

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners’ revolving fund, section 412:2-109, and the special handling fund, section ~~[415-128,]~~ 414-13, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers’ compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner’s education and training fund, section 431:2-214, the medical malpractice patients’ compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, ~~[the insurance examiners’ revolving fund, section 431:2-307, the motor vehicle insurance administration revolving fund, section 431:10C-115.5,]~~ and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium management education fund, section [444-29, and the public broadcasting revolving fund, section 314-13.] 514A-131. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to ~~[chapters]~~ chapter 76 [and 77], hearings

officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department with the exception of costs related to the Hawaii public broadcasting authority. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
  - (2) Any person subject to chapter 485 has complied with that chapter;
  - (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
  - (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
  - (5) Any person subject to chapter 467B has complied with that chapter;
- and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 2. Section 46-80.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition and supplemental to the authority vested in the counties by sections 46-80 and 46-80.1, any county having a charter may enact an ordinance, and may amend the same from time to time, authorizing the creation of special improvement districts for the purpose of providing and financing supplemental maintenance and security services and such other improvements, services, and facilities within the special improvement district as the council of the county determines will restore or promote business activity in the special improvement district and making and financing improvements therein. Each separate special improvement district shall be established by a separate ordinance enacted as provided in the ordinance authorizing the creation of special improvement districts. The ordinance authorizing the creation of special improvement districts may permit the county to provide for a board or association, established pursuant to chapter [415B,] 414D, to provide management of the special improvement district, and to carry out activities as may be prescribed by the ordinance authorizing the creation of special improvement districts and the ordinance establishing the special improvement district as permitted thereby."

SECTION 3. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

**"§92-28 State service fees; increase or decrease of.** Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

- (1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, [415,] 414, 414D, 421, 425, 425D, 428, 431, 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 485, 501, 502, 505, 572, 574, and 846 (part II);
- (2) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapters 304, 305, 306, and 308 shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;
- (3) This section shall not apply to judicial fees as may be set by any chapter cited in this section;
- (4) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91; and
- (5) Fees for copies of proposed and final rules and public notices of proposed rulemaking actions under chapter 91 shall not exceed 10 cents a page, as required by section 91-2.5."

SECTION 4. Section 163D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The corporation may exercise its powers through one or more subsidiary corporations. The corporation, by resolution, may direct any of its members, officers, or employees to organize a subsidiary corporation pursuant to either chapter [415] 414 or chapter [415B,] 414D; provided that the organization of a subsidiary corporation shall not adversely affect the federal tax status of the interest on any bonds issued to finance any project or project facility. The resolution shall prescribe the purposes for which the subsidiary corporation is established. The subsidiary corporation shall remain a subsidiary of the corporation as long as more than one-half of its voting shares are owned or held by the corporation, or a majority of its directors are designated by the corporation; provided that the corporation shall not convey or otherwise dispose of any subsidiary corporation or surrender the right to designate a majority of the directors of any subsidiary corporation if the sale or surrender has an adverse effect on the federal tax status of the interest on any bonds issued to finance any project or project facility. The subsidiary corporation may be operated, maintained, and enhanced at the full discretion of the corporation or its designee."

SECTION 5. Section 207-12, Hawaii Revised Statutes, is amended to read as follows:

"§207-12 Exemptions and immunities. A foreign lender which (1) does not maintain a place of business in this State, (2) conducts its principal activities outside this State, and (3) complies with this part, does not by engaging in this State in any or all of the activities specified in section 207-13, violate the laws of this State relating to doing business or doing a banking, trust, or insurance business, or become subject to chapter 412, [415,] 414, or 431, or become subject to any taxation which would otherwise be imposed for doing business in or doing a banking, trust, or insurance business in, or having gross income or receipts from sources in, property in, or the conduct of any activity in, this State, or become subject to any taxation

under chapter 235, 237, or 241, and no income or receipts of any foreign lender arising out of any of the activities specified in the following section shall constitute income from sources in, property in, or activities conducted in this State for the purposes of any tax imposed by this State; provided that nothing in this part shall be construed to exempt the real property of a foreign lender from taxation to the same extent, according to its value, as other real property is taxed, or to preclude the inclusion of the dividends or other income from foreign lenders in the income of individuals taxable under chapter 235 to the same extent as is included dividends and other income from domestic lenders; and provided further that if any such foreign lender shall acquire any property in this State in enforcement of the rights of the foreign lender in the event of a default by any borrower, as permitted by section 207-13(4), then commencing one year after title to such property has vested in the foreign lender, the rents or other receipts received by the foreign lender from, and the proceeds of sale by the foreign lender of, such property shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if the rents, other receipts, or proceeds were received by a resident of this State; and provided further that if any such foreign lender shall otherwise acquire any property in this State or engage in any business or activities in this State not specified in section 207-13, then the rents and other receipts received by the foreign lender from such property and the proceeds of sale by the foreign lender of such property and all income and receipts from the foreign lender's business or activities in this State not specified in section 207-13 shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if such rents, other receipts, proceeds, and income were received by a resident of this State, but such other activities and business shall not deprive the foreign lender of the immunities and exemptions from taxation hereinabove stated with respect to the activities specified in section 207-13."

SECTION 6. Section 235-68, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) As used in this section:

"Nonresident person" means every person other than a resident person.

"Property" or "real property" has the meaning as the same term is defined in section 231-1.

"Resident person" means any:

- (1) Individual included in the definition of resident in section 235-1;
- (2) Corporation incorporated or granted a certificate of authority under chapter [415-] 414, 414D, or 415A[ ~~or 415B~~];
- (3) Partnership formed or registered under chapter 425 or 425D;
- (4) Foreign partnership qualified to transact business pursuant to chapter 425 or 425D;
- (5) Limited liability company formed under chapter 428 or any foreign limited liability company registered under chapter 428;
- (6) Limited liability partnership formed under chapter 425;
- (7) Foreign limited liability partnership qualified to transact business under chapter 425;
- (8) Trust included in the definition of resident trust in section 235-1; or
- (9) Estate included in the definition of resident estate in section 235-1.

"Transferee" means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

"Transferor" means any person disposing real property which is located in Hawaii."

