

ACT 373

H.B. NO. 3321

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Section 415-28, Hawaii Revised Statutes, is amended to read as follows:

“[§415-28] Meetings of shareholders. Meetings of shareholders may be held at such place within or without this 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 [registered] principal office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any thirteen-month period any circuit court may, on the application of any shareholder, summarily order a meeting to be held.

Special meetings of the shareholders may be called by the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other persons as may be authorized in the articles of incorporation or the bylaws.”

SECTION 2. 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] principal office, and by transferring their shares to the trustee or trustees for the purposes of the agreement. 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 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 the record with the corporation at its [registered] principal office. The counterpart of the voting trust agreement and the copy of 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 the counterpart and the copy of 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 3. Section 415-74, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 the director for filing [pursuant to section 415-55] and shall set forth:

- (1) The plan of merger, or the plan of consolidation;
- (2) Either (A) a statement that the vote of shareholders is not required by virtue of section 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 the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the plan, respectively."

SECTION 4. Section 415-81, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

- "(h) (1) 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] principal office of the corporation is located. If, in the case of a merger or consolidation or share exchange, the corporation is a foreign corporation without a registered office in this State, the petition shall be filed in the county where the [registered] principal 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 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."

SECTION 5. Section 415-85, Hawaii Revised Statutes, is amended to read as follows:

"[**§415-85**] **Filing of statement of intent to dissolve.** The statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to and filed by the director [pursuant to section 415-55]."

SECTION 6. 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 [s]State and judicial subdivision in which the [registered] principal 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 7. 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 filing [[of]] 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] 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 revoking the voluntary dissolution proceedings; and
- (5) That the written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.”

SECTION 8. 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 filing [[of]] 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 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 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 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 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 the resolution, a statement of revocation of voluntary dissolution proceedings 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 the shareholders revoking the voluntary dissolution proceedings;
 - (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 the outstanding shares of each 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 class voted for and against the resolution, respectively.

SECTION 9. Section 415-96, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 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 the provisional director is removed by order of the court or by approval of shareholders [or members] holding a majority of the voting power. A provisional director shall be entitled to such compensation as shall be fixed by the court unless otherwise agreed with the corporation.”

SECTION 10. Section 415-126, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [The first] Each annual report of a corporation shall be delivered to the director between January 1 and March 31 of each year in the case of a domestic corporation, or between January 1 and June 30 in the case of a foreign corporation, except that the first annual report of a corporation shall be filed between January 1 and March 31 in the case of a domestic corporation, or between January 1 and June 30 in the case of a foreign corporation, of the year next succeeding the calendar year in which its articles of incorporation or its application for a certificate of authority, as the case may be, was filed by the director.”

SECTION 11. Section 415A-14.8, Hawaii Revised Statutes, is amended to read as follows:

“**[§415A-14.8] Organization of corporation.** After incorporation, [the incorporator or incorporators, or] the initial director or directors, as the case may be, shall complete the organization of the corporation as provided in section 415-57.”

SECTION 12. 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 for filing.

Upon the filing of the articles of dissolution[, the existence of the corporation shall cease, unless a date of dissolution, no] or upon a date subsequent to the filing as set forth in the articles, but not more than thirty days after [the filing is otherwise established in the articles.] being filed, the existence of the corporation shall cease, except for the purpose of any action, proceeding, or other appropriate corporate action by members, directors, and officers as permitted in this chapter.”

SECTION 13. Section 419-2, Hawaii Revised Statutes, is amended to read as follows:

“§419-2 [Application for charter; petition;] Articles of incorporation; contents. [Application to the director of commerce and consumer affairs for a charter] Articles of incorporation under this chapter shall be [made by a written petition, verified] delivered to the director for filing, certified and executed by the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole[. The petition] and shall set forth:

- (1) The name of the corporation;
- (2) The name and address of the officer forming the corporation, the office which the officer holds in the church, and that the officer is duly authorized by the rules, regulations, or discipline of the church to take the action;
- (3) The boundaries of the district subject to the ecclesiastical jurisdiction of the officer forming the corporation sole, in accordance with the rules, regulations, or discipline of the church;
- (4) The place of the principal office of the corporation sole, which shall be in the State;
- (5) The term for which the corporation sole is organized, which may be perpetual;
- (6) The manner in which any vacancy occurring in the office of the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole is required to be filled by the rules, regulations, or constitution of the church;
- (7) Additional powers to be set forth in its [charter,] articles, in accordance with section [416-27;] 415B-5;
- (8) Any lawful provision for the regulation of the affairs of the corporation sole, including restrictions upon the power to amend all or any part of the [charter;] articles; and
- (9) That the corporation is not organized for profit.

If any [petition for a charter] articles of incorporation presented to the director under this chapter [is] are not in conformity with the requirements of this section the director shall[, within fifteen days,] return the same to the [petitioner] incorporator specifying wherein the same fails to conform with this section and the [petitioner] incorporator may amend the [petition] articles and present [it] them so amended. [A proposed form of the charter of incorporation shall accompany the

petition. The director may require additional proofs from the petitioner.] If the [petition or amended petition and the proposed charter] articles of incorporation are in conformity with law, the director shall [grant to the applicant a charter] file the articles of incorporation [as a corporation sole].”

