

ACT 371

H.B. NO. 2785

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Section 415-19, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§415-19~~]]~~ Payment for shares.** [The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or

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intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be nonassessable.

Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.]

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) During the first two years after incorporation the corporation shall, and thereafter the corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares. The corporation may credit distributions in respect of the shares against their purchase price, until the services are performed, the note paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or in part.

(f) If a corporation issues or authorizes issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting."

SECTION 2. Section 415-29, Hawaii Revised Statutes, is amended to read as follows:

**"§415-29 Notice of 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] seventy 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 the meeting. If mailed, 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 3. 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] seventy 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, the books shall be closed for at least ten days immediately preceding 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, the date in any case to be not more than [fifty] seventy days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring 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 the dividend is adopted, as the case may be, shall be the record date for 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 4. 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 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;] without shareholder action;
- (4) The number of shares outstanding, 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 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 the amendment, respectively, or if no [shares have been issued,] vote of shareholders was taken, a statement to that effect[;] and that shareholder action was not required; and
- (6) If 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 5. Section 415-73, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

consolidation, subject to the rights of other parties under any contracts relating thereto, without further action or approval of the shareholders.

After approval by the vote of shareholders of the acquired corporation, the board of directors of each corporation, in its discretion, may abandon the share exchange, subject to the rights of any other parties under any contracts relating thereto, without further action or approval of the shareholders."

SECTION 6. Section 415-75, Hawaii Revised Statutes, is amended by amending subsection (b), (c), and (d) to read as follows:

“(b) A copy of the plan of merger shall be mailed to each shareholder of record of the subsidiary corporation[.], except the corporation owning at least ninety per cent of the outstanding shares.

(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 subsidiary corporation and the number of shares of each class owned by the surviving corporation; and
- (3) The date of the mailing to shareholders of the subsidiary corporation entitled to receive the plan 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, the articles of merger shall be delivered to the director for filing [pursuant to section 415-55].”

SECTION 7. Section 415-75.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-75.5] 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 adopt a plan of merger pursuant to section 415-75(a) and 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 per cent of the shares of the subsidiary corporations, the name of [the] any non-surviving subsidiary corporation, and the name of the surviving subsidiary corporation; and
- (2) The manner and basis of converting the shares of [the] any non-surviving 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] any non-surviving subsidiary corporation[.], except the parent 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] any non-surviving subsidiary corporation and the number of such shares of each class owned by the [surviving subsidiary] parent corporation; and

- (3) The date of the mailing to shareholders of [the] any nonsurviving subsidiary [corporations] corporation entitled to receive the plan 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] any 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 8. Section 415-82, Hawaii Revised Statutes, is amended to read as follows:

**"§415-82 Voluntary dissolution by incorporators[.] or initial directors.**

A corporation which has not commenced business [and] or which has not issued any shares, may be voluntarily dissolved by its incorporators or initial directors at any time in the following manner:

Articles of dissolution shall be delivered to the director for filing and shall set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation;
- (3) [That] Either (A) that none of its shares has been issued[.], or (B) that the corporation has not commenced business;
- [(4)] That the corporation has not commenced business;
- (5) (4) 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)] (5) That no debts of the corporation remain unpaid; and
- [(7)] (6) That a majority of the incorporators or initial directors elect that the corporation be dissolved.

Upon the filing of the articles of dissolution, the existence of the corporation shall cease."

SECTION 9. 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 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 the written consent has been signed by all shareholders of the corporation[.], or signed in their names by their attorneys thereto duly authorized."

SECTION 10. Section 415-95, Hawaii Revised Statutes, is amended to read as follows:

**"§415-95 Involuntary; ordered by director and certificates, notices; reinstatement.** (a) Whenever the director certifies the name of a corporation as having given any cause for dissolution pursuant to section 415-94, 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 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 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 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.
- (g) Any party of interest, including the director, may petition any judge of the first circuit to liquidate a corporation pursuant to section 415-98 when it appears that liquidation of its business and assets should precede the entry of a decree of dissolution."

SECTION 11. Section 415-131, Hawaii Revised Statutes, is amended to read as follows:

**"§415-131 Annual license mandatory; exceptions; fees.** No foreign corporation [except foreign insurance companies and foreign nonprofit corporations] 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 - December \$100

January - June \$50

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. The director may, for good cause shown, reduce or waive the penalty."

SECTION 12. 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 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 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 articles of incorporation so provide, any two or more offices may be held by the same [person;] individual; provided the corporation shall have at least two [persons] individuals as officers.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be [ex officio] 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.

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 13. 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 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 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.

If provisions of articles of incorporation and bylaws which were adopted by a corporation prior to July 1, 1987 and which are still effective at the time of a particular action or transaction do not provide for a means of effectuating that action or transaction in a manner which would be valid but for this chapter and the repeal of former chapter 416 as it existed immediately prior to July 1, 1987, then to the extent not in conflict with those provisions, this chapter shall apply to that action or transaction.

Notwithstanding anything in this section to the contrary, any provision of any articles of incorporation or bylaws whether or not adopted prior to July 1, 1987 shall be ineffective to the extent that it attempts or purports to vary the requirements for the informational content, execution, delivery, filing and effectiveness of any document required to be delivered to the director pursuant to this chapter."

SECTION 14. Section 415-118, Hawaii Revised Statutes, is repealed.

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SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 16. This Act shall take effect upon its approval.

(Approved June 15, 1988.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.