

ACT 162

H.B. NO. 2192-82

A Bill for an Act Relating to Corporations.

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

SECTION 1. Section 416-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

“(a) The director of regulatory agencies shall at any time not more than fifteen years before the expiration of any articles of association or charter of any corporation extend the duration of the same, and shall at any time not more than five years after the expiration of any articles of association or charter renew the same in each case for such period of extension or renewal as is agreed upon, which may be perpetual, and in each case on application to him for that purpose, upon the filing in his office of a verified certificate signed by any two authorized officers of the corporation[,] who are not the same person, showing that the proposed extension or renewal has been approved by the vote of the holders of not less than three-fourths of all its issued and outstanding shares of stock, voting without regard to class, at a

meeting duly called and held for the purpose, or, in the case of a nonstock corporation, by the vote of not less than three-fourths of the members present at a duly called meeting thereof; provided, that no extension of the charter of a nonprofit corporation shall become effective until the same is allowed by the director.

All extensions or renewals of articles of association and charters granted before April 1, 1939, are ratified and confirmed."

SECTION 2. Section 416-23, Hawaii Revised Statutes, is amended to read:

"§416-23 Amendments of charters and articles. Subject to the provisions set forth in this section, the articles of association or charter of any corporation may be amended by the vote of the holders of not less than two-thirds of all of its stock issued and outstanding and having voting power, or by such larger vote as may be required by the articles of association or charter, at a meeting duly called and held for the purpose, or, in the case of a nonstock corporation, by the vote of not less than two-thirds of the members present at a meeting duly called and held for the purpose. No amendment shall be effective unless there is filed in the office of the director of regulatory agencies a verified certificate, signed by any two authorized officers of the corporation[.] who are not the same person, setting forth the amendment by stating that the articles of association or charter has been amended to read as set forth in the certificate in full or by stating that any provision of the articles of association or charter, which shall be identified by the numerical or other designation thereof in the articles of association or charter or by stating the wording thereof, has been amended to read as set forth in the certificate, and certifying that the amendment was adopted by the required vote as aforesaid at a meeting duly called and held for the purpose. Any amendment so adopted shall become effective and the articles of association or charter shall be amended on the date of filing of the certificate of amendment or on such later date as specified in the certificate of amendment. Any provision of this section to the apparent contrary notwithstanding, (1) no amendment shall confer any other or greater powers or privileges than could lawfully be conferred or obtained in an original charter or articles of association; (2) no amendment changing the name of the corporation shall become effective until the director has determined that the amendment is not in conflict with section 416-12; (3) no amendment to the charter of a nonprofit corporation shall become effective until the same is allowed by the director; and (4) if an amendment would make any change which would adversely affect the rights of the holders of shares of any class, then the holders of each class of shares so affected by the amendment shall be entitled to vote as a class upon the amendment, regardless of other limitations or restrictions on the voting power of the class, and in addition to the vote otherwise required, a vote of the holders of two-thirds of each class so affected by the amendment shall be necessary to the adoption thereof. There may be filed in the office of the director at any time a copy, verified by any two officers of the corporation who are not the same person by authority of its board of directors, of the articles of association or charter of the corporation restated to include all amendments to and including the date of the verification and upon filing the restated articles of association or charter shall be and become the articles of association or charter of the corporation."

SECTION 3. Section 416-64, Hawaii Revised Statutes, is amended to read:

"§416-64 Increase of capital, authorization; certificate to be filed with director. No increase or extension of the capital stock of any corporation organized under the laws of the State, having authority under its articles of association or charter to increase its capital stock, shall be legal and effective unless the increase or extension has been authorized by a vote of not less than two-thirds of all of the shares of stock issued and outstanding and having voting power, at any meeting duly called and held for the purpose; and unless a verified certificate has first been filed with the director of regulatory agencies, signed by any two authorized officers of the corporation[,] who are not the same person, showing that the meeting had been properly called and held; that the increase or extension had been authorized by the required vote; and showing also (1) the present authorized capital stock of the corporation; (2) the amount to which the capital stock thereof may be increased or extended under its articles of association or charter; (3) the amount of increase or extension of the capital stock duly authorized by its stockholders; and (4) in the case of stock having a par value, that not less than ten per cent of the total authorized stock as increased has been paid in, in cash or property, or that the corporation holds cash or property of a value equal to ten per cent of the total authorized stock as increased. The certificate shall be accompanied by payment of the fee required to be paid upon the amount of increase so authorized. The director shall not receive or file the certificate without the payment. The increase of capital shall become effective and the capital of the corporation shall be and become increased on the date of filing of the certificate prescribed by this section or on such later date as shall be specified in the certificate."

