

ACT 372

H.B. NO. 2788

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 415, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§415- Filing requirements; filing duty of the director. (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the director.

(b) The document must contain the information required by this chapter. It may contain other information as well.

(c) If the director has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(d) The director’s duty to file documents under this chapter is ministerial. The filing or refusal to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; and
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§415- Correcting a filed document. (a) A domestic or foreign corporation may correct a document filed by the director if the document:

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

- (1) By preparing articles of correction that:
 - (A) Describe the document including its file date or attach a copy of it to the articles;
 - (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
 - (C) Correct the incorrect statement or defective execution; and
- (2) By delivering the articles to the director for filing.

(c) Articles of correction are effective on the effective date of the document they correct, except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.”

SECTION 2. 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 individual; provided that every corporation which has two or more directors shall have not less than two 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 3. Section 415-54, Hawaii Revised Statutes, is amended to read as follows:

"§415-54 Articles of incorporation. (a) The articles of incorporation shall be delivered to and filed by the director 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)] (2) The aggregate number of shares which the corporation shall have authority to issue, and, if 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)] (3) The mailing address of its initial 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;
- [(9)] (4) The number of directors constituting the initial board of directors and the names and residence addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and 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; and
- [(10)] (5) The name, title, and residence address of each officer; 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[;

- (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].

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(c) In addition to provisions required therein, the articles of incorporation may also contain [provisions not inconsistent with law regarding]:

- [(1) The direction of the management of the business and the regulation of the affairs of the corporation;
- (2) The definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, including restrictions on the transfer of shares;
- (3) The par value of any authorized shares or class of shares; and
- (4) Any provision which under this chapter is required or permitted to be set forth in the bylaws.]
- (1) The period of duration, if less than perpetual;
- (2) Limitations, if any, upon the purpose for which the corporation is organized;
- (3) 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 and in the absence of such a provision, all shares shall be common stock of the same class;
- (4) 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, and in the absence of any such provision, no class of shares may be issued in series and the board of directors shall have no such authority;
- (5) If any preemptive right by shareholders is to be expanded, denied, restricted, or limited, the provisions therefor;
- (6) The names of the initial subscribers for shares of each class and the number of shares subscribed for;
- (7) 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;
- (8) 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; and
- (9) Provisions not inconsistent with law regarding:
 - (A) The direction of the management of the business and the regulation of the affairs of the corporation;
 - (B) The definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, including restrictions on the transfer of shares;

- (C) The par value of any authorized shares or class of shares; and
 (D) Any provision which under this chapter is required or permitted to be set forth in the bylaws.”

SECTION 4. Section 415-55, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any document required to be delivered to the director for filing pursuant to this chapter shall be:

- (1) Certified and executed by:
 - (A) An individual intending to organize a corporation or an incorporator, if the corporation has not been organized; or
 - (B) Two individuals who are officers of the corporation, if the corporation has been organized[;] and has more than one individual as an officer, or one individual who is all of the officers of the corporation if the corporation has only one individual as an officer; or
 - (C) A majority of incorporators or initial board of directors 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
- (2) Delivered to the director.”

SECTION 5. Section 415A-14.6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The articles of incorporation must set forth:

- (1) A corporation¹ 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).] 415-54 (a).

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

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 7. This Act shall take effect upon its approval.

(Approved June 15, 1988.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.