

## ACT 130

S.B. NO. 2732

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 414, Hawaii Revised Statutes, is amended by adding to part XV, subpart D, a new section to be appropriately designated and read as follows:

**“§414- Trustees or receivers for dissolved corporations; appointment; powers; duties.** (a) When any corporation organized and authorized to issue shares under the laws of this State shall be or shall have been dissolved, or shall cease or shall have ceased to exist, the circuit court, upon application of any creditor, stockholder, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the application complies with the requirements of subsection (b), and that the persons responsible for settling the unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.

(b) An application authorized by subsection (a) shall be made only if:

- (1) At least five years have passed from the effective date of the dissolution in the case of a voluntary dissolution under section 414-381 or 414-382, or a voluntary dissolution under any statute previously effective in this State;
- (2) At least two years have passed from the effective date of the dissolution in the case of an administrative or judicial dissolution under section 414-402 or 414-414, or an administrative, involuntary, or judicial dissolution under any statute previously effective in this State; or
- (3) At least two years have passed from the date the corporation ceased to exist under this chapter, or any statute previously effective in this State.

(c) In the event of an appointment of any trustee or receiver of and for a corporation administratively dissolved under section 414-402, the trustee or receiver shall pay to the State out of any funds that may come into the trustee's or receiver's hands as trustee or receiver, a sum equal to any penalty imposed under section 414-473.

(d) The relief provided in this section shall be in addition to, and shall not limit or diminish, any remedies otherwise available under the common law or other state or federal statutes or rules. In the event of a conflict between the terms and provisions of this section and any such common law, statute, or rule on the subject, the more beneficial provisions favoring the applicant shall prevail.”

SECTION 2. Section 414-3, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be

retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.”

SECTION 3. Chapter 414D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . SUPERSEDING CHAPTERS**

**§414D- Superseding chapters.** In the event of any conflict between the provisions of this chapter and the provisions of chapter 421J, 514A, or 514E, the provisions of chapter 421J, 514A, or 514E shall supersede and control the provisions of this chapter.”

SECTION 4. Chapter 414D, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

**“§414D- Miscellaneous charges.** The department director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, \$20; and
- (2) At the time of any service of process on the department director as agent for service of process of a corporation, \$25, which amount may be recovered as taxable costs by the party to the action causing the service to be made if that party prevails in the action.”

SECTION 5. Chapter 425, Hawaii Revised Statutes, is amended by adding to part I five new sections to be appropriately designated and to read as follows:

**“§425- Execution of statements.** Each statement or document required by this chapter to be filed with the director of commerce and consumer affairs shall be signed and certified by at least one partner.

**§425- Registered office and registered agent.** Each domestic partnership or foreign partnership shall continuously maintain in this State:

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

**§425- Designation or change of registered office or registered agent.**

(a) A partnership that does not already have a registered office and registered agent shall designate its registered office and registered agent by delivering to the director of commerce and consumer affairs for filing, a statement of designation that sets forth:

- (1) The name of the partnership;
- (2) The street address of its initial registered office in the State and the name of its initial registered agent at its initial registered office; and

(3) That the street addresses of its initial registered office and agent shall be identical.

(b) A partnership may change its registered office or its registered agent by delivering to the director of commerce and consumer affairs for filing, a statement of change that sets forth:

(1) The name of the partnership;

(2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and

(3) That after the change or changes are made, the street addresses of its registered office and agent shall be identical.

(c) If the registered agent's street address changes, the registered agent may change the street address of the partnership's registered office by notifying the partnership in writing of the change and signing (either manually or in facsimile) and delivering to the director of commerce and consumer affairs for filing, a statement that complies with the requirements of subsection (a) and recites that the partnership has been notified of the change.

**§425- Resignation of registered agent.** (a) A registered agent may resign from the registered agent's appointment by signing and delivering to the director of commerce and consumer affairs for filing, a signed statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the partnership at its principal office.

(c) The appointment of the agent shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**§425- Service on partnership.** (a) Service of any notice or process authorized by law on any partnership, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent or partner of the partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or partner cannot be found, upon any person who is found in charge of the property, business, or office of the partnership within the jurisdiction of the court, officer, or board.

(b) If no other person in charge of the property, business, or office of the partnership can be found within the State, and in case the partnership has not filed with the director of commerce and consumer affairs pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of the State may be served, and the person named is not found within the State, service may be made upon the partnership by registered or certified mail, return receipt requested, addressed to the partnership at its principal office. Service by registered or certified mail shall be perfected at the earliest of:

(1) The date the partnership receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the partnership; or

(3) Five days after its deposit in the United States mail, as evidenced by postmark, if mailed postpaid and correctly addressed.

(c) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a partnership in any other manner permitted by law."

SECTION 6. Chapter 425D, Hawaii Revised Statutes, is amended by adding to article 1 four new sections to be appropriately designated and to read as follows:

**“§425D- Registered office and registered agent.** Each domestic limited partnership or foreign limited partnership shall continuously maintain in this State:

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

**§425D- Designation or change of registered office or registered agent.**

(a) A domestic limited partnership or foreign limited partnership that does not already have a registered office and registered agent shall designate its registered office and registered agent by delivering to the director for filing, a statement of designation that sets forth:

- (1) The name of the limited partnership;
- (2) The street address of its initial registered office in the State and the name of its initial registered agent at its initial registered office; and
- (3) That the street addresses of its initial registered office and agent shall be identical.

(b) A domestic or foreign limited partnership may change its registered office or its registered agent by delivering to the director for filing, a statement of change that sets forth:

- (1) The name of the limited partnership;
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- (3) That after the change or changes are made, the street addresses of its registered office and agent shall be identical.

(c) If the registered agent's street address changes, the registered agent may change the street address of the limited partnership's registered office by notifying the limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the director for filing, a statement that complies with the requirements of subsection (a) and recites that the limited partnership has been notified of the change.

**§425D- 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 signed statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the limited partnership at its principal office.

(c) The appointment of the agent shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**§425D- Service on partnership.** (a) Service of any notice or process authorized by law on any limited partnership, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent or general partner of the limited

partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or general partner cannot be found, upon any person who is found in charge of the property, business, or office of the limited partnership within the jurisdiction of the court, officer, or board.

(b) If no other person in charge of the property, business, or office of the limited partnership can be found within the State, and in case the limited partnership has not filed with the director pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of the State may be served, and the person named is not found within the State, service may be made upon the limited partnership by registered or certified mail, return receipt requested, addressed to the limited partnership at its principal office. Service by registered or certified mail shall be perfected at the earliest of:

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

(c) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited partnership in any other manner permitted by law.”

SECTION 7. Chapter 482, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§482- **Administrative order of abatement for infringement of trade name.** (a) Any individual or sole proprietor with a currently registered trade name in this State claiming that the name of any entity registered or authorized to transact business under the laws of this State is substantially identical to, or confusingly similar to, its trade name may file a petition with the director for an administrative order of abatement to address the infringement of its trade 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 the 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 require the entity to:
  - (A) Register a new trade name with the director; and
  - (B) Conduct business in this State under the new trade name; or
- (2) Require the entity to change its registered name, and to:
  - (A) Register a new trade name with the director; and
  - (B) Conduct business in this State under the new trade 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 this chapter or chapter 414, 414D, 415A, 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 decision of the circuit court shall be governed by chapter 602.”

SECTION 8. Section 414-4, Hawaii Revised Statutes, is amended to read as follows:

“**§414-4 Notice.** (a) Notice under this chapter [~~must~~] shall be in writing unless oral notice is reasonable under the circumstances.

(b) Notice is effective if communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder’s address shown in the corporation’s current record of shareholders.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

- (1) When received;
- (2) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or
- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

(h) Without limiting the manner by which notice otherwise may be given to shareholders, notice to shareholders given by the corporation under this chapter, the articles of incorporation, or the bylaws shall be effective if provided by electronic transmission consented to by the shareholder to whom the notice is given. Any consent shall be revocable by the shareholder by written notice to the corporation. Any consent shall be deemed revoked if:

- (1) The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and
- (2) The inability to deliver becomes known to the secretary or an assistant secretary of the corporation, to the transfer agent, or other person responsible for giving notice; provided that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(i) Notice given pursuant to subsection (h) shall be deemed given:

- (1) If by facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice;

- (2) If by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;
- (3) If by a posting on an electronic network together with separate notice to the shareholder of such specific posting, upon the later of the posting and the giving of such separate notice; and
- (4) If by any other form of electronic transmission, when directed to the shareholder.

An affidavit of the secretary, assistant secretary, transfer agent, or other agent of the corporation that the notice has been given by a form of electronic transmission, in the absence of fraud, shall be prima facie evidence of the facts stated therein.”

SECTION 9. Section 414-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Articles of dissolution, articles of conversion, and articles of merger or share exchange may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date it is filed.”

SECTION 10. Section 414-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The articles of incorporation ~~[must]~~ shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 414-51;
- (2) The number of shares the corporation is authorized to issue;
- (3) The mailing address of the corporation’s initial principal office, the street address of the corporation’s initial registered office, and the name of its initial registered agent at ~~[that]~~ its initial registered office; and
- (4) The name and address of each incorporator.”

SECTION 11. Section 414-61, Hawaii Revised Statutes, is amended to read as follows:

**“§414-61 Registered office and registered agent.** ~~[(a) Except as provided in subsection (b), each]~~ Each corporation shall continuously maintain in this State:

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

~~[(b) A corporation may, but shall not be required to maintain a registered office and a registered agent in this State during the time that the corporation has at least one officer or director who is a resident of this State.]”~~

SECTION 12. Section 414-62, Hawaii Revised Statutes, is amended to read as follows:

**“§414-62 Designation or change of registered office or registered agent.**

(a) A corporation that does not already have a registered office and registered agent ~~[may]~~ shall designate its registered office and registered agent by delivering to the department director for filing a statement of designation that sets forth:

- (1) The name of the corporation;
- ~~[(2) The street address of its registered office;~~
- ~~(3) The name of its registered agent;]~~
- (2) The street address of its initial registered office in this State and the name of its initial registered agent at its initial registered office; and
- ~~[(4)]~~ (3) That the street addresses of its registered office and [the business office of its registered] agent [will] shall be identical.

(b) A corporation may change its registered office or its registered agent by delivering to the department 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 registered agent;~~
- (5) If the current registered agent is to be changed, the name of the new registered agent;]
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- ~~[(6)]~~ (3) That after the change or changes are made, the street addresses of its registered office and [the business office of its registered] agent [will] shall be identical.

(c) If the registered agent's 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 signing (either manually or in facsimile) and delivering to the department director for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.”

