

A Bill for an Act Relating to Business Registration.

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

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

**“§415- Registered office and registered agent.** (a) Except as provided in this section, each corporation shall continuously maintain in the State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent who shall be:
  - (A) An individual who resides in the State and whose business office is identical to the registered office;
  - (B) A domestic corporation or not-for-profit domestic corporation whose business office is identical to the registered office; or
  - (C) A foreign corporation or not-for-profit foreign corporation authorized to transact business in the State whose business office is identical to the registered office.

(b) The requirement that a corporation maintain a registered office and a registered agent shall not apply to any corporation during the time the corporation has at least one officer or director who is a resident of the State.

**§415- Change of registered office or registered agent.** (a) A corporation may change its registered office or registered agent by delivering to the director for filing a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment. This consent may be indicated on or attached to the statement of change; and
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent shall be identical.

(b) If the street address of the registered agent's business office changes, the registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change, and delivering to the director for filing a statement that complies with the requirements of subsection (a), states that the corporation has been notified of the change, and is signed by the registered agent.

**§415- Resignation of registered agent.** (a) A registered agent may resign from the registered agent's appointment by signing and delivering to the director for filing a statement of resignation. The statement may state that the registered office is also discontinued.

(b) The registered agent shall mail one copy of the statement of resignation to the corporation's registered office, if not discontinued, and another copy to the corporation at its principal office.

(c) The agency appointment shall be terminated, and the registered office discontinued if so provided, thirty-one days after the date on which the statement was filed.”

SECTION 2. Chapter 415B, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§415B- Registered office and registered agent.** (a) Except as provided in this section, each corporation shall continuously maintain in the State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent who shall be:
  - (A) An individual who resides in the State and whose business office is identical to the registered office;
  - (B) A domestic corporation or domestic profit corporation whose business office is identical to the registered office; or
  - (C) A foreign corporation or foreign profit corporation authorized to transact business in the State whose business office is identical to the registered office.

(b) The requirement that a corporation maintain a registered office and a registered agent shall not apply to any corporation during the time the corporation has at least one officer or director who is a resident of the State.

**§415B- Change of registered office or registered agent.** (a) A corporation may change its registered office or registered agent by delivering to the director for filing a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of the new registered agent and the new agent’s written consent to the appointment. This consent may be indicated on or attached to the statement of change; and
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent shall be identical.

(b) If the street address of the registered agent’s business office changes, the registered agent may change the street address of the corporation’s registered office by notifying the corporation in writing of the change, and delivering to the director for filing a statement that complies with the requirements of subsection (a), states that the corporation has been notified of the change, and is signed by the registered agent.

**§415B- Resignation of registered agent.** (a) A registered agent may resign from the registered agent’s appointment by signing and delivering to the director for filing a statement of resignation. The statement may state that the registered office is also discontinued.

(b) The registered agent shall mail one copy of the statement of resignation to the corporation’s registered office, if not discontinued, and another copy to the corporation at its principal office.

(c) The agency appointment shall be terminated, and the registered office discontinued if so provided, thirty-one days after the date on which the statement was filed.

**§415B- Amended and restated articles of incorporation.** (a) A domestic corporation may at any time amend and restate its articles of incorporation by complying with the procedures and requirements under sections 415B-37 and 415B-40.

(b) Upon their adoption, the amended and restated articles of incorporation shall set forth:

- (1) All of the operative provisions of the articles of incorporation as theretofore amended;
- (2) The information required under section 415B-38; and
- (3) A statement that the amended and restated articles of incorporation supersedes the original articles of incorporation and all amendments thereto.

(c) The amended and restated articles of incorporation shall be delivered to the director for filing. The director may certify the amended and restated articles of incorporation as the articles of incorporation currently in effect, without including the information required to be filed by subsection (b)(2) and (3)."

SECTION 3. Section 415-8, Hawaii Revised Statutes, is amended to read as follows:

**"§415-8 Corporate name.** The corporate name:

- (1) Shall contain the word "corporation", "incorporated", or "limited", or shall contain an abbreviation of one of the words; and
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, domestic partnership, [or] domestic limited liability company, or domestic limited liability partnership existing under the laws [[Joff]] this State, or any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision shall not apply if the applicant files with the director either of the following:
  - (A) The written consent of the 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 applicant to the use of the name in this State."

