

ACT 198

H.B. NO. 1927

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 425, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§425- Filing in office of the director. (a) A certified and executed partnership registration statement, any other statement or certification, or any judicial decree of dissolution or cancellation, a registration statement for a foreign general partnership, or any other statement or certification relating thereto, shall be delivered to the director for filing. Unless the director finds that any statement or certificate does not conform to law, upon receipt of all filing fees required by law, the director shall:

- (1) Stamp the word “Filed” and the date of delivery thereof; and
- (2) File the document in the director’s office.

(b) Upon the filing of a partnership dissolution statement or judicial decree of dissolution in the office of the director, the domestic general partnership shall be dissolved as set forth therein, and upon the effective date of a certificate of withdrawal or a judicial decree thereof, the foreign general partnership shall be withdrawn.

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

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

- (1) Contains incorrect information; or
 - (2) Was defectively executed, attested, sealed, verified, or acknowledged.
- (b) A document is corrected:

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

(c) A statement of correction is effective on the effective date of the document it corrects, except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a statement of correction is effective when filed."

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (l) to read as follows:

“(l) Any law to the contrary notwithstanding, the director of commerce and consumer affairs may [establish]:

- (1) Establish, increase, decrease, or repeal fees relating to any aspect of the registration, certification, licensure, or any other administrative process for all laws within the jurisdiction of the department. The fee assessed shall bear a reasonable relationship between the revenue derived from the fee and the cost or value of services rendered. Amendments to fee assessments shall be made pursuant to chapter 91[.]; and
- (2) Assess fees for copies in any form of media of the computerized records of the business registration division or for electronic access to the computerized information on a one-time or on-going basis. The fees charged for the copies or access may include billing service fees, network usage fees, and computer consultant fees. In adopting these fees, the division shall continue in its attempt to be self-supporting. To this end, the fees may reflect the commercial value of the service or information provided. In the case of requests for records by a nonprofit organization, the department may reduce or waive the fees. This provision shall control in any instance where there is a conflict between this provision and any other statute.

Effective July 1, 1994, the fees collected by the professional and vocational licensing division and the business registration division shall be deposited into the compliance resolution fund under subsection (o) and shall be used to defray administrative costs, including personnel costs associated with these two programs and costs incurred by supporting offices and divisions.

The director may appoint program specialists, not subject to chapters 76 and 77, to assist with the activities of the professional and vocational licensing division.”

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

“§415-3 Purposes. Every corporation incorporated under this chapter has the purpose of engaging in any lawful business, [other than activities of a financial institution under chapter 412, activities under chapter 431, or carrying on any profession, except pursuant to chapter 415A,] unless a more limited purpose is set forth in the articles of incorporation[.]; provided that the following purposes are prohibited:

- (1) Activities under chapter 412, except when prior approval is obtained pursuant to chapter 412;
- (2) Activities under chapter 431, except when prior approval is obtained pursuant to chapter 431; and
- (3) Carrying on any professional service under chapter 415A, except pursuant to chapter 415A.”

SECTION 4. Section 415-75.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 the parent corporation and the surviving subsidiary corporation, and the plan of merger 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 any nonsurviving subsidiary corporation, and the name of the surviving subsidiary corporation; and
- (2) The manner and basis of converting the shares of any nonsurviving 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.”

SECTION 5. Section 415A-2, Hawaii Revised Statutes, is amended by amending the definition of “professional service” to read:

““Professional service” means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 459, 460, 461, 463E, 465, 466, 471, 554-2, and 605 and may not lawfully be rendered by a corporation organized under the Hawaii Business Corporation Act, chapter 415.”

SECTION 6. Section 415B-94, Hawaii Revised Statutes, is amended to read as follows:

“§415B-94 Articles of dissolution. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter, articles of dissolution shall be delivered to the director for filing and shall be verified on oath and set forth:

- (1) The name of the corporation;
- [(2)] A statement setting forth the date of any meeting of members at which the resolution to dissolve was adopted, that a quorum was present at the meeting, and that the resolution received at least two-thirds of the votes which members present at the meeting or represented by proxy were entitled to cast, or a statement that a resolution to dissolve was adopted by a consent in writing signed by all members entitled to vote with respect thereto;
- (3) If there are no members or no members entitled to vote thereon, a statement of this fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted, and a statement of the fact that the resolution received the vote of a majority of the directors in office;
- (4) (2) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
- [(5)] (3) A copy of any plan of distribution as adopted by the corporation, or a statement that no plan was so adopted;
- [(6)] (4) That all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter;
- [(7)] (5) That there are no actions pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against the corporation in any pending action;
- [(8)] (6) The dates on which the notice required by section 415B-91(c) was published; and
- [(9)] (7) The date that the director filed the statement of intent.”