SECTION 14. Section 419-4, Hawaii Revised Statutes, is amended to read as follows:

“**§419-4 Amendment of [charter.] articles.** Subject to the provisos set forth in this section, and subject to any lawful restrictions upon the power to amend the [charter of a corporation] articles of incorporation sole[, set forth in its petition] filed under section 419-2, the incumbent of the corporation may at any time amend the [charter of the corporation] articles of incorporation by changing its name, the term of its existence, the boundaries of the district subject to its jurisdiction, the place of its principal office, the manner of filling any vacancy in the incumbency thereof, its powers, or any provision of the [charter] articles for the regulation of the affairs of the corporation (except restrictions upon the power to amend the [charter,] articles), and may, by amendment of the [charter,] articles, make provision for any act or thing for which provision is authorized in original [charters of corporations] articles of incorporation sole formed under this chapter.

The incumbent of the corporation sole shall subscribe and verify a certificate which shall set forth the amendment either by stating that the [charter has] articles have been amended to read as set forth in the certificate in full or by stating that any provision or provisions of the [charter,] articles, which shall be identified by the numerical or other designation or designations thereof in the [charter] articles or by stating the wording thereof, has or have been amended to read as set forth in the certificate. The certificate shall further state that the amendment has been duly authorized by the rules, regulations, or discipline of the church of which the incumbent is an officer; provided that no amendment shall confer any other or greater powers or privileges than could lawfully be conferred or obtained in [an] the original [charter;] articles; provided further that no amendment shall become effective unless the same is allowed by the director of commerce and consumer affairs.”

SECTION 15. Section 419-5, Hawaii Revised Statutes, is amended to read as follows:

“**§419-5 Name of incumbent; change in incumbency.** There shall be filed, with the [petition for a charter,] articles of incorporation, a [certificate] statement duly [signed and acknowledged,] certified and executed, which shall state the name and address of the person who is to be its incumbent, to which shall be appended a duly attested copy of the certificate of appointment or other document through which the person succeeded to the ecclesiastical office by virtue of which the person became entitled to be the incumbent of the corporation sole. Whenever a change in the incumbency of the corporation occurs, the new incumbent, within thirty days after the new incumbent has become the incumbent, shall file with the director of commerce and consumer affairs a like certificate with like proof of the new incumbent’s title to the office.”

SECTION 16. Section 419-7, Hawaii Revised Statutes, is amended to read as follows:

“**§419-7 Extensions and renewals.** The duration of the corporation, if not perpetual, may be extended by amendment of its [charter,] articles, and at any time

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not more than two years after the expiration of [a charter] its articles it may be renewed upon application to the director of commerce and consumer affairs for that purpose; provided that no renewal shall become effective until it is allowed by the director by and with the consent of the governor. Such application shall be made in the manner and form provided for amendment of [a charter,] articles, as nearly as may be."

SECTION 17. Section 421-1, Hawaii Revised Statutes, is amended by amending the definition of "articles" to read as follows:

" "Articles" means the articles of [association.] incorporation."

SECTION 18. Section 421-4, Hawaii Revised Statutes, is amended to read as follows:

"**§421-4 Articles of [association.] incorporation.** Articles of [association] incorporation shall be [signed and acknowledged] certified and executed by each of the incorporators, if natural persons, and by the president and secretary of associations[, before any officer authorized to take acknowledgments,] and shall contain the following particulars:

- (1) The name of the association;
- (2) The place of its principal office, which shall be in the State;
- (3) The purposes and powers of the association;
- (4) The proposed duration of the association;
- (5) The names and addresses of persons who are to act as the initial directors and officers of the association;
- (6) The names and [post office] addresses of the incorporators, and if organized with capital stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;
- (7) Whether organized with or without capital stock, and if organized with capital stock the total authorized number of [par value] shares and the par value of each share, [and if the privilege of subsequent extension of the authorized capital stock is asked for, the limit of the extension;] if any; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the dividends to which each class shall be entitled;
- (8) If organized without capital stock, whether the property rights and interest of each member are equal or unequal, if unequal, the rule by which the rights and interests shall be determined.

The articles may also contain any other provisions, consistent with law for regulating the association's business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent the districts, and the members residing therein, for voting by proxy, and the issuance, retirement, and transfer of membership and stock."

SECTION 19. Section 421-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (c) to read as follows:

"**§421-6 Filing and recording articles of [association,] incorporation, etc.** (a) The articles of [association, charters,] incorporation and any [certificates] articles of amendment thereof shall be [recorded] filed in the office of the director

of commerce and consumer affairs [in a book to be kept for the purpose, which] and shall at all times during business hours be open to the inspection of the public without charge.

(b) A certified copy of the articles or of a certificate of incorporation issued by the director shall be filed with the department of agriculture.

(c) On the filing of the articles of [association] incorporation with the director, the persons who have subscribed the articles, their associates, successors, and assigns, shall thereafter be a body corporate by the name and style provided in the articles; shall have succession and corporate existence for such term as shall have been agreed upon, which may be perpetual; shall have all of the powers and be subject to all of the liabilities provided for in this chapter; and shall be subject to all general laws in regard to the associations.”