SECTION 4. Section 415-35, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the

powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. [At least one member of every board of directors shall be a resident of this State. If there is no such director who is a member of the board, the board may not function except to elect a new director who is a resident of this State.] Directors need not be shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.”

SECTION 5. Section 415-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The articles of incorporation shall be delivered to and filed by the director and shall set forth:

- (1) The name of the corporation;
- (2) The aggregate number of shares which the corporation shall have authority to issue, and, if the shares are to be divided into classes, the number of shares of each class;
- (3) The mailing address of its initial or principal office[;] and, if the corporation is required at the time of incorporation to have a registered office and registered agent in this State, the street address of the corporation’s initial registered office and the name of its initial registered agent at that office; provided that where no specific street address is available[,], for the corporation’s initial or principal office or for the corporation’s registered office, the rural route post office number or post office box designated or made available by the United States Postal Service;
- (4) The number of directors constituting the initial board of directors and the names and residence addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service; and
- (5) The name, title, and residence address of each officer; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service.”

SECTION 6. Section 415-58, Hawaii Revised Statutes, is amended to read as follows:

“**§415-58 Right to amend articles of incorporation.** (a) A corporation may amend its articles of incorporation from time to time, in any and in as many respects as may be desired, so long as its articles of incorporation as amended contain only those provisions which may be lawfully contained in original articles of incorporation at the time of making the amendment[,] and, if a change in shares or the rights of shareholders, or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, the provisions as may be necessary to effect the change, exchange, reclassification, or cancellation.

(b) In particular, and without limitation upon this general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

- (1) To change its corporate name;

- (2) To change its period of duration;
- (3) To change, enlarge, or diminish its corporate purposes;
- (4) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue, except that if the aggregate number of authorized shares is decreased by the corporation's acquisition of its own shares, the decrease shall be as provided in section 415-6;
- (5) To provide, change, or eliminate any provision with respect to the par value of any shares or class of shares;
- (6) To exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;
- (7) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;
- (8) To change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of other classes;
- (9) To create new classes or shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;
- (10) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;
- (11) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of the series and the variations in the relative rights and preferences as between the shares of the series;
- (12) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;
- (13) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;
- (14) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established; or
- (15) To limit, deny, or grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized."

SECTION 7. Section 415-61, Hawaii Revised Statutes, is amended to read as follows:

**"§415-61 Articles of amendment.** The articles of amendment shall be delivered to and filed by the director and shall set forth:

- (1) The name of the corporation;
- (2) The amendments so adopted which shall be identified by the numerical or other designation thereof in the articles of incorporation;

- (3) The date of the adoption of the amendment by the shareholders, or by the board of directors without shareholder action;
- (4) The number of shares outstanding, the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote;
- (5) The number of shares voted for and against the amendment respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the amendment, respectively, or, if no vote of shareholders was taken, a statement to that effect and that shareholder action was not required; and
- (6) If the amendment provides for an exchange, reclassification, or cancellation of issued shares, [and if the manner in which the same shall be effected is not set forth in the amendment, then] a statement [of the manner in which the same shall be effected.] that provisions necessary to effect the exchange, reclassification, or cancellation have been made."

SECTION 8. 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 and shall set forth:

- (1) [The] A statement that the plan of merger, or the plan of consolidation[,] has been approved by the board of directors of each corporation involved in the merger or consolidation;
- (2) Either:
  - (A) [a] A statement that the vote of shareholders is not required by virtue of section 415-73(e)[,]; or
  - (B) [as] 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[.]; and
- (4) A statement indicating the changes in the articles of incorporation of the surviving corporation to be effected by the merger or consolidation."

SECTION 9. Section 415-75, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Articles of merger shall be delivered to the director for filing and shall set forth:

- (1) [The] A statement that the plan of merger[,] has been approved by the board of directors of the surviving corporation;
- (2) The number of outstanding shares of each class of the subsidiary corporation and the number of shares of each class owned by the surviving corporation; and
- (3) The date a copy of the [mailing] plan of merger is mailed to shareholders of the subsidiary corporation entitled to receive the plan [of a copy of the plan of merger]."

