

ACT 135

H.B. NO. 1935

A Bill for an Act Relating to Corporations.

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

SECTION 1. Section 415-2, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-2] Definitions.** As used in this chapter, unless the context otherwise requires, the terms:

“Articles of incorporation” means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

“Associate of an offeror” means (1) any corporation or other organization of which the offeror is an officer or partner, or is, directly or indirectly, the beneficial owner of ten per cent or more of any class of equity securities; (2) any person who is, directly or indirectly, the beneficial owner of ten per cent or more of any class of equity securities of the offeror; (3) any trust or other estate in which the offeror has a substantial beneficial interest or as to which the offeror serves as a trustee or in a similar fiduciary capacity; and (4) any relative or spouse of the offeror or any relative of such spouse, who has the same home as the offeror.]

“Authorized shares” means the shares of all classes which the corporation is authorized to issue.

“Commissioner” means the commissioner of securities as provided for in chapter 485.]

“Corporation” or “domestic corporation” means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

“Director” means the director of the department of commerce and consumer affairs.

“Distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness, by a corporation to or for the benefit of any of its shareholders in respect of any of its shares, whether by dividend or by purchase, redemption or other acquisition of its shares, or otherwise.

“Employee” includes officers but not directors. A director may accept duties which make the director also an employee.

“Equity security” means any shares of stock or similar securities or any securities convertible into such securities or carrying any warrant or right to subscribe to or purchase such securities or any such warrant or right.

“Exempt offer” means with respect to any class of equity securities of the offeree company (1) an isolated offer to purchase shares from individual stockholders and not made to stockholders generally, (2) an offer made by a

corporation to purchase (A) its own shares, or (B) shares of a subsidiary at least fifty-one per cent of the voting stock of which is directly or indirectly owned beneficially by the parent corporation, (3) an offer to acquire shares of a corporation with less than one hundred shareholders, and (4) an offer to acquire shares of a corporation with less than \$1,000,000 in assets.]

“Foreign corporation” means a corporation for profit organized under laws other than the laws of this State for a purpose or purposes for which a corporation may be organized under this chapter.

["Offeree" means a person to whom a take-over bid is made.

“Offeree company” means a corporation incorporated under the laws of this State and doing business in this State whose shares are the subject of a take-over bid and which is either (1) subject to regulation by the public utilities commission under chapter 269, 271, or 271 G or (2) owns more than 1,000 acres of real property in any single county or (3) is subject to the inspection of the commissioner of financial institutions under chapter 401 or (4) owns directly or indirectly more than ten per cent of the voting stock of any of the foregoing.

“Offeror” means each person who makes or in any way participates in making a take-over bid and includes two or more persons (1) whose take-over bids are made jointly or in concert, or (2) who intend to exercise jointly or in concert any voting rights attaching to the shares for which a take-over bid is made. An “offeror” does not include any bank or broker-dealer loaning funds to an offeror in the ordinary course of its business or any broker-dealer, attorney, accountant consultant, employee, or other persons furnishing information or advice to or performing administrative or ministerial duties for an offeror and not otherwise participating in the take-over bid.

“Offeror’s presently owned shares or other units” means the aggregate number of shares or other units of an offeree company (1) beneficially owned, and (2) subject to a right of acquisition, directly or indirectly, on the date of a take-over bid, by (A) the offeror, and (B) each associate of the offeror.]

“Person” means an individual, a partnership, a corporation, a joint-stock company, an unincorporated organization, or trust.

“Principal office” means the office, within or without this State, where the principal executive office of a domestic or foreign corporation is located.

“Shareholder” means one who is a holder of record of shares in a corporation. If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of [such] the shareholder are held for the account of a specified person or persons. The resolution shall set forth (1) the classification of shareholder who may certify, (2) the purpose or purposes for which the certification may be made, (3) the form of certification and information to be contained therein, (4) if the certification is with respect to a record date or closing of the stock transfer books within which the certification must be received by the corporation, and (5) such other provisions with respect to the procedures as are deemed necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

“Shares” means the units into which the proprietary interests in a corporation are divided.

“Subscriber” means one who subscribes for shares in a corporation, whether before or after incorporation.

[“Take-over bid” means an offer, other than an exempt offer, made by an offeror directly or through an agent by advertisement or any other written or oral communication to offerees to purchase such number of shares or other units of any class of equity security of the offeree company that, together with the offeror’s presently owned shares or other units, will in the aggregate exceed ten per cent of the outstanding shares or other units of such class of equity security.]”

SECTION 2. Section 415-3, Hawaii Revised Statutes, is amended to read as follows:

“[§415-3] **Purposes.** [Corporations may be organized under this chapter for any lawful purpose or purposes, other than for the purpose of carrying on any profession, except pursuant to part VIII of chapter 416.]<sup>1</sup> Every corporation incorporated under this chapter has the purpose of engaging in any lawful business, other than banking, insurance, or carrying on any profession, except pursuant to chapter 415A, unless a more limited purpose is set forth in the articles of incorporation.”

SECTION 3. Section 415-5, Hawaii Revised Statutes, is amended by amending subsections (a), (b), (c), (d), (e), (f), and (i) to read as follows:

“(a) As used in this section, unless the context otherwise requires:

[(1)] “Agent” means any person who is or was a director, officer, employee, or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of [such] the predecessor corporation.

[(2)] “Expenses” include, without limitation, attorney’s fees and any expenses of a completed action or proceeding, whether civil, criminal, administrative, or investigative.

(b) A corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation) [by reason of the fact that such] if that person is or was an agent of the corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with [such] the proceeding if [such] the person acted in good faith and in a manner [such] the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of [such] the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a<sup>1</sup> presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, or that the person had reasonable cause to believe that the person’s conduct was unlawful.

(c) A corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation to procure a judgment in its favor [by reason of the fact that such] because that person is

or was an agent of the corporation, against expenses actually and reasonably incurred by [such] the person in connection with the defense or settlement of [such] the action if [such] the person acted in good faith and in a manner [such] the person reasonably believed to be in or not opposed to the best interests of the corporation [and]; except that no indemnification shall be made in respect of any claim, issue, or matter as to which [such] the person shall have been adjudged to be liable for negligence or misconduct in the performance of [such] the person's duty to the corporation unless and only to the extent that the court in which [such] the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, [such] the person is fairly and reasonably entitled to indemnity for such expenses [which such] as the court [shall deem] deems proper.

(d) To the extent that an agent has been successful on the merits or otherwise in [defense of] defending any claim;<sup>1</sup> issue, or matter therein, the agent shall be indemnified by the corporation against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Any indemnification under subsection (b) or (c) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subsection (b) or (c). [Such] The determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to [such] the proceeding[;], or (2) if [such] a quorum is not obtainable, [for] by independent legal counsel in a written opinion[;], or (3) by the shareholders[;], or (4) by the court in which [such] the proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not [such] the application by the agent, attorney, or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be paid by the corporation in advance of the final disposition of [such] the proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall ultimately be determined that the agent is entitled to be indemnified by the corporation as authorized in this section.

(i) This section does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in [such] that person's capacity, though [such] the person may also be an agent of the employer corporation as defined in subsection (a). Nothing contained in this section shall limit any right to indemnification to which [such] a trustee, investment manager, or other fiduciary may be entitled by contract or otherwise. "

SECTION 4. Section 415-6, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-6]] Power of corporation to acquire its own shares.** A corporation shall have the power to acquire its own shares. All of its own shares acquired by a corporation shall, upon acquisition, constitute authorized but unissued shares, unless the articles of incorporation provide that they shall not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired. If the number of authorized shares is reduced by an acquisition, the corporation shall, not later than the time it [files] delivers its next annual report to the director under this chapter, also [with the director] deliver to the director for filing [pursuant to section 415-55], a

## ACT 135

statement of cancellation showing the reduction in the authorized shares. The statement of cancellation shall set forth:

- (1) The name of the corporation;
- (2) The number of acquired shares canceled, itemized by classes and series; and
- (3) The aggregate number of authorized shares, itemized by classes and series, after giving effect to [such] the cancellation."

SECTION 5. Section 415-7, Hawaii Revised Statutes, is amended to read as follows:

"**[§415-7] Defense of ultra vires.** No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid [by reason of the fact that] because the corporation was without capacity or power to perform [such] the act or to make or receive [such] the conveyance or transfer, but such lack of capacity or power may be asserted:

- (1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of [such] the contract, and in so doing may [allow] award to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of [such] the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.
- (2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation."

SECTION 6. Section 415-8, Hawaii Revised Statutes, is amended to read as follows:

"**[§415-8] Corporate name.** The corporate name:

- (1) Shall contain the word "corporation", "incorporated", or "limited", or shall contain an abbreviation of one of the words[.]; and
- (2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.
- (3) (2) Shall not be the same as, or [deceptively similar] substantially identical to, the name of any domestic [corporations, partnerships, or trade names] corporation or partnership existing [or registered] under the laws of this State,[or] any foreign corporation[,], or partnership[, or trade name] authorized to transact business in this State, any [or] trade name registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision shall

not apply if the applicant files with the director either of the following:

- (A) The written consent of [such] the other corporation or holder of a reserved or registered name to use the same or [deceptively similar] substantially identical name, and one or more words are added to make [such] the name distinguishable from [such] the other name, or
- (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of [such] the name in this State."

SECTION 7. Section 415-9, Hawaii Revised Statutes, is amended to read as follows:

"**[§415-9] Reserved name.** The exclusive right to [the] use [of] the corporate name may be reserved by:

- (1) Any person intending to organize a corporation under this chapter[.];
- (2) Any domestic corporation intending to change its name[.];
- (3) Any foreign corporation intending to make application for a certificate of authority to transact business in this State[.];
- (4) Any foreign corporation authorized to transact business in this State and intending to change its name[.]; or
- (5) Any person intending to organize a foreign corporation and intending to have [such] the corporation make application for a certificate of authority to transact business in this State.

The reservation shall be made by [filing with] delivering to the director an application to reserve a specified corporate name, executed by the applicant. If the director finds that the name is available for corporate use, the director shall reserve the same for the exclusive use of the applicant for [a period of] one hundred twenty days.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by [filing in the office of] delivering to the director a notice of [such] the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee."

SECTION 8. Section 415-14, Hawaii Revised Statutes, is amended to read as follows:

"**[§415-14] Service of process on corporation.** Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial[,], or administrative officer, or board, may be made in the manner provided by law upon any registered agent, officer, or director of the corporation who is found within the jurisdiction of the court, officer, or board; [and in default of finding] or if any registered agent, officer, or director[,], cannot be found, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

If no [registered agent,] officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State[.], and in case the corporation, if a foreign corporation, has not filed with the director pursuant to sections 415-113 and 415-114, the name of a person upon whom legal notice and process from the courts of the State may be served[.], and likewise if the person so named is not found within the State, service may be made upon the corporation by [filing with] delivering to the director, or in the director's absence, [with] to

## ACT 135

the deputy director, a copy of the notice[,] or process, certified to be such under the seal of any court of record, or by the chairman, or president of the board, or by the officer issuing the same. The director or deputy director so served shall [immediately] notify the defendant corporation of the service, as soon as practicable but not more than thirty days after receipt of the notice or process, by certified mail at the corporation's address as last recorded in the business registration division. The filing shall [be deemed] constitute service upon the corporation forty-five days after the filing, and shall authorize the court, board, or officer to proceed in all respects as in the case of service personally made upon an individual.

The director shall keep a record of all processes, notices, and demands served upon the director under this section, and shall record therein the time of [such] the service and the action with reference thereto.

Nothing [herein] contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner [now or hereafter] permitted by law."

SECTION 9. Section 415-15, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-15] Authorized shares.** Each corporation shall have the power to create and issue the number of shares stated in its articles of incorporation. [Such] The shares may be divided into one or more classes, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter.

Without limiting the authority [herein] contained[,], herein, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

- (1) Subject to the right of the corporation to redeem any of [such] the shares at the price fixed by the articles of incorporation for the redemption thereof[.];
- (2) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends[.];
- (3) Having preference over any other class or classes of shares as to the payment of dividends[.];
- (4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation[.]; or
- (5) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation."

SECTION 10. Section 415-16, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-16] Issuance of shares of preferred or special classes in series.** (a) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed

and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

- (1) The rate of dividend[.];
- (2) Whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption[.];
- (3) The amount payable upon shares in event of voluntary and involuntary liquidation[.];
- (4) Sinking fund provisions, if any, for the redemption or purchase of shares[.];
- (5) The terms and conditions, if any, on which shares may be converted[.]; and
- (6) Voting rights, if any.

(b) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of [such] the classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series<sup>1</sup> established.

(c) In order for the board of directors to establish a series, where authority [so] to do so is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

(d) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall deliver to the director for filing [pursuant to section 415-55], a statement setting forth:

- (1) The name of the corporation;
- (2) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;
- (3) The date of adoption of [such] the resolution; and
- (4) That [such] the resolution was duly adopted by the board of directors.

(e) Upon the filing of [a] the statement by the director [pursuant to section 415-55], the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall constitute an amendment of the articles of incorporation."

SECTION 11. Section 415-17, Hawaii Revised Statutes, is amended to read as follows:

"**[[§415-17]] Subscriptions for shares.** A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of [such] the subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such times,<sup>1</sup> or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may



## ACT 135

be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefore. If mailed, [such] the written demand shall be deemed [to be] made when deposited in the United States mail in a sealed envelope addressed to the subscriber at the subscriber's last post-office address known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on [such] the shares shall be paid to the delinquent subscriber or to the delinquent subscriber's legal representative."

SECTION 12. Section 415-22, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-22] Expenses of organization, reorganization, and financing.** The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by [such] the corporation out of the consideration received by it in payment for its shares without thereby rendering [such] the shares assessable."

SECTION 13. Section 415-23, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-23] Shares represented by certificates and uncertificated shares.** The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or vice chairman of the board of directors or the president or a vice president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. Any [of] or all of the signatures upon a certificate may be a facsimile. In case any [such] officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon [such] the certificate [shall have] has ceased to be [such] an officer, transfer agent or registrar before [such] the certificate is issued, it may be issued by the corporation with the same effect as if the officer, transfer agent or registrar were [such] an officer, transfer agent, or registrar at the date of its issue.

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued, and if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

- (1) That the corporation is organized under the laws of this State[.];
- (2) The name of the person to whom the certificate is issued[.];

- (3) The number and class of shares, and the designation of the series, if any, which [such] the certificate represents[.]; and
- (4) The par value of each share represented by [such] the certificate, or a statement that the shares are without par value.

No certificate shall be issued for any share until the consideration established for its issuance [shall have] has been paid.

Unless otherwise provided by the articles of incorporation [or by-laws], the board of directors of a corporation may provide by resolution that some or all of any of all classes and series of its shares shall be uncertificated shares; provided that [such] the resolution shall not apply to shares represented by a certificate until [such] the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to [the second and third] paragraphs (2) and (3) of this section. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical."

SECTION 14. Section 415-25, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-25] Liability of subscribers and shareholders.** A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to [such] the shares other than the obligation to pay to the corporation the full consideration for which [such] the shares were issued or are to be issued.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefore has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of [such] the consideration.

A personal representative, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder."

SECTION 15. Section 415-29, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-29] Notice of [shareholders] shareholders' meetings.** Written notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at [such] the meeting. If mailed, [such] the notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at the shareholder's address as it appears on the stock transfer books of the corporation, with postage thereon prepaid."

SECTION 16. Section 415-30, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-30] Closing of transfer books and fixing record date.** For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, [such] the books shall be closed for at least ten days immediately preceding [such] the meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, [such] the date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring [such] the determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring [such] the dividend is adopted, as the case may be, shall be the record date for [such] the determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.”

SECTION 17. Section 415-31, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-31] Voting record.** The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete record of the shareholders entitled to vote at [such] the meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each[. Such] shareholder. The record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

Failure to comply with the requirements of this section shall not affect the validity of any action taken at [such] the meeting.

An officer or agent having charge of the stock transfer books who shall fail to prepare the record of shareholders, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.”

SECTION 18. Section 415-33, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-33] Voting of shares.** Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share[,], on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

Shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of [such] the other corporation is

held by the corporation, shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by a duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

If, not less than forty-eight hours prior to the time fixed for any annual or special meeting, any shareholder or shareholders delivers to any officer of the corporation, a request that the election of directors to be elected at the meeting be by cumulative voting, then the directors to be elected at the meeting shall be chosen as follows: each shareholder present in person or represented by proxy at the meeting shall have a number of votes equal to the number of shares of capital stock owned by the shareholder multiplied by the number of directors to be elected at the meeting; each shareholder shall be entitled to cumulate the votes of said shareholder and give all thereof to one nominee or to distribute the votes of said shareholder in such manner as the shareholder determines among any or all of the nominees; and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected at the meeting, shall be the successful nominees. The right to have directors elected by cumulative voting as aforesaid shall exist notwithstanding that provision therefore is not included in the articles of incorporation or bylaws, and this right shall not be restricted or qualified by any provisions of the articles of incorporation or bylaws; provided that this right may be restricted, qualified, or eliminated by a provision of the articles of incorporation or bylaws of any corporation having a<sup>1</sup> class of equity securities registered pursuant to the Securities Exchange Act of 1934, as amended, which are either listed on a national securities exchange or traded over-the-counter on the National Market of the National Association of Securities Dealers, Inc. Automated Quotation System. This section shall not prevent the filling of vacancies in the board of directors, which vacancies may be filled in such manner as may be provided in the articles of incorporation or bylaws.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of [such] the other corporation may prescribe, or, in the absence of [such] any provision, as the board of directors of [such] the other corporation may determine.

Shares held by a personal representative may be voted by that individual, either in person or by proxy, without a transfer of [such] the shares into that individual's name. Shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held without a transfer of [such] the shares into [said] the trustee's name.

Shares standing in the name of a receiver may be voted by [such] the receiver, and shares held by or under the control of a receiver may be voted by [such] the receiver without the transfer thereof into the receiver's name if authority [so] to do so is contained in an appropriate order of the court by which [such] the receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote [such] the shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem [such] the shares has been deposited with a bank or trust

company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefore, [such] the shares shall not be entitled to vote on any matter and [shall] are not [be] deemed to be outstanding shares.”

SECTION 19. Section 415-34, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-34] Voting trusts and agreements among shareholders.** Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to [such] the trustee or trustees for the purposes of the agreement. [Such] The trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all [such] of the holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued, and shall deposit a copy of [such] the record with the corporation at its registered office. The counterpart of the voting trust agreement and the copy of [such] the record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and [such] the counterpart and [such] the copy of [such] the record shall be subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

Agreements among shareholders regarding the voting of their shares shall be valid and enforceable in accordance with their terms. Such agreements shall not be subject to the provisions of this section regarding voting trusts.”

SECTION 20. Section 415-35, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-35] Board of directors.** All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. At least one member of every board of directors shall be a resident of this State. If there is no such director who is a member of the board, the board may not function except to elect a new director who is a resident of this State. Directors need not be shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

A director shall perform the director’s duties as a director, including the director’s duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with such care as

an ordinarily prudent person in a like position would use under similar circumstances. In performing the director's duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) Counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or
- (3) A committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence,

provided that the director shall not be considered to be acting in good faith if the director has or should have knowledge concerning the matter in question that would cause such reliance to be unwarranted. A [person] director who so performs the [person's] director's duties shall have no liability by reason of being or having been a director of the corporation.

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting or unless the director shall file the director's written dissent to [such] the action with the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. [Such] The right to dissent shall not apply to a director who voted in favor of [such] the action."

SECTION 21. Section 415-36, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-36] Number and election of directors.** [The directors of every corporation shall be one or more in number, if] If the corporation has only one shareholder[.], the corporation shall have one or more directors. If the corporation has two shareholders, the corporation shall have two or more directors. If the corporation has three or more shareholders, the corporation shall have three or more directors. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors, the number shall be the same as that provided for in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall

## ACT 135

hold office for the term for which the director is elected and until the director's successor shall have been elected and qualified."

SECTION 22. Section 415-37, Hawaii Revised Statutes, is amended to read as follows:

"**[§415-37] Classification of directors.** When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of [such] the meeting shall be elected to hold office until the second succeeding annual meeting, if there are two classes, or until the third succeeding annual meeting, if there are three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders."