SECTION 7. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

**“§237-24.3 Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms “agricultural commodity”, “producer”, and “produce dealer” shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;
- (2) Amounts received from sales of:
  - (A) Intoxicating liquor as the term “liquor” is defined in chapter 244D;
  - (B) Cigarettes and tobacco products as defined in chapter 245; and
  - (C) Agricultural, meat, or fish products grown, raised, or caught in Hawaii, to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state on the shipper’s vessels or airplanes;
- (3) Amounts received by the manager or board of directors of:
  - (A) An association of apartment owners of a condominium property regime established in accordance with chapter 514A; or
  - (B) A nonprofit homeowners or community association incorporated in accordance with chapter [415B] 414D or any predecessor thereto and existing pursuant to covenants running with the land, in reimbursement of sums paid for common expenses;
- (4) Amounts received or accrued from:
  - (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
  - (B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and
  - (C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;
- (5) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, “employee benefit plan” means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;

- (6) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
- (7) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph:
  - (A) "Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; and
  - (B) "Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by the practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;
- (8) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;
- (9) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;
- (10) Amounts received by a labor organization for real property leased to:
  - (A) A labor organization; or
  - (B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.

As used in this paragraph, "labor organization" means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended;
- (11) Amounts received from foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes; and
- (12) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. 40102.'

SECTION 8. Section 238-1, Hawaii Revised Statutes, is amended by amending the definition of "representation" to read as follows:

""Representation" refers to any or all of the following:

- (1) A seller being present in the State;
- (2) A seller having in the State a salesperson, commission agent, manufacturer's representative, broker, or other person who is authorized or employed by the seller to assist the seller in selling property, services, or contracting for use or consumption in the State, by procuring orders for the sales, making collections or deliveries, or otherwise; and
- (3) A seller having in the State a person upon whom process directed to the seller from the courts of the State may be served, including the director of commerce and consumer affairs and the deputy director in the cases provided in section [415-14.] 414-64."

SECTION 9. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

**"§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale;
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition;

- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter [415,] 414, 414D, 415A, [415B,] 421, 421C, 425, 425D, or 428 to the surviving or new entity; and
- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership."

SECTION 10. Section 323D-76, Hawaii Revised Statutes, is amended to read as follows:

**“[[§323D-76]] Acquisition in the public interest; decision of attorney general.** If the attorney general determines that a review of the application is appropriate, the attorney general shall approve the application unless the attorney general finds that the acquisition is not in the public interest. An acquisition of a private nonprofit hospital is not in the public interest unless appropriate steps have been taken to safeguard the value of charitable assets and ensure that any proceeds of the transaction are used for appropriate charitable health care purposes as provided in paragraph (8). In determining whether the acquisition meets such criteria, the attorney general shall consider, as applicable:

- (1) Whether the acquisition is permitted under chapter [415B] 414D governing nonprofit entities, trusts, or charities;
- (2) Whether the hospital acted in a duly diligent manner in deciding to sell, selecting the purchaser, and negotiating the terms and conditions of the sale;
- (3) The procedures used by the seller in making its decision, including whether appropriate expert assistance was used;
- (4) Whether all conflicts of interest were disclosed, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the seller, purchaser, or parties to the acquisition;
- (5) Whether the seller will receive reasonably fair value for its assets. The attorney general may employ, at the seller's expense, reasonably necessary expert assistance in making this determination;
- (6) Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the seller;
- (7) Whether any management contract under the acquisition is for reasonably fair value;
- (8) Whether the sale proceeds will be used for appropriate charitable health care purposes consistent with the seller's original purpose or for the



- support and promotion of health care in the affected community, and will be controlled as charitable funds independent of the purchaser or parties to the acquisition; and
- (9) Whether a right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained, if the hospital is subsequently sold to, acquired by, or merged with another entity.”

SECTION 11. Section 412:1-105, Hawaii Revised Statutes, is amended to read as follows:

“**§412:1-105 Deposits.** Except as expressly authorized by this chapter~~;~~ section ~~415-106(e);~~ or by federal law, no person shall solicit, accept, or hold deposits in this State.”

SECTION 12. Section 412:2-508, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may issue a provisional approval to organize a new corporation pursuant to this chapter and chapter ~~[415]~~ 414 solely for the purpose of merging with or acquiring the stock or assets and assuming the liabilities of a failing financial institution in a transaction meeting the requirements of this part and other applicable law.”

SECTION 13. Section 412:3-101, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-101 Name of financial institution.** The name of every Hawaii financial institution shall be subject to the approval of the commissioner and shall conform with the provisions of section ~~[415-8(2)]~~ 414-51 or any successor thereto, whether or not the Hawaii financial institution is a corporation. If the Hawaii financial institution is incorporated, its name may, but need not, contain the word “corporation”, “incorporated”, or “limited”, or an abbreviation of one of the words.”

SECTION 14. Section 412:3-102, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-102 Change of name.** To change its name, a Hawaii financial institution shall file an application with the commissioner and pay such fees as the commissioner may establish. The application shall be approved if the commissioner is satisfied that the new name complies with this chapter and chapter ~~[415:]~~ 414. Any change of name of a stock financial institution or mutual savings and loan association pursuant to this section shall be effected in accordance with chapter ~~[415:]~~ 414. Any change of name shall not affect a financial institution’s rights, liabilities, or obligations existing prior to the effective date thereof, and no documents of transfer shall be necessary to preserve such rights, liabilities, or obligations; provided~~;~~ however~~;~~ that the commissioner may require notice to be given to the public and other governmental agencies.”

SECTION 15. Section 412:3-208, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The articles of incorporation shall comply in all respects with chapter ~~[415:]~~ 414.”

SECTION 16. Section 412:3-304, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the commissioner is satisfied that the applicant has fulfilled all the requirements of law and is qualified to engage in the business of a nondepository financial services loan company, the commissioner shall issue a written decision and order approving the application. Upon the approval of the application, the payment of an initial license fee established by rule pursuant to chapter 91, and, if applicable, upon providing satisfactory evidence to the commissioner of compliance with the requirements of chapter [415] 414 relating to foreign corporations, the commissioner shall issue to the applicant a license to engage in the business of a nondepository financial services loan company under this chapter.”