SECTION 10. Section 415-75.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Articles of merger shall be delivered to the director for filing and shall set forth:

- (1) [The] A statement that the plan of merger[;] has been approved by the board of directors of the parent corporation;
- (2) The number of outstanding shares of each class of any nonsurviving subsidiary corporation and the number of such shares of each class owned by the parent corporation; and
- (3) The date a copy of the [mailing] plan of merger is mailed to shareholders of any nonsurviving subsidiary corporation entitled to receive the plan [of a copy of the plan of merger].”

SECTION 11. Section 415-95, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Within [ninety days] two years after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the [ninety-day] applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, [or] limited liability company, or limited liability 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 dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 12. 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, domestic partnership, [or] domestic limited liability company, or domestic limited liability partnership existing under the laws of this State or any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark 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;
  - (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; 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 13. Section 415-125, Hawaii Revised Statutes, is amended to read as follows:

**“§415-125 Annual report of domestic and foreign corporations.** Each domestic corporation and each foreign corporation authorized to transact business in this State shall deliver to the director, within the time prescribed by this chapter, an annual report signed by any authorized officer, or an attorney-in-fact for an officer, or if the corporation is in the hands of a receiver or trustee, by the receiver or trustee setting forth:

- (1) The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated;
- (2) [The] Where the corporation is required by law to have a registered office and registered agent in the State, the street address of the domestic corporation’s or foreign corporation’s registered office in this State, and the name of its registered agent in this State at such address, and the address of its principal office in the state or country under the laws of which it is incorporated[, and, in the case of a domestic corporation, the address of its principal office]; provided that if the mailing address of the principal office differs from the street address, or where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;
- (3) A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this State;
- (4) The names and respective residence addresses of the directors and officers of the corporation and the names and respective addresses of the directors and officers of the foreign corporation; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;
- (5) A statement of the aggregate number of shares which a domestic corporation has authority to issue, itemized by classes and series, if any, within a class; and
- (6) A statement of the aggregate number of shares issued by a domestic corporation, itemized by classes and series, if any, within each class.”

SECTION 14. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

**“§415A-8 Corporate name.** The name of a professional corporation:

- (1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule or regulation of the licensing authority of the profession;
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, [or] limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, [or] limited liability company, or limited liability partnership authorized to transact busi-



ness[,] in the State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in the Hawaii Business Corporation Act, chapter 415, or the name of a corporation which has registered its corporate name as provided in the Hawaii Business Corporation Act, chapter 415; except that this section shall not apply if the applicant files with the director either 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 applicant to use the name in this State."

SECTION 15. Section 415A-18, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Within [ninety days] two years after the involuntary dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfilled. Within the [ninety-day] applicable reinstatement period, should the name of the professional corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, [or] limited liability company, or limited liability partnership, or should the 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 dissolved professional corporation pursuant to the amendment provisions of this chapter."

SECTION 16. Section 415B-7, Hawaii Revised Statutes, is amended to read as follows:

**"§415B-7 Corporate name.** The corporate name shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability company, limited liability partnership, or trade name existing or registered under the laws of this State, or any foreign corporation, partnership, [or] limited liability company, or limited liability partnership authorized to transact business[,] in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time reserved in the manner provided under the laws of this State, or the name of a corporation which has in effect a registration of its corporate name as provided under the laws of this State, except that this provision shall not apply if the applicant delivers to the director for filing either of the following:

- (1) The written consent of the 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
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 17. Section 415B-11, Hawaii Revised Statutes, is amended to read as follows:

**“§415B-11 Annual report of domestic and foreign corporations.** (a) Each domestic corporation or foreign corporation authorized to conduct affairs in this State shall deliver to the director for filing, within the time prescribed by this chapter, an annual report setting forth:

- (1) The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated;
- (2) [The] Where the corporation is required by law to have a registered office and registered agent in the State, the street address of the domestic corporation's or foreign corporation's registered office in this State, the name of [the foreign corporation's] its registered agent in this State at [that] such address, and the mailing address of its principal office in the state or country under the laws of which it is incorporated[, and in the case of domestic corporation, the address of the corporation's principal office and the mailing address of the principal office if it differs]; provided that if the mailing address of the principal office differs from the street address, or where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;
- (3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this State; and
- (4) The names and respective addresses of the directors and officers of the foreign corporation[,] and, in the case of a domestic corporation, the names and residence addresses of the directors and officers of a domestic corporation.

