

ACT 270

H.B. NO. 2359-80

A Bill for an Act Relating to Partnerships.

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

SECTION 1. Section 425-1, Hawaii Revised Statutes, is amended to read:

“Sec. 425-1 Registration and annual statements. Whenever any general partnership is formed under the laws of the State to do business in the State, or any general partnership formed under the laws of any other jurisdiction shall do business in the State, such partnership shall file in the office of the director of regulatory agencies the registration and annual statements hereinafter provided. A registration statement shall be filed by a partnership formed under the laws of the State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of 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:

- (1) The name of the partnership;
- (2) The name and residence of each partner;
- (3) The nature of the partnership business;
- (4) The location of the principal place of business of the partnership in the State and, if the 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;
- (5) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in the State;
- (6) The fact that none of the partners is either a minor or an incompetent person;
- (7) In the case of a foreign general partnership, the designation of a person residing within the State as agent for service of process and notice.

Every such annual statement shall contain the information specified in paragraphs (1), (2), (3), (4), (6) and (7) above and a listing of the names of any partner admitted, withdrawn, or who has died during the year.

The registration statement of a domestic partnership shall be certified by each partner, and the registration statement of a foreign partnership shall be certified by at least one partner. Each annual statement shall be certified as correct by any partner."

SECTION 2. Section 425-2, Hawaii Revised Statutes, is amended to read:

"Sec. 425-2 Forms to be furnished by director. The registration, annual and other statements required by this part shall be filed on forms to be furnished by the director of regulatory agencies."

SECTION 3. Section 425-8, Hawaii Revised Statutes, is amended to read:

"Sec. 425-8 Reservation of partnership name. The exclusive right to the use of a partnership name may be reserved by any person intending to organize a domestic partnership, by any domestic partnership intending to change its name, by any foreign partnership intending to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein, by any foreign partnership authorized to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein and intending to change its name, or by any person intending to organize a foreign partnership and intending to have the partnership to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein. Reservations shall be made by filing with the director of regulatory agencies an application in such form as the director may prescribe to reserve a specified partnership name, and payment to the director of a fee equivalent to that paid by a corporation for the same service. If he finds that the name is available for partnership use, he shall reserve the name for the exclusive use of the applicant for a period of sixty days. The right to the exclusive use of a specified partnership name so reserved may be transferred to any other person or partnership by filing in the office of the director a notice of a transfer executed by the applicant for whom the name is reserved specifying the name and address of the transferee."

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

“Sec. 425-9 Statement of dissolution. Whenever a domestic general partnership is dissolved, and the business is not continued within the meaning of section 425-141(1), (3), (5), or (6), a statement thereof showing the cause of dissolution shall be filed in the office of the director of regulatory agencies within thirty days after dissolution. The statement shall be certified by all partners except in such cases as the circumstances make it obviously impossible to secure the signature of one or more partners, which circumstances shall be set forth in the statement.”

SECTION 5. Section 425-13, Hawaii Revised Statutes, is amended to read:

“Sec. 425-13 Personal liability and penalty. (a) If a partner neglects or fails to comply with any provision of this part, all partners shall be liable jointly and severally for all the debts and liabilities of the partnership, and may be severally sued therefor, without the necessity of joining the other partners 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 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 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 punished by a fine not exceeding \$500.”

SECTION 6. Section 425-17, Hawaii Revised Statutes, is amended to read:

“Sec. 425-17 Withdrawal procedure for foreign general partnership. Any foreign general partnership 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. Any such general partnership shall file in the office of the director:

- (1) A certificate executed and certified by at least one partner setting forth:
 - (A) That it surrenders its authority to transact intrastate 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 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,
 - (C) A post office address to which the director may mail a copy of any process against such general partnership that may be so served upon him, and
 - (D) A list of the names and resident addresses of all general partners;
- (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 in English to all credi-

tors of the general 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 and surrender its rights to engage in business within this State and notifying all creditors of the general partnership 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, 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 general partnership to the State or any of its municipal subdivisions have been fully paid and discharged.

Upon 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 general partnership a certificate stating that it has withdrawn and surrendered its right to engage in business within this State. No such general 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 general partnership within the 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."

SECTION 7. Section 425-22, Hawaii Revised Statutes, is amended to read:

"Sec. 425-22 Formation. Two or more persons (as defined in section 425-102), any of whom may be acting in a fiduciary capacity, desirous of forming a limited partnership, shall sign and file a certificate, as follows:

- (1) The certificate shall state:
 - (A) The name of the partnership;
 - (B) The character of the business;
 - (C) The location of the principal place of business;
 - (D) The name and place of residence of each member; general and limited partners being respectively designated;
 - (E) The term for which the partnership is to exist;
 - (F) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;
 - (G) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they are to be made;
 - (H) The time, if agreed upon, when the contribution of each limited partner is to be returned;
 - (I) The share of the profits or the other compensation by way of income which each limited partner is to receive by reason of his contribution;
 - (J) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution;
 - (K) The right, if given, of the partners to admit additional limited partners;

- (L) The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income and the nature of the priority;
 - (M) The right, if given, of the remaining general partners or partners to continue the business on the death, retirement, or insanity of a general partner; and
 - (N) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.
- (2) The certificate shall be certified by each of the persons and shall be filed in the office of the director of regulatory agencies.

A limited partnership is formed if there has been a substantial compliance in good faith with the foregoing requirements.

The director shall preserve the certificate and keep a record of the same, which shall be duly indexed. The certificate, record, and index shall, during all business hours, be open to the inspection of the public, free of charge. A fee of \$1.50 shall be charged for each name signed to any certificate."

SECTION 8. Section 425-40, Hawaii Revised Statutes, is amended to read:

"Sec. 425-40 Effect of retirement, death, or insanity of a general partner.

The retirement, death, or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners under a right so to do stated in the certificate, or with the consent of all members. However, the retirement, death, or insanity of the sole remaining general partner dissolves the partnership."

SECTION 9. Section 425-45, Hawaii Revised Statutes, is amended to read:

"Sec. 425-45 Requirements for amendment and for cancellation of certificate.

(a) The writing to amend a certificate shall conform to the requirements of section 425-22 as far as necessary to set forth clearly the change in the certificate which it desires to make; and be signed and certified 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 certified 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 certified by the assigning limited partner.

(b) The writing to cancel a certificate shall be signed and certified by all members; provided that if the partnership has fifteen 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 subsection (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 an action 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 order 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 10. Section 425-51, Hawaii Revised Statutes, is amended to read:

“**Sec. 425-51 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 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 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 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 punished by a fine not exceeding \$500.”

SECTION 11. Section 425-71, Hawaii Revised Statutes, is amended to read:

“**Sec. 425-71 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 thirty 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:

- (1) The name of the limited partnership;
- (2) The name and residence of each partner, whether general or limited;
- (3) The nature of the limited partnership business;
- (4) 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;
- (5) The date the limited partnership was formed and the date the limited partnership commenced business in the State;
 - (6) The fact that none of the partners is either a minor or an incompetent person;
 - (7) The designation of a person residing within the State as agent for service of process and notice;
 - (8) 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 paragraphs (1), (2), (3), (4), and (6), above. The registration statement shall be signed by at least one general partner, and the annual statement shall be certified as correct by any general partner.”

SECTION 12. Section 425-76, Hawaii Revised Statutes, is amended to read:

“**Sec. 425-76 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 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 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 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 punished by a fine not exceeding \$500.”

SECTION 13. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 14. This Act shall take effect upon 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.