SECTION 17. Section 412:3-401, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-401 Applicability of Hawaii Business Corporation Act.** (a) Except to the extent that the provisions of this chapter are inconsistent, all provisions of chapter [415] 414 shall apply to a corporation engaging in business as a Hawaii financial institution under this chapter. In case of any inconsistencies, the provisions of this chapter shall control.

(b) A copy of each document delivered to the director of commerce and consumer affairs for filing pursuant to chapter [415] 414 shall be simultaneously delivered to the commissioner.”

SECTION 18. Section 412:3-402, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-402 Capital stock.** The following provisions shall apply to all shares of capital stock of a Hawaii stock financial institution:

- (1) Subject to any restrictions in chapter [415] 414 or the articles of incorporation, the consideration to be paid for the issuance of authorized capital stock of a Hawaii stock financial institution shall be authorized by the board of directors of the financial institution and shall be paid only in money or such other consideration as may be authorized by chapter [415] 414 or this chapter, but not in labor or services actually performed for the financial institution; provided that upon authorization by the board of directors, the financial institution may issue its own authorized shares of capital stock in exchange for or in conversion of its outstanding shares, or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate stock dividends or splits, and any such transaction shall not require consideration; provided<sup>[5]</sup> further<sup>[5]</sup> that no such issuance of shares of any class or series shall be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation, or is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which a distribution is to be made.
- (2) No Hawaii financial institution shall issue any share of its capital stock unless and until the full amount of any consideration therefor as authorized by the board of directors shall have been paid into or received by the financial institution.
- (3) No Hawaii stock financial institution other than a nondepository financial services loan company shall issue preferred stock without first

obtaining the written approval of the commissioner as to the amount and terms thereof. While any preferred stock of a financial institution is held as owner or pledgee by any federal agency or entity established by law for the purpose of providing financial assistance to financial institutions, such preferred stock and any dividends paid thereon shall be exempt from taxation by this State.

- (4) No Hawaii stock financial institution other than a nondepository financial services loan company shall decrease its authorized capital stock or the par value of capital stock having par value, or decrease its outstanding capital stock by the acquisition of its own shares, without first receiving the written approval of the commissioner.”

SECTION 19. Section 412:3-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No Hawaii stock financial institution shall declare or pay any dividends or make any other capital distribution to its shareholders except pursuant to its articles of incorporation, this section, and section ~~[415-45]~~ 414-111; provided that if section ~~[415-45]~~ 414-111 is inconsistent with this section, the provisions of this section shall control.”

SECTION 20. Section 412:3-604, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This section shall control over the required percentages for any shareholder vote contained in section ~~[415-73]~~ 414-313 on approval by shareholders of a merger or consolidation, section ~~[415-79]~~ 414-332 on approval by shareholders on the sale of assets not in the usual and regular course of business, and section ~~[415-84]~~ 414-382 on approval by shareholders on the voluntary dissolution of a corporation.”

SECTION 21. Section 412:3-605, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A member of a mutual savings and loan association or credit union shall have no right of dissent under chapter ~~[415]~~ 414 for any of the transactions governed by this part.”

SECTION 22. Section 412:3-606, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Upon the effective date of the conversion as determined under federal law, the institution’s state charter or license shall terminate without further notice, and the institution shall cease to be regulated by the commissioner. Within ten days after receipt of the federal charter, license, certificate, or other approval, the resulting financial institution shall deliver a copy thereof to the commissioner. The resulting financial institution shall also file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the conversion, together with the appropriate filing fee pursuant to chapter ~~[415-]~~ 414.”

SECTION 23. Section 412:3-607, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The charter shall be granted only if the commissioner is satisfied that the granting of the charter will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include, but not be limited to, the appropriate location of offices, capital structure, business experience, the charac-

ter of its executive officers and directors, and compliance with all applicable provisions of chapter [415:] 414. The director of commerce and consumer affairs shall not file the articles of incorporation until the application for a charter to engage in business as a Hawaii financial institution shall have been approved by the commissioner in writing. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.”

SECTION 24. Section 412:3-608, Hawaii Revised Statutes, is amended by amending subsections (e) and (f) to read as follows:

“(e) The charter or license shall be granted only if the commissioner is satisfied that the granting of the charter or license will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include, but not be limited to, the appropriate location of offices, capital structure, business experience, the character of its executive officers and directors and compliance with all applicable provisions of chapter [415:] 414. If the resulting Hawaii financial institution is a new corporation to be formed under chapter [415:] 414, the director of commerce and consumer affairs shall not file the articles of incorporation until the application for a charter to engage in the business of the type of financial institution to which it will convert shall have been approved by the commissioner in writing. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.

(f) If the resulting Hawaii financial institution is an existing corporation formed under chapter [415:] 414, the conversion shall be effective upon the effective date of the new charter or license granted by the commissioner after all provisions of this section and of federal law shall have been complied with in full. If the resulting Hawaii financial institution is a new corporation to be formed under chapter [415:] 414, the effective date of the new charter or license shall be the date of filing of the articles of incorporation by the director of commerce and consumer affairs.”

SECTION 25. Section 412:3-609, Hawaii Revised Statutes, is amended by amending subsections (b) to (f) to read as follows:

“(b) Any merger or consolidation of Hawaii stock financial institutions shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more corporations pursuant to chapter [415:] 414; except that the vote by the shareholders of each of the participating institutions to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604 and that the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing.

(c) One or more federal financial institutions whose operations are conducted principally in this State and one or more Hawaii financial institutions may be merged or consolidated, with the federal financial institution, the Hawaii financial institution, or a new consolidated financial institution being the resulting institution, if the merger or consolidation is permitted by federal law. The federal financial institution shall comply with all requirements, conditions, and limitations imposed by federal law or regulation with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter [415:] 414, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604. The resulting financial institution shall file with the

director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter ~~[415:]~~ 414.