SECTION 13. Section 414-85, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§414-85[H] Share options.** A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued. The documents evidencing such rights, options, or warrants may include conditions that preclude the holder or holders, including any subsequent transferees, of at least a specified percentage of the common shares of a corporation from exercising such rights, options, or warrants.”

SECTION 14. Section 414-121, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§414-121[H] Annual meeting.** (a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws. (b) Annual shareholders' meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office. Notwithstanding the foregoing, the bylaws may authorize the board



of directors, in its sole discretion, to determine that the annual meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized under subsection (c).

(c) If authorized by the board of directors in its sole discretion, and subject to guidelines and procedures adopted by the board, shareholders and proxies of shareholders not physically present at a meeting of shareholders, by means of remote communication, may:

- (1) Participate in a meeting of shareholders; and
- (2) Be deemed present in person and vote at a meeting of shareholders whether the meeting is held at a designated place or solely by means of remote communication; provided that the corporation shall:
  - (A) Implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxy of a shareholder;
  - (B) Implement reasonable measures to provide shareholders and proxies of shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with the proceedings; and
  - (C) Maintain a record of voting or action by any shareholder or proxy of a shareholder that votes or takes other action at the meeting by means of remote communication.

[(e)] (d) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws [does] shall not affect the validity of any corporate action."

SECTION 15. Section 414-122, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Special shareholders' meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office. Notwithstanding the foregoing, the bylaws may authorize the board of directors, in its sole discretion, to determine that the special meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by section 414-121(c)."

SECTION 16. Section 414-123, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The court may fix the time and place of the meeting[;] or determine that the meeting shall be held solely by means of remote communication as authorized by section 414-121(c), determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting."

SECTION 17. Section 414-124, Hawaii Revised Statutes, is amended to read as follows:

"[§414-124] Action without meeting. (a) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action.

The action [must] shall be evidenced by one or more written consents describing the action taken, signed before or after the intended effective date of the action by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under section 414-123 or 414-127, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation [must] shall give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice [must] shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(e) A telegram, cablegram, or other electronic transmission consenting to an action to be taken and transmitted by a shareholder, proxy of a shareholder, or person or persons authorized to act for a shareholder or proxy of a shareholder, shall be deemed to be written, signed, and dated for the purposes of this section; provided that the telegram, cablegram, or other electronic transmission sets forth or is delivered with information from which the corporation may determine:

- (1) That the telegram, cablegram, or other electronic transmission was transmitted by the shareholder, proxy of the shareholder, or person or persons authorized to act for the shareholder or proxy of the shareholder; and
- (2) The date on which the shareholder, proxy of the shareholder, or authorized person or persons transmitted the telegram, cablegram, or other electronic transmission.

The date on which the telegram, cablegram, or other electronic transmission is transmitted shall be deemed to be the date on which the consent is signed. No consent given by telegram, cablegram, or other electronic transmission shall be deemed to have been delivered until the consent is reproduced in paper form and delivered to the corporation.

(f) Any copy, facsimile, or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that the copy, facsimile, or other reproduction shall be a complete reproduction of the entire original writing."

SECTION 18. Section 414-125, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) A corporation shall notify shareholders of the date, time, and place, if any, of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. If a meeting is held solely by means of remote communication, the notice shall also inform shareholders of the means of remote communication by which shareholders may be deemed to be present in person and allowed to vote. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting."

2. By amending subsection (e) to read:

"(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be

given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. In addition, if the annual or special shareholders' meeting was held solely by means of remote communication, and the adjourned meeting will be held by a means of remote communication by which shareholders may be deemed to be present in person and vote, notice need not be given of the new means of remote communication if the new means of remote communication is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 414-127, however, notice of the adjourned meeting shall be given under this section to shareholders who are entitled to notice of the new record date."

SECTION 19. Section 414-126, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**“[§414-124] Waiver of notice.”**

2. By amending subsection (a) to read:

“(a) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver ~~must~~ shall be in writing~~, be~~ and be signed by the shareholder entitled to the notice~~, and be~~ or shall be by electronic transmission by the shareholder entitled to notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records~~;~~; provided that the electronic transmission sets forth, or is delivered with information from which the corporation may determine that the electronic transmission was transmitted by the shareholder.”

SECTION 20. Section 414-141, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The shareholders' list ~~must~~ shall be available for inspection by any shareholder, beginning two business days after notice of the meeting for which the list was prepared is given and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held~~;~~, or on a reasonably accessible electronic network; provided that the information required to gain access to the shareholders' list is provided with the notice of the meeting. A shareholder, the shareholder's agent, or the shareholder's attorney, ~~is~~ shall be entitled on written demand to inspect and to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection. If the corporation determines that the list will be made available on an electronic network, the corporation shall take reasonable steps to ensure that such information is available only to shareholders of the corporation.”

SECTION 21. Section 414-197, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A director may resign at any time by delivering ~~written~~ notice given in writing or by electronic transmission to the board of directors, its chairperson, or the corporation.”

SECTION 22. Section 414-212, Hawaii Revised Statutes, is amended to read as follows:

**“[§414-212] Action without meeting.** (a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action ~~must~~ shall be evidenced by one or

more ~~written~~ consents describing the action taken, given either in writing and signed before or after the intended effective date of the action by each director, or by electronic transmission, and included in the minutes or filed with the corporate records reflecting the action taken. In the case of a consent by electronic transmission, the electronic transmission shall set forth or be submitted with information from which it may be determined that the electronic transmission was authorized by the director who sent the electronic transmission.

(b) Action taken under this section ~~is~~ shall be effective when the last director signs the consent~~,~~ or gives a consent by electronic transmission, unless the consent specifies a different effective date.

(c) A consent signed or given by electronic transmission under this section has the effect of a meeting vote and may be described as such in any document.”

SECTION 23. Section 414-214, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**“~~[[§414-214]] Waiver of notice ~~[[of]] meeting.~~”~~**

2. By amending subsection (a) to read:

“(a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver ~~must~~ shall be in writing, signed by the director entitled to the notice~~,~~ and or by electronic transmission by the director entitled to notice, and filed with the minutes or corporate records.”

SECTION 24. Section 414-287, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**“~~§414-287 Restated~~,~~ or amended and restated articles of incorporation.~~”**

2. By amending subsections (f) and (g) to read:

“(f) A domestic corporation, at any time, may amend and restate its articles of incorporation by complying with the procedures and requirements of ~~[part XI of] this ~~chapter.~~ part.~~

(g) Upon ~~its~~ 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 by section 414-286; and
- (3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.”

SECTION 25. Section 414-314, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§414-314]] Merger of subsidiary.~~ (a) A parent corporation owning at least ninety per cent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.**

(b) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

- (1) The names of the parent and subsidiary; and

(2) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or in part.

(c) The parent corporation shall mail a copy of the plan of merger to each shareholder of the subsidiary corporation who does not waive the mailing requirement in writing.

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

(1) The name and jurisdiction of incorporation of the subsidiary corporation, and the name and jurisdiction of incorporation of the corporation owning at least ninety per cent of its shares, which is hereinafter designated as the surviving corporation;

(2) A statement that the plan of merger has been approved by the board of directors of the surviving corporation;

(3) 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

(4) The date a copy of the plan of merger is mailed to shareholders of the subsidiary corporation entitled to receive the plan.

~~[(d)]~~ (e) The parent may not deliver articles of merger to the department director for filing until at least thirty days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary corporation who did not waive the mailing requirement.

~~[(e)]~~ (f) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in section 414-282).''

SECTION 26. Section 414-317, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(3) The foreign corporation complies with section 414-315 if it is the surviving corporation of the merger or acquiring corporation of the share exchange;

~~[(4) The foreign corporation, if it is the surviving corporation of the merger, delivers a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated to the director within sixty days after the merger becomes effective;] and~~

~~[(5)]~~ (4) Each domestic corporation complies with the applicable provisions of sections 414-311 to 414-314 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 414-315.’’

SECTION 27. Section 414-319, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) After a plan of merger is approved by the shareholders of each corporation and foreign corporation as provided in subsection (b), and by the members of each domestic limited liability company as provided in section 428-904, or as provided in comparable provisions of applicable law for each foreign limited liability company, the surviving entity shall deliver to the department director for filing articles of merger [~~complying with section 414-315,~~] executed on behalf of each party to the merger. The articles of merger shall:

- (1) Comply with section 414-315 if the surviving entity is a domestic or foreign corporation; or
- (2) Comply with section 428-905 if the surviving entity is a domestic or foreign limited liability company.”

SECTION 28. Section 414-401, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§414-401[H]~~ **Grounds for administrative dissolution.** (a) The department director may commence a proceeding under section 414-402 to administratively dissolve a corporation if[:

- ~~(1) The corporation has failed to file its annual report with the department director for a period of two years;~~
- ~~(2) The corporation procured its articles of incorporation through fraud;~~
- ~~(3) The corporation has continued to exceed or abuse the authority conferred upon it by law; or~~
- ~~(4) The corporation does not notify the department director within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.]~~ the corporation fails to:
  - (1) Pay any fees prescribed by law;
  - (2) File its annual report for a period of two consecutive years;
  - (3) Appoint and maintain an agent for service of process as required; or
  - (4) File a statement of a change in the name or business address of the agent as required under this chapter.

(b) Upon the expiration of the period of duration stated in the articles of incorporation, the corporation shall be deemed to have been administratively dissolved.”

SECTION 29. Section 414-402, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§414-402[H]~~ **Procedure for and effect of administrative dissolution.**

(a) If the department director determines that one or more grounds exist under section ~~[414-401]~~ 414-401(a) for dissolving a corporation, the department director shall give written notice of the department director’s determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director’s written notice, the department director shall administratively dissolve the corporation by signing a decree of dissolution that recites the ground for dissolution and its effective date. The decree shall be filed in the department director’s office.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

~~[(e) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section 414-473. If a trustee is not appointed by 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.~~

~~[(f) A corporation whose articles of incorporation have expired shall cease to exist by operation of law.]”~~

SECTION 30. Section 414-433, Hawaii Revised Statutes, is amended to read as follows:

**“§414-433 Application for certificate of authority.** (a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the department director for filing. The application ~~[must]~~ shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section 414-436;
- (2) The name of the state or country under whose law it is incorporated;
- (3) Its date of incorporation and period of duration;
- (4) The mailing address of the corporation's initial principal office, the street address of its [principal] initial registered office[;]
- (5) ~~The street address of its registered office]~~ in this State, and the name of its initial registered agent at ~~[that]~~ its initial registered office; and
- ~~[(6)]~~ (5) The names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of good standing duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated; provided the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 31. Section 414-438, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) A foreign corporation authorized to transact business in this State may change its registered office or its registered agent by delivering to the department director for filing a statement of change that sets forth:~~

- (1) Its name;
- ~~[(2) The street address of its current registered office;~~
- (3) ~~If the current registered office is to be changed, the street address of its new registered office;~~
- (4) ~~The name of its current registered agent;~~
- (5) ~~If the current registered agent is to be changed, the name of its new registered agent; and]~~

- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- ~~{(6)}~~ (3) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent ~~[will]~~ shall be identical.”

