

H.B. NO. 2313

A BILL FOR AN ACT

RELATING TO BUSINESS REGISTRATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 425, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§425- Activities not constituting transacting business.

5 (a) The activities of a foreign general partnership that do not
6 constitute transacting business in this State within the meaning
7 of this chapter include:

- 8 (1) Maintaining, defending, or settling an action or
9 proceeding;
- 10 (2) Holding meetings of its partners or carrying on any
11 other activity concerning its internal affairs;
- 12 (3) Maintaining bank accounts;
- 13 (4) Maintaining offices or agencies for the transfer,
14 exchange, and registration of the foreign
15 partnership's own securities, or maintaining trustees
16 or depositories with respect to those securities;
- 17 (5) Selling through independent contractors;

H .B. NO. 2313

1 (6) Soliciting or obtaining orders, whether by mail or
2 through employees, agents, or otherwise, if the orders
3 require acceptance outside this State before they
4 become contracts;

5 (7) Creating or acquiring indebtedness, mortgages, or
6 security interests in real or personal property;

7 (8) Securing or collecting debts or enforcing mortgages or
8 other security interests in property securing the
9 debts, and holding, protecting, and maintaining
10 property so acquired;

11 (9) Conducting an isolated transaction that is completed
12 within thirty days and is not one in the course of
13 similar transactions of a like manner; and

14 (10) Transacting business in interstate commerce.

15 (b) For purposes of this chapter, the ownership in this
16 State of income-producing real property or income-producing
17 tangible personal property, other than property excluded under
18 subsection (a), constitutes transacting business in this State.

19 (c) This section shall not apply in determining the
20 contracts or activities that may subject a foreign general
21 partnership to service of process, taxation, or regulation under
22 any other law of this State."

1 SECTION 2. Section 414-274, Hawaii Revised Statutes,
2 is amended to read as follows:

3 "**§414-274 Effect of conversion.** When a conversion becomes
4 effective:

5 (1) The converting entity shall continue to exist without
6 interruption, but in the organizational form of the
7 converted entity;

8 (2) All rights, title, and interest in all real estate and
9 other property owned by the converting entity shall
10 automatically be owned by the converted entity without
11 reversion or impairment, subject to any existing liens
12 or other encumbrances thereon;

13 (3) All liabilities and obligations of the converting
14 entity shall automatically be liabilities and
15 obligations of the converted entity without impairment
16 or diminution due to the conversion;

17 (4) The rights of creditors of the converting entity shall
18 continue against the converted entity and shall not be
19 impaired or extinguished by the conversion;

20 (5) Any action or proceeding pending by or against the
21 converting entity may be continued by or against the

H .B. NO. 2313

1 converted entity without any need for substitution of
2 parties;

3 (6) The shares and other forms of ownership in the
4 converting entity that are to be converted into
5 shares, or other forms of ownership, in the converted
6 entity as provided in the plan of conversion shall be
7 converted, and if the converting entity is a domestic
8 corporation, the former shareholders of the domestic
9 corporation shall be entitled only to the rights
10 provided in the plan of conversion or to the rights to
11 dissent under section 414-342;

12 (7) A shareholder, partner, member, or other owner of the
13 converted entity shall be liable for the debts and
14 obligations of the converting entity that existed
15 before the conversion takes effect only to the extent
16 that the shareholder, partner, member, or other owner:

17 (A) Agreed in writing to be liable for the debts
18 or obligations;

19 (B) Was liable under applicable law prior to the
20 effective date of the conversion, for the debts
21 or obligations; or

H.B. NO. 2313

- 1 (C) Becomes liable under applicable law for existing
- 2 debts and obligations of the converted entity by
- 3 becoming a shareholder, partner, member, or other
- 4 owner of the converted entity;

- 5 (8) If the converted entity is a foreign corporation or
- 6 other business entity~~[r]~~ incorporated, formed, or
- 7 organized under a law other than the law of this
- 8 State, the converted entity shall file with the
- 9 director:

