

ACT 250

S.B. NO. 1142

A Bill for an Act Relating to the Names of Corporations, Partnerships, and Limited Liability Companies.

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

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

“§415- Administrative order of abatement for infringement of corporate name. (a) Any domestic corporation in good standing or foreign corporation authorized to do business in this State claiming that the name of any domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or

confusingly similar to, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by chapter 91 and the registrant shall be given an opportunity to respond to the petition at a hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name;
- or
- (2) (A) Require the entity to change its registered name;
- (B) Require the entity to register the new name with the director; and
- (C) Require the entity to conduct business in this State under its new name.

If the entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 2. Chapter 415A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§415A- Administrative order of abatement for infringement of corporate name. (a) Any professional corporation in good standing claiming that the name of any domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and

- (B) Require the entity to conduct business in this State under this new trade name;
- or
- (2) (A) Require the entity to change its registered name;
- (B) Require the entity to register the new name with the director; and
- (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 3. Chapter 415B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§415B- Administrative order of abatement for infringement of corporate name. (a) Any domestic corporation in good standing or foreign corporation authorized to do business in this State claiming that the name of another domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name;
- or
- (2) (A) Require the entity to change its registered name;
- (B) Require the entity to register the new name with the director; and
- (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity

shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing in the court a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 4. Chapter 425, Hawaii Revised Statutes, is amended by adding to part VI a new section to be appropriately designated and to read as follows:

"§425- Administrative order of abatement for infringement of partnership name. (a) Any domestic partnership in good standing formed under this chapter or foreign partnership authorized to do business in this State under this chapter claiming that the name of another domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a full hearing. The notice shall be made and the hearing held¹ accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name;
- or
- (2) (A) Require the entity to change its registered name;
- (B) Require the entity to register the new name with the director; and
- (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 5. Chapter 425D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§425D- Administrative order of abatement for infringement of limited partnership name. (a) Any domestic limited partnership in good standing or foreign limited partnership authorized to do business in this State claiming that the name of another domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner’s claim that further use of the name should be abated. The petitioner, at the petitioner’s expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a full hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name;
- or
- (2) (A) Require the entity to change its registered name;
- (B) Require the entity to register the new name with the director; and
- (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity’s registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely file.¹ The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last know¹ mailing address. The entity shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director’s order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal within thirty days after the issuance of the director’s order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602.”

SECTION 6. Chapter 428, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§428- Administrative order of abatement for infringement of limited liability company name. (a) Any domestic limited liability company in good standing or foreign limited liability company authorized to do business in this State claiming that the name of another domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or foreign limited liability company authorized to transact business in the State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner’s claim that further use of the name

should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a full hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name;
- or
- (2) (A) Require the entity to change its registered name;
- (B) Require the entity to register the new name with the director; and
- (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 415, 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be do novo.¹ Review of any final judgment of the circuit court under this section shall be governed by chapter 602."

SECTION 7. New statutory material is underscored.²

SECTION 8. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.