SECTION 32. Section 414-439, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The registered agent shall attach the filing receipt to ~~[one]~~ a copy of the statement of resignation and mail the copy and receipt to the registered office if not discontinued. The registered agent shall mail a second copy to the foreign corporation at its principal office address shown in its most recent annual report.”

SECTION 33. Section 414-451, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the department director for filing. The application ~~[must]~~ shall set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;
- (3) That it revokes the authority of its registered agent to accept service on its behalf and ~~[appoints the department director as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this State;]~~ 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 department director; and
- (4) A mailing address to which the department director may mail a copy of any process served on the department director under paragraph (3);  
and
- (5) ~~A commitment to notify the department director in the future of any change in its mailing address].”~~

SECTION 34. Section 414-461, Hawaii Revised Statutes, is amended to read as follows:

“**§414-461 Grounds for revocation.** The department director may commence a proceeding under section 414-462 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- ~~[(1) The foreign corporation has failed to file its annual report with the department director for a period of two years;~~
- ~~(2) The foreign corporation is without a registered agent or registered office in this State as required by this chapter;~~
- ~~(3) The foreign corporation does not inform the department director under section 414-438 or 414-439 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;~~
- ~~(4) An incorporator, director, officer, or agent of the foreign corporation signed a document that the incorporator, director, officer, or agent~~



- ~~knew was false in any material respect with intent that the document be delivered to the department director for filing; or~~
- (5) ~~The department director receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.]~~
- (1) The corporation fails to:
- (A) Pay any fees prescribed by law;
- (B) File its annual report for a period of two consecutive years;
- (C) Appoint and maintain an agent for service of process as required;  
or
- (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the corporation.”

SECTION 35. Section 414-470, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each corporation shall keep accurate and complete books and records of account and shall keep and maintain at its principal office, or other place as its board of directors may order, minutes of the proceedings of its shareholders and board of directors. The books and records of account shall include accounts of the corporation’s assets, liabilities, receipts, disbursements, gains, and losses. The minutes of the proceedings of the shareholders and board of directors of the corporation shall show, as to each meeting of the shareholders or the board of directors, the time and place, if any, thereof, whether regular or special, whether notice thereof was given, and if so in what manner, the names of those present at directors’ meetings, the number of shares present or represented at shareholders’ meetings, and the proceedings at each meeting. Any of the books and records described in this subsection may be kept on, or by means of, or be in the form of, any information storage device or method; provided that the books and records can be converted into clearly legible paper form within a reasonable time. Upon the request of any person entitled to inspect the books and records pursuant to any provision of this chapter, a corporation, at its own expense, shall convert the requested stored books and records. When books and records are kept pursuant to this subsection, a clearly legible paper form produced from or by means of the information storage device or method shall be admissible as evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been; provided that the paper form accurately portrays the record.”

SECTION 36. Section 414-472, Hawaii Revised Statutes, is amended to read as follows:

“**§414-472 Annual report.** (a) Each domestic corporation, and each foreign corporation authorized to transact business in this State, shall deliver to the department director for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The mailing address of its principal office, the address of its registered office in this State, and the name of its registered agent at [that] its registered office in this State;
- ~~[(3) The address of its principal office;~~
- (4) (3) The names and business addresses of its directors and officers; and

~~[(5)] (4) A brief description of the nature of its business.~~

Domestic corporations shall also provide the total number of authorized shares, itemized by class and series, if any, within each class, and the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

~~[(b) Information in the annual report must reflect the state of the corporation's affairs as of December 31, of the year preceding the year of filing.~~

~~(c) Each annual report of a corporation shall be delivered to the director between January 1 and March 31 of each year in the case of a domestic corporation, or between January 1 and June 30 in the case of a foreign corporation, except that the first annual report of a corporation shall be filed between January 1 and March 31 in the case of a domestic corporation, or between January 1 and June 30 in the case of a foreign corporation, of the year next succeeding the calendar year in which its articles of incorporation or its application for a certificate of authority, as the case may be, was filed by the director.]~~

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for a domestic or foreign corporation whose date of incorporation or registration in this State falls between:

- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the corporation's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the corporation's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the corporation's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the corporation's affairs as of October 1 of the year when filed;

provided that if a domestic or foreign corporation is incorporated or registered in the same year in which the annual report is due, the domestic or foreign corporation shall not be required to file an annual report for that year. Thereafter, the domestic or foreign corporation shall comply with the requirements of this section.

~~[(d)] (e) If an annual report does not contain the information required by this section, the department director shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the department director within thirty days after the effective date of notice, it is deemed to be timely filed."~~

SECTION 37. Chapter 414D, Hawaii Revised Statutes, is amended by amending the designation of part XVI to read as follows:

**“PART [XVI.] XVII. TRANSITION PROVISIONS”**

SECTION 38. Section 414D-15, Hawaii Revised Statutes, is amended to read as follows:

“~~[(e)]~~**§414D-15** Notice. (a) Notice may be oral or written.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Oral notice is effective when communicated if communicated in a comprehensible manner.

(d) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, shall be effective when mailed, if mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

~~[(d) Written]~~ (e) Except as provided in subsection (d), written notice, if in a comprehensible form, is effective at the earliest of the following:

- (1) When received;
- (2) Five days after its deposit with the United States Postal Service, as evidenced by the postmark; provided the notice is mailed with the correct address and with first class postage affixed; or
- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee[;]
- ~~(4) Thirty days after its deposit with the United States Postal Service, as evidenced by the postmark; provided the notice is mailed with the correct address and with other than first class, registered, or certified postage affixed].~~

~~[(e)]~~ (f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's last known address shown in the corporation's current list of members.

~~[(f)]~~ (g) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's last known address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of the members, at the last known address appearing on the current list of members.

~~[(g)]~~ (h) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in the State), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

~~[(h)]~~ (i) If section 414D-105(b) or any other provision of this chapter prescribes notice requirements for particular circumstances, those requirements shall govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements shall govern.”

SECTION 39. Section 414D-32, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The articles of incorporation ~~[must]~~ shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 414D-61;
- (2) The mailing address of the corporation's initial principal office, the street address of the corporation's initial registered office, and the name of its initial registered agent at [that] its initial registered office;
- (3) The name and address of each incorporator;
- (4) Whether or not the corporation will have members; and

- (5) Provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (b) The articles of incorporation may set forth:
  - (1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
  - (2) The names and addresses of the individuals who are to serve as the initial directors;
  - (3) Provisions not inconsistent with law regarding:
    - (A) Managing and regulating the affairs of the corporation;
    - (B) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members)[;], including but not limited to the power to merge with another corporation, convert to another type of entity, sell all or substantially all of the corporation's assets, or dissolve the corporation; and
    - (C) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;
  - (4) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
  - (5) Provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of [~~any such~~] the director's duties to the corporation and its members; provided that such a provision may not eliminate or limit the liability of a director:
    - (A) For any breach of the director's duty of loyalty to the corporation or its members;
    - (B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
    - (C) For any transaction from which a director derived an improper personal economic benefit; or
    - (D) Under sections 414D-150 to 414D-152."

SECTION 40. Section 414D-71, Hawaii Revised Statutes, is amended to read as follows:

~~“[E]§414D-71[E] Registered office and registered agent. [(a) Except as provided in subsection (b), each]~~ Each corporation shall continuously maintain in this State:

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

~~[(b) A corporation may, but shall not be required to, maintain a registered office and a registered agent in this State during the time the corporation has at least one officer or director who is a resident of the State.]”~~

SECTION 41. Section 414D-72, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§414D-72~~]]~~ Designation or change of registered office or registered agent.** (a) A corporation that does not already have a registered office and registered agent ~~[may]~~ shall designate its registered office and registered agent by delivering to the department director for filing a statement of designation that sets forth:

- (1) The name of the corporation;
- ~~[(2) The street address of its registered office;~~
- ~~(3) The name of its registered agent;]~~
- (2) The street address of its initial registered office in this State and the name of its initial registered agent at its initial registered office; and
- ~~[(4)]~~ (3) That [after the change or changes are made,] the street addresses of its registered office and [the office of its registered] agent [will] shall be identical.

(b) A corporation may change its registered office or its registered agent by delivering to the department 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 new registered agent;~~
- ~~(5) If the current registered agent is to be changed, the name of the new registered agent;]~~
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and

- ~~[(6)]~~ (3) That after the change or changes are made, the street addresses of its registered office and [the business office of its registered] agent [will] shall be identical.

(c) ~~If the registered agent's street address [of a registered agent's office is changed,] changes,~~ the corporation's registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.”

SECTION 42. Section 414D-74, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If a corporation has no registered agent, or the registered agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the corporation at its principal office shown in the most recent annual report filed pursuant to section 414D-308. Service shall be perfected under this subsection on the earliest of:

- (1) The date the corporation receives the notice via mail service;
- (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, if mailed and correctly addressed with ~~[first-class]~~ postage affixed.”

SECTION 43. Section 414D-89, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§414D-89~~]]~~ Termination, expulsion, and suspension.** (a) No member may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable, and is carried out in good faith.

- (b) A procedure [is] shall be fair and reasonable when either:
- (1) The articles or bylaws set forth a procedure that provides:
    - (A) Not less than fifteen days prior written notice of the expulsion, suspension, or termination and the reasons therefor; and
    - (B) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or
  - (2) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.
- (c) Any written notice given by mail shall be [~~given by first class or certified mail~~] sent to the last known address of the member shown on the corporation's records.
- (d) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, shall commence within one year after the effective date of the expulsion, suspension, or termination.
- (e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to the expulsion or suspension.
- (f) If the expulsion or termination of membership is the result of a judicial or nonjudicial foreclosure proceeding, no other proceeding may be brought to challenge the expulsion or termination and in no event shall this provision give rise to any right of redemption."

SECTION 44. Section 414D-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) A corporation with members shall hold a special meeting of members:
- (1) On call of its board, or the person or persons authorized to do so by the articles or bylaws; or
  - (2) [~~If~~] Unless the articles or bylaws provide otherwise, if the holders of at least five per cent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held."

SECTION 45. Section 414D-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Unless limited or prohibited by the articles or bylaws, action required or permitted by this chapter to be approved by the members at a meeting may be approved without a meeting of members if the action is approved by members holding at least eighty per cent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty per cent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records."