- 10 (A) An agreement that the ~~[surviving]~~ converted
- 11 entity may be served with process in this State
- 12 in any action or proceeding for the enforcement
- 13 of any liability or obligation of ~~[any entity~~
- 14 ~~previously subject to suit in this State which is~~
- 15 ~~to merge;~~ the converting domestic corporation;

- 16 (B) An irrevocable appointment of a resident of this
- 17 State including the street address, as its agent
- 18 to accept service of process in any such
- 19 proceeding; and

- 20 (C) An agreement for the enforcement, as provided in
- 21 this chapter, of the right of any dissenting
- 22 ~~[member,~~ shareholder, ~~[or]~~ partner, member, or

H.B. NO. 2313

1 other owner to receive payment for their interest
2 against the [~~surviving~~] converted entity; and

3 (9) If the converting entity is a domestic corporation,
4 part XIV shall apply as if the converted entity were
5 the survivor of a merger with the converting entity."

6 SECTION 3. Section 414-403, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) A corporation administratively dissolved under
9 section 414-402 may apply to the department director for
10 reinstatement within two years after the effective date of
11 dissolution. The application [~~must~~] shall:

12 (1) Recite the name of the corporation and the effective
13 date of its administrative dissolution;

14 (2) Contain all reports due and unfiled;

15 (3) Contain the payment of all delinquent fees and
16 penalties; and

17 (4) Contain a certificate from the department of taxation
18 [~~reciting~~] indicating that all taxes owed by the
19 corporation have been paid[~~ed~~], a payment arrangement
20 has been entered into, or the unpaid tax liabilities
21 are being contested in an administrative or judicial
22 appeal with the department of taxation."

H .B. NO. 2313

1 SECTION 4. Section 414-433, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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

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

20 SECTION 5. Section 414D-207, Hawaii Revised Statutes, is
21 amended by amending subsections (a) and (b) to read as follows:

H .B. NO. 2313

1 "(a) A domestic corporation may adopt a plan of conversion
2 and convert to a foreign corporation or any other business
3 entity if:

4 (1) The board of directors and members of the domestic
5 corporation approve a plan of conversion in the manner
6 prescribed by section 414D-202 and if the conversion
7 is treated as a merger to which the converting entity
8 is a party and not the surviving entity;

9 (2) The conversion is permitted by and complies with the
10 laws of the state or country in which the converted
11 entity is to be incorporated, formed, or organized;
12 and the incorporation, formation, or organization of
13 the converted entity complies with [~~such~~] those laws;

14 (3) At the time the conversion becomes effective, each
15 member of the converting entity, unless otherwise
16 agreed to by the member or directors, owns an equity
17 interest or other ownership interest in, and is a
18 shareholder, partner, member, [~~owner,~~] or other
19 [~~security holder~~] owner of, the converted entity;

20 (4) The members of the domestic corporation, as a result
21 of the conversion, shall not become personally liable

H.B. NO. 2313

1 without the members' consent, for the liabilities or
2 obligations of the converted entity; and

3 (5) The converted entity is incorporated, formed, or
4 organized as part of or pursuant to the plan of
5 conversion.

6 (b) Any foreign corporation or other business entity may
7 adopt a plan of conversion and convert to a domestic corporation
8 if the conversion is permitted by and complies with the laws of
9 the state or country in which the foreign corporation or other
10 business entity is incorporated, formed, or organized."