SECTION 23. Section 415-39, Hawaii Revised Statutes, is amended to read as follows:

"**[§415-39] [Removal] Resignation and removal of directors.** (a) A director may resign at any time by delivering written notice to the board of directors, its chairperson, or to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

(b) At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided for in this section. Any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the director's removal would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which the director is a part.

Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole."

SECTION 24. Section 415-41, Hawaii Revised Statutes, is amended to read as follows:

"**[§415-41] Director conflicts of interest.** No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of [such] this relationship or interest or because [such] the director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies [such] the contract or transaction or because [his or their] the votes of the interested director or directors are counted for [such] that purpose, if:

- (1) The fact of [such] the relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of [such] the interested director or directors; or
- (2) The fact of [such] the relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify [such] the contract or transaction by vote or written consent; or
- (3) The contract or transaction is fair and reasonable to the corporation.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies [such] the contract or transaction."

SECTION 25. Section 415-42, Hawaii Revised Statutes, is amended to read as follows:

"[§415-42] **Executive and other committees.** If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in [such] the resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have authority to:

- (1) Authorize distributions;
- (2) Approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders;
- (3) Designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof;
- (4) Amend the bylaws;
- (5) Approve a plan of merger not requiring shareholder approval;
- (6) Authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors; or
- (7) Authorize or approve the issuance or sale of, or any contract to issue or sell, shares or designate the terms of a series of class of shares;

provided that the board of directors having acted regarding general authorization for the issuance or sale of shares, or any contract therefore, and, in the case of a series, the designation thereof, may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which [such] the shares may be issued or sold, including, without limitation, the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares, or a series of a class of shares, with full power in [such] the committee to adopt any final resolution setting forth all of the terms thereof and to authorize the statement of the terms of a series [for filing with] to be delivered to the director for filing under this chapter.

Neither the designation of [any such] the committee, the delegation thereto of authority, nor action by [such] the committee pursuant to such



## ACT 135

authority shall alone constitute compliance by any member of the board of directors, not a member of the committee in question, with [his] the member's responsibility to act in good faith, in a manner [he] the member reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances."

SECTION 26. Section 415-43, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-43] Place and notice of directors' meetings; committee meetings.** Meetings of the board of directors, regular or special, may be held either within or without this State.

Regular meetings of the board of directors or any committee designated thereby may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors or any committee designated thereby shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of [such] the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated thereby need be specified in the notice or waiver of notice of [such] the meeting unless required by the bylaws.

Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of [such] the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting."

SECTION 27. Section 415-44, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-44] Action by directors without a meeting.** Unless otherwise provided by the articles of incorporation or bylaws, any action required or permitted to be taken at any meeting of the directors may be taken without a meeting if all of the directors or of a committee of the directors or all of the members of the committee, as the case may be, sign a written consent setting forth the action taken or to be taken at any time before or after the intended effective date of [such] the action. [Such] The consent shall be filed with the minutes of the directors' meetings or committee meetings, as the case may be, and shall have the same effect as a unanimous vote."

SECTION 28. Section 415-45, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-45] Distributions to shareholders.** Subject to any restrictions in the articles of incorporation, the board of directors may authorize and the corporation may make distributions, except that no distribution may be made if, after giving effect thereto, either:

- (1) The corporation would be unable to pay its debts as they become due in the usual course of its business; or

- (2) The corporation's total assets would be less than the sum of its total liabilities and [( ), unless the articles of incorporation otherwise permit( )], the maximum amount that then would be payable, in any liquidation, in respect of all outstanding shares having preferential rights in liquidation.

Determinations under paragraph (2) may be based upon (A) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, or (B) a fair valuation or other method that is reasonable in the circumstances.

In the case of a purchase, redemption, or other acquisition of a corporation's shares, the effect of a distribution shall be measured as of the date[,] money or other property is transferred or debt is incurred by the corporation, or as of the date the shareholder ceases to be a shareholder of the corporation with respect to [such] the shares, whichever is earlier. In all other cases, the effect of a distribution shall be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization.

Indebtedness of a corporation incurred or issued to a shareholder in a distribution in accordance with this section shall be on a parity with the indebtedness of the corporation to its general unsecured creditors except to the extent subordinated by agreement."

SECTION 29. Section 415-48, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-48] Liabilities of directors in certain cases.** In addition to any other liabilities, a director who votes for or assents to any distribution contrary to the provisions of this chapter, or contrary to any restrictions contained in the articles of incorporation, shall, unless the director complied with the standard provided for in this chapter for the performance of the duties of directors, be liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount of such dividend which is paid or the value of [such] the distribution in excess of the amount of [such] the distribution which could have been made without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

Any director against whom a claim shall be asserted under or pursuant to this section for the making of a distribution and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such distribution, knowing [such] the distribution to have been made in violation of this chapter, in proportion to the amounts received by them.

Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from any other directors who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided for in this chapter for the performance of duties of directors. Nothing in this chapter shall [be deemed to] prohibit the distribution of assets to shareholders permitted or authorized by the Federal Housing Commissioner by any corporation organized for the purpose of providing housing for rent pursuant to regulations of the Federal Housing Commissioner under the provisions of Title VIII of the National Housing Act, as amended, where the principal assets of the corporation consist of real property belonging to the United States and leased to the corporation pursuant to Title VIII of the National Housing Act as amended or supplemented from time to time."

## ACT 135

SECTION 30. Section 415-49, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-49] Provisions relating to actions by shareholders.** No action shall be brought in this State by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefore at the time of the transaction of which the plaintiff complains, or the plaintiff's shares or voting trust certificates thereafter devolved upon the plaintiff by operation of law from a person who was a holder of record at [such] that time.

In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of [such] the corporation or of voting trust certificates therefore, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of [such] the action.

In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five per cent of the outstanding shares of any class of [such] the corporation or of voting trust certificates therefore, unless the shares or voting trust certificates so held have a market value in excess of \$25,000, the corporation in whose right [such] the action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with [such] the action or may be incurred by other parties named as defendant for which it may become legally liable. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that the intervenor becomes a party to the action. The amount of [such] the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The corporation shall have recourse to [such] the security in such amount as the court having jurisdiction shall determine upon the termination of [such] the action, whether or not the court finds the action was brought without reasonable cause."

SECTION 31. Section 415-50, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-50] Officers.** The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected or appointed by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same [person;] individual; provided that every corporation shall have not less than two [persons] individuals as officers.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws."

SECTION 32. Section 415-52, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-52] Books and records.** Each corporation shall keep accurate and complete books and records of account and shall keep and maintain at its principal [offices,] office, or such other place as its board of directors may order, minutes of the proceedings of its shareholders and board of directors. The books and records of account shall include accounts of the corporation's assets, liabilities, receipts, disbursements, gains, and losses. The minutes of the proceedings of the shareholders and board of directors of the corporation shall show, as to each meeting of the shareholders or the board of directors, the time and place thereof, whether regular or special, whether notice thereof was given, and if so in what manner, the names of those present at directors' meetings, the number of shares present or represented at shareholders' meetings, and the proceedings at each meeting.

In every corporation incorporated under this chapter, the board of directors of the corporation[,] shall cause a book to be kept for registering the names of all persons who are or shall become shareholders of the corporation, showing the number of shares of stock held by them respectively, and the time when they respectively [become] became the owner of the shares. The book shall be [opened] open at all reasonable times for the inspection of the shareholders. The secretary or the person having the charge thereof shall give a certified transcript of anything therein contained to any shareholder applying therefor provided that the shareholder pays a reasonable charge for the preparation of the certified transcript. The transcript shall be legal evidence of the facts therein set forth in any suit by or against the corporation.”

SECTION 33. Section 415-53, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-53] Incorporators.** One or more [persons, or a domestic or foreign corporation,] individuals may act as incorporator or incorporators of a corporation by signing and delivering to the director for filing articles of incorporation for [such] the corporation.”

SECTION 34. Section 415-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The articles of incorporation shall be delivered to and filed by the director [pursuant to section 415-55] and shall set forth:

- (1) The name of the corporation[.];
- (2) The period of duration, which may be perpetual[.];
- (3) 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[.];
- (4) The aggregate number of shares which the corporation shall have authority to issue, and, if [such] the shares are to be divided into classes, the number of shares of each class[.];
- (5) 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[.];
- (6) 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[.];

- (7) If any preemptive right is to be granted to shareholders, the provisions therefor[.];
- (8) The [street] mailing address of its initial [registered] or principal office; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service[; and the name of its initial registered agent at such address.];
- (9) The number of directors constituting the initial board of directors and the names and residence addresses of the [persons] individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and [qualify] qualified; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service[.];
- (10) The name, title,<sup>1</sup> and residence address of each [incorporator] officer; provided that where no specific [residence] street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service[.];
- (11) The names of the initial subscribers for shares of each class and the number of shares subscribed for[.];
- (12) The subscription price or prices for 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[.]; and
- (13) 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 35. Section 415-55, Hawaii Revised Statutes is amended to read as follows:

“[**§415-55**] **Filing of documents and effective date.** (a) Any document required to be delivered to the director for filing pursuant to this chapter shall be:

- (1) [Executed] Certified and executed by:
    - (A) [A person] An individual intending to organize a corporation or an incorporator, if the corporation has not been organized; or
    - (B) Two [persons] individuals who are officers of the corporation, if the corporation has been organized; or
    - (C) A majority of incorporators with respect to articles of dissolution delivered pursuant to section 415-82[.]; or
    - (D) Any person or persons as the court shall designate or appoint in a reorganization or bankruptcy proceeding or other court proceeding; and<sup>1</sup>
  - (2) Delivered to the director.
- (b) If the director finds [such] the document sets forth the information required by this chapter, the director shall:
- (1) [Endorse] Stamp the word “Filed” and the [hour, minute, month, day, and year] date of the delivery thereof, and
  - (2) File the document in the director’s office.

(c) The director, however, shall not file a document required by this chapter unless all fees prescribed by this chapter have been paid with respect to [such] the document.

(d) Upon the filing of a document, the document shall become effective as of delivery. Articles of dissolution and amendments to articles of incorporation in a reorganization proceeding may become effective at a [or at such] later date, and articles of merger or consolidation may become effective at a later time and date, as set forth in the instrument, but not more than thirty days after being filed.

[(e) Any person knowingly making a false statement in any document to be filed with the director shall be deemed to be guilty of a violation.]”

SECTION 36. Section 415-56, Hawaii Revised Statutes, is amended to read as follows:

“**[[§415-56]] Effect of issuance of articles of incorporation.** Upon the effective [time and] date of the articles of incorporation, the corporate existence shall begin, and [such] the articles of incorporation shall be prima facie evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this State in a proceeding to cancel or revoke the articles of incorporation or for involuntary dissolution of the corporation.”

SECTION 37. Section 415-57, Hawaii Revised Statutes, is amended to read as follows:

“**[[§415-57] [Organization] Organizational meeting of directors.** After the effective [time and] date of the articles of incorporation, an [organization] organizational meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of a majority of the directors named in the articles of incorporation for the purpose of adopting bylaws, electing officers, and transacting [such] other business as may come before the meeting. The directors calling the meeting shall give at least three days’ notice thereof to each director so named, stating the time and place of the meeting.”

SECTION 38. Section 415-58, Hawaii Revised Statutes, is amended to read as follows:

“**[[§415-58]] Right to amend articles of incorporation.** A corporation may amend its articles of incorporation from time to time, in any and in as many respects as may be desired, so long as its articles of incorporation as amended contain only [such] those provisions which [might] may be lawfully contained in original articles of incorporation at the time of making [such] the amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, [such] the provisions as may be necessary to effect [such] the change, exchange, reclassification, or cancellation.

In particular, and without limitation upon [such] this general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

- (1) To change its corporate name[.];
- (2) To change its period of duration[.];
- (3) To change, enlarge, or diminish its corporate purposes[.];
- (4) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue[.], except that if the aggregate number of authorized shares is

decreased by the corporation's acquisition of its own shares, the decrease shall be as provided in section 415-6;

- (5) To provide, change, or eliminate any provision with respect to the par value of any shares or class of shares[.];
- (6) To exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued[.];
- (7) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued[.];
- (8) To change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares[,] of other classes[.];
- (9) To create new classes<sup>1</sup> or shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued[.];
- (10) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared[.];
- (11) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of [such] the series and the variations in the relative rights and preferences as between the shares of [such] the series[.];
- (12) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established[.];
- (13) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed[.];
- (14) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established[.]; or
- (15) To limit, deny, or grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized."

SECTION 39. Section 415-59, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-59] Procedure to amend articles of incorporation.** Amendments to the articles of incorporation shall be made in the following manner:

- (1) The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders, which may be either the annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. If the corporation has only one class of shares outstanding, an amendment solely to change the number

of authorized shares to effectuate a split of, or stock dividend in, the corporation's own shares, or solely to do so and to change the number of authorized shares in proportion thereto, may be adopted by the board of directors[.]; and the provisions for adoption by shareholders shall not apply, unless otherwise provided by the articles of incorporation. [The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto.]

- (2) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment [of such] or the summary may be included in the notice of [such] the annual meeting.
- (3) With respect to corporations incorporated on or after July 1, [1986,] 1987,<sup>1</sup> at such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.
- (4) With respect to corporations incorporated before July 1, [1986,] 1987,<sup>1</sup> at such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares having voting power. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that said lesser proportion shall not be less than the proportion set forth in paragraph (3) of this section. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting."

SECTION 40. Section 415-60, Hawaii Revised Statutes, is amended to read as follows:

"**[[[§415-60]] Class voting on amendments.** The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

- (1) Increase or decrease the aggregate number of authorized shares of [such] that class[.];
- (2) Effect an exchange, reclassification, or cancellation of all or part of the shares of [such] that class[.];



## ACT 135

- (3) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of [such] that class[.];
- (4) Change the designations, preferences, limitations, or relative rights of the shares of [such] that class[.];
- (5) Change the shares of [such] that class into the same or a different number of shares of the same class or another class or classes[.];
- (6) Create a new class of shares having rights and preferences prior and superior to the shares of [such] that class, or increase the rights and preferences or the number of authorized shares, of any class having rights and preferences prior or superior to the shares of [such] that class[.];
- (7) In the case of a preferred or special class of shares, divide the shares of [such] that class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so[.];
- (8) Limit or deny any existing preemptive rights of the shares of [such] that class[.]; or
- (9) Cancel or otherwise affect dividends on the shares of [such] that class which have accrued but have not been declared."

SECTION 41. Section 415-61, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-61] Articles of amendment.** The articles of amendment shall be delivered to and filed by the director [pursuant to section 415-55,] and shall set forth:

- (1) The name of the corporation[.];
- (2) The amendments so adopted[.] which shall be identified by the numerical or other designation thereof in the articles of incorporation;
- (3) The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued[.];
- (4) The number of shares outstanding, [and] the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote[.];
- (5) The number of shares voted for and against [such] the amendment[.] respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against [such] the amendment, respectively, or if no shares have been issued, a statement to that effect[.]; and
- (6) If [such] the amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected."

SECTION 42. Section 415-63, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-63] Effect of articles of amendment.** No amendment shall affect any existing cause of action in favor of or against [such] the corporation, or any pending suit to which [such] the corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against [such] the corporation under its former name shall abate for that reason."

SECTION 43. Section 415-64, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-64] Restated articles of incorporation.** A domestic corporation may at any time restate its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.

Upon the adoption of [such] the resolution, restated articles of incorporation shall set forth all of the operative provisions of the articles of incorporation as theretofore amended, together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto. The restated articles of incorporation shall be delivered to [and filed by] the director for filing [pursuant to section 415-55].”

SECTION 44. Section 415-65, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-65] Amendment of articles of incorporation in reorganization proceedings.** (a) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of [such] the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided for in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making [such] the amendment.

(b) In particular and without limitation upon [such] this general power of amendment, the articles of incorporation may be amended for such purpose so as to:

- (1) Change the corporate name, period of duration, or corporate purposes of the corporation;
- (2) Repeal, alter, or amend the bylaws of the corporation;
- (3) Change the aggregate number of shares or shares of any class, which the corporation has authority to issue;
- (4) Change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;
- (5) Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and
- (6) Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(c) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

- (1) Articles of amendment approved by decree or order of [such] a court shall be executed and verified on oath in duplicate by such person or persons as the court shall designate or appoint for the

purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title or the proceedings in which the decree or order was entered, and a statement that [such] the decree or order was entered by a court having jurisdiction [of] over the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

- (2) The articles of amendment shall be delivered to and filed by the director [pursuant to section 415-55].

(d) The [amendment] amendments shall become effective upon the effective [time and] date of filing of the articles of amendment by the director without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.”

SECTION 45. Section 415-71, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-71] Procedure for merger.** Any two or more domestic corporations may merge into one of [such] the corporations pursuant to a plan of merger approved in the manner provided for in this chapter.

The board of directors of each corporation shall, by resolution [adopted by each such board], approve a plan of merger setting forth:

- (1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation[.];
- (2) The terms and conditions of the proposed merger[.];
- (3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or of any other corporation held as an asset by any of the constituent corporations or, in whole or in part, into cash or other property[.];
- (4) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by [such] the merger[.]; and
- (5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.”

SECTION 46. Section 415-72, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-72] Procedure for consolidation.** Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided for in this chapter.

The board of directors of each corporation shall, by [a] resolution [adopted by each such board], approve a plan of consolidation setting forth:

- (1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation[.];
- (2) The terms and conditions of the proposed consolidation[.];
- (3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the new corporation [or of any corporation,] or, in whole or in part, into cash or other property[.];
- (4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter[.]; and

- (5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.”

SECTION 47. Section 415-72A, Hawaii Revised Statutes, is amended to read as follows:

“**[[§415-72A]] Procedure for share exchange.** All the issued or all the outstanding shares of one or more classes of any domestic corporation may be acquired through the exchange of all such shares of such class or classes by another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in this chapter.

The board of directors of each corporation shall, by resolution adopted by each [such] board, approve a plan of exchange setting forth:

- (1) The name of the corporation and the jurisdiction in which it is incorporated, the shares of which are proposed to be acquired by exchange, and the name of the corporation to acquire the shares of [such] the corporation in the exchange, which is hereinafter designated as the acquiring corporation[.] and the jurisdiction in which it is incorporated;
- (2) The terms and conditions of the proposed exchange[.];
- (3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation, or, in whole or in part, for cash or other property[.]; and
- (4) Such other provisions with respect to the proposed exchange as are deemed necessary or desirable. The procedure authorized by this section shall not [be deemed to] limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation through a voluntary exchange or otherwise by agreement with the shareholders.”

SECTION 48. Section 415-73, Hawaii Revised Statutes, is amended to read as follows:

“**[[§415-73]] Approval by shareholders.** (a) The board of directors of each corporation in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of [an] a share exchange, upon approving [such] the plan of merger, consolidation, or share exchange, shall, by resolution, direct that the plan be submitted to a vote at a meeting of its shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at [such] the meeting, not less than twenty days before [such] the meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger, consolidation, or share exchange. A copy or a summary of the plan of merger, consolidation, or share exchange, as the case may be, shall be included in or enclosed with [such] the notice.

(b) With respect to corporations incorporated on or after July 1, [1986,] 1987, at [each] such a meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of a majority of each class of the shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if any such plan contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of

## ACT 135

shares to vote as a class and, in the case of an exchange, if the class is included in the exchange.

(c) With respect to corporations incorporated before July 1, [1986,] 1987, at [each] such meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of three-fourths of all the issued and outstanding shares of stock having voting power even though their right to vote is otherwise restricted or denied by the articles, bylaws, or resolutions of any such corporation. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that said lesser proportion shall be not less than the proportion set forth in subsection (b) of this section.

(d) After [such] the approval by a vote of the shareholders of each [such corporation,] of the corporations, and at any time prior to the filing of the articles of merger, consolidation, or share exchange, the merger, consolidation, or share exchange may be abandoned pursuant to provisions therefor, if any, set forth in the plan.

- (e) (1) Notwithstanding the provisions of subsections (a) and (b), submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation shall not be required if:
- (A) The articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger[.];
  - (B) Each holder of shares of the surviving corporation which were outstanding immediately before the effective date of the merger is to hold the same number of shares with identical rights immediately after[.];
  - (C) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued, will not exceed by more than twenty per cent the number of voting shares outstanding immediately before the merger, and
  - (D) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued, will not exceed by more than twenty per cent the number of participating shares outstanding immediately before the merger.
- (2) As used in this subsection:
- (A) "Voting shares" means shares which entitle their holders to vote unconditionally in elections of directors;
  - (B) "Participating shares" means shares which entitle their holders to participate without limitation in [distribution] distributions of earnings or surplus."

