

ACT 6

S.B. NO. 2701

A Bill for an Act Relating to Business Registration.

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

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

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

(b) The document must contain the information required by this chapter

but 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 in 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.

**§415B- 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.

**§415B- Filing of statement of revocation of voluntary dissolution proceedings.** The statement of revocation of voluntary dissolution proceedings shall be delivered to the director for filing."

SECTION 2. 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 its corporate name:

- (1) Is not the same as, or substantially identical to, the name of any domestic corporation or partnership existing under the laws of this State or any foreign corporation or partnership authorized to transact business in this State, 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 substantially identical name and one or more words are added to make the name distinguishable from the other name; [or]
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this State; [and] or
  - (C) A copy of a certificate of registration of a trade name by the

foreign corporation under which trade name that foreign corporation will transact business in this State; and

- (2) Is transliterated into letters of the English alphabet, if the name is not in English."

SECTION 3. 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 certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which it is incorporated[.], which certificate shall be dated not earlier than thirty days prior to the filing of the application. If the certificate of good standing is in a foreign language, a translation under the oath of the translator shall accompany the certificate."

SECTION 4. 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 theretofore 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 revocation 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 the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at 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 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.
- (3) 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 residence addresses of its officers;
  - (C) The names and residence addresses of its directors;
  - (D) A copy of the resolution revoking the voluntary dissolution proceedings;
  - (E) If the adoption of the resolution is by the members entitled to vote on the revocation of voluntary dissolution proceedings, the number of members of the corporation and the number of members voting for and against the resolution, respectively; and, if the members of any class are entitled to vote as a class, the designation and number of members of each class and the number of members of each class voting for and against the

- resolution, respectively; and  
 (F) If the adoption of the resolution is by the board of directors, the number of directors voting for and against the resolution, respectively.

Upon the adoption of 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 5. Section 415B-97, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) The corporation has failed to 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)] The corporation has failed for ninety days to appoint and maintain a registered agent in this State;
- (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;] <sup>or</sup><sup>1</sup>
- [(5)] (3) The corporation has failed to complete voluntary dissolution for a period of two years.”

SECTION 6. 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 certificate of good standing duly certified by the proper officer of the jurisdiction in which the foreign corporation is incorporated[.], which certificate shall be dated not earlier than thirty days prior to the filing of the application. If the certificate of good standing is in a foreign language, a translation under oath of the translator shall accompany the certificate.”

SECTION 7. Section 425-12, Hawaii Revised Statutes, is amended to read as follows:

**“§425-12 Fee for recording.** (a) The director of commerce and consumer affairs shall collect the following fees:

- (1) For each change of partnership name or statement of dissolution filed, a fee of \$1.50 per partner;
- [(2)] For each admission, withdrawal, or death statement filed, a fee of \$1.50 per partner involved;
- (3) For each name recorded as aforesaid, a fee of \$1;
- [(4)] (2) For each annual statement filed, a fee of \$3; and
- [(5)] (3) For each general partnership registered, a fee of \$3 for each partner.

(b) The following special handling fees shall be assessed by the director for expeditious review of the following documents:

- [(1)] For limited partnerships: certificate of amendment, \$40; certificate of cancellation, \$10; annual statement, \$10; certificate of limited partnership, \$1 a page; certificate of good standing, \$10;

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- (2)] (1) For general partnerships: registration statement, \$10; change of name statement, \$10; partnership dissolution statement, \$10; annual statement, \$10; certification of general partnership, \$1 a page; certificate of good standing, \$10;
- [(3)] (2) For foreign general [and foreign limited] partnerships: registration statement of foreign general partnership, \$10; [registration statement of foreign limited partnership, \$40;] withdrawal application, \$10; annual statement, \$10; certification of foreign general [or foreign limited] partnership, \$1 a page; certificate of good standing, \$10.

All special handling fees shall be credited to the special fund authorized by section 415-128."

SECTION 8. Section 482-3, Hawaii Revised Statutes, is amended to read as follows:

**"§482-3 Record, issuance and effect of certificate.** (a) Upon receiving the application accompanied by the fee, the director of commerce and consumer affairs shall cause the print, label, trademark, service mark, or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant's claim of the use of the print, label, trademark, service mark, or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, trademark, service mark, or trade name which is substantially identical with any registered print, label, trademark, service mark, or trade name or with the name of any corporation or partnership registered in accordance with chapters 415, 415A, 415B, [416, 418, and] 425[;], and 425D; provided further that the print, label, trademark, service mark, or trade name is continued in actual use by the applicant in the State or elsewhere in the United States or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark.

(b) The registration of a print, label, trademark, service mark, or trade name may be renewed at any time during a period of its registration for additional periods of ten years from the date of renewal by the filing of an application for renewal of registration in [the] a form as the director may provide. Upon filing the application for renewal the applicant shall pay the director a fee of \$25, of which \$15 shall be deposited in the special fund authorized by section 415-128, and the balance deposited to the general fund of the State.

(c) The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 10. This Act shall take effect upon its approval.

(Approved April 7, 1992.)

### Notes

1. Should not be underscored.

2. Edited pursuant to HRS §23G-16.5.