

A Bill for an Act Relating to Corporations.

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

SECTION 1. Chapter 416, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

- “§416- Distributions from capital surplus.** (a) As used in this section:
- (1) “Capital surplus” means and is limited to:
    - (A) The value of consideration received for shares with par value in excess of the par value,
    - (B) The value of consideration received for shares without par value in excess of the amount determined to be capital pursuant to section 416-59, or
    - (C) Capital contributed to a corporation other than for shares of capital stock; and
  - (2) “Insolvent” means the inability of a corporation to pay its debts as they become due in the usual course of business.
- (b) The board of directors may distribute to its shareholders out of capital surplus a portion of its assets, in cash or property; provided that:
- (1) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent;
  - (2) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of two-thirds of the outstanding shares of each class of stock, whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation;
  - (3) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid;
  - (4) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of involuntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation;
  - (5) No such distribution shall be made of capital surplus unless the assets of the corporation remaining after the distribution equals in value the total capital and capital surplus of the corporation; and

(6) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(c) Notwithstanding section 416-91, the board of directors may also distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, pursuant to subsection (b), if at the time the corporation may not pay out such dividends in cash in compliance with section 416-91.

(d) Nothing contained in this section shall limit or prohibit a corporation from making a distribution to shareholders pursuant to section 416-65 upon a reduction of its capital or capital stock or pursuant to section 416-91."

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Approved June 13, 1983.)

**Note**

1. Edited pursuant to HRS §23G-16.5.