SECTION 49. Section 415-74, Hawaii Revised Statutes, is amended to read as follows:

"[§415-74] **Articles of merger or consolidation.** (a) Upon receiving the approvals required by sections 415-71, 415-72, 415-72A, and 415-73,

articles of merger or articles of consolidation shall be delivered to [and filed by] the director for filing pursuant to section 415-55 and shall set forth:

- (1) The plan of merger, or the plan of consolidation[.];
- (2) [As to each corporation, either] Either (A) [the shareholders of which were required to vote thereon, the number of shares outstanding, and, if the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each such class, or (B)] a statement that the vote of shareholders is not required by virtue of section [415-73(d).] 415-73(e), or (B) as to each corporation, the approval of whose shareholders is required, the number of shares outstanding, and, if the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each class; and
- (3) As to each corporation the approval of whose shareholders is required, the number of shares voted for and against [such] the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each [such] class voted for and against [such] the plan, respectively.

(b) The certificate of merger or certificate of consolidation shall be returned to the surviving or new corporation, as the case may be, or its representative."

SECTION 50. Section 415-75, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-75] Merger of subsidiary corporation.** (a) Any corporation owning at least ninety per cent of the outstanding shares of each class of another corporation may merge [such] the other corporation into itself without approval by a vote of the shareholders [or] of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

- (1) The name and jurisdiction of incorporation of the subsidiary corporation and the name and jurisdiction of incorporation of the corporation owning at least ninety per cent of its shares, which is hereinafter designated as the surviving corporation[.]; and
- (2) The manner and basis of converting the shares of the subsidiary corporation into shares, obligations, or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(b) A copy of [such] the plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(c) Articles of merger shall be delivered to [and filed by] the director for filing [pursuant to section 415-55,] and shall set forth:

- (1) The plan of merger;
- (2) The number of outstanding shares of each class of the subsidiary corporation and the number of [such] shares of each class owned by the surviving corporation; and
- (3) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(d) On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares [duplicate originals of] the articles of merger shall be delivered to the director [who shall file them] for filing pursuant to section 415-55."

## ACT 135

SECTION 51. Chapter 415, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§415- Merger of subsidiary corporations.** (a) Any corporation owning at least ninety per cent of the outstanding shares of each class of two or more corporations may deliver to the director for filing articles of merger. The articles of merger shall be signed by any two officers of the parent corporation and any two officers of the surviving subsidiary corporation, and shall set forth:

- (1) The name of the parent corporation owning at least ninety percent of the shares of the subsidiary corporations, the name of the nonsurviving subsidiary corporation, and the name of the surviving subsidiary corporation; and
- (2) The manner and basis of converting the shares of the nonsurviving subsidiary corporation into shares, obligations, or other securities of the surviving subsidiary corporation or of any other corporation or, in whole or in part, into cash or other property.

(b) A copy of the plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(c) Articles of merger shall be delivered to the director for filing and shall set forth:

- (1) The plan of merger;
- (2) The number of outstanding shares of each class of the nonsurviving subsidiary corporation and the number of such shares of each class owned by the surviving subsidiary corporation; and
- (3) The date of the mailing to shareholders of the subsidiary corporations of a copy of the plan of merger.

(d) On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the nonsurviving subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares the articles of merger shall be delivered to the director for filing."

SECTION 52. Section 415-76, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-76] Effect of merger or consolidation.** A merger or consolidation shall become effective upon the effective time and date of filing the articles of merger or consolidation[.], or upon time and date subsequent to the filing as set forth in the articles, but not more than thirty days after being filed.

When a merger or consolidation has become effective:

- (1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation[.];
- (2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease[.];
- (3) [Such] The surviving or new corporation shall have all of the rights, privileges, immunities, and powers and shall be subject to all of the duties and liabilities of a corporation organized under this chapter[.];
- (4) [Such] The surviving or new corporation shall thereupon and thereafter possess all of the rights, privileges, immunities, and

franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other [chooses] chooses in action, and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and [deemed to be] transferred to and vested in [such] the single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of [such] the corporations shall not revert or be [in any way] impaired in any way by reason of [such] the merger or consolidation[.];

- (5) [Such] The surviving or new corporation shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of [such] the corporations may be prosecuted as if [such] the merger or consolidation had not taken place, or [such] the surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by [such] the merger or consolidation[.]; and
- (6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

When a merger or consolidation has become effective, the shares of the corporation or corporations party to the plan that are, under the terms of the plan, to be converted, shall cease to exist, in the case of a merger or consolidation, and the holders of [such] the shares shall thereafter be entitled only to the shares, obligations, other securities, cash, or other property into which they shall have been converted, in accordance with the plan, subject to any rights under section 415-80 [of this chapter].”

SECTION 53. Section 415-77, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-77] Merger, consolidation, or share exchange [of shares] between domestic and foreign corporations.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated, or participate in [an] a share exchange, in the following manner, if [such] the merger, consolidation, or share exchange is permitted by the laws of the state under which each [such] foreign corporation is organized:

- (1) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger, consolidation, or share exchange, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized[.]; and
- (2) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this State, it shall comply with the provisions of this chapter with respect to



foreign corporations if it is to transact business in this State, and in every case it shall file with the director of this State:

- (A) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to [such] the merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of [any such] the domestic corporation against the surviving or new corporation;
- (B) An irrevocable appointment of [the director] a resident of this State as its agent to accept service of process in any such proceeding; and
- (C) An agreement that it will promptly pay to the dissenting shareholders of [any such] the domestic corporation[,] the amount, if any, to which they shall be entitled under provisions of this chapter with respect to the rights of dissenting shareholders .”

SECTION 54. Section 415-79, Hawaii Revised Statutes, is amended to read as follows:

“**[“§415-79] Sale of assets other than in regular course of business.** A sale, lease, exchange, or other disposition of all or substantially all[,] of the property and assets, with or without the good will of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations, or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

- (1) The board of directors shall adopt a resolution recommending [such] the sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting[.];
- (2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at [such] the meeting, not less than twenty days before [such] the meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition[.];
- (3) With respect to corporations incorporated on or after July 1, 1987, at such meeting the shareholders may authorize [such] the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. [Such] The authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event [such] the authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon[.];
- (4) With respect to corporations incorporated before July 1, 1987, at such meeting the shareholders may authorize [such] the sale,

lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefore. [Such] The authorization shall require the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event [such] the authorization shall require the affirmative vote of the holders of three-fourths of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that said lesser proportion shall [be] not be less than the proportion set forth in paragraph (3) of this section[.]; and

- (5) After [such] the authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon [such] the sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders."

SECTION 55. Section 415-80, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-80] Right of shareholders to dissent.** (a) Any shareholder of a corporation shall have the right to dissent from, and to obtain payment for his shares in the event of, any of the following corporate actions:

- (1) Any plan of merger or consolidation to which the corporation is a party, except as provided in subsection (c);
- (2) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale;
- (3) Any plan of exchange to which the corporation is a party as the corporation the shares of which are to be acquired;
- (4) Any amendment of the articles of incorporation which materially and adversely affects the rights appurtenant to the shares of the dissenting shareholder in that it:
  - (A) Alters or abolishes a preferential right of [such] the shares;
  - (B) Creates, alters, or abolishes a right in respect of the redemption of [such] the shares, including a provision respecting a sinking fund for the redemption or repurchase of [such] the shares;
  - (C) Alters or abolishes a preemptive right of the holder of [such] the shares to acquire shares or other securities; or
  - (D) Excludes or limits the right of the holder of [such] the shares to vote on any matter, or to cumulate his votes, except as [such] the right may be limited by dilution through the issuance of shares or other securities with similar voting rights; or

- (5) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws, or a resolution of the board of directors directs that dissenting shareholders shall have a right to obtain payment for their shares.
- (b) (1) A record holder of shares may assert dissenters' rights as to less than all of the shares registered in his name only if he dissents with respect to all the shares beneficially owned by any one person, and discloses the name and address of the person or persons on whose behalf he dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.
- (2) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his behalf, and shall be treated as a dissenting shareholder under the terms of this section and section 415-31 if he submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.
- (c) The right to obtain payment under this section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of [such] the corporation is not necessary to authorize [such] the merger.
- (d) A shareholder of a corporation who has a right under this section to obtain payment for his shares shall have no right at law or in equity to attack the validity of the corporate action that gives rise to his right to obtain payment<sup>1</sup> nor to have the action set aside or rescinded, except when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation."

SECTION 56. Section 415-81, Hawaii Revised Statutes, is amended by amending subsections (a), (c), (d), (h), and (j) to read as follows:

"(a) As used in this section:

[(1)] "Dissenter" means a shareholder or beneficial owner who is entitled to and does assert dissenters' rights under section 415-80, and who has performed every act required up to the time involved for the assertion of such rights.

[(2)] "Corporation" means the issuer of the shares held by the dissenter before the corporate action, or the successor by merger or consolidation of that issuer.

[(3)] "Fair value" of shares means their value immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of [such] the corporate action unless [such] the exclusion would be inequitable.

[(4)] "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans, or, if none, at such rate as is fair and equitable under all of the circumstances.

(c) If the proposed corporate action is submitted to a vote at a meeting of shareholders, any shareholder who wishes to dissent and obtain payment for the shareholder's shares must file with the corporation, prior to the vote, a written notice of intention to demand that the shareholder be paid fair compensation for the shareholder's shares if the proposed action is effectuated<sup>1</sup> and shall refrain from voting the shareholder's shares in approval of [such] the action. A shareholder who fails in either respect shall acquire no

right to payment for the shareholder's shares under this section or section 415-80.

(d) If the proposed corporate action is approved by the required vote at a meeting of shareholders, the corporation shall mail a further notice to all shareholders who gave due notice of intention to demand payment and who refrained from voting in favor of the proposed action. If the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send to all shareholders who are entitled to dissent and demand payment for their shares a notice of the adoption of the plan of corporate action. The notice shall: (1) state where and when a demand for payment must be sent and certificates of certificated shares must be deposited in order to obtain payment; (2) inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received; (3) supply a form for demanding payment which includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares; and (4) be accompanied by a copy of sections 415-80 and 415-81 of this chapter. The time set for the demand and deposit shall [be] not be less than thirty days from the mailing of the notice.

- (h) (1) [Within] Not more than sixty days after receiving a demand for payment pursuant to subsection (g), if any such demands for payment remain unsettled, the corporation shall file in an appropriate court a petition requesting that the fair value of the shares and interest thereon be determined by the court.
- (2) An appropriate court shall be a court of competent jurisdiction in the county of this State where the registered office of the corporation is located. If, in the case of a merger or consolidation or share exchange [of shares], the corporation is a foreign corporation without a registered office in this State, the petition shall be filed in the county where the registered office of the domestic corporation was last located.
- (3) All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the petition shall be served on each [such] dissenter; if a dissenter is a nonresident, the copy may be served on the dissenter by registered or certified mail or by publication as provided by law.
- (4) The jurisdiction of the court shall be plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or in any amendment thereof. The dissenters shall be entitled to discovery in the same manner as parties in other civil suits.
- (5) All dissenters who are made parties shall be entitled to judgment for the amount by which the fair value of their shares is found to exceed the amount previously remitted, with interest.
- (6) If the corporation fails to file a petition as provided in paragraph (1) of this subsection, each dissenter who made a demand and who has not already settled the dissenter's claim against the corporation shall be paid by the corporation the amount demanded by the dissenter, with interest, and may sue therefor in an appropriate court.
- (j) (1) Notwithstanding the foregoing provisions of this section, the corporation may elect to withhold the remittance required by

subsection (f) from any dissenter with respect to shares of which the dissenter (or the person on whose behalf the dissenter acts) was not the beneficial owner on the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. With respect to such shares, the corporation shall, upon effectuating the corporate action, state to each dissenter its estimate of the fair value of the shares, state the rate of interest to be used (explaining the basis thereof), and offer to pay the resulting amounts on receiving the dissenter's agreement to accept them in full satisfaction.

- (2) If the dissenter believes that the amount offered is less than the fair value of the shares and interest determined according to this section, the dissenter may within thirty days after the date of mailing of the corporation's offer, mail to the corporation the dissenter's own estimate of fair value and interest, and demand their payment. If the dissenter fails to do so, the dissenter shall be entitled to no more than the corporation's offer.
- (3) If the dissenter makes a demand as provided in paragraph (2), the provisions of subsections (h) and (i) shall apply to further proceedings on the dissenter's demand."

SECTION 57. Section 415-82, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-82] Voluntary dissolution by incorporators.** A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time in the following manner:

Articles of dissolution shall be delivered to [and filed by] the director for filing [pursuant to section 415-55,] and shall set forth:

- (1) The name of the corporation[.];
- (2) The date of [issuance of] its [certificate of] incorporation[.];
- (3) That none of its shares has been issued[.];
- (4) That the corporation has not commenced business[.];
- (5) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses has been returned to those entitled thereto[.];
- (6) That no debts of the corporation remain unpaid[.]; and
- (7) That a majority of the incorporators elect that the corporation be dissolved.

[After] Upon the filing of the articles of dissolution, [the director shall issue a certificate of dissolution. Upon the issuance of such certificate of dissolution by the director,] the existence of the corporation shall cease."

SECTION 58. Section 415-83, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-83] Voluntary dissolution by consent of shareholders.** A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

Upon the execution of [such] the written consent, a statement of intent to dissolve shall set forth:

- (1) The name of the corporation[.];
- (2) The names and respective residence addresses of its officers[.];
- (3) The names and respective residence addresses of its directors[.];
- (4) A copy of the written consent signed by all shareholders of the corporation[.]; and

- (5) A statement that [such] the written consent has been signed by all shareholders of the corporation."

SECTION 59. Section 415-84, Hawaii Revised Statutes, is amended to read as follows:

"**[[§415-84]] Voluntary dissolution by act of corporation.** A corporation may be dissolved by the act of the corporation, when authorized, in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of [such] the dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting[.];
- (2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, that one of the purposes[.] of [such] the meeting is to consider the advisability of dissolving the corporation[.];
- (3) With respect to corporations incorporated on or after July 1, 1987, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. [Such] The resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon[.];
- (4) With respect to corporations incorporated before July 1, 1987, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. [Such] The resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that said lesser proportion shall [be] not be less than the proportion set forth in paragraph (3) of this section[.]; and
- (5) Upon the adoption of [such] the resolution, a statement of intent to dissolve shall set forth:
  - (A) The name of the corporation[.];
  - (B) The names and respective residence addresses of its officers[.];
  - (C) The names and respective residence addresses of its directors[.];

- (D) A copy of the resolution adopted by [all] the shareholders authorizing the dissolution of the corporation[.];
- (E) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each [such] class[.]; and
- (F) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.”

SECTION 60. Section 415-86, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-86] Effect of the statement of intent to dissolve.** Upon the effective [time and] date of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until [a certificate of dissolution has been issued by the director] articles of dissolution are delivered to the director for filing or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as provided in this chapter [provided].”

SECTION 61. Section 415-87, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-87] Procedure after filing of statement of intent to dissolve.** After the filing by the director of a statement of intent to dissolve:

- (1) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation[.];
- (2) The corporation shall forthwith publish, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State, notice thereof to all creditors of the corporation. The corporation, with the approval of the director, may omit the publication of the notice if the corporation has insufficient assets to pay for the publication;
- (3) The corporation shall proceed to collect its assets, convey, and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests[.]; and
- (4) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the state and judicial subdivision in which the registered office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court as provided in this chapter.”

SECTION 62. Section 415-88, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-88] Revocation of voluntary dissolution proceedings by consent of shareholders.** By the written consent of all of its shareholders, a corporation may, at any time prior to the [issuance of a certificate] filing the

articles of dissolution by the director, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall set forth:

- (1) The name of the corporation[.];
- (2) The names and respective addresses of its officers[.];
- (3) The names and respective addresses of its directors[.];
- (4) A copy of the written consent signed by all shareholders of the corporation revoking [such] the voluntary dissolution proceedings[.]; and
- (5) That [such] the written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized."

SECTION 63. Section 415-89, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-89] Revocation of voluntary dissolution proceedings by act of corporation.** By the act of the corporation, a corporation may, at any time prior to the [issuance of a certificate] filing the articles of dissolution by the director, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of [such] the revocation be submitted to a vote at a special meeting of shareholders[.];
- (2) Written notice, stating that the purpose or one of the purposes of [such] the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at [such] the meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders[.];
- (3) At [such] the meeting, a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon[.] and shall be adopted in the same manner as the dissolution was authorized in section 415-84, and
- (4) Upon the adoption of [such] the resolution, a statement of revocation of voluntary dissolution proceedings shall set forth:
  - (A) The name of the corporation[.];<sup>1</sup>
  - (B) The names and respective addresses of its officers[.];
  - (C) The names and respective addresses of its directors[.];
  - (D) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings[.];
  - (E) The number of shares outstanding[.]; and
  - (F) The number of shares voted for and against the resolution, respectively."

SECTION 64. Section 415-92, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-92] Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the



corporation have been distributed to its shareholders, articles of dissolution verified on oath by two officers shall set forth:

- (1) The name of the corporation[.];
- (2) That the director has theretofore filed a statement of intent to dissolve the corporation and the date on which [such] the statement was filed[.];
- (3) [That] The dates that notice of the filing of the statement of intent to dissolve the corporation [has been] was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State[.] or that publication of notice had been waived by the director;
- (4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor[.];
- (5) That all of the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests[.]; and
- (6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit."

SECTION 65. Section 415-93, Hawaii Revised Statutes, is amended to read as follows:

"**[§415-93] Filing of articles of dissolution.** Articles of dissolution shall be delivered to [and filed by] the director for filing [pursuant to section 415-55]. [After] Upon the filing of the articles of dissolution[, the director shall issue a certificate of dissolution. Upon the issuance of such certificate of dissolution] or upon a date subsequent to the filing as set forth in the articles, but not more than thirty days after being filed, the existence of the corporation shall cease, except for the purpose of actions, other proceedings and appropriate corporate action by shareholders, directors, and officers as provided in this chapter."

SECTION 66. Section 415-94, Hawaii Revised Statutes, is amended to read as follows:

"**[§415-94] Involuntary dissolution.** A corporation may be dissolved involuntarily when it is established that:

- (1) The corporation has failed to file its annual report [within the time required by this chapter;] for a period of two years; or
- (2) The corporation procured its articles of incorporation through fraud; or
- (3) The corporation has continued to exceed or abuse the authority conferred upon it by law; or
- [(4) The corporation has failed for thirty days to appoint and maintain a registered agent in this State; or
- (5) The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the director a statement of such change; or
- (6)] (4) The corporation has failed to complete voluntary dissolution within [five] two years[; or
- (7) The corporation has been adjudicated bankrupt; or
- (8) The corporation's articles of incorporation have expired and the corporation has not attempted to renew or extend the articles for two years]."

SECTION 67. Section 415-95, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-95] Involuntary; ordered by director and certificates, notices[, etc.]; reinstatement.** (a) Whenever the director [shall certify] certifies the name of a corporation as having given any cause for dissolution pursuant to section 415-94, the director may [disincorporate the corporation or annul the articles of incorporation of the corporation and] declare the corporation dissolved[, after giving notice of the intention to dissolve the corporation by mailing to the corporation at its last known address appearing in the records of the director and by publishing notice of such intention once in each of three successive weeks (three publications) in a newspaper of general circulation published in the State]. Before the director may declare a corporation dissolved, the director shall:

- (1) Give notice of the ground or grounds for dissolution as provided in section 415-94, by mailing the notice to the corporation at its last known address appearing in the records of the director; and
- (2) Give notice of the intention to dissolve the corporation by publishing the notice once in each of three successive weeks (three publications) in a newspaper of general circulation published in the State.

(b) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If [any such corporation is declared dissolved any] a trustee is appointed [to settle the affairs of the corporation], the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section 415-135.<sup>1</sup> If a trustee is not appointed by a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved corporation with full powers to settle its affairs.