(b) The annual report shall be made on forms prescribed and furnished by the director. It shall be executed on behalf of the corporation by any authorized officer or an attorney-in-fact for an officer of the corporation or, if the corporation is in the hands of a receiver or trustee, by the receiver or trustee.”

SECTION 18. Section 415B-34, Hawaii Revised Statutes, is amended to read as follows:

**“§415B-34 Articles of incorporation.** (a) One or more individuals may organize a corporation by signing and delivering articles of incorporation to the director pursuant to section 415B-10, which shall set forth:

- (1) The name of the corporation;
- (2) The period of the corporation's duration, which may be perpetual;
- (3) The purpose or purposes for which the corporation is organized;
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for the distribution of assets on dissolution or final liquidation;
- (5) The mailing address of the corporation's initial or principal office[;] and, if the corporation is required at the time of incorporation to have a registered office and registered agent in this State, the street address of the corporation's initial registered office and the name of its initial registered agent at that office; provided that where no specific street address is available[, the mailing address, which may be a] for the corporation's initial or principal office or for the corporation's regis-

- tered office, the rural route post office or post office box designated or made available by the United States Postal Service may be listed;
- (6) The number of directors constituting the initial board of directors and the names and residence addresses of the individuals who are to serve as the initial directors and initial officers; and
  - (7) If a corporation has no members, that fact shall be set forth.
- (b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.”

SECTION 19. Section 415B-61, Hawaii Revised Statutes, is amended to read as follows:

“**[§415B-61]** **Board of directors.** The affairs of a corporation shall be managed by a board of directors[, of which one director shall be a resident of this State]. The [other] directors need not be residents of this State or members of the corporation unless required by the articles of incorporation or the bylaws. The articles of incorporation or the bylaws may prescribe other qualifications for directors.”

SECTION 20. Section 415B-84, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-84 Articles of merger or consolidation.** The articles of merger or articles of consolidation shall be delivered to the director for filing and shall set forth:

- (1) [The] That the plan of merger or the plan of consolidation[, including] has been approved and signed by the board of directors of each corporation, in accordance with section 415B-83, and a statement of the jurisdiction of incorporation if a foreign corporation is involved;
- (2) If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation:
  - (A) [a] A statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at the meeting, and that the plan received at least two-thirds of the votes which members present at the meeting or represented by proxy were entitled to cast[.]; or
  - (B) [a] A statement that the amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; [and]
- (3) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of this fact, the date of the meeting of the board of directors at which the plan of merger or consolidation was adopted, and a statement of the fact that the plan received the vote of a majority of the directors in office[.]; and
- (4) A statement indicating the changes in the articles of incorporation of the surviving corporation to be effected by the merger or consolidation.

After the articles of merger or articles of consolidation have been delivered to the director and filed, the certificate of merger or certificate of consolidation shall be issued by the director.”

SECTION 21. Section 415B-98, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Within [ninety days] two years after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the [ninety-day] applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, [or] limited liability company, or limited liability partnership, or 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 dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 22. Section 415B-122, Hawaii Revised Statutes, is amended to read as follows:

**“§415B-122 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 profit or nonprofit corporation, partnership, [or] limited liability company, or limited liability partnership existing under the laws of this State, or any profit or nonprofit foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business or conduct affairs in this State, or a corporate or trade name, trademark, or service mark reserved or registered pursuant to the laws of this State; and
- (2) Is transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 23. Section 425-6, Hawaii Revised Statutes, is amended to read as follows:

**“§425-6 Partnership name.** (a) No statement or certificate of any partnership having a name substantially identical [with] to the name of any corporation, partnership, [or] limited liability company, or limited liability partnership registered to do business under the laws of the State or with any trade name, service mark, or trademark previously registered shall be recorded by the director. The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, [or] limited liability company, or limited liability partnership name, trade name, trademark, or service mark.