SECTION 4. Section 416-65, Hawaii Revised Statutes, is amended by amending subsection (c) to read:

"(c) Certificates. A verified certificate shall be signed by any two authorized officers of the corporation who are not the same person and shall be presented to the director setting forth therein facts showing that the required vote or other determination pursuant to this section of the proposed reduction of capital or capital stock has been obtained or made, and certifying that no distribution of assets representing the surplus created by the reduction will be made at any time unless the remaining assets of the corporation then equal in value the total par value of the remaining capital stock of the corporation, and unless the remaining assets of the corporation then equal in value twice the amount of indebtedness of the corporation and, in the case of a reduction of capital or capital stock by release or cancellation of subscriptions to stock, certifying that the remaining assets of the corporation, upon the reduction, will equal in value the total par value of the remaining capital stock of the corporation and will then equal in value twice the amount of the indebtedness of the corporation."

SECTION 5. Chapter 416, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"§416- Rules. The director of regulatory agencies may make, amend, or repeal rules pursuant to chapter 91, to implement the provisions of this chapter."

SECTION 6. Section 418-11, Hawaii Revised Statutes, is amended to read:

"§418-11 Annual exhibit. (a) Every corporation qualified under section 418-1 shall file by [March 31] June 30 of each year, with the director of regulatory agen-

cies 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] The exhibit shall contain [such] information as the director shall prescribe.

(b) Every corporation qualifying under section 418-2 shall file by [March 31] June 30 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] The exhibit shall contain [such] information as the director shall prescribe."

SECTION 7. Chapter 418, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"**§418- Rules.** The director of regulatory agencies may make, amend, or repeal rules pursuant to chapter 91, to implement the provisions of this chapter."

SECTION 8. Chapter 417, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§417- Merger of subsidiary corporations.** (a) Any corporation organized or existing under the laws of this State or under the laws of any other state or jurisdiction subject to the laws of the United States, if the laws of the other state or jurisdiction permit a merger, owning at least ninety per cent of the outstanding shares of each class of the stock of each of two or more other corporations organized or existing under the laws of this State, or under the laws of any other state or jurisdiction subject to the laws of the United States, if the laws of the other state or jurisdiction permit such a merger, may file in the office of the director of regulatory agencies a certificate of such ownership and of merger of the subsidiary corporations in its name and under its corporate seal and in the name of the surviving subsidiary corporation and under its corporate seal. The certificate shall be signed by any two authorized officers of each of the parent corporation and the surviving subsidiary corporation and shall set forth a copy of the resolutions of each of the board of directors of the parent corporation and the board of directors of the surviving subsidiary corporation to merge one or more of the subsidiary corporations into the other and surviving subsidiary corporation and to cause the surviving subsidiary corporation to assume all of the other subsidiary corporation's or corporations' obligations and the date of the adoption thereof; provided that if the parent corporation does not own all the outstanding stock of the subsidiary corporation parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including, if such is the case, the securities, cash, or other consideration into which shares of stock of the subsidiary corporation or corporations not owned by the parent corporation are to be converted.

(b) Upon the minute, hour, and day of filing of the certificate of ownership and merger pursuant to this section, or if a subsequent minute, hour, and day has been specified in the certificate there upon such subsequent minute, hour, and day, the separate existence of the nonsurviving subsidiary corporation or corporations shall cease and all and singular the rights, privileges, franchises, and property of the nonsurviving subsidiary corporation or corporations and all debts and liabilities due or to become due to the nonsurviving subsidiary corporation or corporations, including subscriptions for shares and things in action and every interest or asset of

conceivable value or benefit, shall be deemed fully and finally and without any right of reversion transferred to and vested in the surviving subsidiary corporation without further act or deed. The surviving subsidiary corporation shall have and hold the same in its own right as fully as the same was possessed and held by the nonsurviving subsidiary corporation or corporations from which by operation of this part, it was transferred; and except as and to the extent otherwise provided in section 417-43 each share of stock of the subsidiary corporation or corporations not theretofore owned by the parent corporation and to be converted in the merger, if any, shall be deemed converted into the securities, cash, or other consideration provided in the certificate of ownership and merger.

(c) All debts, liabilities, and obligations due or to become due of, and all claims or demands for any cause existing against, the nonsurviving subsidiary corporation or corporations shall upon the merger be and become the debts, liabilities, and obligations of and the claims and demands against the surviving subsidiary corporation in the same manner as if the surviving subsidiary corporation had itself incurred or otherwise become liable for them. All rights of creditors and all liens upon the property of each of the subsidiary corporations shall be preserved unimpaired, limited in lien to the property affected by the liens immediately prior to the time of the merger. Any action or proceedings pending by or against any subsidiary corporation or corporations shall not be deemed to have abated or been discontinued but may be prosecuted to judgment with the right to appeal or review as in other cases as if the merger or consolidation had not taken place or the surviving subsidiary corporation may be substituted for the nonsurviving subsidiary corporation."

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 9.² This Act shall take effect upon its approval.

(Approved June 1, 1982.)

Notes

1. Edited pursuant to HRS §23G-16.5.
2. Section "9" should be "10".