(c) The director shall, in each case, deliver a copy of the decree of dissolution to the director of taxation and to the finance officer of each county.

(d) In each case where the director has given a corporation notice of intention to dissolve the corporation on the grounds that its articles of incorporation have been procured through fraud, the corporation shall be entitled to petition for an administrative hearing under chapter 91 and shall give written notice to the director thereof, before the director may declare the corporation dissolved under subsection (a) of this section.

(e) Within ninety days after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfilled. Within the ninety-day period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation or partnership, or should such name or a name substantially identical thereto be registered as a trade name, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved corporation pursuant to the amendment provisions of this chapter.

(f) A corporation whose articles of incorporation have expired shall cease to exist by operation of law.”

SECTION 68. Section 415-96, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-96] Equal division of directors; appointment of provisional director; qualifications; rights and powers; compensation.** (a) If a corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted [to advantage] advantageously or so that there is danger that its property and business will be impaired or lost, [a first] any circuit judge may, notwithstanding any provisions of the articles or bylaws and whether or not an action is pending for an involuntary dissolution of the corporation, appoint a provisional director pursuant to this section. Action for such appointment may be brought by any director or by shareholders holding not less than [thirty-three and] one-third [per cent] of the voting power.

(b) A provisional director shall be an impartial person, who is neither a shareholder or member, nor a creditor, nor officer of the corporation, nor related by consanguinity or affinity within the third degree according to the common law to any of the other directors of the corporation or to any judge of the court by which [such] the provisional director is appointed. A provisional director shall have all of the rights and powers of a director until the deadlock in the board or among the shareholders or members is broken or until [such] the provisional director is removed by order of the court or by approval of shareholders or members holding a majority of the voting power. [Such person] A provisional director shall be entitled to such compensation as shall be fixed by the court unless otherwise agreed with the corporation.”

SECTION 69. Section 415-97, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-97] Jurisdiction of court to liquidate assets and business of corporation.** The [courts] court shall have full power to liquidate the assets and business of a corporation:

- (1) In an action by a shareholder when it is established:
  - (A) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
  - (B) That the acts of the directors or those in control of the corporation are illegal, or fraudulent; or
  - (C) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
  - (D) That the corporate assets are being misapplied or wasted[.]; or
- (2) In an action by a creditor:
  - (A) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or
  - (B) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent[.]; or
- (3) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court[.]; or

- (4) When an action has been filed by the director to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

Proceedings under paragraph (1), (2), or (3) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally."

SECTION 70. Section 415-98, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-98] Procedure in liquidation of corporation by court.** In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.

After a hearing held upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. [Such] The liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of [such] the liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing [such] the liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in the receiver's own name as receiver of [such] the corporation. The court appointing [such] the receiver shall have exclusive jurisdiction [of] over the corporation and its property, wherever situated."

SECTION 71. Section 415-102, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-102] Decree of involuntary dissolution.** In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of [such] the proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge [such] the costs, expenses, debts, and obligations, all of the property and assets have been applied so far as they will go to their payment, the court shall enter a decree

## ACT 135

dissolving the corporation, whereupon the existence of the corporation shall cease.”

SECTION 72. Section 415-103, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-103] Filing of decree of dissolution.** In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of [such] the court to cause a certified copy of the decree to be [filed with] delivered to the director[.] for filing. No fee shall be charged by the director for the filing thereof.”

SECTION 73. Section 415-105, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-105] Survival of remedy after dissolution.** The dissolution of a corporation either (1) by the [issuance of a certificate] filing of the articles of dissolution by the director[.]; or (2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against [such] the corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to [such] the dissolution if an action or other proceeding thereon is commenced within two years after the date of [such] the dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take [such] the corporate or other action as shall be appropriate to protect such remedy, right, or claim. If [such] the corporation was dissolved by the expiration of its period of duration, [such] the corporation may amend its articles of incorporation at any time during [such period of two years] the two-year period so as to extend its period of duration.”

SECTION 74. Section 415-106, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-106] Admission of foreign corporation.** (a) No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority [so to do] from the director. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this State any business which a corporation organized under this chapter is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or [county] country under which [such] the corporation is organized governing its organization and internal affairs differ from the laws of this State, and nothing contained in this chapter [contained,] shall be construed to authorize this State to regulate the organization or the internal affairs of [such] a foreign corporation.

(b) Without excluding other activities which may not constitute transacting business in this State, a foreign corporation shall not be considered to be transacting business in this State, for the purposes of this chapter, by reason of carrying on in this State any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes[.];
- (2) Holding meetings 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 trustees or depositaries 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 [such] the orders require acceptance without this State before becoming binding contracts[.];
- (7) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in 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[.]; or
- (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.

(c) A foreign financial institution whose principal office is not within the State and which is federally or state-chartered and federally-insured, which by law is subject to periodic examination by its regulatory authority and to the requirement of periodic audit, shall not be considered to be doing business in this State by reason of engaging in the advertising or solicitation of savings accounts or investment or other certificates in this State by mail, radio, television, magazines, newspapers or any other media that are published or circulated within this State; provided that in any advertising or solicitation by mail, or in any media which is directed primarily to persons in this State, there shall be a conspicuous statement made that the institution is not supervised or regulated by this State. Such financial institution shall not thereby become subject to chapters 401, 402, 403, 406, 407 or 408. This subsection shall not apply to any financial institution doing business in Hawaii, chartered or licensed pursuant to chapters 401, 402, 403, 406, 407 or 408."

SECTION 75. Section 415-107, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-107] Powers of foreign corporation.** A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which [such] the certificate of authority is issued; and, except as [in this chapter] otherwise provided[,], in this chapter, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character."

SECTION 76. Section 415-108, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-108] Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless [the] its corporate name [of such corporation]:

- (1) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one of such words, or such corporation shall, for use in this State, add at the end of its name one of such words or an abbreviation thereof;

- (2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking and insurance;
- (3) Shall (1) Is not [be] the same as, or [deceptively similar] substantially identical to, the name of any domestic corporation or partnership [or trade name] existing [or registered] under the laws of this State or any foreign corporation or partnership [or trade name] authorized to transact business in this State, [or] trade name registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the director any one of the following:
  - (A) The written consent of such other corporation or holder of a reserved or registered name to use the same or [deceptively similar] substantially identical name and one or more words are added to make [such] the name distinguishable from [such] the other name; or
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of [such] the foreign corporation to the use of [such] the name in this State[.]; and
- (2) Is transliterated into letters of the English alphabet, if the name is not in English.

SECTION 77. Section 415-109, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-109] Change of name by foreign corporation.** (a) Whenever a foreign corporation which is authorized to transact business in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the [certificate of authority of such corporation shall be suspended and it] foreign corporation shall not thereafter transact any business in this State until it has changed its name to a name which is available to it under the laws of this State or has otherwise complied with the provisions of this chapter.

(b) If a foreign corporation is unable to change its name to a name which is available to it under the laws of this State, it may deliver to the director a copy of a certificate of registration of a trade name for the foreign corporation's file and thereafter become authorized to transact business in the State under that name.”

SECTION 78. Section 415-110, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-110] Application for certificate of authority.** [A foreign corporation in order to] To procure a certificate of authority to transact business in this State, a foreign corporation should make application therefor to the director, which application shall set forth:

- (1) The name of the corporation and the [state or country under the laws of] jurisdiction in which it is incorporated;
- [(2) If the name of the corporation does not contain the word “corporation,” “incorporated,” or “limited,” or does not contain an

abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State;

- (3)] (2) The date of incorporation and the period of duration of the corporation;
- [(4)] (3) The mailing address of the principal office of the corporation in the [state or country under the law of] jurisdiction in which it is incorporated;
- [(5)] (4) The street address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at [such] that address;
- [(6)] (5) The primary specific purpose and such other purposes of the corporation which it proposes to pursue in the transaction of business in this State;
- [(7)] (6) The names and respective addresses of the directors and officers of the corporation;
- [(8)] A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class;
- (9) A statement of the aggregate number of issued shares itemized by classes and by series, if any, within each class;
- [(10)] (7) An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this State during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during [such] that year, and an estimate of the gross amount thereof which will be transacted by the corporation at or from places of business in this State during such year; and<sup>1</sup>
- [(11)] (8) [Such] Any additional information as may be necessary or appropriate [in order] to enable the director to determine whether [such] the corporation is entitled to a certificate of authority to transact business in this State [and to determine and assess the fees payable as in this chapter prescribed]. [Such] The application shall be made on forms prescribed and furnished by the director which shall be delivered to [and filed by] the director [pursuant to section 415-55.] for filing."

SECTION 79. Section 415-111, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-111]] Filing of application for certificate of authority.** The application of the corporation for a certificate of authority shall be delivered to the director, together with a [copy of its articles of incorporation and all amendments thereto, and a] certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which it is incorporated. If the certificate of good standing is in a foreign language, a translation under the oath of the translator shall accompany the certificate."

SECTION 80. Section 415-112, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-112]] Effect of certificate of authority.** After filing the application for certificate of authority, the director shall issue a certificate of authority. Upon the issuance of a certificate of authority by the director[,] which shall be effective as of the date the application is delivered to the



## ACT 135

director for filing, the corporation shall be authorized to transact business in this State for those purposes set forth in its application, subject, however, to the right of this State to suspend or to revoke such authority as provided in this chapter."

SECTION 81. Section 415-113, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-113] Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to transact business in this State shall have and continuously maintain in this State:

- (1) A registered office which may [be], but need not, be[,] the same as its place of business in this State; and
- (2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with [such] the registered office, or a domestic corporation[, or a foreign corporation authorized to transact business in this State,] having a business office identical with [such] the registered office."

SECTION 82. Section 415-114, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-114] Change of registered office or registered agent of foreign corporation.** A foreign corporation authorized to transact business in this State may change its registered office or change its registered agent, or both, upon [filing in the office of] delivery to the director for filing a statement setting forth:

- (1) The name of the corporation[.];
- (2) The address of its then registered office[.];
- (3) If the address of its registered office be changed, the address to which the registered office is to be changed[.];
- (4) The name of its then registered agent[.];
- (5) If its registered agent be changed, the name of its successor registered agent[.];
- (6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical[.]; and
- (7) That [such] the change was authorized by resolution duly adopted by its board of directors.

[Such] The statement shall be delivered to and filed by the director [pursuant to section 415-55].

Any registered agent of a foreign corporation may resign as [such] agent upon delivery to the director for<sup>1</sup> filing a written notice [thereof] of resignation,<sup>1</sup> executed in duplicate[, with the director, who]. The director<sup>1</sup> shall [forthwith] mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of [such] the<sup>1</sup> agent shall terminate upon the expiration of thirty days after receipt of [such] the notice by the director.

If [a registered agent changes the registered agent's or its] the business address of a registered agent is changed to another place within [the same county,] this State, the registered agent [or it] may change [such] the address and the address of the registered office of any corporation [of] for which the registered agent [or it is a registered agency] acts by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to the provisions of paragraphs (5) or (7) and must recite that a copy of the statement has been mailed to the corporation."

SECTION 83. Section 415-116, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-116] Amendment to articles of incorporation of foreign corporation.** Whenever the [articles of incorporation] name of a foreign corporation authorized to transact business in this State [are amended, such] is changed by the amendment of its articles of incorporation, the foreign corporation shall, within thirty days after [such] the amendment becomes effective, [file in the office of] deliver to the director [a copy of such amendment] a certificate evidencing the name change, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this State, nor authorize such corporation to transact business in this State under any other name than the name set forth in its certificate of authority]. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.”

SECTION 84. Section 415-117, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-117] Merger of foreign corporation authorized to transact business in this State.** (a) Whenever a foreign corporation authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and [such] the foreign corporation shall be the surviving corporation, it shall, within thirty days after [such] the merger becomes effective, [file with] deliver to the director a [copy of the articles of merger] certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which [such] the statutory merger was effectuated; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this State unless the name of such corporation is changed thereby or unless the corporation desires to pursue in this State other or additional purposes than those which it is then authorized to transact in this State]. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving corporation is changed thereby. If the certificate is in a foreign language a translation under oath of the translator shall accompany the certificate.

(b) Whenever a foreign corporation authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and that corporation shall not be the surviving corporation, the surviving corporation shall, within thirty days after the merger becomes effective, deliver to the director for filing a certificate evidencing the merger in the form prescribed by subsection (a), together with an application for withdrawal of the merged foreign corporation in accordance with section 415-119 executed by the surviving corporation on behalf of the merged foreign corporation.

(c) If the surviving corporation in a merger is to be governed by the laws of any state other than this State, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this State.”

SECTION 85. Section 415-119, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-119] Withdrawal of foreign corporation.** A foreign corporation authorized to transact business in this State may withdraw from the

## ACT 135

State upon procuring from the director a certificate of withdrawal. In order to procure [such] a certificate of withdrawal, [such] the foreign corporation shall deliver to the director an application for withdrawal, which shall set forth:

- (1) The name of the foreign corporation and the state or country under the laws of which it is incorporated[.];
- (2) That the foreign corporation is not transacting business in this State[.];
- (3) That the foreign corporation surrenders its authority to transact business in this State[.];
- (4) That the foreign corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to transact business in this State may thereafter be made on [such] the corporation by service thereof on the director[.];
- (5) The dates that notice of the foreign corporation's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State. The foreign corporation, with the approval of the director, may omit the publication of the notice if the corporation has insufficient assets to pay for the publication;
- (6) That all taxes, debts, obligations, and liabilities of the foreign corporation in the State have been paid and discharged or that adequate provision has been made therefore;
- [(5)] (7) A [post office] mailing address to which the director may mail a copy of any process against the foreign corporation that may be served on the director[.];
- [(6)] A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, and series, if any, within each class, as of the date of such application[.];
- (7) A statement of the aggregate number of issued shares, itemized by classes and series, if any, within each class, as of the date of such application[.]; and<sup>1</sup>
- (8) Such additional information as may be necessary or appropriate in order to enable the director to determine and assess any unpaid fees payable by [such] the foreign corporation as in this chapter prescribed.

The application for withdrawal shall be made on forms prescribed and furnished by the director and shall be delivered to and filed by the director [pursuant to section 415-55].”

SECTION 86. Section 415-120, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-120] Certificate of withdrawal.** After the filing of the application of withdrawal, the director shall issue a certificate of withdrawal which shall be effective as of the date of the filing of the application of withdrawal, and [upon the issuance of such certificate of withdrawal,] the authority of the foreign corporation to transact business in this State shall cease.”

SECTION 87. Section 415-121, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-121] Revocation of certificate of authority.** The certificate of authority of a foreign corporation to transact business in this State may be revoked by the director upon the conditions prescribed in this section when:

- (1) The corporation has failed to file its annual report [within the time required by this chapter,] for a period of two years, or has failed to pay any fees or penalties prescribed by this chapter when they have become due and payable; or
- (2) The foreign corporation has failed to appoint and maintain a registered agent in this State as required by this chapter; or
- (3) The foreign corporation has failed, for more than thirty days after a change of its registered office or registered agent, to file in the office of the director a statement of [such] the change as required by this chapter; or
- [(4)] (4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by [such] the foreign corporation pursuant to this chapter.

No certificate of authority of a foreign corporation shall be revoked by the director unless (1) the director shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this State, and (2) the corporation [shall fail] has failed prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation.”

SECTION 88. Section 415-122, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-122] Issuance of certificate of revocation.** Upon revoking any [such] certificate of authority, the director shall[:

- (1) Issue] issue a certificate of revocation [in duplicate.] that shall be filed
- [(2)] File one of such certificates] in the director's office[.
- (3) Mail to such corporation at its registered office in this State a notice of such revocation accompanied by the other certificate.

Upon the issuance of such certificate of revocation[,], and the authority of the foreign corporation to transact business in this State shall cease.”

SECTION 89. Section 415-123, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-123] Application to corporations heretofore authorized to transact business in this State.** Foreign corporations which are duly authorized to transact business in this State at the time this chapter takes effect, for a purpose or purposes for which a corporation might secure such authority under this chapter, shall[, subject to the limitations set forth in their respective certificates of authority,] be entitled to all of the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this State under this chapter, and from the time this chapter takes effect such corporations shall be subject to all of the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this State under this chapter.”

SECTION 90. Section 415-124, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-124] Transacting business without certificate of authority.** No foreign corporation transacting business in this State without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this State, until [such] the corporation shall have obtained a certificate of authority. Nor shall any action or proceeding be maintained in any court of this State by any successor or assignee of [such] the corporation on any right, claim, or demand arising out of the transaction of business by [such] the corporation in this State, until a certificate of authority shall have been obtained by [such] the corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of [such] the corporation, and shall not prevent [such] the corporation from defending any action, suit, or proceeding in any court of this State.

A foreign corporation which transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon [such] the corporation had it duly applied for and received a certificate of authority to transact business in this State as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay [such] the fees.

The attorney general shall bring proceedings to recover all amounts due this State under the provisions of this section."

SECTION 91. Section 415-125, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-125] Annual report of domestic and foreign corporations.** Each domestic corporation[,] and each foreign corporation authorized to transact business in this State[,] shall [file,] deliver to the director, within the time prescribed by this chapter, an annual report signed by any authorized officer, or an attorney-in-fact for an officer, or if the corporation is in the hands of a receiver or trustee, by the receiver or trustee setting forth:

- (1) The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated[.];
- (2) The street address of the foreign corporation's registered office [of the foreign corporation] in this State, and the name of its registered agent in this State at such address, and[, in the case of a foreign corporation,] the address of its principal office in the state or country under the laws of which it is incorporated, and, in the case of a domestic corporation, the address of its principal office; provided that if the mailing address of the principal office differs from the street address, or where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service[.];
- (3) A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this State[.];
- (4) The names and respective residence addresses of the directors and officers of the corporation[.]; and the names and respective

addresses of the directors and officers of the foreign corporation; provided that where no specific [residence] street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service[.];

- (5) A statement of the aggregate number of shares which [the] a domestic corporation has authority to issue, itemized by classes and series, if any, within a class[.]; and
- (6) A statement of the aggregate number of [issued] shares issued by a domestic corporation, itemized by classes and series, if any, within each class."

SECTION 92. Section 415-126, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-126] Filing of annual report of domestic and foreign corporations.** (a) [Such] The first annual report of a corporation shall be delivered to the director between [the first day of] January 1 and [the thirty-first day of] March 31 of each year in the case of a domestic corporation, or between [the first day of] January 1 and [the thirtieth day of] June 30 in the case of a foreign corporation, except that the first annual report of a corporation shall be filed between [the first day of] January 1 and [the thirty-first day of] March 31 in the case of a domestic corporation, or between [the first day of] January 1 and [the thirtieth day of] June 30 in the case of a foreign corporation, of the year next succeeding the calendar year in which its [certificate] articles of incorporation or its application for a certificate of authority, as the case may be, [was issued] was filed by the director. [Proof to the satisfaction of the director that prior to the thirty-first day of March in the case of a domestic corporation, or the thirtieth day of June in the case of a foreign corporation, such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement.]

(b) If the director finds that [such] the report conforms to the requirements of this chapter, the director shall file the same. If the director finds that it does not so conform, the director shall return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file [such] the report within the time hereinabove provided shall not apply, if [such] the<sup>1</sup> report is corrected to conform to the requirements of this chapter and returned to the director within thirty days from the date on which it was mailed to the corporation by the director.

(c) The annual report of a corporation, either domestic or foreign, filed in compliance with this section shall reflect the state of the corporation's affairs as of December 31 of the year preceding the year of filing."

SECTION 93. Section 415-128, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-128] Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of 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) 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;
- (12) Good standing certificate, \$10;
- (13) Filing any other statement or report, except an annual report, of a domestic or foreign corporation, \$25;
- (14) Special handling fee for review of corporation documents, excluding agreement of merger or consolidation, \$40;
- (15) Special handling fee for review of agreement of merger or consolidation, \$100;
- (16) Special handling fee for certificates issued by the department, \$10 per certificate;
- (17) Special handling fee for certification of documents, \$1 per page.]
- (1) Articles of incorporation, \$50;
- (2) Articles of amendment, \$25;
- (3) Restated articles of incorporation, \$25;
- (4) Articles of merger or consolidation, \$100;
- (5) Articles of merger (subsidiary corporation), \$50;
- (6) Articles of dissolution, \$25;
- (7) Annual report of domestic and foreign corporations organized for profit, \$15;
- (8) Filing any other statement or report, except an annual report, of a domestic or foreign corporation, \$25;
- (9) Application for a certificate of authority, \$50;
- (10) Application for a certificate of withdrawal, \$25;
- (11) Reservation of corporate name, \$10;
- (12) Transfer of reservation of corporate name, \$10;
- (13) Good standing certificate, \$15;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, \$40;
- (15) Special handling fee for review of articles of merger or consolidation, \$100;
- (16) Special handling fee for certificates issued by the department, \$10 per certificate;
- (17) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to the special fund established [pursuant to section 416-97] for use by the department in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund."