(d) One or more financial institutions chartered or licensed under the laws of or whose operations are conducted principally in any state other than this State, in any possession or territory of the United States, or in any foreign country and one or more Hawaii depository financial institutions or trust companies may be merged or consolidated, but only where the depository financial institution or trust company resulting from any merger or consolidation pursuant to this subsection is chartered or licensed under the laws of and conducts its operations principally in this State, is a federal financial institution that conducts its operations principally in this State, or is an out-of-state bank authorized to establish interstate branches in this State pursuant to section 412:12-104. A nondepository financial services loan company licensed pursuant to article 9 may be merged or consolidated with another corporation, but only where the nondepository financial institution resulting from any merger or consolidation is licensed under the laws of this State. The financial institution chartered or licensed under the laws of any state other than this State, any possession or territory of the United States, or any foreign country shall comply with all requirements, conditions, and limitations imposed by the law of the jurisdiction under which the financial institution is chartered or licensed with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter ~~[415:]~~ 414, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604. If the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing. If the resulting institution is a federal financial institution, the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing and the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter ~~[415:]~~ 414.

(e) A Hawaii mutual savings and loan association may merge into a Hawaii stock financial institution or a federal financial institution whose operations are principally conducted in this State, or may consolidate with a Hawaii stock financial institution or a federal financial institution whose operations are conducted principally in this State into a new resulting institution; provided that the resulting institution shall be a Hawaii stock financial institution or a federal financial institution, and shall not be a Hawaii mutual savings and loan association. The merger or consolidation shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more stock financial institutions pursuant to this section and to chapter ~~[415:]~~ 414, as though the Hawaii mutual savings and loan association was a stock financial institution; except that the members of the participating Hawaii mutual savings and loan association shall approve the plan of merger or consolidation at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605. If the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing. If the resulting institution is a federal financial institution, the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time

of the merger or consolidation, together with the appropriate filing fee pursuant to chapter [415:] 414.

(f) A Hawaii credit union may merge with a Hawaii credit union or federal credit union. The merger shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger of two or more stock financial institutions pursuant to this section and to chapter [415:] 414, as though the credit unions were stock financial institutions; except that the plan of merger shall be approved by a majority of the members of the board of directors of each participating credit union and by the members of the participating credit unions at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605.”

SECTION 26. Section 412:3-610, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Except to the extent inconsistent with this part or in contravention of federal law, [section 415-76] sections 414-315(b) and 414-316 shall be applicable to any merger or consolidation under this part.”

SECTION 27. Section 412:3-613, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Whenever the transferring financial institution is a Hawaii financial institution, the sale or other disposition of its assets or business or the transfer of its deposits or liabilities subject to this section shall be effected pursuant to the procedures, conditions, and requirements of chapter [415] 414 applicable to the sale of assets other than in the regular course of business; provided that the sale or assumption shall be approved by the shareholders or members of the transferring Hawaii financial institution at a meeting duly called and noticed and upon a vote which satisfies the requirements of section 412:3-604. Notwithstanding the foregoing, the approval of the shareholders or members of the transferring institution shall not be required if the acquisition of all or substantially all of the assets or business, or the assumption of liabilities or deposits, of any of the transferring financial institution’s departments or branches does not constitute an acquisition of all or substantially all of the assets or business, or assumption of all or substantially all of the liabilities or deposits, of the transferring financial institution.”

SECTION 28. Section 412:3-617, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except for a credit union, a solvent Hawaii financial institution whose capital is not impaired and which has not received a notice of charges and proposed suspension or revocation order pursuant to section 412:2-312 may cease its business and dissolve if the institution shall have complied with applicable federal law and the following requirements and conditions:

- (1) The board of directors shall adopt a resolution adopting a plan of liquidation and dissolution and recommending that the financial institution be dissolved, and directing that the question of the dissolution be submitted to the commissioner for approval, and, if approved, to a vote of the shareholders or members, which vote may be at either an annual or special meeting. The plan of liquidation and dissolution shall include, but not be limited to, provisions for the orderly payment or assumption of the institution’s deposits and other liabilities and for transfer or assumption of all trust, agency, and other fiduciary relationships and accounts;
- (2) Within five business days after the meeting of the board of directors described in paragraph (1) [of this subsection], the financial institution

shall file an application with the commissioner pursuant to section 412:3-603 for approval to cease business and dissolve. The application shall be accompanied by a copy of the plan of liquidation and dissolution certified by two executive officers of the financial institution to have been duly adopted by the board and any other information that the commissioner may require. A copy of the notice shall be delivered contemporaneously to the financial institution's federal insurer;

- (3) The commissioner shall approve the application to cease business and dissolve if the commissioner is satisfied that the depositors, beneficiaries, and creditors will be adequately protected under the plan, the institution is not insolvent or in danger of becoming insolvent, that its capital is not impaired and is not in danger of becoming impaired, and that no other reason exists to deny the application. The commissioner may impose any restrictions and conditions as the commissioner deems appropriate;
- (4) Upon receipt of the commissioner's approval to cease business and dissolve, the financial institution shall proceed with the dissolution in accordance with the procedures, conditions, and requirements for, and with the effect of, a voluntary dissolution by act of corporation pursuant to chapter ~~[415,]~~ 414, except that the vote by shareholders or members to approve the dissolution shall satisfy the requirements of section 412:3-604; and
- (5) Any financial institution whose capital is impaired or in danger of becoming impaired, and any institution which is insolvent or in danger of becoming insolvent, may not undergo a voluntary dissolution."

SECTION 29. Section 412:5-101, Hawaii Revised Statutes, is amended to read as follows:

**"§412:5-101 Necessity for bank charter.** Except as expressly permitted by federal law or this chapter ~~[or section 415-106(e)]~~, no person shall engage in any activity for which a charter to operate as a bank is required by this chapter, including without limitation the solicitation, acceptance, and holding of deposits in the State, the use of the term "bank", or the exercise of such other powers or privileges restricted to banks under applicable law unless it is a corporation incorporated in this State and has such a charter."

