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S.B. NO. 140

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Section 425-175, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any provision in part IV, a partner or former partner in a limited liability partnership shall not be individually and personally liable for debts, obligations, and liabilities of or chargeable to the partnership, whether in

contract, tort, or otherwise [arising] that arise out of negligence, including negligent acts and negligent omissions[;], wrongful acts or omissions[;], misconduct[;], or malpractice committed while the partnership is a limited liability partnership and in the course of the partnership business, unless the negligence, wrongful acts or omissions, misconduct, or malpractice were committed by the partner or by a person or persons under the partner's direct supervision and control.”

SECTION 2. Section 425-178, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) At the time of registration pursuant to section 425-153 in the case of a limited liability partnership, and section 425-155, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims [of the type described in section 425-175, or based upon acts, errors, or omissions, a limited liability partnership or foreign limited liability partnership shall comply] based upon negligent or wrongful acts or omissions that arise out of the conduct of the business of the partnership, by complying with one, or pursuant to subsection (b), some combination, of the following:

- (1) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of all claims of the type described in this subsection in an amount of at least \$100,000 multiplied by the number of licensed persons rendering professional services on behalf of the partnership, or at least \$100,000 multiplied by the number of partners in the case of a nonprofessional limited liability partnership; however, the maximum amount of insurance [is] shall not be required to exceed \$5,000,000 [against which no claims are outstanding].
- (2) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance companies as security for payment of liabilities imposed by law for damages arising out of all claims of the type described in subsection (a) in an amount of at least \$100,000 multiplied by the number of licensed persons rendering professional services, or at least \$100,000 multiplied by the number of partners in the case of a nonprofessional limited liability partnership; however, the maximum amount of security [is] shall not be required to exceed \$5,000,000 [against which no claims are outstanding].
- (3) A limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding \$10,000,000. In order to comply with this alternative method of meeting the requirements established in this section, a limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the director, signed by an authorized member partner of the limited liability partnership or foreign limited liability partnership, accompanied by such forms as prescribed by the director. In order to be current in a given year, the partnership form of confirming compliance with this optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular

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fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.’’

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 14, 1997.)