SECTION 94. Section 415-129, Hawaii Revised Statutes, is amended to read as follows:

"[§415-129] **Miscellaneous charges.** The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, [75] 25 cents per page and [25] \$10 for the certificate and affixing the seal thereto[.]; and
- (2) At the time of any service of process on the director as [resident agent] agent for service of process of a corporation, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action."

SECTION 95. Section 415-131, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-131] [License fees payable by foreign corporations.] 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 an annual license to do so. Every such corporation shall pay to the director 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]
<u>July - December</u>	<u>\$ 100</u>		
<u>January - June</u>	<u>\$ 50</u>		

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 96. Section 415-135, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-135] Penalties imposed upon corporations.** Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by 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 failure to file the required report shall be a separate offense for each thirty days of the continuance. The director may, for good cause shown, reduce or waive the penalty imposed by this section.

[Each corporation that fails to comply with the take-over requirements imposed by this chapter shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than three years, or both.]

Each corporation domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories [propounded] directed to the corporation by the director in accordance with the provisions of this chapter, or that files or shall cause to be filed with the director any articles, statement, report, application, or other document



## ACT 135

required by this chapter which is known to the corporation to be false in any material respect, shall be [deemed to be] guilty of a [misdemeanor and upon conviction thereof may be fined in any amount not exceeding \$500.] class C felony."

SECTION 97. Section 415-136, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-136] Penalties imposed upon officers and directors.** Each officer [and] or director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories [propounded] directed to the officer [and] or director of a corporation by the director in accordance with the provisions of this chapter, or who signs any articles, statement, report, application, or other document filed with the director which is known to [such] the officer or director to be false in any material respect, shall be [deemed to be] guilty of a [misdemeanor] class C felony."

SECTION 98. Section 415-137, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-137] Interrogatories by director.** The director may [propound] direct to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable the director to ascertain whether [such] the corporation has complied with all of the provisions of this chapter applicable to [such] the corporation. [Such] The interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the director, and the answers thereto shall be full and complete and shall be made in writing and under oath. If [such] the interrogatories [be] are directed to an individual, they shall be answered by the individual, and if directed to a corporation, they shall be answered by the president, vice president, secretary, or assistant secretary thereof. The director need not file any document to which [such] the interrogatories relate until [such] the interrogatories [be] are answered as [herein] provided herein, and not then if the answers thereto disclose that [such] the document is not in conformity with the provisions of this chapter. The director shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter."

SECTION 99. Section 415-138, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-138] Information disclosed by interrogatories.** Interrogatories [propounded] initiated by the director and the answers thereto shall not be open to public inspection, nor shall the director disclose any facts or information obtained therefrom except insofar as the director's official duty may require the same to be made public or in the event [such] the interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this State."

SECTION 100. Section 415-140, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-140] Appeal from director.** If the director shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the director before the same shall be filed in the director's office, the

director shall[, within thirty days after the delivery thereof to the director,] give written notice of the director's disapproval to the person or corporation, domestic or foreign, delivering the same, and specifying the reasons therefor. From such disapproval [such] the person or corporation may appeal to the court of the [county] circuit in which the registered or principal office of [such] the corporation is situated, or is proposed to be[,] situated, by filing with the clerk of [such] the court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the director; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the director or direct the director to take such action as the court may deem proper.

If the director revokes the certificate of authority to transact business in this State of any foreign corporation, pursuant to the provisions of this chapter, [such] the foreign corporation may likewise appeal to the court of the [county] circuit where the registered office of [such] the foreign corporation in this State is situated by filing with the clerk of [such] the court a petition setting forth a copy of its certificate of authority to transact business in this State and a copy of the notice of revocation [given] issued by the director; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the director or direct the director to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the court under this section in review of any ruling or decision of the director may be taken as in other civil actions."

SECTION 101. Section 415-141, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-141] Certificates and certified copies to be received in evidence.** All certificates issued by the director in accordance with the provisions of this chapter, and all copies of documents filed in the director's office in accordance with the provisions of this chapter when certified by the director, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the director under the great seal of this State, as to the existence or nonexistence of the facts relating to corporations, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated."

SECTION 102. Section 415-144, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-144] Waiver of notice.** Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to [such] the notice, whether before or after the time stated therein, shall be equivalent to the giving of [such] the notice."

SECTION 103. Section 415-147, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-147] Application to existing corporations.** The provisions of this chapter shall apply to all existing corporations organized under any general act of this State providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under this chapter, where the power has been reserved to amend, repeal, or modify the

## ACT 135

act under which [such] the corporation was organized and where [such] the act is repealed by this chapter.”

SECTION 104. Section 415-162, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-162]** **Effect of chapter on existing corporations.** The existence of corporations formed or existing on the date of enactment of this chapter or the voting requirements in the [charter] articles of incorporation of any such corporation shall not be affected by the enactment of this chapter nor by any change in the requirement or repeal of the laws under which they were formed or created.

Neither the repeals effected by the enactment of this chapter nor the amendment thereof shall impair or take away any existing liability, cause of action, or right against any corporation, its shareholders, directors, or officers incurred prior to the time of [such] the enactment or amendment.

Nothing in this chapter shall affect the validity of any action taken by any corporation, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation, prior to the effective date of this chapter.”

SECTION 105. Section 415-171, Hawaii Revised Statutes, is amended by amending the definition of “control share acquisitions” to read as follows:

““Control share acquisition” means an acquisition of shares of an issuing public corporation resulting in beneficial ownership by an acquiring person of a new range of voting power specified in this part, but does not include an acquisition:

- (1) Before, or pursuant to an agreement entered into before the effective date of this part;
- (2) By a donee pursuant to an inter vivos gift not made to avoid this part or by a distributee as defined in chapter 560;
- (3) Pursuant to a security agreement not created to avoid this part;
- (4) Under [chapter 417],<sup>1</sup> chapter 417E, if the issuing public corporation is a party to the transaction; or
- (5) From the issuing public corporation.”

SECTION 106. Section 415A-2, Hawaii Revised Statutes, is amended to read as follows:

“**[§415A-2]** **Definitions.** As used in this chapter, unless the context otherwise requires, the term:

“Director” means the director of commerce and consumer affairs.

“Disqualified person” means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity which for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

[“Foreign professional corporation” means a corporation for profit organized for the purpose of rendering professional services under a law other than the law of this State.]

“Licensing authority” means the officer, board, agency, court, or other authority in this State which has the power to issue a license or other legal authorization to render a professional service.

“Professional corporation” [or “domestic professional corporation”] means a domestic professional corporation for profit subject to this chapter[, except a foreign professional corporation].

"Professional service" means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, [458,] 459, 460, 461, 466, 471, 554-2, and 605 and may not lawfully be rendered by a corporation organized under the Hawaii Business Corporation Act, chapter 415.

"Qualified person" means [a natural person, or general partnership, which] an individual who is eligible under this chapter to own shares issued by a professional corporation."

SECTION 107. Chapter 415A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§415A- Incorporators.** One or more individuals may act as the incorporator or incorporators of a professional corporation by delivering articles of incorporation to the director for filing."

SECTION 108. Section 415A-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A professional corporation may be incorporated for the purpose of rendering professional services within two or more professions, and for any purpose or purposes for which corporations may be organized under the Hawaii Business Corporation Act, chapter 415, to the extent that [such] any combination of professional purposes or of professional and business purposes is permitted by the licensing laws and rules of this State applicable to [such] the professions [and rules thereunder]."

SECTION 109. Chapter 415A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§415A- Articles of incorporation.** (a) The articles of incorporation must set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 415A-8;
- (2) The profession or professions that the corporation shall be authorized to practice and any other purpose allowed by the licensing laws and rules of the State; and
- (3) The matters specified in section 415-54(a)(2), (4), (5), (6), (7), (11), (12), and (13).

(b) The articles of incorporation may set forth any of the matters specified in section 415-54(b).

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter or chapter 415."

SECTION 110. Chapter 415A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§415A- Filing of documents, effective date.** The filing of documents required by this chapter to be delivered to the director for filing, and the effectiveness thereof, shall be governed by section 415-55."

SECTION 111. Chapter 415A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§415A- Organization of corporation.** After incorporation, the incorporator or incorporators, or the initial director or directors, as the case

## ACT 135

may be, shall complete the organization of the corporation as provided in section 415-56.”

SECTION 112. Section 415A-5, Hawaii Revised Statutes, is amended to read as follows:

“**[§415A-5] General powers.** A professional corporation shall have the powers enumerated in the Hawaii Business Corporation Act, chapter 415, except that a professional corporation may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the corporation’s articles of incorporation [of the corporation].”

SECTION 113. Section 415A-6, Hawaii Revised Statutes, is amended to read as follows:

“**[§415A-6] Rendering professional services.** A professional corporation[, domestic or foreign,] may render professional services in this State only through [natural persons] individuals permitted to render such services in this State; but nothing in this chapter shall [be construed to] require [that] any person who is employed by a professional corporation to be licensed to perform services for which no license is otherwise required or [to] prohibit the rendering of professional services by a licensed [natural person] individual acting in the [person’s] licensee’s individual capacity[, notwithstanding such person may be a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign].”

SECTION 114. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

“**[§415A-8] Corporate name.** The name of a [domestic] professional corporation [or of a foreign professional corporation authorized to transact business in this State]:

- [(1)] Shall contain the words, “professional corporation” or the abbreviation “P.C.”;]
- (1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule or regulation of the licensing authority of the profession;
- [(2)] Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;
- (3) (2) Shall not be the same as, or [deceptively similar] substantially identical to, the name of any domestic corporation, partnership or trade name existing or registered under the laws of this State or any foreign corporation or partnership authorized to transact business, or trade name registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in the Hawaii Business Corporation Act, chapter 415, or the name of a corporation which has [in effect a registration of] registered its corporate name as provided in the Hawaii Business Corporation Act, chapter 415; except that this [provision] section shall not apply if:
  - (A) Such similarity results from the use in the corporate name of personal names of its shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

- (B) The] the applicant files with the director either of the following:
- (i)] (A) The written consent of such other corporation or holder of a reserved or registered name to use the same or [deceptively similar] substantially identical name and one or more words are added to make [such] the name distinguishable from [such] the other name, or
  - (ii)] (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to [the] use [of such] the name in this State[; and
- (4) Shall otherwise conform to any rule adopted by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of such corporation].”

SECTION 115. Section 415A-9, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~**§415A-9**] **Issuance and transfer of shares; share certificates.** (a) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to[:

- (1) Natural persons who are] individuals authorized by law in this State or in any other state or territory of the United States or the District of Columbia to render a professional service permitted by the corporation's articles of incorporation [of the corporation; and
- (2) General partnerships in which all the partners are qualified persons with respect to such professional corporation and in which at least one partner is authorized by law in this State to render a professional service permitted by the articles of incorporation of the corporation].

(b) Where [deemed necessary by] the licensing authority for any profession [in order] deems it necessary to prevent violations of the ethical standards of such profession, the licensing authority may by rule further restrict, condition, or abridge the authority of professional corporations to issue shares but no such rule, of itself, shall have the effect of causing a shareholder of a professional corporation at the time [such] the rule becomes effective to become a disqualified person. All shares issued in violation of this section or any rule [hereunder] under this section shall be void.

(c) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to [natural persons and general partnerships] individuals qualified [hereunder] under this section to hold shares issued directly to them by [such] the professional corporation. Any transfer of shares in violation of this [provision] subsection shall be void; provided that nothing [herein] contained herein shall prohibit the transfer of shares of a professional corporation by operation of law or court decree[.]; and provided further that a shareholder may transfer part or all of such shares to a revocable living or inter vivos trust with respect to which such shareholder:

- (1) Retains the unilateral right of revocation;
- (2) Is the sole beneficiary during the shareholder's lifetime; and
- (3) Is either a trustee or co-trustee or otherwise retains the right to direct the trustee in all matters related to the corporation or its shares; but nothing in such trust nor in this section shall in any

way diminish the liability of the shareholder with respect to the professional actions of the corporation.

(d) Every certificate representing shares of a professional corporation shall state conspicuously upon its face that the shares represented thereby are subject to restrictions on transfer imposed by this chapter and are subject to such further restrictions on transfer as may be imposed by the licensing authority from time to time pursuant to this chapter."

SECTION 116. Section 415A-10, Hawaii Revised Statutes, is amended to read as follows:

**"[§415A-10] Death or disqualification of a shareholder.** (a) Upon the death of a shareholder of a professional corporation, or if a shareholder of a professional corporation becomes a disqualified person, or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares of [such] the deceased shareholder or of [such] the disqualified person may be transferred to a qualified person and, if not so transferred, shall be purchased or redeemed by the corporation to the extent of funds which may be legally made available for such purchase[.]; provided that upon the death of a sole shareholder of a professional corporation, the personal representative of the estate of the deceased sole shareholder may elect to dissolve the professional corporation, by delivering for filing verified articles of dissolution signed by the personal representative and the surviving officer of the professional corporation. If the personal representative elects to dissolve the professional corporation, the personal representative may publish a notice to creditors in lieu of a statement of intent as required by section 415-92(3).

(b) If the price for [such] the shares of the corporation is not fixed by [the] its articles of incorporation or bylaws [of the corporation] or by private agreement, the corporation within six months after such death or thirty days after such disqualification or transfer, as the case may be, shall make a written offer to pay for [such] the shares at a specified price deemed by [such] the corporation to be the fair value thereof as of the date of [such] the death, disqualification, or transfer. [Such] The offer shall be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and shall be accompanied by a balance sheet of the corporation, as of the latest available date and not more than twelve months prior to the making of [such] the offer, and a profit and loss statement of [such] the corporation for the twelve months' period ended on the date of [such] that balance sheet.

(c) If within thirty days after the date of [such] the written offer from the corporation the fair value of [such] the shares is agreed upon between [such] the disqualified person and the corporation, payment therefor shall be made within sixty days, or such other period as the parties may fix by agreement, after the date of [such] the offer, upon surrender of the certificate or certificates representing [such] the shares. Upon payment of the agreed value the disqualified [persons] person shall cease to have any interest in [such] the shares.

(d) If within such period of thirty days the disqualified person and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from the disqualified person given within sixty days after the date of the corporation's written offer or at its election at any time within such period of sixty days, shall file a petition in any court of competent jurisdiction in the [county in this State] circuit where the [registered] principal office of the corporation is located requesting that the fair value of [such share] the shares be found and determined. If the corporation

[shall fail to institute the proceeding as herein provided,] fails to file a petition as provided in this subsection, the disqualified person may [do so] file a petition within sixty days after delivery of [such] a written demand to the corporation. The disqualified person, wherever residing, shall be made a party to the proceeding as an action against the person's shares quasi in rem. A copy of the petition shall be served on the disqualified person, if a resident of this State, and shall be served by registered or certified mail on the disqualified person, if a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. The disqualified person shall be entitled to judgment against the corporation for the amount of the fair value of the person's shares as of the date of death, disqualification, or transfer upon surrender to the corporation of the certificate or certificates representing [such] the shares. The court, in its discretion, may order that the judgment be paid in such [installment] installments as the court may determine. The court, if it so elects, may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof.

(e) The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all of the circumstances, from the date of death, disqualification, or transfer.

(f) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of [such] the costs and expenses may be apportioned and assessed as the court may deem equitable against the disqualified person if the court [shall find] finds that the action of [such] the disqualified person in failing to accept [such] the offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to the disqualified person such sum as the court may determine to be reasonable compensation to any expert or experts employed by the disqualified person in the proceeding.

(g) If a purchase, redemption, or transfer of the shares of a deceased or disqualified shareholder or of a transferee who is a disqualified person is not completed within ten months after the death of the deceased shareholder or five months after the disqualification or transfer, as the case may be, the corporation shall cancel [forthwith] the shares on its books and the disqualified person shall have no further interest as a shareholder in the corporation other than the person's right to payment for [such] the shares under this section.

(h) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as [in this section] provided[,], in this section, may be held and disposed of by [such] the corporation as in the case of other treasury shares.

(i) This section shall not [be deemed to] require the purchase of shares of a disqualified person where the period of [such] disqualification is for less than five months from the date of disqualification or transfer.

(j) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, bylaws, or any private agreement shall be specifically enforceable in the courts of this State.



(k) Nothing [herein] contained herein shall prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law."

SECTION 117. Section 415A-11, Hawaii Revised Statutes, is amended to read as follows:

**"[§415A-11] Responsibility for professional services.** [(a) Any reference to a corporation in this section shall include both domestic and foreign corporations.

(b)] (a) Every individual who renders professional services as an employee of a professional corporation shall be liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual rendered [such] the services as a sole practitioner. An employee of a professional corporation shall not be liable for the conduct of other employees unless the employee is at fault in appointing, supervising, or cooperating with [them.] the other employees.

[(c)] (b) Every corporation whose employees perform professional services within the scope of their employment or of their apparent authority to act for the corporation shall be liable to the same extent as its employees.

[(d)] (c) Except as otherwise provided by statute, if any corporation is liable under subsection [(c),] (b), every shareholder of that corporation shall be liable to the same extent as though the shareholder were a partner in a partnership and the services giving rise to liability had been rendered on behalf of the partnership, unless the corporation has provided security for professional responsibility as provided in this subsection and the liability is satisfied to the extent contemplated by the insurance or bond which effectuates the security.

A professional corporation[, domestic or foreign,] may provide security for professional responsibility by procuring insurance or a surety bond issued by an insurance company or a combination thereof, as the corporation may elect. The minimum amount of security and requirements as to the form and coverage provided by the insurance policy or surety bond may be established for each profession by the licensing authority for the profession, and the minimum amount may be set to vary with the number of shareholders, the type of practice, or other variables deemed appropriate by the licensing authority. [If no effective determination by the licensing authority is in effect, the minimum amount of professional responsibility security for the professional corporation shall be the product of \$100,000 multiplied by the number of shareholders of the professional corporation.]"

SECTION 118. Section 415A-12, Hawaii Revised Statutes, is amended to read as follows:

**"[§415A-12] Professional relationships; privileged communications.** (a) The relationship between an individual performing professional services as an employee of a professional corporation[, domestic or foreign,] and a client or patient shall be the same as if the individual performed [such] the services as a sole practitioner.

(b) The relationship between a professional corporation[, domestic or foreign,] performing professional services and the client or patient shall be the same as between the client or patient and the individual performing the services.

(c) Any privilege applicable to communications between a person rendering professional services and the person receiving [such] the services recognized under the laws of this State, whether statutory or deriving from

common law, shall remain inviolate and shall extend to a professional corporation[, domestic or foreign,] and its employees in all cases in which it shall be applicable to communications between [a natural person] an individual rendering professional services on behalf of the corporation and the person receiving [such] the services.”

SECTION 119. Section 415A-14, Hawaii Revised Statutes, is amended to read as follows:

**“[§415A-14] Directors and officers.** Not less than one-half of the directors of a professional corporation and all of the officers, other than the secretary and the treasurer, shall be qualified persons with respect to the [corporations.] corporation. At least one director shall be a resident of this State.”

SECTION 120. Section 415A-15, Hawaii Revised Statutes, is amended to read as follows:

**“[§415A-15] Amendments to articles of incorporation.** A personal representative, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation may amend the articles of incorporation by signing a written consent to [such] the amendment. Articles of amendment so adopted shall be executed [in duplicate by] on behalf of the corporation by [such] the personal representative, guardian, conservator, or receiver and by [the secretary or assistant secretary of the corporation,] the surviving officer, and verified on oath by one of the persons signing [such] the articles, and shall set forth:

- (1) The name of the corporation;
- (2) The amendments so adopted[;] which shall be identified by the numerical or other designation thereof in the articles of incorporation;
- (3) The date of adoption of the amendment by the personal representative, guardian, conservator, or receiver;
- (4) The number of shares outstanding; and
- (5) The number of shares held by the personal representative, guardian, conservator, or receiver.”