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

SECTION 24. Section 425-14, Hawaii Revised Statutes, is amended to read as follows:

**“§425-14 Cancellation of registration.** (a) If any general partnership fails or neglects for a period of two years to file any annual statement as required by this part, the director of commerce and consumer affairs may cancel the registration or the certificate, as the case may be, of such partnership. The cancellation of such registration or certificate shall not relieve the partners of liability for the penalties for the failure to file any statement or certificates required by this part.

(b) Within two years after the involuntary cancellation of a general partnership under this section, the registration statement of the general partnership may be reinstated by the director upon written application executed by any partner of the general 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 statements due and unfilled. Within the applicable reinstatement period, should the name of the general partnership, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited liability company, or limited liability 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 general partnership pursuant to the amendment provisions of this chapter."

SECTION 25. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No certificate of a limited liability partnership or registration for a foreign limited liability partnership shall be accepted by the director if the name of the partnership:

- (1) Is the same as, or substantially identical to, the name of any domestic corporation [or], domestic partnership, domestic limited liability company, or domestic limited liability partnership, [whether general, limited, limited liability, domestic, or foreign, previously authorized or registered to do business] existing or registered under the laws of the State, or [with] any foreign corporation, foreign partnership, foreign limited liability company, or foreign limited liability partnership authorized to transact business in the State, or any trade name, service mark, or trademark [previously] registered [under the laws of the] in this State, or a name the exclusive right to which is, at the time, reserved, except that this provision shall not apply if the partnership applying for registration files with the director [any one] either of the following:
  - (A) The written consent of the holder of the registered or reserved 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 limited liability partnership to use the name in this State; and
- (2) In the case of a foreign limited liability partnership, is not transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 26. Section 425-171, Hawaii Revised Statutes, is amended to read as follows:

“**[§425-171] Cancellation of registration.** (a) If any limited liability partnership or foreign limited liability partnership fails or neglects for a period of two years to file any annual statement as required by this part, the director may cancel the registration of the partnership. The cancellation of the registration shall not relieve the partners of liability for the penalties due to the State for the failure to file any statement or certificates required by this part.

(b) Within two years after the involuntary cancellation of a domestic or foreign limited liability partnership under this section, the registration statement of the domestic or foreign limited liability partnership may be reinstated by the director

upon written application executed by any partner of the limited liability 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 statements due and unfiled. Within the applicable reinstatement period, should the name of the limited liability partnership, or a name substantially identical thereto, be registered or reserved by another corporation, partnership, limited liability company, or limited liability 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 limited liability partnership pursuant to the amendment provisions of this chapter.”

SECTION 27. Section 425-178, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For purposes of subsection (a), a limited liability partnership is a professional partnership if it is engaged in the delivery of professional services under chapters 442, 448, 453, 455, 457, [458,] 459, 460, 461, 463E, 465, 466, and 471.”

SECTION 28. Section 425D-102<sup>1</sup>, Hawaii Revised Statutes, is amended to read as follows:

“**§425D-102 Name.** (a) The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) May not contain the name of a limited partner unless:
  - (A) It is also the name of a general partner or the corporate name of a corporate general partner[.]; or<sup>2</sup>
  - (B) The business of the limited partnership had been carried on under that name before the admission of that limited partner;
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, domestic partnership, [or] domestic limited liability company, or domestic limited liability partnership existing or registered under the laws of this State, any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark [previously] registered in this State, or a name the exclusive right to which is, at the time, reserved, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter, except that this provision shall not apply if the applicant filed with the director either of the following:
  - (A) The written consent of the other partnership or holder of a reserved or registered name to use the same or substantially identical name, and one or more words [may be] 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 applicant to the use of the name in this State.”

SECTION 29. Section 425D-203.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within [ninety days] two years after the involuntary cancellation of a certificate of limited partnership under this section, the certificate of 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 statements due and unfiled. Within the [ninety-day] applicable reinstatement period, should the name of the limited partnership, or a name substantially identical thereto, be registered or reserved by another corporation, partnership, [or] limited liability company, or limited liability 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 30. Section 425D-904, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No registration for a foreign limited partnership shall be accepted by the director if the name of such foreign limited partnership:

- (1) Is the same as, or substantially identical to, the name of any domestic [or foreign] corporation, domestic partnership [whether general or limited, or], domestic limited liability company, or domestic limited liability partnership [previously authorized or] existing or registered to do business under the laws of [the] this State, or any foreign corporation, foreign partnership, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State, or [with] any trade name, service mark, or trademark [previously] registered [under the laws of the] in this State, or a name the exclusive right to which is, at the time, reserved, except that this provision shall not apply if the foreign limited partnership applying for registration files with the director [any one] either of the following:
  - (A) The written consent of the holder of the registered or reserved 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 limited partnership to the use of the name in this State; and
- (2) Is not transliterated into letters of the English alphabet, if the name is not in English."