SECTION 7. Section 415B-134, Hawaii Revised Statutes, is amended to read as follows:

“§415B-134 Withdrawal of foreign corporation. A foreign corporation authorized to conduct affairs in this State may withdraw from this State by applying to the director for a certificate of withdrawal. [The application for withdrawal shall be verified on oath and state:] In order to obtain a certificate of withdrawal, a foreign corporation shall deliver to the director an application for withdrawal, which shall set forth:

- (1) The name of the corporation and the jurisdiction in which it is incorporated;
- (2) That the corporation is not conducting affairs in this State;
- (3) That the corporation surrenders its authority to conduct affairs in this State;
- (4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the director;
- (5) The dates that notice of the foreign corporation’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 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;

- (6) That all taxes, debts, obligations, and liabilities of the foreign corporation in the State have been paid and discharged or that adequate provision has been made therefor; and
- (7) A post office address to which the director may mail a copy of any process against the corporation that may be served on the director.

The application for withdrawal shall be made on forms prescribed and furnished by the director and shall be delivered to and filed by the director.”

SECTION 8. Section 415B-135, Hawaii Revised Statutes, is amended to read as follows:

“§415B-135 [Filing of application for withdrawal. The application for withdrawal shall be delivered to the director for filing. Upon the filing of the certificate of withdrawal by the director, the authority of the corporation to conduct affairs in this State shall cease.] **Certificate of withdrawal.** After the filing of the application for withdrawal, the director shall issue a certificate of withdrawal which shall be effective as of the date of the filing of the application of withdrawal, and the authority of the foreign corporation to conduct affairs in this State shall cease.”

SECTION 9. Section 425D-203.6, Hawaii Revised Statutes, is amended to read as follows:

“[[§425D-203.6]] Cancellation of registration. (a) If any limited partnership neglects for a period of two years to file any annual statement as required by this chapter, the director may cancel the certificate of [such] the limited partnership. The cancellation of [such] the certificate shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.

(b) Within ninety days after the involuntary cancellation of a limited partnership under this section, the limited partnership may be reinstated by the director upon written application executed by any general partner of the limited partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all [reports] statements due and unfiled. Within the ninety-day period, should the name of the limited partnership, 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, trademark or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily canceled limited partnership pursuant to the amendment provisions of this chapter.”

SECTION 10. Section 425D-902, Hawaii Revised Statutes, is amended to read as follows:

“[[§425D-902]] Registration. Before transacting business in this State, a foreign limited partnership shall register with the director. In order to register, a foreign limited partnership shall submit to the director an application for registration as a foreign limited partnership, certified and signed by a general partner and setting forth:

- (1) The name of the foreign limited partnership;
- (2) The state and date of its formation;
- (3) The name and address of any qualified agent for service of process on the foreign limited partnership whom the foreign limited partnership

- elects to appoint; the agent must be an individual resident of this State or a domestic corporation;
- [(4)] A statement that the director is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under paragraph (3) or, if appointed, the agent's authority has been revoked, or if the agent cannot be found or served with the exercise of reasonable diligence;
 - (5) (4) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;
 - [(6)] (5) The name and residence address of each general partner; and
 - [(7)] (6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this State is [cancelled] canceled or withdrawn."

SECTION 11. Section 425D-1107, Hawaii Revised Statutes, is amended to read as follows:

“[[§425D-1107[]] Fees for filing documents and issuing certificates. The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$25;
- (2) Any certificate of amendment, restatement, or correction, \$10;
- (3) Certificate of cancellation, \$10;
- (4) Annual statement for domestic or foreign limited partnership, \$3;
- (5) Any other certificate or document of domestic or foreign limited partnership, \$10;
- (6) Application for registration as a foreign limited partnership, \$50;
- (7) Any certificate of amendment or agent change for foreign limited partnership, \$10;
- (8) [Certificate of cancellation of registration] Application for certificate of withdrawal of foreign limited partnership, \$10;
- (9) Reservation of name, \$10;
- (10) Transfer of reservation of name, \$10;
- (11) Good standing certificate, \$15;
- (12) Special handling fee for review of any limited partnership document, \$40;
- (13) Special handling fee for certificates issued by the director, \$10 per certificate; and
- (14) Special handling fee for certification of documents, \$1 per page.

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

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 13. This Act shall take effect upon its approval.

(Approved June 19, 1995.)

Note

1. Edited pursuant to HRS §23G-16.5.