SECTION 121. Section 415A-17, Hawaii Revised Statutes, is amended to read as follows:

**“[§415A-17] Termination of professional activities.** If a professional corporation shall cease to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of the Hawaii Business Corporation Act, chapter 415[, regarding its corporate name]. After the amended articles of incorporation have been delivered to the director for filing, [The] the corporation then may continue in existence as a corporation under the Hawaii Business Corporation Act, chapter 415, and shall no longer be subject to this chapter.”

SECTION 122. Section 415A-18, Hawaii Revised Statutes, is amended to read as follows:

**“[§415A-18] Involuntary dissolution[;] reinstatement.** [A professional corporation may be dissolved involuntarily by a decree of the circuit court in an action filed by the attorney general when it is established that the corporation has failed to comply with any provision of this chapter applicable to it within sixty days after receipt of written notice of noncompliance.

## ACT 135

Each licensing authority in this State and the director shall certify to the attorney general, from time to time, the names of all corporations which have given cause for dissolution as provided in this chapter, together with the facts pertinent thereto. Whenever the director or any licensing authority shall certify the name of a corporation to the attorney general as having given any cause for dissolution, the director or such licensing authority, as the case may be, shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the attorney general shall file an action in the name of the State against such corporation for its dissolution.]

(a) Whenever it is established that a professional corporation has failed to comply with any provision of this chapter, the director may declare the corporation dissolved.

Before the director may declare a corporation dissolved, the director shall:

- (1) Give notice of the ground or grounds for dissolution as provided in section 415-94, by mailing the notice to the professional corporation at its last known address appearing in the records of the director; and
- (2) Give notice of the intention to dissolve the corporation by publishing the notice once in each of three successive weeks (three publications) in a newspaper of general circulation published in the State.

(b) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any professional corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section 415-135. If a trustee is not appointed by a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved professional corporation with full powers to settle its affairs.

(c) The director shall, in each case, deliver a copy of the decree of dissolution to the director of taxation and to the finance officer of each county.

(d) In each case where the director has given a professional corporation notice of intention to dissolve the corporation on the grounds that its articles of incorporation have been procured through fraud, the corporation shall be entitled to petition for an administrative hearing under chapter 91 and shall give written notice to the director thereof, before the director may declare the corporation dissolved under subsection (a) of this section.

(e) Within ninety days after the involuntary dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes; costs of involuntary dissolution, and the filing of all reports due and unfilled. Within the ninety-day period, should the name of the professional corporation, or a name substantially identical thereto be registered or reserved by another corporation or partnership, or should the name or a name substantially identical thereto be registered as a trade name, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved professional corporation pursuant to the amendment provisions of this chapter.

(f) A professional corporation whose articles of incorporation have expired shall cease to exist by operation of law."

SECTION 123. Section 415A-19, Hawaii Revised Statutes, is repealed.

SECTION 124. Section 415A-20, Hawaii Revised Statutes, is repealed.

SECTION 125. Section 415A-21, Hawaii Revised Statutes, is repealed.

SECTION 126. Section 415A-22, Hawaii Revised Statutes, is amended to read as follows:

**"[§415A-22] Annual report of [domestic and foreign] professional corporations.** [(a)] The annual report of each [domestic] professional corporation[, and each foreign professional corporation authorized to transact business in this State, filed with] shall be delivered to the director for filing pursuant to the Hawaii Business Corporation Act, chapter 415, and shall include a statement that all of the shareholders, not less than one-half of the directors, and all of the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

[(b)] Financial information contained in the annual report of a professional corporation, other than the amount of stated capital of the corporation, shall not be open to public inspection nor shall the licensing authority disclose any facts or information obtained therefrom except insofar as its official duty may require the same to be made public or in the event such information is required for evidence in any criminal proceedings or in any other action by this State.]"

SECTION 127. Section 415A-23, Hawaii Revised Statutes, is repealed.

SECTION 128. Section 415A-24, Hawaii Revised Statutes, is amended to read as follows:

**"[§415A-24] Interrogatories by [licensing authority.] director.** [(a)] Each licensing authority of this State] The director may [propound] direct to any professional corporation[, domestic or foreign,] organized to practice a profession within the jurisdiction of [such licensing authority,] the director and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable the [licensing authority] director to ascertain whether [such] the corporation has complied with all of the provisions of this chapter applicable to [such] the corporation. [Such] The interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the [licensing authority,] director, and the answers thereto shall be full and complete and shall be made in writing and under oath. If [such] the interrogatories [be] are directed to an individual they shall be answered by the individual, and if directed to a professional corporation they shall be answered by the president, vice president, secretary, or assistant secretary thereof. The [licensing authority] director shall certify to the attorney general, for [such] any action [as] the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter.

[(b)] Interrogatories [propounded] directed to an individual or a professional corporation by [a licensing authority] the director and the answers thereto shall not be open to public inspection nor shall the [licensing authority] director disclose any facts or information obtained therefrom except insofar as its official duty may require the same to be made public or

## ACT 135

in the event such interrogatories or the answers thereto are required for evidence in any criminal proceeding or any other action by this State."

SECTION 129. Section 415A-25, Hawaii Revised Statutes, is amended to read as follows:

"[**§415A-25**] **Penalties.** (a) Each professional corporation[, domestic or foreign,] that fails or refuses to answer truthfully within the time prescribed by this chapter interrogatories [propounded] directed to the professional corporation in accordance with this chapter by the [licensing authority having jurisdiction of a type of professional service described in the articles of incorporation of such corporation,] director shall be [deemed to be] guilty of a [misdemeanor.] class C felony.

(b) Each officer [and] or director of a professional corporation[, domestic or foreign,] who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories [propounded] directed to [such] that officer or director in accordance with this chapter by the [licensing authority having jurisdiction of a type of professional service described in the articles of incorporation of such corporation,] director, or who signs any articles, statement, report, application, or other document filed with [such] the [licensing authority] director which is known to [such] that officer or director to be false in any material respect, shall be deemed to be guilty of a [misdemeanor.] class C felony."

SECTION 130. Section 415A-26, Hawaii Revised Statutes, is repealed.

SECTION 131. Section 415A-27, Hawaii Revised Statutes, is amended to read as follows:

"[**§415A-27**] **Application of business corporation act.** The provisions of the Hawaii Business Corporation Act, chapter 415, shall apply to professional corporations, [domestic or foreign,] except to the extent [such] that the provisions are inconsistent with this chapter."

SECTION 132. Section 415A-28, Hawaii Revised Statutes, is amended to read as follows:

"[**§415A-28**] **Applications and<sup>1</sup> existing corporations.** (a) This chapter shall apply to all existing professional corporations organized under any general act of this State which is repealed by this chapter. [Every such existing corporation which shall be required to amend its corporate name or purposes to comply with this chapter shall deliver duly executed duplicate originals of articles of amendment or restated articles of incorporation containing such amendments to the director within ninety days after July 1, 1987.]

(b) Any corporation organized under any act of this State which is not repealed hereby may become subject to the provisions of this chapter by delivering to the director duly executed [duplicate originals of] articles of amendment [or restated articles of incorporation] stating that the corporation elects to become subject to this chapter and containing [such] the amendment of its corporate name or purposes as may be required to comply with this chapter.

(c) This chapter shall not apply to any corporation now in existence or hereafter organized under any act of this State which is not repealed hereby unless [such] the corporation voluntarily becomes subject to this chapter as [herein] provided[, in this chapter, and nothing contained in this chapter shall alter or affect any existing or future right or privilege permitting or not

prohibiting performance of professional services through the use of any other form of business organization. Nothing in this chapter shall affect the validity of any action taken by any corporation, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation[,] prior to July 1, 1987."

SECTION 133. Section 415B-2, Hawaii Revised Statutes, is amended by amending the definition of "director" to read as follows:

"“Director” means the director of the department of commerce and consumer affairs."

SECTION 134. Section 415B-6, Hawaii Revised Statutes, is amended by amending subsections (a), (e) and (g) to read as follows:

"(a) As used in this section, unless the context otherwise requires:

"Agent" means any person who is or was a director, officer, employee, or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of [such] the predecessor corporation.

"Expenses" include, without limitation, attorney's fees and any expenses of a completed action or proceeding, whether civil, criminal, administrative, or investigative.

(e) Any indemnification under subsection (b) or (c) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subsection (b) or (c). [Such] The determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to [such] the proceeding; or (2) if [such] a quorum is not obtainable, by independent legal counsel in a written opinion; or (3) by the [shareholder;] members; or (4) by the court in which the proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney, or other person is opposed by the corporation.

(g) The indemnification provided by this section [shall] is not [be deemed] exclusive of any other rights to which those indemnification<sup>1</sup> may be entitled under any bylaw, agreement, vote of [shareholders,] the mem-  
bers, or disinterested directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding office, and shall continue as to a person who has ceased to be an agent and shall inure to the benefit of the heirs and personal representatives of such a person."

SECTION 135. Section 415B-7, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~415B-7] Corporate name. The corporate name[~~:~~]:

- (1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;
- (2) Shall ~~shall~~ not be the same as, or [deceptively similar] substan-  
tially identical to, the name of any domestic corporation, partnership, or trade name existing or registered under the laws of this State or any foreign corporation[,]  
or partnership[, or trade

name] authorized to transact business or trade name registered in this State, or a name the exclusive right to which is, at the time reserved in the manner provided under the laws of this State,<sup>1</sup> except that this provision shall not apply if the applicant [files with] delivers to<sup>1</sup> the director for filing either of the following:

- [(A)] (1) The written consent of [such] the other corporation or holder of a reserved or registered name to use the same or [deceptively similar] substantially identical name and one or more words are added to make [such] the name distinguishable from [such] the other name, or
- [(B)] (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of [such] the name in this State."

SECTION 136. Section 415B-8, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§415B-8]]~~ **Reserved name.** The exclusive right to the use of a corporate name may be reserved by:

- (1) Any person intending to organize a corporation under this chapter[.];
- (2) Any domestic corporation intending to change its name[.];
- (3) Any foreign corporation intending to make application for a certificate of authority to [transact business] conduct its affairs<sup>1</sup> in this State[.];
- (4) Any foreign corporation authorized to [transact business] conduct its affairs<sup>1</sup> in this State and intending to change its name[.];  
or
- (5) Any person intending to organize a foreign corporation and intending to have [such] the corporation make application for a certificate of authority to [transact business] conduct its affairs in this State.

The reservation shall be made by [filing with] delivering to the director for filing an application to reserve a specified corporate name, executed by the applicant. If the director finds that the name is available for corporate use, the director shall reserve the name for the exclusive use to the applicant for a period of one hundred twenty days.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the director a notice of [such] the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee."

SECTION 137. Section 415B-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any officer or director of the corporation who is found within the jurisdiction of the court, officer, or board; and in the event of failure to find any such officer or director, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

If (1) no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and (2) the corporation, if a foreign corporation, has

neglected to [file with] deliver to the director the name of a person upon whom legal notice and process from the courts of the State may be served or if the person so named is not found within the State, then service may be made upon the corporation by [filing with] delivering to the director[,] for filing, or, in the director's absence [with], to the deputy director, a copy of the notice or process, certified to be such under the seal of any court of record, or by the chairperson or president of the board, or by the officer issuing the same. The director or deputy director so served shall [immediately] as soon as practicable but not later than thirty days after the filing notify the defendant corporation by certified mail of the service. [The filing] Delivery shall [be deemed] constitute service upon the corporation forty-five days after [the filing,] delivery, and shall authorize the court, board, or officer to proceed in all respects as in the case of service personally made upon an individual."

SECTION 138. Section 415B-10, Hawaii Revised Statutes, is amended to read as follows:

"**[§415B-10] Filing of document and effective date.** (a) Any document required to be delivered to the director for filing pursuant to this chapter shall be:

(1) [Executed] Certified and executed by:

- (A) A person intending to organize a corporation or an incorporator, if the corporation has not been organized; or
- (B) Two persons who are officers of the corporation, if the corporation has been organized; or
- (C) A majority of incorporators with respect to articles of dissolution delivered pursuant to section 415B-94.; and<sup>1</sup>

(2) Delivered to the director.

(b) If the director finds [such] the document sets forth the information required by this chapter, the director shall:

- (1) [Endorse] Stamp the word "Filed" and the [hour, minute, month, day, and year] date of the delivery thereof; and
- (2) File the document in the director's office.

(c) The director, however, shall not file a document required by this chapter unless all fees prescribed by this chapter have been paid with respect to [such] the document.

(d) Upon the filing of a document, the document shall become effective as of delivery. Articles of merger or consolidation may become effective at a [or at such] later time and date, and articles of dissolution may become effective on a later date, as set forth in the instrument, but not more than thirty days after being filed.

[(e) Any person knowingly making a false statement in any document to be filed with the director shall be<sup>1</sup> guilty of a violation.]"

SECTION 139. Section 415B-11, Hawaii Revised Statutes, is amended to read as follows:

"**[§415B-11] Annual report of domestic and foreign corporations.** Each domestic corporation or foreign corporation authorized to conduct affairs in this State[,] shall [file,] deliver to the director for filing, within the time prescribed by this chapter, an annual report setting forth:

- (1) The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated;
- (2) The address of the foreign corporation's registered office in this State, the name of the foreign corporation's registered agent in this State at [such] that address, and[, in the case of a foreign



corporation,] the mailing address of its principal office in the state or country under the laws of which it is incorporated, and in the case of domestic corporation, the address of the corporation's principal office and the mailing address of the principal office if it differs; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;

- (3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this State; and
- (4) The names and respective addresses of the directors and officers of the foreign corporation[.], and in the case of a domestic corporation the names and residence addresses of the directors and officers of a domestic corporation.

The annual report shall be made on forms prescribed and furnished by the director[, and the information therein contained shall be given as of the date of the execution of the report]. It shall be executed on behalf of the corporation by [its president, a vice-president, secretary, assistant secretary, or treasurer,] any authorized officer or an attorney-in-fact for an officer of the corporation or, if the corporation is in the hands of a receiver or trustee, by [such] the receiver or trustee."

SECTION 140. Section 415B-12, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-12] Filing of annual report of domestic and foreign corporations.** (a) [Such] The annual report of a corporation shall be delivered to the director for filing between [the first day of] January 1 and [the thirty-first day of] March 31 of each year in the case of a domestic corporation, or between [the first day of] January 1 and [the thirtieth day of] June 30 in the case of a foreign corporation, except that the first annual report of a corporation shall be filed between [the first day of] January 1 and [the thirty-first day of] March 31 in the case of a domestic corporation, or between [the first day of] January 1 and [the thirtieth day of] June 30 in the case of a foreign corporation of the year next succeeding the calendar year in which its [certificate] articles of incorporation or its certificate of authority, as the case may be, was issued by the director. [Proof to the satisfaction of the director that prior to the thirty-first day of March in the case of a domestic corporation, or the thirtieth day of June in the case of a foreign corporation, such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement.]

(b) If the director finds that [such] the report conforms to the requirements of this chapter, the director shall file the report. If the director finds that [it] the report does not so conform, the director shall return [the report] it to the corporation for any necessary corrections, in which event the penalties prescribed in this chapter for failure to file [such] the report within the time provided shall not apply[,] if the report is corrected to conform to the requirements of this chapter and returned to the director within thirty days from the date on which it was mailed to the corporation by the director.

(c) The annual report of a corporation, either domestic or foreign, filed in compliance with this section shall reflect the state of affairs of the corporation as of December 31 of the year preceding the year of filing."

SECTION 141. Section 415B-13, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-13]] Defense of ultra vires.** No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid because the corporation was without capacity or power to do [such] the act or to make or receive [such] the conveyance or transfer, but such lack of capacity or power may be asserted:

- (1) In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of a<sup>1</sup> real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, if all of the parties to the contract are parties to the proceeding, and if the court deems the same to be equitable, the court may set aside and enjoin the performance of [such] the contract, and in so doing may [allow] award to the corporation or the other parties to the contract, as the case may be, compensation for the loss damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of [such] the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained; or
- (2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative action, against the officers or directors of the corporation for exceeding their authority.”

SECTION 142. Section 415B-14, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-14]] Greater voting requirements.** With respect to any action to be taken by the members or board of directors of a corporation, whenever the articles of incorporation [or bylaws] require the vote or concurrence of a greater proportion of the board of directors or members or any class of members than required by this chapter, the articles of incorporation [or bylaws] shall control.”

SECTION 143. Section 415B-16, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-16]] Action by members or the board of directors without a meeting.** Any action required or permitted by this chapter to be taken at a meeting of the members or the board of directors of a corporation may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members or directors, as the case may be, entitled to vote on the subject matter of the meeting. Such consent shall have the force and effect of a unanimous vote and may be stated as such in any articles or document [filed with] which is delivered to the director for filing pursuant to this chapter.”

SECTION 144. Section 415B-31, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-31]] Members.** A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of

## ACT 135

election or appointment, and the qualifications and rights of the members of each class may be set forth in the articles of incorporation or the bylaws or determined by the board of directors. If the corporation has no members, that fact shall be set forth in the articles of incorporation [or the bylaws]. A corporation may issue certificates evidencing membership therein.

The directors, officers, employees, and members of the corporation shall not be liable for the corporation's obligations."

SECTION 145. Section 415B-32, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-32] Meetings of members.** A meeting of the members shall be held at least once each year following the year of incorporation, unless this is dispensed with pursuant to unanimous written consent under section 415B-16. Meetings of members may be held at such place within or without the State as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings shall be held at the principal office of the corporation within this State. Unless otherwise provided in the articles of incorporation or bylaws or fixed in accordance with the bylaws, the annual meeting of the members for the consideration of business as may come before the meeting, shall be held on the first Monday of April in each year, if not a legal holiday, and if a legal holiday, on the next calendar day following.

Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth<sup>1</sup> of the votes entitled to be cast at [such] the meeting."

SECTION 146. Section 415B-33, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-33] Notice of members' meetings.** Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day, and hour of the meeting and, in case of a special meeting, any purpose for which the meeting is called, shall be delivered not less than ten days<sup>1</sup> nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, secretary, or other officers or any person calling the meeting, to each member entitled to vote at [such] the meeting. If mailed, [such] the notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at the member's address as it appears on the records of the corporation, with postage thereon prepaid."

SECTION 147. Section 415B-34, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-34] Articles of incorporation.** One or more [persons] individuals may organize a corporation by signing and delivering articles of incorporation [in duplicate] to the director pursuant to section 415B-10, which shall set forth:

- (1) The name of the corporation;
- (2) The period of the corporation's duration, which may be perpetual;

- (3) The purpose or purposes for which the corporation is organized;
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for the distribution of assets on dissolution or final liquidation;
- (5) The [street] address of the corporation's initial [registered] office; provided that where no specific street address is available, the mailing address, which may be a rural route post office or post office box designated or made available by the United States Postal Service may be listed, [and the name of its initial registered agent at such address];
- (6) The number of directors constituting the initial board of directors and the names and residence addresses of the [persons] individuals who are to serve as the initial directors and initial officers; and
- (7) [The name and address of each incorporator.] If a corporation has no members, that fact shall be set forth.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. [Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be<sup>1</sup> the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.]”

SECTION 148. Section 415B-35, Hawaii Revised Statutes, is amended to read as follows:

**“[§415B-35] Effect of filing of articles of incorporation.** Upon the effective date of the articles of incorporation, the corporate existence shall begin, and [such] the articles shall be prima facie evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the State in a proceeding to cancel or revoke the articles of incorporation or for involuntary dissolution of the corporation.”

SECTION 149. Section 415B-36, Hawaii Revised Statutes, is amended to read as follows:

**“[§415B-36] Right to amend articles of incorporation.** A corporation may amend its articles of incorporation from time to time, in any and in as many respects as may be desired, so long as its articles of incorporation as amended contain only [such] provisions which might be lawfully contained in original articles of incorporation at the time of making [such] the amendment.”

SECTION 150. Section 415B-37, Hawaii Revised Statutes, is amended to read as follows:

**“[§415B-37] Procedure to amend articles of incorporation.** Amendments to the articles of incorporation shall be made in the following manner:

- (1) If any members are entitled to vote on an amendment, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at an annual or special meeting of [any such] the members. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member

entitled to vote at [such] the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at [such] the meeting or represented by proxy are entitled to cast.

- (2) If there are no members or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon its receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting."

