the carrying on of a business, trade, avocation, or profession for profit. Any charter granted or corporation created under authority of this section shall be subject to all general laws enacted in regard to corporations.”

SECTION 7. Section 416-78, Hawaii Revised Statutes, is amended to read:

“**Sec. 416-78 Consent of stockholders in lieu of meeting.** Whenever the vote of stockholders or members at a meeting thereof is required or permitted to be taken in connection with any corporate action permitted by any section of this chapter or of chapter 417, the meeting and vote of stockholders or members may be dispensed with if all of the stockholders or members who would have been entitled to vote upon the action if the meeting were held, consent in writing to the corporate action being taken. If the action which is consented to is such as would have required the filing of a certificate under any section of this chapter or of chapter 417 if the action had been voted upon by the stockholders or members at a meeting thereof, the certificate filed under such section shall state that written consent has been given in lieu of stating that

the stockholders or members have voted upon the corporate action in question if the last mentioned statement is required in the certificate.”

SECTION 8. Section 416-95, Hawaii Revised Statutes, is amended to read:

“**Sec. 416-95 Annual exhibit; inspection by whom; penalty.** Every corporation organized for profit under this chapter shall by March 31 of each year, file with the director of regulatory agencies an exhibit of its state of affairs as of December 31 of the preceding year. Such exhibit shall contain such information as the director shall prescribe.

Examination of books, etc., by director. The director may call for the production of the books and papers of the corporation, and examine its officers, members, and others touching its affairs, under oath. In case any corporation refuses to produce its books and papers upon the request of the director, or in case any of the officers or members of any corporation refuse to be examined on oath, touching the affairs of the corporation, then the director may apply to a circuit court for an order to compel the production of the books and papers or the examination of the officers or members of the corporation, obedience to which order may be enforced by the judge, in like manner with his ordinary decrees and orders.

Penalty. Any corporation violating or neglecting or failing in any particular to conform to or comply with any of the provisions of this section 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 failure to file the required exhibit shall be a separate offense for each thirty days of the continuance. The director may, for good cause shown, waive the penalty imposed by this section.”

SECTION 9. Section 416-96, Hawaii Revised Statutes, is amended to read:

“**Sec. 416-96 Nonprofit corporations, exhibits of.** Every nonprofit corporation shall by March 31 of each year, file with the director of regulatory agencies an exhibit of its state of affairs as of December 31 of the preceding year. Such exhibit shall contain such information as the director shall prescribe.”

SECTION 10. Section 416-97, Hawaii Revised Statutes, is amended to read:

“**Sec. 416-97 Fees; amount.** The following fees shall be paid to the director of regulatory agencies upon the filing of the corporate documents:

- (1) Articles of incorporation and affidavit of incorporation, 20 cents per \$1,000 authorized capital, \$50 minimum, \$1,000 maximum;
- (2) Certificate of increase of authorized capital stock, 20 cents per \$1,000 authorized capital increase, \$20 minimum, \$1,000 maximum;
- (3) Certificate of renewal or extension of corporate existence, same as the filing of articles of incorporation;
- (4) Certificate of reduction of capital stock, \$15;
- (5) Certificate of amendment of articles of incorporation, \$10;
- (6) Agreement of merger or consolidation, \$50;
- (7) Annual corporation exhibit of domestic and foreign corporations organized for profit, \$10;
- (8) Certificate of dissolution, \$5;

- (9) Resolution of issuance of preferred stock, \$10;
- (10) Certification, 10 cents per page or any portion thereof;
- (11) Petition and charter of incorporation of nonprofit corporation, \$10;
- (12) Certificate of amendment and renewal or extension of charter of nonprofit corporation, \$5;
- (13) Articles of incorporation of agricultural and fishing cooperatives without capital stock, \$15;
- (14) Restated articles of incorporation: corporations with an authorized capital of less than \$500,000, \$20; corporations with an authorized capital of \$500,000 or more, \$100;
- (15) Annual exhibit of nonprofit domestic and foreign corporations, \$1;
- (16) Agreement of merger or consolidation of nonprofit corporations, \$5.”

SECTION 11. Section 417-53, Hawaii Revised Statutes, is amended to read:

“**Sec. 417-53 Merger; necessary statement.** If the agreement is for a merger, it shall state any matters in respect of which the charter of the incorporation of the surviving nonprofit corporation is proposed to be amended, and shall set forth or incorporate as part thereof the proposed charter of incorporation as amended, and the charter of incorporation shall be deemed to be the amended charter of incorporation of the surviving nonprofit corporation upon the allowance of the merger agreement by the director of regulatory agencies. The amended charter of incorporation of the surviving nonprofit corporation may provide for the extension of the term of its corporate existence, and may contain all the powers and privileges that could lawfully be conferred or obtained in an original charter of incorporation.”