SECTION 46. Section 414D-105, Hawaii Revised Statutes, is amended to read as follows:

**"[H]§414D-105[H] Notice of meeting.** (a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided that notice of matters referred to in subsection (c)(2) shall be given as provided in subsection (c).

(c) Notice [is] shall be fair and reasonable if:

- (1) The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten [~~(or if notice is mailed by other than first class or registered mail, thirty) nor~~] or more than sixty days before the meeting date;
- (2) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under sections 414D-150, 414D-164, 414D-182, 414D-202, 414D-222, 414D-241, and 414D-242; and
- (3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 414D-107[;], however, notice of the adjourned meeting shall be given under this section to the members of record as of the new record date.

~~[(e) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:~~

- ~~(1) Requested in writing to do so by a person entitled to call a special meeting; and~~
- ~~(2) The request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.]'~~

SECTION 47. Section 414D-109, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~414D-109] Members' list for meeting.** (a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list shall show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members [~~must~~] shall be available for inspection by any member for the purpose of communication with other members concerning the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held, beginning two business days after notice of the meeting for which the list was prepared is given, and continuing through the meeting. A member, [~~or~~] a member's agent, or a member's attorney is entitled on written demand to inspect and, subject to the limitations of sections 414D-302(c) and 414D-305, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection[-]; provided that a labor union organized under this chapter with a tax exemption under section 501(c)(5) of the federal Internal Revenue Code of 1986, as amended, shall not be required to provide copies of the membership list if doing so would violate any federal or state law relating to labor unions.

(c) The corporation shall make the list of members available at the meeting; provided that a request for the list is submitted no fewer than five business days prior to the scheduled date of the meeting. Any member, member's agent, or member's

attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), the court of the county where a corporation's principal office (or if none in this State, its registered office) is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section shall not affect the validity of action taken at the meeting.

(f) This section shall not apply to time share owners associations as defined in chapter 514E."

SECTION 48. Section 414D-113, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form; provided that no proxy shall be valid for more than three years from its date of execution[-], unless otherwise specifically provided in the corporation's by-laws."

SECTION 49. Section 414D-113, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) [Appointment of a proxy is revoked by the person appointing the proxy: (1) Attending any meeting and voting in person; or (2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.] An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest without limitation include the appointment of:

- (1) A pledgee;
- (2) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (3) An employee of the corporation whose employment contract requires the appointment; or
- (4) A party to a voting agreement created under section 414D-117."

SECTION 50. Section 414D-114, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [Cumulative voting is not authorized at a particular meeting unless the meeting notice or statement accompanying the notice states that cumulative voting will take place or a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one member gives this notice, all other members participating in the election are entitled to cumulate their votes without giving further notice.] Unless otherwise provided in the articles or bylaws, cumulative voting shall not be permitted. If authorized in the articles or bylaws, cumulative voting may be permitted; provided that:



- (1) The meeting notice or statement accompanying the notice states that cumulative voting shall take place;
- (2) A member gives notice of the member's intent to cumulatively vote not less than forty-eight hours before the meeting or such longer period as may be required by the articles or bylaws; and
- (3) If one member gives notice of intent to cumulatively vote, all other members participating in the election may cumulate their votes without giving further notice."

SECTION 51. Section 414D-115, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§414D-115[H] Other methods of electing directors.** A corporation may provide in its articles or bylaws for the election of directors by members or delegates:

- (1) On the basis of chapter or other organizational unit;
- (2) By region or other geographic unit;
- (3) By preferential voting; [ø]
- (4) By any other reasonable method[-]; or
- (5) By mail.”

SECTION 52. Section 414D-149, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Any person who serves as a director to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this section, remuneration does not include [~~indemnification~~] payment of reasonable [~~travel~~] expenses and indemnification or insurance for actions as a director as allowed by sections 414D-159 to 414D-167.”

SECTION 53. Section 414D-153, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§414D-153[H] Required officers.** (a) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The bylaws or the board shall delegate responsibility to one of the officers to prepare minutes of the directors' and members' meetings and to authenticate records of the corporation.

(c) The same individual may simultaneously hold more than one office in a corporation.

(d) Officers of the corporation shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed for a term not to exceed one year by the board of directors.”

SECTION 54. Section 414D-155, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Any person who serves as an officer to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of or failure to perform duties of the position to which the person was appointed, unless the person was grossly

negligent in the performance of or failure to perform the duties. For purposes of this section, remuneration does not include [~~indemnification~~] payment of reasonable [~~travel~~] expenses and indemnification or insurance for actions as an officer as allowed by sections 414D-159 to 414D-167.”

SECTION 55. Section 414D-156, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [A] Except as otherwise provided in the articles of incorporation or bylaws, a board may remove any officer at any time with or without cause.”

SECTION 56. Section 414D-164, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The determination shall be made by the board of directors by majority vote of a quorum consisting of directors who are not at the time parties to the proceeding.”

SECTION 57. Section 414D-207, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A domestic corporation may adopt a plan of conversion and convert to a foreign corporation or any other entity if:

- (1) The board of directors and members of the domestic corporation approve a plan of conversion in the manner prescribed by section 414D-202 and if the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
- (3) At the time the conversion becomes effective, each member of the converting entity, unless otherwise agreed to by the member[~~s~~] or directors, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity;
- (4) The members of the domestic corporation, as a result of the conversion, shall not become personally liable without the members’ consent, for the liabilities or obligations of the converted entity; and
- (5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.”

SECTION 58. Section 414D-232, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Corporations may make distributions upon dissolution in conformity with part XIII [~~of this chapter~~].”

SECTION 59. Section 414D-244, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the department director for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;

- (4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If member or third person action was required to revoke the dissolution, the information required by section 414D-243(a)(5) [~~and (a)(6);~~] or (6).”

SECTION 60. Section 414D-248, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§414D-248**~~]]~~ **Grounds for administrative dissolution.** The department director may commence a proceeding under section 414D-249 to administratively dissolve a corporation if[:

- ~~(1) The corporation fails to file its annual report with the department director for a period of two years;~~
- ~~(2) The corporation is without a registered agent or registered office in this State for sixty days or more;~~
- ~~(3) The corporation fails to notify the department director within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;~~
- ~~(4) The corporation procured its articles of incorporation through fraud; or~~
- ~~(5) The corporation has continued to exceed or abuse the authority conferred on it by law.] the corporation fails to:~~
  - (1) Pay any fees prescribed by law;
  - (2) File its annual report for a period of two consecutive years;
  - (3) Appoint and maintain an agent for service of process as required; or
  - (4) File a statement of a change in the name or business address of the agent as required under this chapter.”

SECTION 61. Section 414D-253, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Venue for a proceeding by the attorney general to dissolve a corporation [~~lies~~] shall be in circuit court. Venue for a proceeding brought by any other party named in section 414D-252 [~~lies~~] shall be in the county where a corporation's principal office (or, if none in this State, its registered office) is or was last located.”

SECTION 62. Section 414D-273, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§414D-273**~~]]~~ **Application for certificate of authority.** (a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the department director~~[-]~~ for filing. The application [~~must~~] shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section 414D-276;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date of incorporation and period of duration;
- (4) The mailing address of the corporation's initial principal office, the street address of its [~~principal~~] initial registered office[;]

- (5) ~~The address of its registered office]~~ in this State, and the name of its initial registered agent at ~~[that] its initial registered~~ office;
- ~~(6)]~~ (5) The names and usual business or home addresses of its current directors and officers; and
- ~~(7)]~~ (6) Whether the foreign corporation has members.

(b) The foreign corporation shall deliver with the completed application a certificate of good standing (or a document of similar import) duly authenticated by the ~~[department director]~~ secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated[-]; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 63. Section 414D-276, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A foreign corporation may apply to the department director for authorization to use in this State the name of another corporation (incorporated or authorized to transact business in this State) that is substantially identical based upon the records of the department director ~~[from]~~ to the name applied for. The department director shall authorize use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents to the use in writing, and one or more words are added to the other entity’s name to make the name distinguishable from the name of the applicant; or
- (2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this State.”

SECTION 64. Section 414D-277, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§414D-277[H]~~ **Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to transact business in this State ~~[must]~~ shall continuously maintain in this State:

- (1) A registered office with the same address as that of its registered agent; and
- (2) A registered agent, who may be:
  - (A) An individual who resides in this State and whose office is identical with the registered office;
  - (B) A domestic business or nonprofit corporation whose office is identical with the registered office; or
  - (C) A foreign ~~[business or nonprofit corporation]~~ entity authorized to transact business in this State whose office is identical with the registered office.”

SECTION 65. Section 414D-278, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign corporation authorized to transact business in this State may change its registered office or its registered agent by delivering to the department director for filing a statement of change that sets forth:

- (1) The corporation’s name;
- ~~(2) The street address of the 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 its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment;]
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- [~~(6)~~] (3) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent [~~will~~] shall be identical.”

SECTION 66. Section 414D-282, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the department director for filing. The application [~~must~~] shall set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;
- (3) That it revokes the authority of its registered agent to accept service on its behalf, and [~~appoints the department director as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this State;~~] 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 department director; and
- (4) A mailing address to which the department director may mail a copy of any process served on the department director under paragraph (3); and
- (5) A ~~commitment to notify the department director in the future of any change in the mailing address].”~~

SECTION 67. Section 414D-283, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

“~~[[~~§414D-283~~]]~~ **Grounds for revocation of certificate of authority.**”

2. By amending subsection (a) to read:

“(a) The department director may commence a proceeding under section 414D-284 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- [~~(1) The foreign corporation has not filed its annual report with the department director for a period of two years;~~
- [~~(2) The foreign corporation is without a registered agent or registered office in this State as required by this chapter;~~
- [~~(3) The foreign corporation does not inform the department director under section 414D-278 or 414D-279 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;~~
- (4) An incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material

respect with the intent that the document be delivered to the department director for filing; or

- (5) ~~The department director receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.]~~
- (1) The corporation fails to:
  - (A) Pay any fees prescribed by law;
  - (B) File its annual report for a period of two consecutive years;
  - (C) Appoint and maintain an agent for service of process as required;  
or
  - (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the corporation.”

SECTION 68. Section 414D-302, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

- (1) Excerpts from any records required to be maintained under section 414D-301(a), to the extent not subject to inspection under subsection (a);
- (2) Accounting records of the corporation; and
- (3) Subject to ~~[section]~~ sections 414D-109(b) and 414D-305, the membership list.”

SECTION 69. Section 414D-305, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414D-305]]~~ **Limitations on use of membership list.** Without consent of the board, a membership list or any part thereof shall not be obtained or used by any person for any purpose unrelated to a member’s interest as a member. Without limiting the generality of the foregoing, without the consent of the board, a membership list or any part thereof shall not be:

- (1) Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (2) Used for any commercial purpose; ~~[-or]~~
- (3) Sold to or purchased by any person~~[-];~~ or
- (4) Published in whole or in part to the general public.”