SECTION 20. Section 421-7, Hawaii Revised Statutes, is amended to read as follows:

“**§421-7 Amendments of articles of incorporation.** (a) An association may amend its articles of [association] incorporation by the affirmative vote of two-thirds of the members voting thereon at any regular meeting, or at a special meeting called for the purpose, or if the association permits its members to vote on the basis of patronage, by the affirmative vote of a majority of the members and of two-thirds of the patronage, voting thereon. A written or printed notice of the proposed amendment, and of the time and place of holding the meetings shall be delivered to each member, or mailed to the member’s last known address as shown by the books of the association, at least thirty days prior to any such meetings. No amendment affecting the preferential rights of any outstanding stock shall be adopted until the written consent of the holders of two-thirds of the outstanding preference shares has been obtained.

(b) After an amendment has been adopted, articles of amendment shall be [signed and sworn to] certified and executed by the president or vice president and by the treasurer or secretary or assistant secretary, and filed as in the case of articles of [association,] incorporation, including the payment of fees.”

SECTION 21. Section 421C-1, Hawaii Revised Statutes, is amended by amending the definition of “articles” to read as follows:

“ “Articles” means[, for stock associations,] the articles of incorporation [of a stock association, or, for nonstock associations, the charter of incorporation of a nonstock association].”

SECTION 22. Section 421C-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Associations may amend their articles upon [petition to and] approval by the director of commerce and consumer affairs of articles of amendment to convert from a stock association to a nonstock association or vice-versa. This subsection may be employed by an association only once every two calendar years.”

SECTION 23. Section 421C-11.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Articles shall be [signed and acknowledged] certified and executed by each of the incorporators, if natural persons, and by the president and secretary of associations, before any officer authorized to take acknowledgments, and shall contain the following particulars:

- (1) The name of the association which shall contain the term "cooperative" or some abbreviation thereof notwithstanding section 421-5;
- (2) The street address and zip code of its principal office, which shall be in the State;
- (3) The purposes and powers of the association;
- (4) The duration of the association;
- (5) The number, names, titles, and residence addresses of the initial officers and directors, or similar officers;
- (6) The names and [post office] addresses of the incorporators, and if organized with stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;
- (7) If organized with stock, the total authorized number of [par value] shares and the par value of each share, [and if the privilege of subsequent extension of the authorized stock is asked for, the limit of the extension;] if any; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the interest-dividends to which each class shall be entitled;
- (8) If organized without stock, whether the property rights and interest of each member are equal or unequal, if unequal, the rule by which the rights and interest shall be determined."

SECTION 24. Section 421H-2, Hawaii Revised Statutes, is amended to read as follows:

"§421H-2 [Charter] Articles of incorporation. (a) The [charter] articles of incorporation and bylaws shall require the purchase and sale of the stock of resident owners who cease to be residents, at not more than a transfer value determined as provided in the [charter] articles and bylaws, and which shall not exceed the aggregate of the following:

- (1) The consideration paid for the membership share by the first occupant of the unit involved, as shown on the books of the corporation.
- (2) Accumulated interest, or an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market-interest index. Any increment pursuant to this paragraph shall not exceed a ten per cent annual increase on the consideration paid for the membership or share by the first occupant of the unit involved.
- (3) The value, as determined by the board of directors of the corporation, of any improvements installed at the expense of the member with the prior approval of the board of directors.
- (4) No other charges, fees, premiums, taxes, or payments or exchanges of any kind may be imposed, assessed, or made a condition of any transfer.

(b) The [charter] articles of incorporation and bylaws shall require the board of directors or corporate members to sell the stock purchased as provided in subsection (a) to new resident shareholders at a price which does not exceed the transfer value paid for the unit. Upon termination or dissolution of the corporation, the then existing stockholders shall be paid an amount that does not exceed the transfer value of their share.

(c) Amendment of the [charter] articles of incorporation shall require the affirmative vote of at least two-thirds of the resident shareholders.

(d) The [charter] articles of incorporation and bylaws shall require:

- (1) The corporation issue only one class of stock;
- (2) One share shall be issued for each dwelling unit in the cooperative;
- (3) Voting rights shall be based upon one share, one vote; and
- (4) Each shareholder shall be a resident of the unit represented by the share held.

(e) The [charter] articles of incorporation and bylaws shall require a provision that there shall not be any social, political, racial, or religious discrimination nor any discrimination on the basis of age, sex, marital, or parental status, subject only to limitations under applicable federal, state, or county laws, rules, or regulations.”

SECTION 25. Section 422-2, Hawaii Revised Statutes, is amended by amending the definition of “articles” to read as follows:

“ “Articles” means the articles of [association;] incorporation;”

SECTION 26. Section 422-9, Hawaii Revised Statutes, is amended to read as follows:

“**§422-9 Filing of articles.** Articles of incorporation must be [signed, acknowledged,] certified, executed, and filed in the manner prescribed by the laws of the State for domestic corporations.”

SECTION 27. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 28. This Act shall take effect upon its approval.

(Approved June 15, 1988.)