

ACT 174

H.B. NO. 1638

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Section 415-141, Hawaii Revised Statutes, is amended to read as follows:

“§415-141 Certificates and certified copies to be received in evidence.

All certificates issued by the director [in accordance with the provisions of] pursuant to this chapter, and all copies of documents filed in the director’s office [in accordance with the provisions of] pursuant to this chapter when certified by the director, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the director, under the [great] seal of [this State,] the department, as to the existence or nonexistence of the facts relating to corporations, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.”

SECTION 2. Section 415-172, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

ACT 174

“(d) Within five days after receipt of an information statement pursuant to subsection (c), a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section [416-73,] 415-28, to vote on the proposed control share acquisition. The meeting shall be held [no];

- (1) No later than fifty-five days after receipt of the information statement, unless the acquiring person agrees to a later date[.]; and [no]
- (2) No sooner than thirty days after receipt of the information statement, unless the acquiring person so requests in writing when delivering the information statement.

The notice of the meeting shall at a minimum be accompanied by a copy of the information statement, and a statement disclosing that the issuing public company recommends [acceptance];

- (1) Acceptance of[, expresses];
- (2) Expresses no opinion and is remaining neutral toward[.]; or [is]
- (3) Is unable to take a position with respect to the proposed control share acquisition.

The notice of meeting shall be given within twenty-five days after receipt of the information statement.

Notwithstanding any contrary provision of this chapter, a proxy relating to a meeting of shareholders required under this subsection[, must];

- (1) Must be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation; and [must]
- (2) Must not be solicited sooner than thirty days before the meeting unless otherwise agreed in writing by the acquiring person and the issuing public corporation.”

SECTION 3. Section 415B-9, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-9 Service of process on corporation.** (a) Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any officer or director of the corporation who is found within the jurisdiction of the court, officer, or board; and in the event of failure to find any such officer or director, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

(b) If:

- (1) [no] No officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State[.]; and
- (2) [the] The corporation, if a foreign corporation, has neglected to deliver to the director the name of a person upon whom legal notice and process from the courts of the State may be served or if the person so named is not found within the State[.];

then service may be made upon the corporation by [delivering to the director for filing, or, in the director’s absence, to the deputy director, a copy of the notice or process, certified to be such under the seal of any court of record, or by the chairperson or president of the board, or by the officer issuing the same. The director or deputy director so served shall as soon as practicable but not later than thirty days after the filing notify the defendant corporation by certified mail of the service. Delivery shall constitute service upon the corporation forty-five days after delivery, and shall authorize the court, board, or officer to proceed in all respects as in the case of service personally made upon an individual.

(b) The director shall keep a record of all processes, notices, and demands served upon the director under this section, and shall record therein the time of such service and the action taken with reference thereto.] registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service using registered or certified mail shall be perfected at the earliest of:

- (1) The date the corporation receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) Nothing in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.”

SECTION 4. Section 415B-18, Hawaii Revised Statutes, is amended to read as follows:

“**[§415B-18] Certificates and certified copies to be received in evidence.** All certificates issued by the director pursuant to this chapter, and all copies of documents filed in the director’s office pursuant to this chapter where certified by the director, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the director, under the seal of [this State] the department, as to the existence or nonexistence of the facts relating to corporations, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.”

SECTION 5. Section 415B-45, Hawaii Revised Statutes, is amended to read as follows:

“**[§415B-45] Books and records.** Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and any committee having any of the authority of the board of directors[; and]. Each corporation shall keep at its [registered office or] principal office in this State a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member or member’s agent or attorney, for any proper purpose at any reasonable time.”

SECTION 6. Section 415B-98, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If a trustee is not appointed by [the director or] 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.”

SECTION 7. Section 415B-133, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-133 Merger of foreign corporation authorized to conduct affairs in this State.** Whenever a foreign corporation authorized to conduct affairs in this State is a party to a statutory merger permitted by the laws of the jurisdiction in

which it is incorporated, and the corporation is the surviving corporation, [it] the foreign corporation shall deliver to the director for filing, within sixty days after the merger becomes effective, a copy of the articles of merger duly certified by the proper officer of the jurisdiction in which the statutory merger was effected. It shall not be necessary for the surviving corporation to obtain either a new or amended certificate of authority to conduct affairs in this State [unless the name of the corporation is changed by the merger or the corporation desires to pursue any purpose other than one which it is then authorized to pursue in this State].”