SECTION 70. Section 414D-308, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414D-308]]~~ **Annual report [for the department director].** (a) Each domestic corporation, and each foreign corporation authorized to transact business in the State, shall deliver to the department director an annual report on a form prescribed and furnished by the department director that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The mailing address of its principal office, the address of its registered office in this State, and the name of its registered agent at [the] its registered office in the State;
- ~~[(3) The address of its principal office;~~
- (4) (3) The names and business or residence addresses of its directors and principal officers;
- ~~[(5) (4) A brief description of the nature of its activities; and~~
- ~~[(6) (5) Whether or not it has members.~~

~~[(b) The information in the annual report shall reflect the state of the corporation's affairs as of December 31, of the year preceding the year of filing.~~

~~(c) The first annual report shall be delivered to the department director by March 31 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports shall be delivered to the department director by June 30 of the following calendar years.]~~

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for a domestic or foreign corporation whose date of incorporation or registration in this State falls between:

- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the corporation's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the corporation's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the corporation's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the corporation's affairs as of October 1 of the year when filed;

provided that if a domestic or foreign corporation is incorporated or registered in the same year in which the annual report is due, the domestic or foreign corporation shall not be required to file an annual report for that year. Thereafter, the domestic or foreign corporation shall comply with the requirements of this section.

~~[(d)] (e) If an annual report does not contain the information required by this section, the department director shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the department director within thirty days after the effective date of notice, it shall be deemed to [be] have been timely filed."~~

SECTION 71. Section 414D-321, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§414D-321[H] Application to existing domestic corporations.** This chapter applies to all domestic corporations in existence on July 1, 2002, that were incorporated under any general statute of this State providing for incorporation of

nonprofit corporations [if the power to amend or repeal the statute under which the corporation was incorporated was reserved].”

SECTION 72. Section 414D-323, Hawaii Revised Statutes, is amended to read as follows:

“~~[§414D-323]~~ **Saving provisions.** (a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:

- (1) The operation of the statute or any action taken under it before its repeal;
- (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
- (3) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
- (4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or
- (5) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

(c) Nothing in this chapter shall affect the validity of any action taken by any corporation, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation, prior to the effective date of this chapter.”

SECTION 73. Section 415A-2, Hawaii Revised Statutes, is amended by amending the definition of “professional service” to read as follows:

““Professional service” means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 457, 459, 460, 461, 463E, 465, 466, 471, 605, and section 554-2 ~~[and may not lawfully be rendered by a corporation organized under the Hawaii Business Corporation Act, chapter 415].~~”

SECTION 74. Section 415A-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon the death of a shareholder of a professional corporation, or if a shareholder of a professional corporation becomes a disqualified person, or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares of the deceased shareholder or of the disqualified person may be transferred to a qualified person and, if not so transferred, shall be purchased or redeemed by the corporation to the extent of funds which may be legally made available for such purchase; provided that upon the death of a sole shareholder of a professional corporation, the personal representative of the estate of the deceased sole shareholder may elect to dissolve the professional corporation, by delivering for filing [verified] articles of dissolution signed by the personal representative and the surviving officer of the professional corporation. If the personal representative elects to dissolve the professional corporation, the personal representative may publish a notice to creditors ~~[in lieu of a statement of intent as required by section 415-92(3)].~~”



SECTION 75. Section 415A-14.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 415A-8;
- (2) The profession or professions that the corporation shall be authorized to practice and any other purpose allowed by the licensing laws and rules of this State;
- (3) The mailing address of its initial ~~[-or]~~ principal office~~[-; 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];~~ the street address of its initial registered office, and the name of its initial registered agent at its initial registered office;
- (4) The number of directors constituting the initial board of directors and the names and 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;
- (5) The name, title, and address of each officer; and
- (6) The number of shares the corporation is authorized to issue, and if the shares are to be divided into classes, the number of shares of each class.’’

SECTION 76. Section 415A-16.7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§415A-16.7]**~~]]~~ **Effective date of the conversion.** ~~[Upon the issuance of] A conversion shall be effective upon the filing of the certificate of conversion [by] with the director[-, the conversion shall be effective].’’~~’’

SECTION 77. Section 415A-18, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~[Whenever it is established that a professional corporation has failed to comply with any provision of this chapter, the director may declare the corporation dissolved.]~~ The director may commence a proceeding to dissolve a professional corporation administratively if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two consecutive years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

Before the director may declare a corporation dissolved, the director shall give notice of the ground or grounds for dissolution as provided in section ~~[415-94] 414-401~~ by mailing the notice to the professional corporation at its last known address appearing in the records of the director, and may give public notice of the intention to dissolve the corporation.’’

SECTION 78. Section 415A-22, Hawaii Revised Statutes, is amended to read as follows:

“~~§415A-22 Annual report [of professional corporations].~~ (a) The annual report of each professional corporation shall be delivered to the director for filing and shall set forth:

- (1) The name of the corporation;
- (2) The profession or professions that it is or are actually engaged in;

- (3) The mailing address of its principal office[; 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;], the street address of its registered office in this State, and the name of its registered agent at its registered office in the State;
- (4) The names and addresses of the directors and officers of the corporation;
- (5) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, if any;
- (6) A statement of the aggregate number of shares issued by the corporation, itemized by classes, if any; and
- (7) A statement that all of the shareholders, not less than one-half of the directors, and all of the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any of the provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for professional corporations whose date of incorporation in this State falls between:

- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the corporation's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the corporation's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the corporation's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the corporation's affairs as of October 1 of the year when filed;

provided that if a professional corporation is incorporated in the same year in which the annual report is due, the professional corporation shall not be required to file an annual report for that year. Thereafter, the professional corporation shall comply with the requirements of this section."

SECTION 79. Section 421-22, Hawaii Revised Statutes, is amended to read as follows:

**"§421-22 Annual [reports.] report.** (a) An association formed under this chapter[~~, within ninety days after the close of its fiscal year,~~] shall file with the director of commerce and consumer affairs [~~and with the department of agriculture~~] an annual report [~~containing the~~]. The annual report shall contain:

- (1) The name of the association[~~, its place of business, and a~~];
- (2) The mailing address of its principal office, the address of its registered office in this State, and the name of its registered agent at its registered office in the State; and
- (3) A general statement of its business operations during the fiscal year[~~, showing the~~] that includes:
  - (A) The amount of capital stock paid up [~~and the~~];

- (B) The number of shareholders, if a stock corporation, or the number of members and the amount of membership fees received, if a nonstock association; [an]
- (C) An income statement; and [its]
- (D) Its balance sheet.

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for associations whose date of registration in this State falls between:

- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the association's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the association's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the association's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the association's affairs as of October 1 of the year when filed;

provided that if an association is formed in the same year in which the annual report is due, the association shall not be required to file an annual report for that year. Thereafter, the association shall comply with the requirements of this section.

(e) A copy of the report shall be submitted to the members at their annual meeting, or mailed to each member of the association, or printed in an official publication of the association."

SECTION 80. Section 421C-29, Hawaii Revised Statutes, is amended to read as follows:

"[~~§421C-29~~] **Annual report.** (a) Every association[~~, within one hundred twenty days of the close of its fiscal year,~~] shall file with the director of commerce and consumer affairs an annual report as prescribed by the director. A copy of the report shall be submitted to the members at their annual meeting, mailed to each member of the association, or printed in an official publication of the association.

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for every association whose date of registration in this State falls between:

- (1) January 1 and March 31, the annual report shall be filed on or before March 31 of each year and shall reflect the state of the association's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, the annual report shall be filed on or before June 30 of each year and shall reflect the state of the association's affairs as of April 1 of the year when filed;

- (3) July 1 and September 30, the annual report shall be filed on or before September 30 of each year and shall reflect the state of the association's affairs as of July 1 of the year when filed; and
  - (4) October 1 and December 31, the annual report shall be filed on or before December 31 of each year and shall reflect the state of the association's affairs as of October 1 of the year when filed;
- provided that if an association is formed in the same year in which the annual report is due, the association shall not be required to file an annual report for that year. Thereafter, the association shall comply with the requirements of this section."

SECTION 81. Section 425-1, Hawaii Revised Statutes, is amended to read as follows:

**"§425-1 Registration and annual statements.** (a) Whenever any general partnership is formed under the laws of this State to do business in this State, or any general partnership formed under the laws of any other jurisdiction shall do business in this State, such partnership shall file in the office of the director of commerce and consumer affairs the registration and annual statements hereinafter provided. A registration statement shall be filed by a partnership formed under the laws of this State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in this State. [~~An annual statement shall be filed on or before March 31 of each year, as of December 31 of the preceding year.~~] Every such registration statement shall contain the following information:

- (1) The name of the partnership;
- (2) The name and address of each partner;
- (3) [~~The street~~] The mailing address of the [chief executive office of the partnership in the State and,] partnership's initial principal office, the street address of the partnership's initial registered office in the State, and the name of its initial registered agent at its initial registered office in the State; provided that if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction [and the street address of the partnership's chief executive office and of one office in this State, if there is one;] shall also be set forth;
- (4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in this State; and
- (5) The fact that none of the partners is either a minor or an incompetent person[; and
- (6) In the case of a foreign general partnership, the designation of a person residing within this State as agent for service of process and notice, and the person's street address].

(b) Every [~~such~~] domestic and foreign partnership shall file an annual statement with the director which shall contain the information specified in subsection (a) (1), (2), (3), (4), and (5)[; and (6)] and a listing of the names of any partner admitted, withdrawn, or who has died during the year[-]; provided that the information provided to satisfy the requirements of subsection (a)(4) shall indicate the current registered office and agent. The annual statement shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.

(d) Effective January 1, 2003, for a domestic or foreign partnership whose date of registration in this State falls between:

- (1) January 1 and March 31, the annual statement shall be filed on or before March 31 of each year and shall reflect the state of the partnership's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, the annual statement shall be filed on or before June 30 of each year and shall reflect the state of the partnership's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, the annual statement shall be filed on or before September 30 of each year and shall reflect the state of the partnership's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, the annual statement shall be filed on or before December 31 of each year and shall reflect the state of the partnership's affairs as of October 1 of the year when filed;

provided that if a domestic or foreign partnership is registered in the same year in which the annual statement is due, the domestic or foreign partnership shall not be required to file an annual statement for that year. Thereafter, the domestic or foreign partnership shall comply with the requirements of this section.

~~[(e)]~~ (e) The registration statement of a domestic partnership shall be certified by ~~[each]~~ any partner, and the registration statement of a foreign partnership shall be certified by at least one partner. Each annual statement shall be certified as correct by any partner.