SECTION 30. Section 412:6-101, Hawaii Revised Statutes, is amended to read as follows:

**"§412:6-101 Necessity for savings bank charter.** Except as expressly permitted by federal law or this chapter ~~[or section 415-106(e)]~~, no person shall engage in any activity for which a charter to operate as a savings bank is required by this chapter, including without limitation the solicitation, acceptance, and holding of deposits in this State, the use of the term "savings bank," or the exercise of such other powers or privileges restricted to savings banks under applicable law, unless it is a corporation incorporated in this State and has such a savings bank charter."

SECTION 31. Section 412:7-101, Hawaii Revised Statutes, is amended to read as follows:

**"§412:7-101 Necessity for savings and loan association charter.** Except as expressly permitted by federal law or this chapter ~~[or section 415-106(e)]~~, no person shall engage in any activity for which a charter to operate as a savings and

loan association is required by this chapter, including without limitation the solicitation, acceptance, and holding of deposits in this State, the use of the term “savings and loan association,” or the exercise of such other powers or privileges restricted to savings and loan associations under applicable law, unless it is a corporation incorporated in this State and has such a charter.”

SECTION 32. Section 412:9-101, Hawaii Revised Statutes, is amended to read as follows:

“**§412:9-101 Necessity for financial services loan company license.** Except as expressly permitted by federal law or this chapter [~~or section 415-106(e)~~], no person shall engage in any activity for which a license to operate as a financial services loan company is required by this chapter, including without limitation, making loans and extensions of credit where the interest charged, contracted for, or received is in excess of rates permitted by law other than this article, the use of the term “financial services loan company”, or the exercise of such other powers or privileges restricted to financial services loan companies under applicable law unless it is a corporation incorporated in this State and has such a license; provided that a nondepository financial services loan company shall not be required to be incorporated in this State.”

SECTION 33. Section 412:10-101, Hawaii Revised Statutes, is amended to read as follows:

“**§412:10-101 Necessity for credit union charter.** Except as expressly permitted by federal law or this chapter [~~or section 415-106(e)~~], no person shall engage in the business of a credit union, represent itself as a credit union, use a name or title containing the phrase “credit union” or any derivation thereof, or control any other person engaging in the business of a credit union.”

SECTION 34. Section 412:12-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any out-of-state state bank which shall be the resulting bank in an interstate merger transaction involving a Hawaii bank shall confirm in writing to the commissioner that as long as it maintains a branch in this State, it shall comply with all applicable laws of this State and provide satisfactory evidence to the commissioner of compliance with applicable requirements of chapter [~~415~~] 414 relating to foreign corporations.”

SECTION 35. Section 412:12-105, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) No branch of an out-of-state bank may be established or acquired in this State under this section, unless:

- (1) The out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch in this State, it shall comply with all applicable laws of this State;
- (2) The applicant provides to the commissioner satisfactory evidence of compliance with the applicable requirements of chapter [~~415~~] 414 relating to foreign corporations; and
- (3) The commissioner, acting within thirty days after receiving notice of an application under subsection (c), certifies to the responsible federal bank supervisory agency that the requirements of this article have been met.”



SECTION 36. Section 412:13-202, Hawaii Revised Statutes, is amended to read as follows:

**“§412:13-202 Application to establish and maintain a branch or agency; contents.** A foreign bank, in order to procure a license under this article to establish and maintain a Hawaii state branch or Hawaii state agency, shall submit an application to the commissioner, together with the application fee prescribed in section 412:13-206. The application shall contain:

- (1) The same information as required by the Board of Governors of the Federal Reserve System for an application to establish a branch or agency, as the case may be, in the United States;
- (2) If applicable, a statement under oath appointing an agent in this State for receipt of service of process in accordance with section [415-113;] 414-437, if the license is granted; and
- (3) Any additional information that the commissioner may require.”

SECTION 37. Section 412:13-203, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii state branch or Hawaii state agency, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the requirements of chapter [415] 414 relating to foreign corporations, if applicable. The commissioner shall then issue a license to establish and maintain a Hawaii state branch or Hawaii state agency to the foreign bank.”

SECTION 38. Section 412:13-216, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An application to establish and maintain a Hawaii representative office shall include, if applicable, a statement under oath appointing an agent in this State for receipt of service of process in accordance with section [415-113;] 414-437, if the license is granted.”

SECTION 39. Section 412:13-217, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii representative office, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the requirements of chapter [415] 414 relating to foreign corporations, if applicable. The commissioner shall then issue a license to establish and maintain a Hawaii representative office to the foreign bank.”

SECTION 40. Section 414-53, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

- (C) Require the entity to conduct business in this State under its new name.

If the entity fails to comply with the order of abatement within sixty days, the department 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 department 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 414D, 415A, [415B], 425, 425D, or 428, as applicable."

SECTION 41. Section 414D-63, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A foreign corporation may register its corporate name, or its corporate name with any change required by section 414D-276, if the name is distinguishable upon the records of the department director from:

- (1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this State; the name of a limited partnership or limited liability partnership existing under the laws of this State or authorized to transact business in this State; and
- (2) A corporate name reserved under section 414D-62 or [415-9], 414-52, or registered under this section."

SECTION 42. 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-]414."

SECTION 43. Section 415A-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A professional corporation may be incorporated for the purpose of rendering professional services within two or more professions, and for any purpose or purposes for which corporations may be organized under [~~the Hawaii Business Corporation Act,~~] chapter [415-]414, to the extent that any combination of professional purposes or of professional and business purposes is permitted by the licensing laws and rules of this State applicable to the professions."

SECTION 44. Section 415A-5, Hawaii Revised Statutes, is amended to read as follows:

"**§415A-5 General powers.** A professional corporation shall have the powers enumerated in [~~the Hawaii Business Corporation Act,~~] chapter [415-]414, except that a professional corporation may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the corporation's articles of incorporation."

SECTION 45. Section 415A-8.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) Allow the entity to retain its registered name, but:

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

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter [415:] 414, 414D, 415A, [415B:] 425, 425D, or 428, as applicable."

SECTION 46. Section 415A-14.6, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The articles of incorporation may set forth any of the matters specified in section [415-54(e):] 414-32(b).

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter or chapter [415:] 414."

