

ACT 54

S.B. NO. 3006

A Bill for an Act Relating to Business Registration.

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

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

**“§415A- Trustees or receivers for dissolved professional corporations; appointment; powers; duties.** (a) When any professional corporation organized and authorized to issue shares under the laws of this State shall be or shall have been

dissolved or shall cease or shall have ceased to exist, the circuit court, upon application of any creditor, stockholder, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the persons responsible for settling the unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.

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

SECTION 2. Section 414-402, Hawaii Revised Statutes, is amended to read as follows:

**“§414-402 Procedure for and effect of administrative dissolution[-] and effect of expiration.** (a) If the department director determines that one or more grounds exist under section 414-401 for dissolving a corporation, the department director shall give written notice of the department director’s determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

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

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

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

~~(e) [Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee’s hands as trustee, a sum equal to any penalty imposed under section 414-473. If a trustee is not appointed, the last directors of the dissolved corporation shall be and act as trustees for the creditors, claimants, and shareholders of the dissolved corporation with full powers to settle its affairs.]~~

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

~~(g) If a corporation was dissolved due to the expiration of its period of duration, the~~ If a corporation’s period of duration specified in its articles of incorporation has expired, the corporation may continue its corporate existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.

~~(f) The corporation, at any time within two years of [such dissolution,] the~~ expiration of its period of duration, may amend its articles of incorporation to extend

its period of duration, and upon the amendment, the corporation may resume carrying on its business as if the ~~[dissolution]~~ expiration had never occurred; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if that name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of ~~[corporate existence]~~ its period of duration shall be allowed only upon the registration of a new name by the corporation pursuant to the amendment provisions of this chapter.”

SECTION 3. Section 414-433, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

SECTION 4. Section 414D-160, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in subsection (d), a corporation may indemnify a former or current director made a party to a proceeding by reason of the fact that the individual was or is a director, against liability incurred in the proceeding if:

- (1) The individual conducted the individual’s self in good faith; and
- (2) The individual reasonably believed:
  - (A) In the case of conduct in an official capacity, that the individual’s conduct was in the corporation’s best interests;
  - (B) In all other cases, the individual’s conduct, at a minimum, did not oppose the corporation’s best interests; ~~[and]~~
- (3) and In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual’s conduct was unlawful.”

SECTION 5. Section 414D-249, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-249 Procedure for and effect of administrative dissolution[-] and effect of expiration.** (a) If the department director determines that one or more grounds exist under section 414D-248 for dissolving a corporation, the department director shall give written notice of the department director’s determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director’s written notice, the department director may administratively dissolve the corporation by signing a decree of dissolution that re-

cites ~~[the ground or]~~ any grounds for dissolution and its effective date. The decree shall be filed in the department director's office.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under section 414D-245 and notify its claimants under sections 414D-246 and 414D-247.

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

~~(e) [Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If a trustee is not appointed, the last directors of the dissolved corporation shall be and act as trustees for the creditors, claimants, and members of the dissolved corporation with full powers to settle its affairs.~~

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

(g) If a corporation was dissolved due to the expiration of its period of duration, the] If a corporation's period of duration specified in its articles of incorporation has expired, the corporation may continue its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its business and affairs under section 414D-245 and notify claimants under sections 414D-246 and 414D-247.

(f) The corporation, at any time within two years of the [dissolution,] expiration of its period of duration, may amend its articles of incorporation to extend its period of duration and, upon the amendment, the corporation may resume carrying on its [business] activities as if the [dissolution] expiration had never occurred; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if that name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of [corporate existence] its period of duration shall be allowed only upon the registration of a new name by the corporation pursuant to the amendment provisions of this chapter."

SECTION 6. Section 414D-273, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A foreign corporation may apply for a certificate of authority to transact business in this [State] state by delivering an application to the department director for filing. The application shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this [State,] state, a corporate name that satisfies the requirements of section 414D-276;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date of incorporation [and period of duration];
- (4) The mailing address of the corporation's principal office, the street address of its registered office in this [State,] state, and the name of its registered agent at its registered office in this [State,] state;
- (5) The names and usual business addresses of its current directors and officers; and
- (6) Whether the foreign corporation has members."