~~[(d)]~~ The registered agent of a foreign general partnership may be:

- ~~(1) An individual who resides in this State and whose business office is identical with the registered office;~~
- ~~(2) A domestic entity whose business office is identical with the registered office; or~~
- ~~(3) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.]”~~

SECTION 82. Section 425-1.7, Hawaii Revised Statutes, is amended to read as follows:

**“§425-1.7 Correcting a filed document.** (a) A domestic or foreign general partnership may correct a document filed ~~[by]~~ with 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] <sup>1</sup> preparing and delivering to the director for filing, a statement of correction that:

~~[(A)]~~ (1) Describes the document including its file date or attaches a copy of it to the statement;

~~[(B)]~~ (2) Specifies the incorrect information and the reason it is incorrect or the manner in which the execution was defective;

~~[(C)]~~ (3) Corrects the incorrect information or defective execution; and

~~[(D)]~~ (4) Is executed and certified by a general partner~~[-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 83. Section 425-11, Hawaii Revised Statutes, is amended to read as follows:

“§425-11 Record of statements. [The director of commerce and consumer affairs shall cause books or files to be kept in the director’s office, in which shall be recorded the several particulars required by this part to be filed in the director’s office; and such books or files shall be open to public inspection.] The director shall keep books or files in which the information required by this chapter to be filed with the director shall be recorded. The books or files shall be open to public inspection.”

SECTION 84. Section 425-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$25;
- (3) Partnership dissolution statement, \$25;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$25;
- (6) Application for certificate of withdrawal, \$10;
- (7) Statement of correction, \$25;
- (8) Reservation of name, \$20;
- (9) Transfer of reservation of name, \$20;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$25;
- (12) Articles of conversion, \$200;
- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$25;
- (14) Special handling fee for review of any general partnership document, \$50;
- (15) Special handling fee for certificates issued by the director, \$25 per certificate;
- (16) Special handling fee for certification of documents, \$25;
- (17) Special handling fee for review of articles of conversion, \$150; and
- (18) Agent’s statement of change of address, [~~\$25~~] \$20 for each affected foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign general partnership.”

SECTION 85. Section 425-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 director may commence a proceeding to cancel the registration of a general partnership if the partnership fails to:~~

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two consecutive years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

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.”

SECTION 86. Section 425-153, Hawaii Revised Statutes, is amended to read as follows:

“**§425-153 Statement of qualification.** [(a)] A statement of qualification shall contain:

- (1) The name of the partnership;
  - [(2) The street address of the partnership’s chief executive office and, if different, the street address of an office in this State, if any;
  - (3) If the partnership does not have an office in this State, the name and street address of the partnership’s agent for service of process;] and
  - [(4)] (2) A statement that the partnership elects to be a limited liability partnership.
- [(b) The agent of a limited liability partnership for service of process shall be:
- (1) An individual who resides in this State and whose business office is identical with the registered office;
  - (2) A domestic entity whose business office is identical with the registered office; or
  - (3) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.]”

SECTION 87. Section 425-154, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A statement of qualification may be amended and restated at any time for any proper purpose determined by the partners. The amended and restated statement of qualification shall set forth:

- (1) All of the operative provisions of the statement of qualification as previously amended; and
- (2) A statement that the amended and restated statement of qualification supersedes the original statement of qualification and all amendments thereto.

The amended and restated statement of qualification shall be delivered to the director for filing. The director may certify the amended and restated statement of qualification as the statement of qualification currently in effect, without including the information required to be filed by paragraph [(b)(2)] (2).”

SECTION 88. Section 425-156, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before transacting business in this State, a foreign limited liability partnership shall register pursuant to part I of this chapter, file a statement of foreign qualification with the director, and submit a certificate of good standing from the state in which the partnership was formed[-]; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 89. Section 425-158, Hawaii Revised Statutes, is amended to read as follows:

“**§425-158 Statement of foreign qualification.** (a) A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with:

- (A) The law of the state or other jurisdiction under which the foreign limited liability partnership is formed; and
- (B) Section 425-151;
- (2) ~~The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any;~~
- (3) ~~The name and street address of the partnership's agent for service of process;~~
- (4) ~~The total number of partners on the date the statement is filed;~~ and
- [5] (2) A statement that the partnership elects to be a foreign limited liability partnership.

[(b) The agent of a foreign limited liability partnership for service of process shall be an individual who is a resident of this State or other person qualified or registered with the director to do business in the State.]”

SECTION 90. Section 425-162, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**“[E]§425-162[E] Foreign limited liability partnerships; activities not constituting the transaction of business.”**

2. By amending subsections (a) and (b) to read:

“(a) Activities of a foreign limited liability partnership that do not constitute the transaction of business [for the purpose of this subpart] include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
- (8) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and
- (10) Transacting business in interstate commerce.

(b) [For purposes of this subpart, the] **The** ownership in this State of income-producing real property or income-producing tangible personal property, other than property excluded under subsection (a), constitutes the transaction of business in this State.”

SECTION 91. Section 425-163, Hawaii Revised Statutes, is amended to read as follows:

**“[E]§425-163[E] Annual [reports,] report.** (a) Every limited liability partnership and foreign limited liability partnership authorized to transact business in this State shall file an annual report in the office of the director that contains:



- (1) The name of the limited liability partnership or foreign limited liability partnership;
- ~~(2) In the case of a foreign limited liability partnership, the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;~~
- ~~(3)] (2) The mailing address of the partnership's principal office, the street address of the partnership's [chief executive] registered office in the State, and[, if different, the street address of an office of the partnership in this State, if any; and~~
- (4) If the partnership does not have an office in this State,] the name [and street address] of [the partnership's current] its registered agent [for service of process.] at its registered office in the State.

~~(b) [An annual report as of the preceding December 31 shall be filed on or before March 31 of each year following the calendar year in which a limited liability partnership files a statement of qualification or a foreign limited liability partnership becomes authorized to transact business in this State.] The annual report shall be filed within the time periods prescribed in subsections (c) and (d).~~

~~(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.~~

~~(d) Effective January 1, 2003, for a domestic or foreign limited liability partnership whose date of registration in this State falls between:~~

- ~~(1) January 1 and March 31, the annual report shall be filed on or before March 31 of each year and shall reflect the state of the partnership's affairs as of January 1 of the year of filing;~~
- ~~(2) April 1 and June 30, the annual report shall be filed on or before June 30 of each year and shall reflect the state of the partnership's affairs as of April 1 of the year of filing;~~
- ~~(3) July 1 and September 30, the annual report shall be filed on or before September 30 of each year and shall reflect the state of the partnership's affairs as of July 1 of the year of filing; and~~
- ~~(4) October 1 and December 31, the annual report shall be filed on or before December 31 of each year and shall reflect the state of the partnership's affairs as of October 1 of the year of filing;~~

~~provided that if a domestic or foreign limited liability partnership is registered in the same year in which the annual report is due, the domestic or foreign limited liability partnership shall not be required to file an annual report for that year. Thereafter, the domestic or foreign limited liability partnership shall comply with the requirements of this section.~~

~~(e) Each annual report shall be certified as correct by any partner."~~

SECTION 92. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director may revoke the statement of qualification of a limited liability partnership or statement of foreign qualification of a foreign limited liability partnership [that fails to file an annual report for a period of two years or fails to pay the required filing fee.] if:

- (1) The partnership fails to:
    - (A) Pay any fees prescribed by law;
    - (B) File its annual report for a period of two consecutive years;
    - (C) Appoint and maintain an agent for service of process as required;
- or

- (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

The director shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice shall be mailed to the partnership at its last known address appearing in the records of the director. The notice shall specify the annual report that has not been filed or the fee that has not been paid, and the effective date of the revocation. The revocation shall not be effective if the specified annual report is filed and the specified fee is paid before the effective date of the revocation."

SECTION 93. Section 425-167, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**"[E]§425-167[H] Correction of filed documents."**

2. By amending subsections (a) and (b) to read:

**"(a) A domestic limited liability partnership or foreign limited liability partnership may correct a document filed with the director if the document:**

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

**(b) ~~[To correct a]~~ A document~~[-, a limited liability partnership or foreign limited liability partnership shall prepare and deliver]~~ is corrected by preparing and delivering to the director for filing, a [certificate] statement of correction that:**

- (1) Identifies the document, including its filing date, or [includes] attaches a copy of [the document to be corrected, attached to the certificate:] it to the statement;
- (2) Identifies the incorrect statement, if any;
- (3) Explains why the incorrect statement, if any, is incorrect, or describes the manner in which execution of the document was defective; and
- (4) Corrects the incorrect statement or defective execution."

SECTION 94. Section 425-168, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**"[E]§425-168[H] Fee for recording."**

2. By amending subsections (a) and (b) to read:

**"(a) The director shall collect the following fees for the following limited liability partnership documents ~~[filed under this subpart]:~~**

- (1) ~~[For each annual]~~ Annual report ~~[filed, a fee of]~~, \$25;
- (2) ~~[For each statement]~~ Statement of qualification ~~[of limited liability partnership, a fee of]~~, \$50;
- (3) ~~[For each statement]~~ Statement of foreign qualification ~~[of limited liability partnership, a fee of]~~, \$100;
- (4) ~~[For each certificate]~~ Statement of correction ~~[or statement of]~~, amendment, ~~[a fee of]~~ restatement, or amendment and restatement, \$50;
- (5) ~~[For each certificate]~~ Certificate of good standing, ~~[a fee of]~~ \$25;
- (6) ~~[For review of articles]~~ Articles of conversion, ~~[a fee of]~~ \$200;
- (7) For any other certificate, statement, or document, ~~[a fee of]~~ \$50; ~~[and]~~
- (8) ~~[For each certification]~~ Certification of domestic or foreign partnership, ~~[a fee of]~~ \$20; and

- (9) For each agent’s statement of change of registered office, \$20 for each affected domestic or foreign limited liability partnership; provided that if an agent files more than two hundred statements of change of registered office at the same time, the fee shall be reduced to \$1 for each affected domestic or foreign limited liability partnership.
- (b) The following special handling fees shall be assessed by the director for expeditious handling and review of the following documents:
- (1) ~~For limited liability partnerships:~~
    - ~~(A)~~ Statement of qualification [~~of limited liability partnership~~], \$50;
    - ~~(B)~~ ~~Certificate~~ (2) Statement of correction, amendment, restatement, or amendment and restatement, \$50;
    - ~~(C)~~ Statement of amendment of limited liability partnership, \$50;
    - ~~(D)~~ (3) Annual report, \$50;
    - ~~(E)~~ (4) Certification of domestic or foreign limited liability partnership, \$25;
    - ~~(F)~~ (5) Certificate of good standing[;] for domestic or foreign limited liability partnership, \$25; [~~and~~
    - ~~(G)~~ (6) Articles of conversion[;] for domestic or foreign limited liability partnership, \$150;
  - (2) ~~For foreign limited liability partnerships:~~
    - ~~(A)~~ (7) Statement of foreign qualification [of limited liability partnership], \$50;
    - ~~(B)~~ Certificate of correction, \$50;
    - ~~(C)~~ (8) Statement of correction, amendment, restatement, or amendment and restatement of foreign limited liability partnership, \$50;
    - ~~(D)~~ (9) Annual report, \$50;
    - ~~(E)~~ Certification of foreign partnership, \$25;
    - ~~(F)~~ Certificate of good standing, \$25; and
    - ~~(G)~~ Articles of conversion, \$150;] and
  - (3) (10) For any other certificate or document authorized by this subpart, \$50.”