SECTION 31. Section 428-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as authorized by subsections (c) and (d), the name of a limited liability company must not be the same as, or substantially identical to:

- (1) The name of any corporation, partnership, [or] limited liability company, or limited liability partnership existing under the laws of this State;
- (2) The name of any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State;
- (3) A name the exclusive right to which is reserved under the laws of this State;

- (4) A fictitious name approved under section 428-1005 for a foreign limited liability company authorized to transact business in this State because its real name is unavailable; or
- (5) Any trade name, service mark, or trademark registered in this State.”

SECTION 32. Section 428-905, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) After approval of the plan of merger under section 428-904(c) and compliance with section 428-908, if applicable, unless the merger is abandoned under section 428-904(d), articles of merger shall be signed on behalf of each limited liability company and each other entity that is a party to the merger and delivered to the director for filing. The articles shall set forth and contain:

- (1) The name and jurisdiction of formation or organization of each of the entities that are parties to the merger;
- [(2)] The plan of merger;
- (3) (2) A statement[, signed by each entity that is a party to the merger,] that the plan of merger was approved[;] by each entity that is a party to the merger;
- [(4)] (3) As to each entity, the total authorized votes and the number voted for and against the plan;
- [(5)] (4) The name and address of the surviving company;
- [(6)] (5) The effective date and time of the merger, which shall be not earlier than the date and time of filing of the articles of merger and not later than thirty days after the filing of the articles of merger;
- [(7)] (6) If the surviving entity is a foreign limited liability company, it shall file with the director:
  - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
  - (B) An irrevocable appointment of a resident of this State including the street address, as its agent to accept service of process in any such proceeding; and
  - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder or partner to receive payment for their interest against the surviving entity; and
- [(8)] (7) A statement of compliance with section 428-908, if applicable.”

SECTION 33. Section 428-1005, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as authorized by subsections (c) and (d), the name, including a fictitious name, of a foreign limited liability company shall not be the same as or substantially identical to:

- (1) The name of any corporation, partnership, [or] limited liability company, or limited liability partnership existing under the laws of this State;
- (2) The name of any foreign corporation, foreign partnership, [or] foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State;
- (3) A name, the exclusive right to which is reserved under the laws of this State;



- (4) The fictitious name of another foreign limited liability company authorized to transact business in this State; or
- (5) Any trade name, service mark, or trademark registered in this State.”

SECTION 34. Section 482-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful for any person to adopt or use a print, label, trademark, service mark, or trade name which is identical to or confusingly similar with any registered print, label, trademark, service mark, or trade name, or the name of any partnership, corporation, [or] limited liability company, or limited liability partnership registered in accordance with the laws on partnerships, corporations, [or] limited liability companies[.], or limited liability partnerships.”

SECTION 35. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 36. This Act shall take effect upon its approval; provided that:

- (1) Sections 11, 15, 21, 24, 26, and 19 shall take effect on July 1, 1999;
- (2) Any corporation, professional corporation, or nonprofit corporation involuntarily dissolved prior to July 1, 1999, may be reinstated within ninety days, pursuant to the requirements, other than the two-year requirement, of sections 415-95, 415A-18, or 415B-98, Hawaii Revised Statutes (HRS), respectively; and
- (3) Any general partnership, domestic or foreign limited liability partnership, or certificate of limited partnership involuntarily cancelled prior to July 1, 1999, may be reinstated within ninety days, pursuant to the requirements, other than the two-year requirement, of section 425-14, 425-171, or 425D-203.6, HRS, respectively.

(Approved July 2, 1999.)

#### Notes

- 1. So in original.
- 2. “Or” should not be underscored.
- 3. Edited pursuant to HRS §23G-16.5.