SECTION 8. Section 425-17, Hawaii Revised Statutes, is amended to read as follows:

“**§425-17 Withdrawal procedure for foreign general partnership.** Any foreign general partnership which has qualified to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director of commerce and consumer affairs a certificate of withdrawal [in the manner hereinafter provided]. Any such general partnership shall file in the office of the director[:

- (1) A certificate executed and certified by at least one partner setting forth:
 - (A) That it surrenders its authority to transact intrastate business in this State,
 - (B) That it irrevocably consents that process against it in any action or suit upon any liability or obligation incurred within this State prior to the issuance of the certificate of withdrawal may be served upon the director of commerce and consumer affairs and that service of such process upon the director shall be deemed sufficient service upon it,
 - (C) A post office address to which the director may mail a copy of any process against such general partnership that may be so served upon the director, and
 - (D) A list of the names and resident addresses of all general partners;
- (2) Satisfactory proof showing that, within sixty days last past, it has advertised in a daily newspaper of general circulation in the State, once in each of four successive weeks (four publications), a notice in English to all creditors of the general partnership that it intends to apply, within sixty days from the first publication of the notice, to the director of commerce and consumer affairs for a certificate of withdrawal and intends to withdraw and surrender its rights to engage in business within this State and notifying all creditors of the general partnership to present their claims;
- (3) Satisfactory proof that not less than fifteen days have elapsed since the last publication of the notice;
- (4) Satisfactory proof showing that all creditors, resident or located within the State, have been paid; and
- (5) A valid certificate or certificates showing that all of the taxes, imposts, license fees and assessments theretofore levied upon, due or payable by the general partnership to the State or any of its municipal subdivisions have been fully paid and discharged.] an application for withdrawal, certified and signed by a general partner, which shall set forth:
 - (1) The name of the foreign general partnership, and the state or country under the laws of which it is formed;

- (2) That the foreign general partnership is not transacting business in this State;
- (3) That the foreign general partnership surrenders its authority to transact business in this State;
- (4) That the foreign general partnership revokes the authority of its registered agent in this State to accept service of process, and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- (5) The name and residence address of each general partner;
- (6) The dates that notice of the foreign general partnership's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State. The foreign general partnership, with the approval of the director may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;
- (7) That all taxes, debts, obligations, and liabilities of the foreign general partnership in the State have been paid and discharged or that adequate provision has been made therefor;
- (8) A mailing address to which the director may mail a copy of any process against the foreign general partnership that may be served on the director; and
- (9) Such additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign general partnership.

Upon the filing with and the approval by the director of the aforesaid [certificate and proofs] application, and after the payment of a fee of \$3 [for such certificate], the director shall issue to such general partnership a certificate stating that it has withdrawn and surrendered its rights to engage in business within this State. No such general partnership may withdraw from this State without complying with the aforesaid conditions and until such compliance, service of legal notices and processes may be made on any agent of the general partnership within the State, or if none can be found, service of such notices and processes upon the director of commerce and consumer affairs shall be deemed sufficient service of such notices and processes upon it."

SECTION 9. Section 425D-201, Hawaii Revised Statutes, is amended to read as follows:

"**[§425D-201] Certificate of limited partnership.** (a) In order to form a limited partnership, a certificate of limited partnership must be executed and delivered to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The address of the principal office;
- (3) The name and the residence address of each general partner;
- (4) The name and address of each limited partner;
- (5) The latest date upon which the limited partnership is to dissolve; and
- (6) Any other matter the general partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the director [or at any later time, not more [than] thirty days after being filed, specified in the certificate of limited partnership] if[, in either case,] there has been substantial compliance with the requirements of this section."

ACT 174

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect July 1, 1993.

(Approved June 9, 1993.)

Note

1. So in original.