SECTION 95. Section 425D-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In order to form a limited partnership, a certificate of limited partnership shall 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 mailing address of the limited partnership’s initial principal office[;], the street address of the limited partnership’s initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (3) The name and the 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.”

SECTION 96. Section 425D-203.5, Hawaii Revised Statutes, is amended to read as follows:

“**§425D-203.5 Annual statement.** (a) Every limited partnership shall file an annual statement [~~on or before March 31 of each year as of December 31 of the preceding year~~] containing the following information:

- (1) The name of the limited partnership;

- (2) The name and address of each general partner;
- (3) The name and address of each limited partner;
- (4) The [location of the principal place of business of the limited partnership in this State; and] mailing address of the limited partnership's principal office, the street address of the limited partnership's registered office in the State, and the name of its registered agent at its registered office in the State; and
- (5) The fact that none of the partners is either a minor or an incompetent person.

(b) The annual statement shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.

(d) Effective January 1, 2003, for each limited partnership whose date of registration in this State falls between:

- (1) January 1 and March 31, an annual statement shall be filed on or before March 31 of each year and shall reflect the state of the limited partnership's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual statement shall be filed on or before June 30 of each year and shall reflect the state of the limited partnership's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual statement shall be filed on or before September 30 of each year and shall reflect the state of the limited partnership's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual statement shall be filed on or before December 31 of each year and shall reflect the state of the limited partnership's affairs as of October 1 of the year when filed;

provided that if a limited partnership is registered in the same year in which the annual statement is due, the limited partnership shall not be required to file an annual statement for that year. Thereafter, the limited partnership shall comply with the requirements of this section.

~~[(b)]~~ (e) Each annual statement shall be certified as correct by any general partner."

SECTION 97. Section 425D-203.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~"(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 the limited partnership.]~~ The director may commence a proceeding to cancel the certificate of a limited partnership administratively if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two consecutive years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required.

The cancellation of 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."

SECTION 98. Section 425D-204, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each certificate required by this chapter to be filed in the office of the director shall be executed in the following manner:

- (1) An original certificate of limited partnership must be signed by ~~[all]~~ at least one general [partners;] partner;
- (2) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner;
- (3) A certificate of cancellation must be signed by all general partners; ~~[and]~~
- (4) Any other certificate or document must be signed by all general partners~~[-]; and~~
- (5) A designation or change of a registered office or agent must be signed by at least one general partner.”

SECTION 99. Section 425D-902, Hawaii Revised Statutes, is amended to read as follows:

“**§425D-902 Registration.** (a) 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 street] mailing address of [any qualified agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent shall be:~~
  - (A) ~~An individual who resides in this State and whose business office is identical with the registered office;~~
  - (B) ~~A domestic entity whose business office is identical with the registered office; or~~
  - (C) ~~A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office;]~~ the foreign limited partnership’s initial principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (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;~~
- (5) ~~The name and address of each general partner; and~~
- (6) (5) 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 canceled or withdrawn.

(b) The foreign limited partnership shall deliver with the completed application a certificate of good standing duly authenticated by the secretary of state or other official having custody of limited partnership records in the state or country under whose law it is formed; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 100. Section 425D-906.5, Hawaii Revised Statutes, is amended to read as follows:

**“~~§425D-906.5~~ Annual statement.** (a) Every foreign limited partnership registered in this State shall file an annual statement [~~on or before March 31 of each year as of December 31 of the preceding year~~] containing the following information:

- (1) The name of the limited partnership;
- (2) The name and address of each general partner;
- (3) The name and address of each limited partner;
- (4) The name of the jurisdiction where the limited partnership was formed [~~and the location of the principal place of business of the partnership~~]; the mailing address of its principal office, the street address of its registered office in the State, and the name of its registered agent at its registered office in the State; and
- (5) The fact that none of the partners is either a minor or incompetent.

(b) The annual statement shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.

(d) Effective January 1, 2003, for each foreign limited partnership whose date of registration in this State falls between:

- (1) January 1 and March 31, an annual statement shall be filed on or before March 31 of each year and shall reflect the state of the foreign limited partnership’s affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual statement shall be filed on or before June 30 of each year and shall reflect the state of the foreign limited partnership’s affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual statement shall be filed on or before September 30 of each year and shall reflect the state of the foreign limited partnership’s affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual statement shall be filed on or before December 31 of each year and shall reflect the state of the foreign limited partnership’s affairs as of October 1 of the year when filed;

provided that if a foreign limited partnership is registered in the same year in which the annual statement is due, the foreign limited partnership shall not be required to file an annual statement for that year. Thereafter, the foreign limited partnership shall comply with the requirements of this section.

~~[(b)]~~ (e) Each annual statement shall be certified as correct by any general partner.”

SECTION 101. Section 425D-906.6, Hawaii Revised Statutes, is amended to read as follows:

**“~~[§425D-906.6]~~ Cancellation of registration.** [~~If any foreign limited partnership neglects for a period of two years to file any annual statement as required by this chapter, the director may cancel the registration of such limited partnership.]~~ A certificate of registration of a foreign limited partnership to transact business in this State may be canceled by the director if:

- (1) The partnership fails to:
  - (A) Pay any fees prescribed by law;
  - (B) File its annual report for a period of two consecutive years;

- (C) Appoint and maintain an agent for service of process as required;  
or
- (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

The cancellation of such registration shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.”

SECTION 102. Section 428-108, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§428-108[H] Change of [designated] registered office or registered agent [for service of process].~~ A limited liability company or a foreign limited liability company may change its [designated] registered office or its registered agent [for service of process] by delivering to the director for filing a statement of change which sets forth:

- (1) The name of the company;
- (2) The street address of its current [designated] registered office~~[-or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;~~
- (3) ~~If the current designated office is to be changed, the street address of the new designated office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;~~
- (4) The] in this State, the name [and street address] of its current registered agent [for service of process;] at its registered office in this State, and any changes required to keep the information current; and
- ~~[(5) If the current agent for service of process or street address of that agent is to be changed, the new street address or the name and street address of the new agent for service of process.]~~
- (3) That after the change or changes are made, the street addresses of its registered office and registered agent shall be identical.”

SECTION 103. Section 428-109, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§428-109[H] Resignation of registered agent [for service of process].~~ ~~[(a) An agent for service of process of a limited liability company or a foreign limited liability company may resign by delivering to the director for filing a record of the statement of resignation.~~

~~(b) After filing a statement of resignation, the director shall mail a copy to the designated office and another copy to the limited liability company or foreign limited liability company at its principal office.~~

~~(c) An agency is terminated on the thirty first day after the statement is filed in the office of the director.] (a) A registered agent of a domestic or foreign limited liability company may resign from the registered agent’s appointment by signing and delivering to the director for filing the signed statement of resignation. The statement may include a statement that the registered office is also discontinued.~~

~~(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the partnership at its principal office.~~

(c) The appointment of the agent is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.”

SECTION 104. Section 428-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Articles of organization of a limited liability company shall set forth:
  - (1) The name of the company;
  - ~~[(2) The street address of the initial designated office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;~~
  - ~~(3) The name and street address of the initial agent for service of process;]~~
  - (2) The mailing address of the company’s initial principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its registered office in this State;
  - ~~[(4)] (3) The name and address of each organizer;~~
  - ~~[(5)] (4) Whether the duration of the company is for a specified term and, if so, the period specified;~~
  - ~~[(6)] (5) Whether the company is to be manager-managed, and:
 
    - (A) If so, the name and address of each initial manager, and the number of initial members; or
    - (B) If not, the name and address of each initial member; and~~
  - ~~[(7)] (6) Whether the members of the company are to be liable for its debts and obligations under section 428-303(c).”~~

SECTION 105. Section 428-207, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) A record is corrected:
  - (1) By preparing articles of correction that:
    - (A) Describe the record, including its filing date, or ~~[attach]~~ have attached a copy of it to the articles of correction;
    - (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the certification or signing was defective; and
    - (C) ~~[Corrects]~~ Correct the incorrect statement or defective certification or signing; and
  - (2) By delivering the articles of correction to the director for filing.”

SECTION 106. Section 428-210, Hawaii Revised Statutes, is amended to read as follows:

**“§428-210 [Filing of annual] Annual report.** (a) Each limited liability company and each foreign limited liability company authorized to transact business in this State shall deliver to the director for filing an annual report that sets forth:

- (1) The name of the company and the state or country under whose law it is organized;
- (2) The mailing address of the company’s principal office, the street address of its [designated] registered office in this State, and the name [and street address] of its registered agent [for service of process in this State, provided that if no street address is available the rural post office number or post office box designated or made available by the United States Postal Service;] at its registered office in the State; and



- ~~[(3) The street address of its principal office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and~~
- (4) (3) Whether the company is manager-managed, and:
- (A) If so, the name and address of each manager, and the number of members; or
- (B) If not, the name and address of each member.