SECTION 47. Section 415A-14.7, Hawaii Revised Statutes, is amended to read as follows:

"[H]§415A-14.7[H] **Filing of documents, effective date.** The filing of documents required by this chapter to be delivered to the director for filing, and the effectiveness thereof, shall be governed by [section 415-55:] sections 414-11(d), (e), (f), (g), and (i), 414-14, and 414-16."

SECTION 48. Section 415A-14.8, Hawaii Revised Statutes, is amended to read as follows:

"§415A-14.8 **Organization of corporation.** After incorporation, the initial director or directors, as the case may be, shall complete the organization of the corporation as provided in section [415-57:] 414-35."

SECTION 49. Section 415A-16.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A professional corporation may adopt a plan of conversion and convert to any other entity if:

- (1) The board of directors and shareholders of the professional corporation approve a plan of conversion in the manner prescribed by section [415-73] 414-313 and 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 shareholder of the converting entity, unless otherwise agreed to by that shareholder, 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 shareholders of the professional corporation, as a result of the conversion, shall not become personally liable without the shareholders' 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 50. Section 415A-17, Hawaii Revised Statutes, is amended to read as follows:

**"§415A-17 Termination of professional activities.** If a professional corporation shall cease to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of [~~the Hawaii Business Corporation Act,~~] chapter [415-] 414. After the amended articles of incorporation have been delivered to the director for filing, the corporation then may continue in existence as a corporation under [~~the Hawaii Business Corporation Act,~~] chapter [415-] 414, and shall no longer be subject to this chapter."

SECTION 51. Section 415A-18, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) 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.

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.

(b) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any professional 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 [415-135-] 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 professional corporation with full powers to settle its affairs."

SECTION 52. Section 415A-27, Hawaii Revised Statutes, is amended to read as follows:

**"§415A-27 Application of business corporation act.** The provisions of [~~the Hawaii Business Corporation Act,~~] chapter [415-] 414, shall apply to professional corporations, except to the extent that the provisions are inconsistent with this chapter."

SECTION 53. Section 419-2, Hawaii Revised Statutes, is amended to read as follows:

**"§419-2 Articles of incorporation; contents.** (a) Articles of incorporation under this chapter shall be delivered to the director for filing, certified and executed

by the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole and shall set forth:

- (1) The name of the corporation;
- (2) The name and address of the officer forming the corporation, the office which the officer holds in the church, and that the officer is duly authorized by the rules, regulations, or discipline of the church to take the action;
- (3) The boundaries of the district subject to the ecclesiastical jurisdiction of the officer forming the corporation sole, in accordance with the rules, regulations, or discipline of the church;
- (4) The place of the principal office of the corporation sole, which shall be in the State;
- (5) The term for which the corporation sole is organized, which may be perpetual;
- (6) The manner in which any vacancy occurring in the office of the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole is required to be filled by the rules, regulations, or constitution of the church;
- (7) Additional powers to be set forth in its articles, in accordance with section ~~[415B-5;]~~ 414D-52;
- (8) Any lawful provision for the regulation of the affairs of the corporation sole, including restrictions upon the power to amend all or any part of the articles; and
- (9) That the corporation is not organized for profit.

(b) If any articles of incorporation presented to the director under this chapter are not in conformity with the requirements of this section the director shall return the same to the incorporator specifying wherein the same fails to conform with this section and the incorporator may amend the articles and present them so amended. If the articles of incorporation are in conformity with law, the director shall file the articles of incorporation.”

SECTION 54. Section 419-3, Hawaii Revised Statutes, is amended to read as follows:

“**§419-3 Powers of corporation sole.** (a) Every corporation sole formed under this chapter shall have the powers set forth in section ~~[415B-5;]~~ 414D-52.

(b) Every such corporation shall have continuity of existence, notwithstanding vacancies in the incumbency thereof, and during the period of any vacancy, shall have the same capacity and right to receive and take any gift, bequest, devise, or conveyance of property, either as grantee for its own use, or as a trustee (where the trusteeship is within its corporate purposes and subject to removal from such trusteeship as provided by law), and to be or be made the beneficiary of a trust, as though there were no vacancies.

(c) No agency created by a corporation sole by a written instrument which, in express terms, provides that the agency thereby created shall not be terminated by a vacancy in the incumbency of the corporation, shall be terminated or affected by the death of the incumbent of the corporation or by a vacancy in the incumbency thereof, however caused.”

SECTION 55. Section 419-8, Hawaii Revised Statutes, is amended to read as follows:

“**§419-8 Dissolution.** A corporation formed under this chapter may be dissolved, voluntarily or involuntarily, in the manner provided in ~~[part V of chapter~~

415B denominated “dissolution, liquidation, and sale of assets,” save] part XIII of chapter 414D; provided that:

- (1) In lieu of the certificate and vote therein required for a voluntary dissolution, the incumbent of the corporation sole shall execute, subscribe, and verify a declaration of dissolution which shall set forth the name of the corporation, the reason for its dissolution or winding up, and that the dissolution has been duly authorized by the church, to administer the affairs, property, and temporalities of which the corporation was organized, and the director of commerce and consumer affairs shall be satisfied that the dissolution has been duly authorized[-];
- (2) In lieu of the certificate of an officer, director, or manager of the corporation, therein required for the involuntary dissolution of a corporation which has ceased to have any assets and has failed to function, the certificate may be made by any authorized officer of the church, to administer the affairs, property, and temporalities of which the corporation was organized[-];
- (3) In lieu of the directors or managers of the corporation the incumbent shall be a trustee to wind up the corporation, unless some other person or persons are appointed as therein provided[-];
- (4) The church, to administer the affairs, property, and temporalities of which the corporation was organized, shall stand in the place and stead of the stockholders, and may be represented in court by any authorized officer thereof or trustee acting in its behalf; the remaining assets shall be distributed to such church or to a trustee or trustees in its behalf, or in such other manner as may be decreed by the circuit court of the judicial circuit in which the dissolved corporation had its principal office at the date of dissolution; and the trustee or trustees in dissolution, the director, the attorney general, or any person connected with the church, may file a petition for the determination of the manner of distribution of the remaining assets, or for the appointment of a trustee or trustees to act in behalf of the church[-]; and
- (5) In lieu of the officers of the corporation the incumbent shall represent the corporation with respect to the required tax clearance.”