SECTION 12. Section 418-5, Hawaii Revised Statutes, is amended to read:

“**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 so as to change its corporate name or shall be a party to a merger or consolidation shall, within thirty days after the time the amendment or merger or consolidation becomes effective, file with the director of regulatory agencies a certificate by the official who has custody of the records pertaining to corporations in the jurisdiction in which the corporation shall have been incorporated, certifying as to the change of name, merger, or consolidation. If such certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto. 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, shall be filed with the director of regulatory agencies if the director so requests.”

SECTION 13. Section 418-9, Hawaii Revised Statutes, is amended to read:

“**Sec. 418-9 Annual license mandatory, exceptions; fees.** No foreign corporation except foreign insurance companies and foreign nonprofit corporations 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–December \$100

January–June \$50.

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.”

SECTION 14. Section 418-11, Hawaii Revised Statutes, is amended to read:

“**Sec. 418-11 Annual exhibit.** (a) Every corporation qualified under section 418-1 shall file by March 31 of each year, with the director of regulatory agencies an exhibit of its state of affairs, as of December 31 of the preceding year together with a remittance of \$10 to cover the filing fee. Such exhibit shall contain such information as the director shall prescribe.

(b) Every corporation qualifying under section 418-2 shall file by March 31 of each year, with the director of regulatory agencies an exhibit of its state of affairs as of December 31 of the preceding year together with a remittance of \$1 to cover the filing fee. Such exhibit shall contain such information as the director shall prescribe.”

SECTION 15. Section 419-2, Hawaii Revised Statutes, is amended to read:

“**Sec. 419-2 Application for charter; petition; contents.** Application to the director of regulatory agencies for a charter of incorporation under this chapter shall be made by a written petition, verified by the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole. The petition shall set forth:

- (1) The name of the corporation;
- (2) The name and address of the officer forming the corporation, the office which he holds in the church, and that he is duly authorized by the rules, regulations, or discipline of the church to take the action;
- (3) The boundaries of the district subject to the ecclesiastical jurisdiction of the officer forming the corporation sole, in accordance with the rules, regulations, or discipline of the church;
- (4) The place of the principal office of the corporation sole, which shall be in the State;
- (5) The term for which the corporation sole is organized, which may be perpetual;
- (6) The manner in which any vacancy occurring in the office of the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole is required to be filled by the rules, regulations, or constitution of the church;
- (7) Additional powers to be set forth in its charter, in accordance with section 416-27;
- (8) Any lawful provision for the regulation of the affairs of the corporation sole, including restrictions upon the power to amend all or any part of the charter;
- (9) That the corporation is not organized for profit.

If any petition for a charter of incorporation presented to the director under this chapter is not in conformity with the requirements of this section the director shall, within fifteen days, return the same to the petitioner specifying wherein the same fails to conform with this section and the petitioner may amend the petition and present it so amended. A proposed form of the charter of incorporation shall accompany the petition. The director may require additional proofs from the petitioner. If the petition or amended petition and the proposed charter are in conformity with law, the director shall grant to the applicant a charter of incorporation as a corporation sole.”

SECTION 16. Section 419-4, Hawaii Revised Statutes, is amended to read:

“**Sec. 419-4 Amendment of charter.** Subject to the provisos set forth in this section, and subject to any lawful restrictions upon the power to amend the charter of a corporation sole, set forth in its petition filed under section 419-2, the incumbent of the corporation may at any time amend the charter of the corporation by changing its name, the term of its existence, the boundaries of the district subject to its jurisdiction, the place of its principal office, the manner of filling any vacancy in the incumbency thereof, its powers, or any provision of the charter for the regulation of the affairs of the corporation (except restrictions upon the power to amend the charter), and may, by amendment of the charter, make provision for any act or thing for which provision is authorized in original charters of corporations sole formed under this chapter.

The incumbent of the corporation sole shall subscribe and verify a certificate which shall set forth the amendment either by stating that the charter has been amended to read as set forth in the certificate in full or by stating that any provision or provisions of the charter, which shall be identified by the numerical or other designation or designations thereof in the charter or by stating the wording thereof, has or have been amended to read as set forth in the certificate. The certificate shall further state that the amendment has been duly authorized by the rules, regulations, or discipline of the church of which the incumbent is an officer; provided, that no amendment shall confer any other or greater powers or privileges than could lawfully be conferred or obtained in an original charter; provided, further, that no amendment shall become effective unless the same is allowed by the director of regulatory agencies.”

SECTION 17. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 18. This Act shall take effect upon its approval.

(Approved June 13, 1980.)

\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.