~~[(b) The information in an annual report shall be current as of December 31 of the year preceding the year of filing.~~

~~(c) The first annual report shall be delivered to the director by June 30 of the year following the calendar year in which a limited liability company was organized or a foreign limited liability company was authorized to transact business. Subsequent annual reports shall be delivered to the director by June 30 of the following calendar year.~~

~~(d) (b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).~~

~~(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.~~

~~(d) Effective January 1, 2003, for domestic or foreign limited liability companies whose date of organization or registration in this State falls between:~~

- ~~(1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the company's affairs as of January 1 of the year when filed;~~
- ~~(2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the company's affairs as of April 1 of the year when filed;~~
- ~~(3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the company's affairs as of July 1 of the year when filed; and~~
- ~~(4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the company's affairs as of October 1 of the year when filed;~~

~~provided that if a domestic or foreign limited liability company is organized in the same year in which the annual report is due, the domestic or foreign limited liability company shall not be required to file an annual report for that year. Thereafter, the domestic or foreign limited liability company shall comply with the requirements of this section.~~

~~(e) If an annual report does not contain the information required in subsection (a), the director shall return the report for correction. If the report is corrected to contain the information required in subsection (a) and delivered to the director within thirty days after the date on which it was mailed to the limited liability company by the director, the report shall be considered to be timely filed."~~

SECTION 107. Section 428-904, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A plan of merger shall be approved:

- (1) In the case of a limited liability company that is a party to the merger, unless otherwise provided in the operating agreement, by the members representing the percentage of ownership specified in the operating agreement, but not fewer than the members holding a majority of the ownership, or if provision is not made in the operating agreement, by all the members;

- (2) In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;
- (3) In the case of a corporation that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the corporation is organized;
- (4) In the case of a domestic limited partnership that is a party to the merger, unless otherwise provided in the partnership agreement, by all of the partners;
- (5) In the case of a foreign limited partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign limited partnership is organized;
- (6) In the case of a domestic general partnership that is a party to the merger, unless otherwise provided in the partnership agreement, by the vote of all partners; and
- (7) In the case of a foreign general partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign general partnership is organized.”

SECTION 108. Section 428-1002, Hawaii Revised Statutes, is amended to read as follows:

“**§428-1002 Application for certificate of authority.** (a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the director for filing. The application shall set forth:

- (1) The name of the foreign limited liability company or, if its name is unavailable for use in this State, a name that satisfies the requirements of section 428-1005;
- (2) The name of the state or country under whose law it is organized;
- (3) ~~[The street address of its principal office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service, and a]~~ A representation and warranty that a list of the names of and addresses of all members and their respective capital contributions are kept and will be kept at this principal office until cancellation, in accordance with section 428-1007, of the foreign limited liability company’s authority to transact business in this State;
- (4) The ~~[street]~~ mailing address of its initial principal office, the street address of its initial [designated] registered office in this State ~~[or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;~~
- (5) ~~The~~, and the name ~~[and street address]~~ of its initial registered agent [for service of process] at its initial registered office in this State;
- ~~[(6)]~~ (5) Whether the duration of the company is for a specified term and, if so, the period specified;
- ~~[(7)]~~ (6) Whether the company is manager-managed, and:
  - (A) If so, the name and address of each manager; or
  - (B) If not, the name and address of each member;
- ~~[(8)]~~ (7) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 428-303(c); and

~~(9)~~ (8) Any additional information as may be necessary or appropriate to enable the director to determine whether the foreign limited liability company is entitled to obtain authority to transact business in this State.

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of company records in the state or country under whose law it is organized, which certificate shall be dated not earlier than ~~thirty~~ sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath ~~[of]~~ by the translator shall accompany the certificate.”

SECTION 109. Section 428-1006, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director may not revoke a certificate of authority of a foreign limited liability company unless the director sends the company notice of the revocation, at least sixty days before its effective date, by a record addressed to its agent for service of process in this State, or if the company fails to appoint and maintain a proper agent in this State, addressed to its last known address appearing in the director’s records. The notice shall identify the cause for the revocation of the certificate of authority. If the foreign limited liability company does not cure its failure by the date specified in the notice of revocation, the director may issue a certificate of revocation ~~[in duplicate, file one of the certificates]~~ that shall be filed in the office of the director [and mail the other certificate addressed as described in the preceding sentence to the foreign limited liability company]. The authority of the company to transact business in this State shall cease upon the issuance of the certificate of revocation.”

SECTION 110. Section 482-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Before any person may receive a certificate of registration of a print, label, or trademark, the person shall file in the office of the director of commerce and consumer affairs an application for the registration of the print, label, or trademark, with a declaration, certified by the applicant, stating that the applicant is the sole and original proprietor or the assign of the proprietor of this print, label, or trademark, and describing the goods or manufactured articles for which the print, label, or trademark is used, and stating the manner in which the print, label, or trademark is used. Before any person may receive a certificate of registration of a service mark or trade name, the person shall file in the office of the director an application for the registration thereof, with a declaration, certified, as aforesaid, stating that the person is the sole and original proprietor of the service mark or trade name, or the assign of the proprietor and setting forth the nature of the business in which the service mark or trade name is used. The application shall be accompanied by ~~[two]~~ one exact ~~[copies]~~ copy of the print, label, trademark, service mark, or trade name. Upon filing the application, the applicant shall pay to the director a fee of \$50. A special handling fee of \$20 for expediting registration of a trade name, print, label, trademark, or service mark shall be assessed by the department. All special handling fees shall be credited to the compliance resolution fund established under section ~~[26-9(o)]~~.”

SECTION 111. Act 15, Session Laws of Hawaii 2001, section 4, is amended by amending subsection (b) of section 482-2, Hawaii Revised Statutes, to read as follows:

“(b) Before any person may receive a certificate of registration of a print or label, the person shall file in the office of the director an application for the

registration of the print or label, with a declaration, certified by the applicant, stating that the applicant is the sole and original proprietor or the assign of the proprietor of this print or label, and describing the goods or manufactured articles for which the print or label is used, and stating the manner in which the print or label is used. The application shall be accompanied by [two] one exact [copies] copy of the print, label, or trade name. Upon filing the application, the applicant shall pay to the director a fee of \$50. A special handling fee of \$20 for expediting registration of a trade name, print, or label shall be assessed by the director. All special handling fees shall be credited to the compliance resolution fund established under section 26-9(o).”

SECTION 112. Section 482E-3, Hawaii Revised Statutes, is amended to read as follows:

“§482E-3 Offering circular. (a) It is unlawful for any person to sell a franchise in this State unless such person has presented to the prospective franchisee or the franchisee’s representative, at least seven days prior to the sale of the franchise, an offering circular containing the following information:

- (1) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with franchisees.
- (2) The franchisor’s principal business address and the name and address of the franchisor’s agent in the State authorized to receive process.
- (3) The business form of the franchisor whether corporate, partnership, or otherwise.
- (4) Such other information concerning the identity and business experience of persons affiliated with the franchisor including franchise brokers and selling agents as the director may by rule prescribe.
- (5) A statement whether any person identified in the offering circular, within ten years preceding the date of the offering circular:
  - (A) Has been found guilty of a felony or held liable in a civil action by final judgment if the civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or
  - (B) Is subject to any currently effective order of the Securities and Exchange Commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment advisor or is subject to any currently effective order of any national security association or national securities exchange (as defined in the Securities and Exchange Act of 1934) suspending or expelling such person from membership of such association or exchange; or
  - (C) Is subject to any currently effective order or ruling of the Federal Trade Commission or is subject to any currently effective order relating to the business activity as a result of an action brought by any public agency or department.

Such statement shall set forth the court, the date of conviction or judgment, any penalty imposed, or damages assessed, or the date, nature, and issue of such order.

- (6) A statement of when, where, and how long the franchisor has:
  - (A) Conducted a business of the type to be operated by the franchisees;
  - (B) Has granted franchises for such business; and
  - (C) Has granted franchises in other lines of business.

- (7) A recent financial statement of the franchisor, together with a statement of any material changes in the financial condition of the franchisor from the date thereof. The director may describe:
  - (A) Form and content of the financial statements required under this chapter;
  - (B) The circumstances under which consolidated financial statements can be filed; and
  - (C) The circumstances under which financial statements shall be audited by independent, certified public accountants.
- (8) A copy of the typical franchise contract or agreement proposed for use in this State.
- (9) A statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases.
- (10) A statement describing a payment of fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.
- (11) A statement of the conditions under which the franchise agreement may be terminated or renewed or renewal refused, or repurchased at the option of the franchisor.
- (12) A statement of the conditions under which the franchise may be sold, transferred, or assigned.
- (13) A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee or subfranchisor is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or the franchisor's designee.
- (14) A statement of any restriction or condition imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is limited or required in the goods and services offered by the franchisee.
- (15) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or the franchisor's agent or affiliate.
- (16) A statement of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part.
- (17) A copy of any financial statement prepared for presentation to prospective franchisees or other persons together with a statement setting forth the basis for such statements.
- (18) A statement of the number of franchise businesses in each of the following categories which within the three-year period preceding the date of the offering circular have:
  - (A) Been canceled or terminated by either the franchisor or franchisee;
  - (B) Not been renewed by either the franchisor or franchisee;
  - (C) Been reacquired through purchase by the franchisor;
  - (D) Been otherwise reacquired by the franchisor; and
  - (E) Been transferred or sold by the franchisee to persons other than a corporation or other business entity controlled by the transferring or selling franchisee.

- (19) A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee.
- (20) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory.
- (21) A statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from (A) the use of the public figure in the name or symbol of the franchise or (B) the endorsement or recommendation of the franchise by the public figure in advertisements.
- (22) Such other information as the director may reasonably require.
- (23) Such other information as the franchisor may wish to present.
- (24) When the person selling the franchise is a subfranchisor, the offering circular shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this subsection.
- (25) List of names and addresses of all franchisees of the franchisor whose franchise businesses are situated in this State.

(b) If any material change occurs in the information contained in the offering circular, the offering circular shall be amended by the franchisor or subfranchisor before further sales of the franchise are made in this State and the amended offering circular shall be presented to a prospective franchisee at least seven days before a sale of a franchise is made to the prospective franchisee. The director may define by rule material changes which require amendment of an offering circular.

(c) There shall be filed with the director a copy of the offering circular required under subsection (a) or the amended offering circular required under subsection (b) at least seven days prior to the sale of a franchise.

(d) Every filing under this section shall expire ~~two~~ three months after the end of each franchisor's fiscal year. Applications for renewals shall be made not more than sixty days before the expiration date. An application for renewal shall be accompanied by the most recently amended offering circular required under subsection (b). Any applicant for renewal of a franchise filing who submits the renewal application after the expiration date shall be required to reapply as a new franchisor.

(e) In lieu of an offering circular meeting the requirements set forth in this section, franchises may be sold in this State by means of an offering circular or disclosure statement required by a federal or government agency of another state, or an offering circular or disclosure statement meeting the requirements approved by an association of state regulatory agencies; provided that the director determines that such offering circular or disclosure statement substantially meets the disclosure requirements set forth in this section."

SECTION 113. Section 414D-88, Hawaii Revised Statutes, is repealed.

SECTION 114. Section 414D-108, Hawaii Revised Statutes, is repealed.

SECTION 115. Section 425-165, Hawaii Revised Statutes, is repealed.

SECTION 116. Section 425-166, Hawaii Revised Statutes, is repealed.

SECTION 117. Section 425-170, Hawaii Revised Statutes, is repealed.

SECTION 118. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 119. This Act shall take effect on July 1, 2002; provided that section 111 shall take effect on July 1, 2003.

(Approved May 31, 2002.)

**Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.