SECTION 7. Section 415A-18, Hawaii Revised Statutes, is amended to read as follows:

"**§415A-18 Administrative dissolution; expiration; reinstatement.** (a) The director may commence a proceeding to dissolve a professional corporation administratively if the corporation fails to:

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

Before the director may declare a professional corporation dissolved, the director shall give notice of ~~[the ground or]~~ any grounds for dissolution by mailing the notice to the professional corporation at its last known address appearing in the records of the director.

(b) If the professional corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after the date of mailing of the director's written notice, the director shall administratively dissolve the corporation by signing a decree of dissolution that recites ~~[the ground]~~ any grounds for dissolution and its effective date. The decree shall be filed in the director's office. The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

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

(d) In each case where the director has given a professional corporation notice of intention to dissolve the corporation on the grounds that its articles of incorporation have been procured through fraud, the corporation shall be entitled to petition for an administrative hearing under chapter 91 and shall give written notice to the director thereof, before the director may declare the corporation dissolved under subsection (a).

(e) ~~[Within two years after the administrative dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by an officer of the corporation setting forth such information as the director may require, and contain a certificate from the department of taxation indicating that all taxes owed by the corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation, the payment of all delinquent fees and penalties and the filing of all reports due and unfiled.]~~ A professional corporation that is administratively dissolved under this section may apply to the director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) Recite the name of the professional corporation and the effective date of its administrative dissolution;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation indicating that all taxes owed by the professional corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

Within the applicable reinstatement period, should the name of the professional corporation, or a name substantially identical thereto, be registered or reserved by another [~~corporation, partnership, limited liability company, or limited liability partnership,~~] entity or [~~should the~~] if that name or a name substantially identical [thereto be] is registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the [involuntarily] administratively dissolved professional corporation pursuant to the amendment provisions of this chapter.

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

(g) [~~If a professional corporation was dissolved due to the expiration of its period of duration, the] If a professional corporation's period of duration specified in its articles of incorporation has expired, the professional corporation may continue its corporate existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.~~

(g) The professional corporation, at any time within two years of [such dissolution,] expiration of its period of duration, may amend its articles of incorporation to extend its period of duration[;], and upon the amendment, the professional corporation may resume carrying on its business as if the expiration had never occurred; provided that, if the name of the professional corporation or a name substantially identical thereto is registered or reserved by another [corporation, partnership, limited liability company, or limited liability partnership,] entity, or if [the] that name or a name substantially identical [thereto] is registered as a trade name, trademark, or service mark, then the extension of [corporate existence] its period of duration shall be allowed only upon the registration of a new name by the professional corporation pursuant to the amendment provisions of this chapter."

SECTION 8. Section 425E-811, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The court may summarily order the director to reinstate the [~~dissolved] administratively canceled limited partnership or may take other action the court considers appropriate."~~

SECTION 9. Section 428-810, Hawaii Revised Statutes, is amended to read as follows:

**"§428-810 Procedure for and effect of administrative termination.** (a) If the director determines that [~~a ground exists] one or more grounds exist to [terminate] administratively terminate a limited liability company, the director may declare the company terminated. Before the director declares a limited liability company terminated, the director shall mail a notice of the grounds for termination to the company and may give public notice of the intention to terminate the limited liability company.~~

(b) If the limited liability company does not correct each ground for termination or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after mailing of the notice of intention to terminate the limited liability company, the director shall administratively terminate the company by signing a decree of termination that recites the ground or grounds for termination and its effective date. The decree shall be filed in the director's office.

(c) A limited liability company administratively terminated continues its existence temporarily but may carry on only business necessary to wind up and liquidate

its business and affairs under section 428-802 and to notify claimants under section 428-807. The company ceases existence upon the completion of these matters.

(d) The administrative termination of a limited liability company does not terminate the authority of its agent for service of process.

(e) Any manager, member, or creditor of an administratively terminated limited liability company may petition the circuit court to appoint a trustee to settle its affairs. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's possession as trustee, a sum equal to any penalties imposed pursuant to section 428-1302. Up until the time a trustee is appointed by the circuit court, or indefinitely if a trustee is not appointed by the circuit court, the last managers of the limited liability company if the company was manager-managed, or if not manager-managed the last members of the limited liability company, shall be and act as trustees for the creditors and members of the limited liability company with full powers to settle its affairs.

~~[(f) The director shall deliver a copy of the decree of termination for each administratively terminated limited liability company to the director of taxation and financial officer of each county.]”~~

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect on July 1, 2008.

(Approved May 1, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.