SECTION 56. Section 421-5, Hawaii Revised Statutes, is amended to read as follows:

“**§421-5 Name.** Section [~~415B-7~~] 414D-61 shall apply to associations formed under this chapter and no domestic corporation not organized under this chapter shall use the word “cooperative” as a part of its name.”

SECTION 57. Section 421-6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) An association organized under this chapter shall be subject to chapter [415] 414 relating to the payment of fees by corporations to the director.”

SECTION 58. Section 421-21, Hawaii Revised Statutes, is amended to read as follows:

“**§421-21 Voluntary dissolution.** Chapter [415,] 414, relating to the voluntary dissolution of [~~steek~~] profit corporations, and chapter [~~415B,]~~ 414D, relating to the voluntary dissolution of [~~nonsteek~~] nonprofit corporations, shall apply, as the case may be, to associations formed under this chapter except that the dissolution

shall be approved at a meeting duly called and held for the purpose by not less than two-thirds of the voting power voting thereon.”

SECTION 59. Section 421H-1, Hawaii Revised Statutes, is amended by amending the definition of “limited-equity housing cooperative” to read as follows:

““Limited-equity housing cooperative” means a stock cooperative corporation which is organized as a nonprofit corporation under chapter [415B] 414D for the purpose of holding title to, either in fee simple or for a term of years, improved real property, if all or substantially all of the shareholders of such corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation, which right of occupancy is transferable only concurrently with the transfer of the share or shares of stock in the corporation held by the person having such right of occupancy; provided the corporation also:

- (1) Is organized so that the consideration paid for an individual membership share by the first occupant following construction or acquisition by the corporation, including the principal amount of obligation incurred to finance the membership share, does not exceed seven per cent of the respective dwelling unit’s development cost, acquisition cost, or of the fair market value appraisal by the permanent lender, whichever is greater; and
- (2) Holds title to real property as the beneficiary of a trust providing for distribution for public or charitable purposes upon termination of the trust; or
- (3) Holds title to real property subject to conditions which will result in reversion to a public or charitable entity for affordable housing upon dissolution of the corporation; or
- (4) Holds a leasehold interest conditioned on the corporation’s continued qualification under this chapter and providing for reversion to a public entity or charitable corporation for affordable housing.”

SECTION 60. Section 421I-11, Hawaii Revised Statutes, is amended to read as follows:

“[H]§421I-11[H] **Application of Hawaii business corporation act.** The provisions of the Hawaii Business Corporation Act, chapter [415] 414, shall apply to cooperative housing corporations, except to the extent that the provisions of chapter [415] 414 are inconsistent with this chapter.”

SECTION 61. Section 423-1, Hawaii Revised Statutes, is amended to read as follows:

“§423-1 **Dental service corporation, formation.** A nonprofit dental service corporation may be formed for the purposes of contracting with individuals and corporations, both public and private, for defraying or assuming the costs of services of dentists and dental surgeons, and the contracting on behalf of dentists and dental surgeons to furnish such services. The director of commerce and consumer affairs shall grant to applicants who file articles of incorporation in conformity with section [415B-34] 414D-32 a charter of incorporation for the establishment and conduct of a dental service corporation; provided that the corporation may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

- (1) [Fifty] At least fifty licensed dentists and dental surgeons in this State have become members of the corporation;

- (2) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all licensed dentists and dental surgeons in this State;
- (3) Voting by proxy and cumulative voting are prohibited; and
- (4) [Certificate] A certificate of compliance with the requirements of paragraphs (1), (2), and (3) has been issued to the corporation by the board of dental examiners.

Any charter granted or corporation created under authority of this section shall be subject to all general laws enacted in regard to nonprofit corporations.”

SECTION 62. Section 424-1, Hawaii Revised Statutes, is amended to read as follows:

“**§424-1 General provisions.** A nonprofit optometric service corporation may be formed for the purposes of contracting with individuals and corporations, both public and private, for defraying or assuming the costs of services of optometrists, and the contracting on behalf of optometrists to furnish such services. The director of commerce and consumer affairs shall grant to applicants who file articles of incorporation in conformity with section [415B-34] 414D-32 a charter of incorporation for the establishment and conduct of an optometric service corporation; provided that the corporation may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

- (1) At least twenty-five per cent of all licensed optometrists in this State have become members of the corporation;
- (2) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all licensed optometrists in this State;
- (3) Voting by proxy and cumulative voting are prohibited; and
- (4) [Certificate] A certificate of compliance with the requirements of paragraphs (1), (2), and (3) has been issued to the corporation by the board of examiners in optometry.

Any charter granted or corporation created under authority of this section shall be subject to all general laws enacted in regard to nonprofit corporations.”

SECTION 63. Section 425-196, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

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



shall wind up its affairs in accordance with chapter [415;] 414, 414D, 415A, [415B;] 425, 425D, or 428, as applicable.”

SECTION 64. Section 425D-102.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity’s registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter [415;] 414, 414D, 415A, [415B;] 425, 425D, or 428, as applicable.”

SECTION 65. Section 428-105.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity’s registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter [415;] 414, 414D, 415A, [415B;] 425, 425D, or 428, as applicable.”

SECTION 66. Section 428-901, Hawaii Revised Statutes, is amended by amending the definition of “corporation” to read as follows:

““Corporation” means a corporation under the Hawaii Business Corporation Act, chapter [415;] 414, a predecessor law, or comparable law of another jurisdiction.”

SECTION 67. Section 428-907, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§428-907]]~~ **Dissenters’ rights.** The shareholders of a domestic corporation that is a party to a merger authorized by section 428-904 have the rights of dissenting shareholders in the manner provided in ~~[section 415-81.]~~ part XIV of chapter 414.”