SECTION 151. Section 415B-38, Hawaii Revised Statutes, is amended to read as follows:

"**[§415B-38] Articles of amendment.** The articles of amendment shall be filed pursuant to section 415B-10] delivered to the director for filing and shall set forth:

- (1) The name of the corporation;
- (2) The amendment so adopted[;] which shall be identified by the numerical on<sup>1</sup> other designation thereof in the articles of incorporation;
- (3) If there are members entitled to vote on the amendment, (A) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at [such] the meeting, and that [such] the amendment received at least two-thirds of the votes which members present at [such] the meeting or represent<sup>1</sup> by proxy were entitled to cast, or (B) a statement that [such] the amendment was adopted by a consent in writing signed by all members entitled to vote thereon; and
- (4) If there are no members or no members entitled to vote on the amendment, a statement of [such] that fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that [such] the amendment received the vote of a majority of the directors in office."

SECTION 152. Section 415B-42, Hawaii Revised Statutes, is amended to read as follows:

"**[§415B-42] [Organization] Organizational meetings.** After the effective [time and] date of the articles of incorporation, an [organization] organizational meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the [incorporators] members or directors as stated in the articles for the purpose of adopting bylaws, and transacting any other business. The [incorporators] directors or members calling the meeting shall give at least three days' notice of the time and place of the meeting to each director.

A first meeting of the members may be held at the call of at least a majority of the directors, upon at least three days' notice for any purpose stated in the notice."

SECTION 153. Section 415B-43, Hawaii Revised Statutes, amended to read as follows:

"**[§415B-43] Voting.** The right of the members, or any class or classes of members, to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation [or the bylaws or as determined by

the board of directors]. Unless so limited, enlarged, or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by the member's duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws or board of directors may provide that [such] the elections may be conducted by mail.

The articles of incorporation or the bylaws may provide that in all elections for directors, every member entitled to vote shall have the right to cumulate the member's vote and give one candidate a number of votes equal to the candidate's<sup>1</sup> vote multiplied by the number of directors to be elected, or by distributing [such] the votes on the same principle among any number of [such] the candidates.

If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power."

SECTION 154. Section 415B-46, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-46] Shares of stock and dividends prohibited; compensation; distribution.** A corporation under this chapter shall not authorize or issue shares of stock[.] except for limited equity housing cooperatives. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers or<sup>1</sup> services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit."

SECTION 155. Section 415B-62, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-62] Number and election of directors.** The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except that if authorized by the articles of incorporation or by<sup>1</sup> the bylaws, the number may be fixed by the members at the annual meeting or at any other meeting properly called for such purpose, and except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to [the bylaws] the articles of incorporation or, if authorized by the [bylaws or] articles of incorporation, by the members[, unless the articles of incorporation provide that a change in the number of directors shall be made only by the<sup>1</sup> amendment of the articles of incorporation]. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a [bylaw or] membership resolution fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected

## ACT 135

by the members or elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. [In the absence of a provision fixing the term of office, the term of office of a director shall be one year.]

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term to which the director is elected or appointed and until a successor is elected or appointed and qualified. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

A director may be removed from office pursuant to any procedure therefor provided in the articles on<sup>1</sup> incorporation or bylaws."

SECTION 156. Section 415B-64, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-64] Place and notice of directors' meetings.** Meetings of the board of directors, regular or special, may be held either within or without this State, and upon such notice as the bylaws prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of [such] the meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be<sup>1</sup> specified in the notice or waiver of notice of [such] the meeting.

Unless prohibited by the articles of incorporation[, association, charter,] or bylaws, and subject to provisions therein relating to notice, members of the board of directors or any committee designated thereby may participate in a meeting of [such] the board or committee by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can simultaneously hear each other. Participation by [such] this means shall constitute presence in person at a meeting."

SECTION 157. Section 415B-65, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-65] Vacancies.** Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, even if [such] the majority is less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case [such] that provision shall control.

A director elected or appointed to fill a vacancy shall be elected or appointed, as the case may be, for the unexpired term of the director's predecessor in office.

Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

If a corporation has no members other than the directors and all of the directors resign, die, or become incompetent, any circuit judge of the circuit where the corporation has its principal office or any circuit judge of the first circuit may appoint directors of the corporation upon petition of a creditor of the corporation, the personal representative of a deceased director, or the guardian or conservator of an incompetent director."

SECTION 158. Section 415B-66, Hawaii Revised Statutes, is amended to read as follows:

**“[§415B-66] Committees.** If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, which committees, to the extent provided in [such] the resolution, in the articles of incorporation, or in the bylaws of the corporation, shall have and exercise all the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to:

- (1) Amending, altering, or repealing the bylaws;
- (2) Electing, appointing, or removing any member of any such committee or any director or officer of the corporation;
- (3) Amending the articles of incorporation, restating articles of incorporation, adopting a plan of merger, or adopting a plan of consolidation with another corporation;
- (4) Authorizing the sale, lease, exchange, or mortgage of all of substantially all of the property and assets of the corporation;
- (5) Authorizing the voluntary dissolution of the corporation of<sup>1</sup> revoking proceedings therefor;
- (6) Adopting a plan for the distribution of the assets of the corporation; or
- (7) Amending, altering, or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered, or repealed by [such] the committee.

Nothing in paragraphs (1) to (7) shall prohibit any committee, if properly authorized by the board of directors and not prohibited by the bylaws, from engaging in any sale, lease, exchange, mortgage, pledge, or distribution of assets of the corporation in the normal course of the corporation's business.

The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon the board or [such] the director by law.”

SECTION 159. Section 415B-67, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A provisional director shall be an impartial person, who is not a member, director, officer, employee, or creditor of the corporation, or related by consanguinity or affinity within the third degree according to the common law to any other director of the corporation or to any judge of the court by which [such] the provisional director is appointed. A provisional director shall have all of the rights and powers of a director until the deadlock in the board or among the members is broken or until [such] the provisional director is removed by order of the court or by approval of members holding a majority of the voting power. A provisional director shall be entitled to compensation which shall be fixed by the court unless otherwise agreed with the corporation.”

SECTION 160. Section 415B-68, Hawaii Revised Statutes is amended to read as follows:

**“[§415B-68] Officers.** The officers of a corporation shall consist of a president, a<sup>1</sup> vice-president, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary[, and as prescribed in the articles of incorporation [each of whom]. Each officer shall be elected or



appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the [bylaws] articles of incorporation so provide, any two or more offices may be held by the same person; provided the corporation shall have at least two persons as officers.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex-officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation [or the by<sup>1</sup> bylaws].

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws."

SECTION 161. Section 415B-69, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-69] Removal of officers.** Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint [such] the officer or agent whenever, in their judgment, the best interests of the corporation will be served thereby. The removal of an officer or agent shall be without prejudice to the contract rights, if any, of the officer or agent so removed. Election or appointment of an officer or agent shall not of itself create contract rights."

SECTION 162. Section 415B-70, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-70] Loans to directors and officers prohibited.** No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of [any such] a loan shall be liable to the corporation for the amount of [such] the loan until it is repaid. For the purposes of this section, any director who votes against the making of [such] a loan shall be deemed not to have assented to or participated in the making of [such] the loan."

SECTION 163. Section 415B-81, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-81] Procedure for merger.** Any two or more domestic corporations may merge into one of [such] the corporations pursuant to a plan of merger approved in the manner provided in this chapter.

Each corporation shall adopt a plan of merger setting forth:

- (1) The names and the jurisdictions of incorporation of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;
- (2) The terms and conditions of the proposed merger;
- (3) A statement of the proposed articles of incorporation of the surviving corporation, as amended, to effect [such] the proposed merger; and
- (4) Any other necessary or desirable provisions with respect to the proposed merger."

SECTION 164. Section 415B-83, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-83]] Approval of merger or consolidation.** A plan of merger or consolidation shall be adopted in the following manner:

- (1) If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of [such] the corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at an annual or special meeting of [such] the members. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at [such] the meeting within the time and in the manner provided in this chapter for the giving<sup>1</sup> of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at [each such] the meeting or represented by proxy are entitled to cast; and
- (2) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of [such] the corporation upon receiving the vote of a majority of the directors in office.

After [such] the approval and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to any provision set forth in the plan of merger or consolidation.”

SECTION 165. Section 415B-84, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-84]] Articles of merger or consolidation.** The articles of merger or articles of consolidation shall be delivered to the director for filing and [filed pursuant to section 415B-10 and] shall set forth:

- (1) The plan of merger or the plan of consolidation[:], including a statement of the jurisdiction of incorporation if a foreign corporation is involved;
- (2) If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation (A) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at [such] the meeting, and that [such] the plan received at least two-thirds of the votes which members present at [such] the meeting or represented by proxy were entitled to cast, or (B) a statement that [such] the amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and
- (3) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of [such] this fact, the date of the meeting of the board of directors at which the plan of merger or consolidation was adopted, and a statement of the fact that [such] the plan received the vote of a majority of the directors in office.

[The] After the articles of merger or articles of consolidation have been delivered to the director and filed, the certificate of merger or certificate of consolidation[, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the director, shall be

returned to the surviving or new corporation, as the case may be, or its representative.] shall be issued by the director."

SECTION 166. Section 415B-85, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-85] Effect of merger or consolidation.** Upon compliance with section 415B-84, the merger or consolidation shall [be effected] become effective upon the time and date of filing the articles of merger or consolidation; or upon a time and date subsequent to the filing as set forth in the articles, but not more than thirty days after being filed and:

- (1) The several corporations party to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;
- (2) The separate existence of all corporations [parties] party to the plan of merger or consolidation, except the surviving or new corporation, shall cease;
- (3) [Such] The surviving or new corporation shall have all of the rights, privileges, immunities, and powers and shall be subject to all of the duties and liabilities of a corporation organized under this chapter;
- (4) [Such] The surviving or new corporation, thereupon and thereafter, shall possess all of the rights, privileges, immunities, and franchises, public and private, of each of the merging or consolidating corporations. Any property, whether real, personal, or mixed[;], any debt due on account, any other chose in action, and any other interest of or belonging to or due to each of the corporations so merged or consolidated, shall be [taken and deemed to be] transferred to and vested in the surviving or new corporation, as the case may be, without further act or deed. The title to any real estate, or any interest therein, vested in any surviving or new corporation shall not revert or be in any way impaired by reason of the merger or consolidation;
- (5) Any surviving or new corporation shall be responsible and liable for all of the liabilities and obligations of its merged or consolidated corporations. Any claim existing, or action or proceeding pending by or against any merged or consolidated corporation, may be prosecuted as if the merger or consolidation had not taken place or the surviving or new corporation may be substituted in the former's place. Neither the rights of creditors nor any liens upon the property of any merged or consolidated corporation shall be impaired by any merger or consolidation; and
- (6) In the case of a merger, the articles of incorporation of the surviving corporation [shall be deemed to be] are amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter, [shall be deemed to be] are the articles of incorporation of the new corporation."

SECTION 167. Section 415B-86, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-86]] Merger or consolidation of domestic and foreign corporations.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner; provided that a merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is organized:

- (1) Each domestic corporation shall comply with this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the laws of the jurisdiction under which it is organized;
- (2) If the surviving or new corporation, as the case may be, is to be governed by the laws of any jurisdiction other than this State, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to conduct affairs in this State, and it shall [file with] deliver to the director[:] for filing:
  - (A) An agreement that the surviving or new corporation may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation; and
  - (B) An irrevocable appointment of [the director] a resident of this State as the surviving or new corporation's agent to accept service of process in any such proceeding.

The effect of [such] the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except where the surviving or new corporations are governed by laws other than those of this State, insofar as those laws otherwise provide.

After approval by the members, or, if there are no members entitled to vote thereon, by the board of directors, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to any provisions therefor set forth in the plan of merger or consolidation.”

SECTION 168. Section 415B-91, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-91]] Voluntary dissolution.** (a) A corporation may dissolve and wind up its affairs in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and direct that the question of the dissolution be submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of [such] the meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at [such] the meeting pursuant to this chapter. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at [such] the meeting or represented by proxy are entitled to cast.
- (2) If there are no members or no members entitled to vote on the dissolution, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve adopted by the vote of a majority of the directors in office.

(b) Upon the adoption of a resolution, a statement of intent to dissolve the corporation shall be delivered to the director for filing and shall set forth:

- (1) The name of the corporation;
- (2) The names and respective residence addresses of the corporation's officers and directors;
- (3) A copy of the resolution adopted authorizing the dissolution;  
and
- (4) The number of votes by members or directors, as the case may be, cast in favor of the resolution.

[(3)] (c) The corporation shall publish once in each of four successive weeks in any newspaper of general circulation published in the State, a notice to all creditors of the corporation to present their claims at a place designated in the notice within ninety days from the first publication of the notice. The corporation shall mail, within thirty days from the first publication of the notice, postage prepaid, a like notice to each creditor whose name and address is known to the corporation and who prior to the mailing of the notice, has not presented any claim. [The notice shall also set forth all corporate and trade names actually used by the corporation of<sup>1</sup> its predecessors in its trade or business during the preceding six years.] All claims, other than tort claims, not so presented shall be forever barred. The corporation, with the approval of the director, may omit the publication of the notice if the assets of the corporation are insufficient to pay for the publication.

(d) Upon the [adoption of the resolution to dissolve by the members, or by the board of directors if there are no members or no members entitled to vote on the dissolution,] filing of the statement of intent to dissolve by the director, the corporation shall cease to conduct its affairs [upon the date established], except insofar as may be necessary for the winding up thereof, and shall proceed to collect its assets and apply and distribute them pursuant to this chapter."

SECTION 169. Section 415B-92, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-92] Plan of distribution.** Subject to this chapter, a plan providing for the distribution of assets may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

- (1) The board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote<sup>1</sup> thereon. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at [such] the meeting, pursuant to this chapter. The plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at [such] the meeting or represented by proxy are entitled to cast.
- (2) If there are no members or no members entitled to vote on the plan of distribution, a plan shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office."

SECTION 170. Section 415B-94, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-94] Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations

of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter, articles of dissolution shall be [filed pursuant to section 415B-10,] delivered to the director for filing and shall be verified on oath and set forth:

- (1) The name of the corporation;
- (2) A statement setting forth the date of any meeting of members at which the resolution to dissolve was adopted, that a quorum was present at [such] the meeting, and that [such] the resolution received at least two-thirds of the votes which members present at [such] the meeting or represented by proxy were entitled to cast, or a statement that a resolution to dissolve was adopted by a consent in writing signed by all members entitled to vote with respect thereto;
- (3) If there are no members or no members entitled to vote thereon, a statement of [such] this fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted, and a statement of the fact that [such] the resolution received the vote of a majority of the directors in office;
- (4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
- (5) A copy of any plan of distribution as adopted by the corporation, or a statement that no plan was so adopted;
- (6) That all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter;
- (7) That there are no actions pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against the corporation in any pending action; [and]
- (8) [That] The dates on which the notice required by section 415B-91(3) [has been complied with] was published; and
- (9) The date that the director filed the statement of intent."

SECTION 171. Section 415B-95, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-95] Filing of articles of dissolution.** The articles of dissolution shall be delivered to the director [and filed] for filing [pursuant to section 415B-10].

Upon the filing of the articles of dissolution, the existence of the corporation shall cease [on the date established therein], unless a date of dissolution, no more than thirty days after the filing is otherwise established in the articles.<sup>1</sup> except for the purpose of any action, proceeding, or other appropriate corporate action by members, directors, and officers as permitted in this chapter."

SECTION 172. Section 415B-96, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-96] Revocation of voluntary dissolution proceedings.** At any time prior to the filing of the articles of dissolution by the director, a corporation may revoke the action therefore<sup>1</sup> taken to dissolve the corporation in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of [such] revocation be submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose,<sup>1</sup> of [such] the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at [such] the meeting pursuant to this chapter. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at [such] the meeting or represented by proxy are entitled to cast.
- (2) If there are no members or no members entitled to vote on the revocation of voluntary dissolution proceedings, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of [such] the resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may again conduct its affairs."

SECTION 173. Section 415B-97, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-97] Involuntary dissolution[, when].** A corporation may be dissolved involuntarily when it is established that:

- (1) The corporation has failed to [file] deliver to the director its annual report within the time required by this chapter[.] for a period of two years;
- (2) The corporation procured its articles of incorporation through fraud;
- [(3)] (3) The corporation has continued to exceed or abuse the authority conferred upon it by law;
- (4) (3) The corporation has failed for ninety days to appoint and maintain a registered agent in this State;
- [(5)] (4) The corporation has failed for ninety days after change of its registered agent to file in the office of the director a statement of such change;
- [(6)] The corporation has been adjudicated bankrupt; or
- (7) The corporation's articles of incorporation have expired with no attempt by the corporation to renew or extend the articles for two years[.];<sup>1</sup> or
- (5) The corporation has failed to complete voluntary dissolution for a period of two years."

SECTION 174. Section 415B-98, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-98] Involuntary dissolution, ordered by director[.]; reinstatement.** (a) Whenever the director certifies that a corporation has given any cause for dissolution pursuant to section 415B-97, the director may [disincorporate the corporation or annul the articles of incorporation and] declare the corporation dissolved[, after giving notice of the intention to dissolve the corporation by mailing notice<sup>1</sup> to the corporation at its last known address appearing in the records of the director and by publishing

notice of such intention once in each of three successive weeks in a newspaper of general circulation published in the State]. Before the director may declare a corporation dissolved, the director shall:

- (1) Give notice of the ground or grounds for dissolution as provided in section 415-94, by mailing the notice to the corporation at its last known address appearing in the records of the director; and
- (2) Give notice of the intention to dissolve the corporation by publishing the notice once in each of three successive weeks (three publications) in a newspaper of general circulation published in the State.

(b) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If [any corporation is declared dissolved] any trustee is appointed to settle the affairs of the corporation the trustee shall pay to the State out of any funds under the control of the trustee, a sum equal to any penalty imposed under section 415B-157. [In each case the director shall deliver a copy of the decree of dissolution to the director of taxation and to the finance officer of each county.]

(c) If a trustee is not appointed by the director or a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved corporation with full powers to settle its affairs.

(d) In each case where the director has given a corporation notice of intention to dissolve the corporation on the grounds that its articles of incorporation have been procured through fraud, the corporation shall be entitled to petition for an administrative hearing under chapter 91 and shall give written notice to the director thereof, before the director may declare the corporation dissolved under subsection (a) of this section.

(e) The director shall, in each case, deliver a copy of the decree of dissolution to the director of taxation and to the finance officer of each county.

(f) Within ninety days after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfilled. Within the ninety-day period, should the name of the corporation, or a name substantially identical thereto be registered or such name or a name substantially identical thereto be registered as a trade name, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved corporation pursuant to the amendment provisions of this chapter.

(g) A corporation whose articles of incorporation have expired shall cease to exist by operation of law."

SECTION 175. Section 415B-99, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-99] Jurisdiction of court to liquidate assets and affairs of corporation.** [The first] Any circuit court shall have full power to liquidate the assets and affairs of a corporation:

- (1) Pursuant to action by a member or director when it appears:
  - (A) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason



- thereof, and the members are unable to break the deadlock or there are no members having voting rights;
- (B) That the acts of the directors or those in control of the corporation are illegal or fraudulent;
  - (C) That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;
  - (D) That the corporate assets are being misapplied or wasted; or
  - (E) That the corporation is unable to carry out its purposes;
- (2) Upon application by a corporation to have its dissolution continued under the supervision of the court. It shall be unnecessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally."

SECTION 176. Section 415B-100, Hawaii Revised Statutes, is amended by amending subsections (a), (c) and (d) to read as follows:

"(a) In proceedings to liquidate the assets and affairs of a corporation the court shall have the power [to issue injunctions; to appoint a receiver or receivers pendente lite with such powers and duties as the court, from time to time, may direct, and to take any other action as may be necessary to preserve the corporate assets wherever situated and carry on the affairs of the corporation until a full hearing can be had.];

- (1) To issue injunctions;
- (2) To appoint a receiver or receivers pendente lite with such powers and duties as the court, from time to time, may direct; and
- (3) To take any other action as may be necessary to preserve the corporate assets wherever situated and carry on the affairs of the corporation until a full hearing can be had.

[After a hearing had upon such notice as the] The court may direct [to] that notice be given to all parties to the proceedings and to any other parties in interest designated by the court, and after a hearing on the notice, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. [Any such] The liquidating receiver shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing [any such] the liquidating receiver shall state the powers and duties, which may be increased or diminished at any time during the proceedings.

