

ACT 16

H.B. NO. 3159

A Bill for an Act Relating to Corporations.

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

SECTION 1. 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)** 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 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 the meeting, not less than twenty days before 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 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. 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 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 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. 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 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 not be less than the proportion set forth in paragraph (3) of this section; and

- (5) After the authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon 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.

(b) A sale, lease, exchange, or other disposition of the property and assets of a corporation shall not be deemed to be the sale, lease, exchange, or other disposition of all or substantially all the property and assets of the corporation if the corporation is retaining sufficient property and assets to continue one or more significant business segments or lines of the corporation after the sale, lease, exchange or other disposition. Furthermore, the business segments or lines retained must not be only temporary operations or merely a pretext to avoid shareholders' rights which might otherwise arise under this chapter."

SECTION 2. New statutory material is underscored.

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

(Approved April 20, 1988.)