SECTION 68. Section 431:4-104, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The articles of incorporation shall state in addition to the requirements set forth in section ~~[415-54:]~~ 414-32:

- (1) The name of the insurer, which shall include the word “Insurance” and, as the last word thereof, one of the words “Corporation”, “Incorporated”, or “Limited”, or one of the abbreviations “Corp.”, “Inc.”, or “Ltd.”. In the case of the reciprocal insurer, the name shall include the word “Reciprocal”, “Interinsurer”, “Interinsurance”, “Exchange”, “Underwriters”, or “Underwriting”;
- (2) (A) Whether it is a stock or mutual insurer; and  
(B) The classes of insurance it will issue, according to the designations made in this article.
- (3) The place of its principal office, which shall be established and maintained in this State.
- (4) (A) If a stock insurer, the amount of its capital, the aggregate number of shares, and the par value of each share, which par value shall not be less than \$2, and if the privilege of subsequent extension of the authorized capital stock is sought, then the limit of such extension shall be stated;  
(B) If a mutual insurer, the maximum contingent liability of its policyholders for the payment of its expenses and losses occurring under its policies.
- (5) The names and addresses, both business and residence, of the officers of the insurer for the initial term.
- (6) Other provisions, not inconsistent with law, as may be deemed proper by the incorporators.”

SECTION 69. Section 431:4-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A domestic stock insurer may increase its capital stock by complying with section ~~[415-58]~~ 414-281 and section 431:4-120. The increase in capital shall be effective upon the payment of the increased capital in full in cash.”

SECTION 70. Section 431:14A-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The Hawaii employers’ mutual insurance company is established as an independent corporation to provide workers’ compensation insurance and related services to Hawaii employers. The company may be reorganized as a nonprofit corporation under chapter ~~[415B:]~~ 414D.”

SECTION 71. Section 431:19-101, Hawaii Revised Statutes, is amended by amending the definition of “pure nonprofit captive insurance company” to read as follows:

““Pure nonprofit captive insurance company” means a pure captive insurance company formed without capital stock as a nonprofit corporation under chapter ~~[415B:]~~ 414D, whose voting of membership interest is held by a parent organization formed under a nonprofit law or by such nonprofit parent and its affiliated companies.”

SECTION 72. Section 431:19-102.4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Upon any transfer authorized pursuant to this section, the captive insurance company shall cease to be domiciled in this State, and its corporate or other legal existence in this State shall cease upon the issuance of a certificate of discontinuance by the department of commerce and consumer affairs; provided that at the time of issuance of the certificate of discontinuance, the captive insurance company shall pay a certificate fee in accordance with chapter [415-] 414.”

SECTION 73. Section 431:19-106.5, Hawaii Revised Statutes, is amended:

(1) By amending subsection (c) to read as follows:

“(c) After approval of the plan of conversion or merger by the commissioner, the converting or merging insurer shall file with the director of commerce and consumer affairs, appropriate articles of amendment or articles of merger, as the case may be; provided that in the case of the conversion of a reciprocal insurer to a stock or mutual insurer, the existing reciprocal insurer shall file articles of incorporation in order to commence the corporate existence of the company in the form of a stock or mutual insurer. Documents filed with the director of commerce and consumer affairs pursuant to this subsection shall comply with all applicable requirements for such documents as may be contained in this article and chapter [415] 414 or [415B-] 414D.”

(2) By amending subsection (g) to read as follows:

“(g) An alien or foreign insurer may be a party to a merger under this section provided that the surviving company shall otherwise qualify and be approved by the commissioner as a captive insurance company under this article. For purposes of chapters [415] 414 and [415B-] 414D, an alien stock or mutual insurer subject to this section shall be considered a foreign corporation.”

SECTION 74. Section 432C-1, Hawaii Revised Statutes, is amended by amending the definition of “for-profit entity” to read as follows:

““For-profit entity” means a corporation organized under chapter [415-] 414, including a stock insurance company.”

SECTION 75. Section 441-24, Hawaii Revised Statutes, is amended to read as follows:

“**§441-24 Inspection of cemetery or pre-need funeral authority books; annual exhibits.** The books, records, and papers of every cemetery authority whether or not a corporation, which operates or claims to operate a perpetual care cemetery, and of every pre-need funeral authority shall be subject to examination by the director to the same extent and in the same manner as may be from time to time provided for corporations in section [415-125-] 414-472, and every cemetery authority operating a perpetual care cemetery, and every pre-need funeral authority shall submit such information as may be required by the director in order to furnish information as to whether or not the cemetery or pre-need funeral authority has complied with this chapter.”

SECTION 76. Section 482-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director of commerce and consumer affairs shall cause the print, label, trademark, service mark, or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the print,

label, trademark, service mark, or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, trademark, service mark, or trade name which is substantially identical with any registered print, label, trademark, service mark, or trade name or with the name of any corporation or partnership registered in accordance with chapters [415,] 414, 414D, 415A, [415B,] 425, and 425D; provided further that the print, label, trademark, service mark, or trade name is continued in actual use by the applicant in the State or elsewhere in the United States or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name, or trademark.”

SECTION 77. Section 485-5, Hawaii Revised Statutes, is amended to read as follows:

“**§485-5 Exempted securities; local development company.** Securities issued by a local development company organized within the State for profit under chapter [415] 414 and approved by the Small Business Administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended, are exempted from this chapter, except such provisions relating to the prospectus, upon the approval of the commissioner of securities. The commissioner shall grant approval for the exemption upon finding that the proposed plan of business of the applicant and the proposed issuance of securities are fair, just, and equitable, that the applicant intends to transact its business fairly and honestly, and that the securities that the applicant proposes to issue and the method to be used by the applicant in issuing or disposing of such securities are not such as, in the opinion of the commissioner, will work a fraud upon the purchaser thereof.”

SECTION 78. Act 15, Session Laws of Hawaii, 2001, is amended by amending section 5 to amend subsection (a) of section 482-3, Hawaii Revised Statutes, to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director shall cause the print, label, or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the print, label, or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, or trade name which is substantially identical with any registered print, label, or trade name or with the name of any corporation, partnership, or limited liability company registered in accordance with chapters 414, 414D, 415A, [415B,] 425, 425D, and 428; provided further that the print, label, or trade name is continued in actual use by the applicant in the State or elsewhere in the United States, or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, or limited liability company name or trade name.”

SECTION 79. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**ACT 40**

SECTION 80. This Act shall take effect on July 1, 2002; provided that section 78 of this Act shall take effect on July 1, 2003.

(Approved April 23, 2002.)