(c) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to any receiver, and to any attorney in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of [such] the assets.

(d) A receiver of a corporation appointed under this section shall have authority to sue and defend in all courts in the receiver's own name as receiver of [such] the corporation. The court appointing [such] the receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated."

SECTION 177. Section 415B-103, Hawaii Revised Statutes, is amended to read as follows:

"**[[§415B-103]] Discontinuance of liquidation proceedings.** The liquidation of the assets and affairs of a corporation may be discontinued at any

time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In [such] that event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all of its remaining property and assets.”

SECTION 178. Section 415B-104, Hawaii Revised Statutes, is amended to read as follows:

“**[§415B-104] Decree of involuntary dissolution.** In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of [such] the proceedings and all debts, obligations, and liabilities of the corporation have been paid and discharged and all of its remaining property and assets distributed pursuant to this chapter, or in case the corporation’s property and assets are not sufficient to satisfy and discharge [such] the costs, expenses, debts, and obligations, and all of the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation and the existence of the corporation shall cease.”

SECTION 179. Section 415B-107, Hawaii Revised Statutes, is amended to read as follows:

“**[§415B-107] Survival of tort claims after dissolution.** The dissolution of a corporation by (1) the issuance of a certificate of dissolution by the director, (2) a decree of the court when the court has not liquidated the assets and affairs of the corporation pursuant to this chapter, or (3) expiration of the corporation’s period of duration, shall not take away or impair any tort remedy available to or against [such] the corporation for any right or claim existing, or any liability incurred, prior to [such] the dissolution; provided the action or other proceeding thereon is commenced within two years after the date of the incident giving rise to the claim, or the date of [such] the dissolution, whichever is earlier. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect [such] the remedy, right, or claim. If a corporation is dissolved by the expiration of its period of duration, the corporation may amend its articles of incorporation at any time during [such period of two years] the two-year period so as to extend its period of duration.”

SECTION 180. Section 415B-108, Hawaii Revised Statutes, is amended to read as follows:

“**[§415B-108] Sale, lease, exchange, or mortgage of assets.** A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, of the property<sup>1</sup> conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

- (1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending [such] the sale, lease, exchange, mortgage, pledge, or other<sup>1</sup> a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the<sup>1</sup> other disposition of all, or substantially all, of the property and assets of the corporation shall be given to each member entitled to vote at [such] the meeting, pursuant to this chapter. At the meeting the members may authorize [such] the sale, lease, exchange, mortgage, pledge, or

other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. The authorization shall require at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast. [Such] Notwithstanding the authorization by a vote of members [notwithstanding], the board of directors may abandon [such] the sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members; or

- (2) If there are no members or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, of the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

Nothing in this section shall require a vote of the members with respect to any sublease, exchange, mortgage, pledge, or distribution of assets of the corporation in the normal and continuing course of the corporation's business."

SECTION 181. Section 415B-121, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No foreign corporation shall have the right to conduct affairs in this State until it obtains a certificate of authority from the director. No foreign corporation shall be entitled to obtain a certificate of authority under this chapter to conduct in this State any affairs which a corporation organized under this chapter is prohibited from conducting. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws[,] of the jurisdiction under which it is organized, which govern its organization and internal affairs, differ from the laws of this State. Nothing in this chapter shall be construed to authorize this State to regulate the organization or the internal affairs of [such] a foreign corporation."

SECTION 182. Section 415B-122, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-122] Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

- [(1)] Does not contain any term which indicates or implies that it is organized for any purpose other than any of the purposes contained in the corporation's articles of incorporation;
- [(2)] (1) Is not the same as, or [deceptively similar] substantially identical to, the name of any profit or nonprofit corporation or partnership<sup>1</sup> existing under the laws of this State, or any profit or nonprofit foreign corporation or<sup>1</sup> foreign partnership authorized to transact business or conduct affairs in this State, or a corporate or trade name reserved or registered pursuant to the laws of this State; and
- [(3)] (2) Is transliterated into letters of the English alphabet, if the name is not in English."

SECTION 183. Section 415B-123, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-123]] Change of name by foreign corporation.** (a) Whenever a foreign corporation which is authorized to conduct affairs in this State changes its name to one under which a certificate of authority would not be granted, [the certificate of authority of such corporation shall be suspended and it] the foreign corporation shall not thereafter conduct any affairs in this State until it has changed its name to a name which is permitted by the laws of this State.

(b) If a foreign corporation is unable to change its name to a name which is available to it under the laws of this State, it may deliver to the director for filing, a certificate of registration of a trade name for the foreign corporation’s file and thereafter become authorized to transact business in this State under that name.”

SECTION 184. Section 415B-124, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-124]] Application for certificate of authority.** In order to procure a certificate of authority to conduct affairs in this State, a foreign corporation shall submit an application therefor to the director stating:

- (1) The name of the corporation and the jurisdiction under which it is incorporated;
- (2) The date of incorporation and the period of duration of the corporation;
- (3) The mailing address of the principal office of the corporation in the jurisdiction in which it is incorporated;
- (4) The address of the corporation’s proposed registered office [of the corporation] in this State and the name of its proposed registered agent in this State at [such] that address;
- (5) Any purpose of the corporation which it proposes to pursue in conducting its affairs in this State;
- (6) The names and respective addresses of the directors and officers of the corporation; and
- (7) Any additional information necessary or appropriate to enable the director to determine whether [such] the corporation is entitled to a certificate of authority to conduct affairs in this State.”

SECTION 185. Section 415B-125, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-125]] Filing of application for certificate of authority.** The application of a foreign corporation for a certificate of authority shall be delivered to the director, together with a [copy of the corporation’s articles of incorporation and any amendments thereto,] certificate of good standing duly certified by the proper officer of the jurisdiction in which the foreign corporation is incorporated. If the certificate of good standing is in a foreign language, a translation under oath of the translator shall accompany the certificate.”

SECTION 186. Section 415B-126, Hawaii Revised Statutes is amended to read as follows:

**“[[§415B-126]] Effect of certificate of authority.** Upon the issuance of a certificate of authority which shall be effective as of the date the application for the certificate of authority is delivered to the director for filing [by the director,] a foreign corporation shall be authorized to conduct affairs in this State for any purpose set forth in the corporation’s application; provided

## ACT 135

that this State may suspend or revoke such authority pursuant to this chapter.”

SECTION 187. Section 415B-127, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No foreign corporation which is conducting affairs in this State without a certificate of authority shall be permitted to maintain any action or proceeding in any court of this State until [such] the corporation has obtained a certificate of authority. No action or proceeding shall be maintained in any court of this State by any successor or assignee of [such] the corporation on any right, claim, or demand arising out of the conduct of affairs by [such] the corporation in this State, until a certificate of authority has been obtained by [such] the corporation or by a corporation which as<sup>1</sup> acquired all, or substantially all, of its assets.”

SECTION 188. Section 415B-128, Hawaii Revised Statutes, is amended to read as follows:

“**[§415B-128] Powers of foreign corporation.** A foreign corporation which has received a certificate of authority under this chapter and until a certificate of revocation or certificate of withdrawal has been issued pursuant to this chapter, shall enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which [such] the certificate of [authorization] authority is issued. Except as otherwise provided by this chapter, [such] a foreign corporation shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.”

SECTION 189. Section 415B-129, Hawaii Revised Statutes, is amended to read as follows:

“**[§415B-129] Registered office and registered agent of foreign corporation.** Any foreign corporation authorized to conduct affairs in this State shall have and continuously maintain in this State:

- (1) A registered office which may be the same as its principal office; and
- (2) A registered agent which may be either an individual resident in this State whose business office is identical [with] to the corporation’s registered office, or a profit or nonprofit domestic corporation[, or a profit or nonprofit foreign corporation authorized to transact business or conduct affairs in this State and] having an office identical with the corporation’s registered office.”

SECTION 190. Section 415B-130, Hawaii Revised Statutes, is amended to read as follows:

“**[§415B-130] Change of registered office or registered agent of foreign corporation.** A foreign corporation authorized to conduct affairs in this State may change its registered office or change its registered agent, or both, upon delivering to the director [pursuant to section 415B-10] for filing a statement setting forth:

- (1) The name of the corporation;
- (2) The street address of the corporation’s current registered office; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service may be provided;

- (3) If the address of the corporation's registered office is to be changed, the street address to which the registered office is to be changed; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service may be provided;
- (4) The name of the corporation's registered agent;
- (5) If the corporation's registered agent is to be changed, the name of the successor registered agent;
- (6) That the address of the corporation's registered office and the registered agent, as changed, will be identical; and
- (7) That [such] the change was authorized by resolution duly adopted by its board of directors.

If the business address of a registered agent is changed to another place within this State, the registered agent may change the address and the address of the registered office of any corporation for which the registered agent acts, by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to the provisions of paragraph (7) and must recite that a copy of the statement has been mailed to the corporation.

Any registered agent in this State appointed by a foreign corporation may resign as [such] the agent for the foreign corporation upon [filing] delivering a written notice thereof [with] to the director who shall mail a copy of the notice to the foreign corporation at its principal office in the jurisdiction in which it is incorporated as shown by its most recent annual report. The appointment of the registered agent shall terminate upon the expiration of thirty days after receipt of the notice by the director."

SECTION 191. Section 415B-131, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-131]] Amendment to articles of incorporation of foreign corporation.** Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this State are amended[,] to change its corporate name, the foreign corporation, within thirty days after [such] the amendment becomes effective, shall [file in the office of] deliver to the director for filing a copy of [such] the amendment duly certified by the proper officer of the jurisdiction in which the corporation is incorporated]; provided that the filing of itself shall neither enlarge nor alter any purpose which the corporation is authorized to pursue in conducting its affairs in this State nor authorize the corporation to conduct affairs in this State under any other name than the name set forth in its certificate of authority]."

SECTION 192. Section 415B-132, Hawaii Revised Statutes, is repealed.

SECTION 193. Section 415B-133, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-133]] Merger of foreign corporation authorized to conduct affairs in this State.** Whenever a foreign corporation authorized to conduct affairs in this State is a party to a statutory merger permitted by the laws of the jurisdiction in which it is incorporated, and [such] the corporation is the surviving corporation, it shall [file] deliver to the director for filing, within sixty days after [such] the merger becomes effective [with the director], a copy of the articles of merger duly certified by the proper officer of the jurisdiction in which [such] the statutory merger was effected. It shall not be

## ACT 135

necessary for [such] the surviving corporation to obtain either a new or amended certificate of authority to conduct affairs in this State unless the name of [such] the corporation is changed by the merger or the corporation desires to pursue [in this State] any purpose other than one which it is then authorized to pursue in this State.”

SECTION 194. Section 415B-134, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-134]] Withdrawal of foreign corporation.** A foreign corporation authorized to conduct affairs in this State may withdraw from this State by applying to the director for a certificate of withdrawal. The application for withdrawal shall be verified on oath and state:

- (1) The name of the corporation and the jurisdiction in which it is incorporated;
- (2) That the corporation is not conducting affairs in this State;
- (3) That the corporation surrenders its authority to conduct affairs in this State;
- (4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the director; [and]
- (5) The dates that notice of the foreign corporation’s intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State. The foreign corporation, with the approval of the director, may omit the publication of the notice if the corporation has insufficient assets to pay for the publication;
- (6) That all taxes, debts, obligations, and liabilities of the foreign corporation in the State have been paid and discharged or that adequate provision has been made therefor; and
- [(5)] (7) A post office address to which the director may mail a copy of any process against the corporation that may be served on the director.”

SECTION 195. Section 415B-135, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-135]] Filing of application for withdrawal.** The application for withdrawal shall be delivered to the director [and filed pursuant to section 415B-10.] for filing. Upon the [issuance] filing of [such] the certificate of withdrawal[,] by the director, the authority of the corporation to conduct affairs in this State shall cease.”

SECTION 196. Section 415B-136, Hawaii Revised Statutes, is amended to read as follows:

**“[[§415B-136]] Revocation of certificate of authority.** (a) The certificate of authority of a foreign corporation to conduct affairs in this State may be revoked by the director when:

- (1) The corporation has failed to file its annual report [within the time required by this chapter,] for a period of two years or has failed to pay any fees or penalties imposed pursuant to this chapter;

- (2) The corporation has failed to appoint and maintain a registered agent in this State as required by this chapter;
- (3) The corporation, after change of its registered agent or registered address, has failed for a period of thirty days to [file in the office of] deliver to the director for filing a statement of the change as required by this chapter;
- (4) The corporation has failed to [file in the office of the director any amendment to its articles of incorporation,] deliver to the director a certificate evidencing its name change or any articles of merger within the time prescribed by this chapter;
- (5) The certificate of authority of the corporation was procured through fraud practiced upon the State;
- [(6) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter;] or
- [(7)] (6) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by [such] the corporation pursuant to this chapter.

(b) No certificate of authority of a foreign corporation shall be revoked by the director unless the director has given the corporation at least sixty days' notice of the revocation by mail addressed to the corporation's registered office in this State, and the corporation, prior to revocation fails [to file an annual report, pay fees or penalties, file the required statement of change of registered agent, file articles of amendment or articles of merger, or correct any misrepresentation.];

- (1) To deliver to the director an annual report;
- (2) To deliver to the director for filing, a certificate evidencing a corporation's name change or articles of merger, or the required statement of change of registered agent;
- (3) To pay fees or penalties; or
- (4) To correct any misrepresentation."

SECTION 197. Section 415B-137, Hawaii Revised Statutes, is amended to read as follows:

"**[§415B-137] Issuance of certificate of revocation.** Upon revoking any [such] certificate of authority, the director shall[:

- (1) Issue a certificate of revocation [in duplicate;
- (2) File one of such certificates in the director's office; and
- (3) Mail to the corporation at its registered office in this State a notice of revocation accompanied by one of the certificates.

Upon the issuance of the certificate of revocation], and the authority of the corporation to conduct affairs in this State shall cease."

SECTION 198. Section 415B-151, Hawaii Revised Statutes, is amended to read as follows:

"**[§415B-151] Powers of director.** The director shall have the power and authority reasonably necessary to administer this chapter efficiently, to perform the duties [by this chapter] imposed upon the director[, by this chapter, and to adopt, amend, and repeal rules under this chapter subject to chapter 91."

SECTION 199. Section 415B-152, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If the director fails to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be [approved by the director before the same shall



be filed in] delivered to the director[’s office,] for filing, the director [within thirty days after the delivery thereof [to the director],<sup>1</sup> shall deliver written notice of disapproval to the person or corporation and specify the reasons therefor. The person or corporation, domestic or foreign, may appeal the director’s disapproval to [the first] any circuit court by filing with the clerk of [such] the court a petition setting forth a copy of the document sought to be filed and a copy of the written disapproval thereof by the director. The matter shall be tried de novo by the court and the court shall either sustain the action of the director or order the director to take any action the court deems proper.”

SECTION 200. Section 415B-153, Hawaii Revised Statutes, is amended to read as follows:

**“[§415B-153] Interrogatories by director.** The director may propose to any foreign or domestic corporation, subject to this chapter, and to any officer or director thereof, any interrogatories which are reasonably necessary and proper to enable the director to ascertain whether the corporation has complied with all of the applicable provisions of this chapter.

Interrogatories to an officer or director shall be mailed by registered mail to the individual’s latest residence address on file in the office of the director. The interrogatories shall be answered within thirty days after their mailing or within any additional time fixed by the director. The answers to the interrogatories shall be full and complete, in writing, and under oath. If the interrogatories are directed to an individual they shall be answered by [such] the individual; and, if directed to a corporation, they shall be answered by its president, vice-president, secretary, assistant secretary, treasurer, or assistant treasurer.

The director need not file any document related to [such] the interrogatories until the interrogatories are answered pursuant to this section, and not then if [such] the answers disclose that the document is not in conformity with this chapter. The director shall certify to the attorney general, for [such] any action [as] the attorney general deems appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter.

The director, or designated agent, at any time, may call for the production of the books and papers of any domestic or foreign corporation doing business in [the] this State, and examine under oath its officers, members, and any [others relating to] other persons associated with its corporate affairs.”

SECTION 201. Section 415B-155, Hawaii Revised Statutes, is amended to read as follows:

**“[§415B-155] Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing<sup>1</sup> corporate documents:

- (1) Articles of incorporation of nonprofit corporation, \$10;
- (2) Certificate of amendment and renewal or extension of charter of nonprofit corporation, \$5;
- (3) Annual exhibit of nonprofit domestic and foreign corporations, \$1;
- (4) Agreement of merger or consolidation of nonprofit corporations, \$5; and
- (5) Filing any other statement or report, except an annual report, of a domestic or foreign corporation, \$5.]
- (1) Articles of incorporation, \$25;

- (2) Articles of amendment, \$10;
- (3) Restated articles of incorporation, \$10;
- (4) Articles of merger or consolidation, \$50;
- (5) Articles of dissolution, \$10;
- (6) Annual report of nonprofit domestic and foreign corporations, \$1;
- (7) Filing any other statement or report, except an annual report, of a nonprofit domestic or foreign corporation, \$10;
- (8) Application for a certificate of authority, \$25;
- (9) Application for a certificate of withdrawal, \$10;
- (10) Reservation of corporate name, \$10;
- (11) Transfer of reservation of corporate name, \$10;
- (12) Good standing certificate, \$15;
- (13) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, \$40;
- (14) Special handling fee for review of articles of merger or consolidation, \$100;
- (15) Special handling fee for certificates issued by the department, \$10 per certificate; and
- (16) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to a special fund which may be established for use by the department in expediting the processing of documents. At least two temporary business assistants I positions shall be paid out of the special fund."

SECTION 202. Section 415B-156, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-156] Miscellaneous charges.** The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, [35] 25 cents a page and [1] \$10 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as [resident] agent for service of process of a corporation, [\$5.] \$25, which amount may be recovered as taxable costs by the party to the action causing [such] the service to be made if [such] that party prevails in the action."

SECTION 203. Section 415B-157, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-157] Penalties imposed upon corporation.** Any domestic or foreign corporation that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of [\$50] \$25 to be assessed by the director. The director may waive the imposition of the penalty upon a showing of good cause.

Any domestic or foreign corporation that fails or refuses to truthfully and fully answer, within the time prescribed by this chapter<sup>1</sup> shall be subject to [chapter 710, part V.] a class C felony."

SECTION 204. Section 415B-158, Hawaii Revised Statutes, is amended to read as follows:

**"[§415B-158] Penalties imposed upon directors and officers.** Any director and officer of a foreign or domestic corporation who, within the time prescribed by this chapter, fails or refuses to truthfully and fully answer interrogatories [propounded] initiated [to such director or officer] by the

## ACT 135

director pursuant to this chapter, or who signs any articles, statement, report, application, or other document [filed with] delivered or delivered to and filed by the director which is known to [such officer or director to] be false in any material respect, shall be subject to [chapter 710, part V.] a class C felony.”

SECTION 205. Section 415B-159, Hawaii Revised Statutes, is amended to read as follows:

**“[§415B-159] Effect of chapter on existing corporations.** The existence of corporations formed or existing on the date of enactment of this chapter or the voting requirements in the charter of incorporation of any such corporations shall not be affected by the enactment of this chapter nor by any change in the requirement or repeal of the laws under which they were formed or created.

Neither the repeals effected by the enactment of this chapter nor the amendment thereof shall impair or take away any existing liability, cause of action, or right against any corporation, its shareholders, directors, or officers incurred prior to the time of [such] the enactment, or amendment.

Nothing in this chapter shall affect the validity of any action taken by any corporation, or [shall] impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation, prior to July 1, 1987.”

SECTION 206. Section 415-90, Hawaii Revised Statutes, is amended to read as follows:

**“[§415-90] Filing of statement of revocation of voluntary dissolution proceedings.** The statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of corporation, shall be delivered to [and filed by] the director for filing [pursuant to section 415-55].”

SECTION 207. This Act shall not affect the validity of any provisions of articles of incorporation and bylaws which were adopted, any proceedings which begun, rights which accrued, or penalties or liabilities which were incurred prior to the effective date.

SECTION 208. Chapters 416, 417 and 418, Hawaii Revised Statutes, are repealed.

SECTION 209. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 210. This Act shall take effect on July 1, 1987.

(Approved June 5, 1987.)

### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.