11 SECTION 6. Section 414D-210, Hawaii Revised Statutes,
12 is amended to read as follows:

13 "[+]§414D-210[+] **Effect of conversion.** When a
14 conversion becomes effective:

15 [~~a~~](1) [~~Upon an effective conversion, t~~]The
16 converting entity shall continue to exist without
17 interruption, but in the organizational form of
18 the converted entity[~~;~~];

19 [~~b~~](2) All rights, title, and interest in all real
20 estate and other property owned by the converting
21 entity shall automatically be owned by the
22 converted entity without reversion or impairment,

1 subject to any existing liens or other
2 encumbrances[-];
3 ~~(e)~~ (3) All liabilities and obligations of the
4 converting entity shall automatically be
5 liabilities and obligations of the converted entity
6 without impairment or diminution due to the
7 conversion[-];
8 ~~(d)~~ (4) The rights of creditors of the converting
9 entity shall continue against the converted
10 entity and shall not be impaired or extinguished
11 by the conversion[-];
12 ~~(e)~~ (5) Any action or proceeding pending by or
13 against the converting entity may be continued by
14 or against the converted entity without any need
15 for substitution of parties[-];
16 ~~(f)~~ (6) The shares and other forms of ownership in
17 the converting entity that are to be converted
18 into shares, or other forms of ownership, in the
19 converted entity[-] as provided in the plan of
20 conversion[-] shall be converted[-];
21 ~~(g)~~ (7) A shareholder, partner, member, or other
22 owner of the converted entity shall be liable for

H.B. NO. 2313

1 the debts and obligations of the converting
2 entity that existed before the conversion takes
3 effect; provided that the shareholder, partner,
4 member, or other owner:

5 ~~[(1)]~~ (A) Agreed in writing to be liable for
6 ~~[such]~~ the debts or obligations;

7 ~~[(2)]~~ (B) Was liable under applicable law prior
8 to the effective date of the conversion for
9 ~~[such]~~ the debts or obligations; or

10 ~~[(3)]~~ (C) Becomes liable under applicable law
11 for existing debts and obligations of the
12 converted entity by becoming a shareholder,
13 partner, member, or other owner of the
14 converted entity.

15 (8) If the converted entity is a foreign corporation
16 or other business entity incorporated, formed, or
17 organized under a law other than the law of this
18 State, the converted entity shall file with the
19 director:

20 (A) An agreement that the converted entity may be
21 served with process in this State in any
22 action or proceeding for the enforcement of

- 1 any liability or obligation of the converting
2 domestic corporation;
- 3 (B) An irrevocable appointment of a resident of
4 this State, including the street address, as
5 its agent to accept service of process in any
6 such proceeding; and
- 7 (C) An agreement for the enforcement, as provided
8 in this chapter, of the right of any
9 dissenting shareholder, partner, member, or
10 other owner to receive payment for their
11 interest against the converted entity."

12 SECTION 7. Section 414D-241, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~[†]~~§414D-241~~[†]~~ **Dissolution by incorporators, initial**
15 **directors, and third persons.** ~~[(a)]~~ A majority of the
16 incorporators or initial directors of a corporation that has no
17 members~~[7]~~ and has not commenced business, subject to any
18 approval required by the articles or bylaws, may dissolve the
19 corporation by delivering to the department director articles of
20 dissolution~~[-~~

21 ~~(b) The corporation shall give notice of any meeting at~~
22 ~~which dissolution will be approved. The notice shall be in~~

1 ~~accordance with section 414D-145(e). The notice must also state~~
2 ~~that the purpose, or one of the purposes, of the meeting is to~~
3 ~~consider dissolution of the corporation.~~

4 ~~(c) The incorporators or directors in approving~~
5 ~~dissolution shall adopt a plan of dissolution indicating to whom~~
6 ~~the assets owned or held by the corporation will be distributed~~
7 ~~after all creditors have been paid.] that set forth:~~

- 8 (1) The name of the corporation;
9 (2) The date of its incorporation;
10 (3) That the corporation has no members and that the
11 corporation has not commenced business;
12 (4) That a plan of dissolution, indicating to whom the
13 assets owned or held by the corporation shall be
14 distributed after all creditors have been paid, has
15 been adopted; and
16 (5) That a majority of the incorporators or initial
17 directors authorized the dissolution."

18 SECTION 8. Section 414D-250, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) A corporation administratively dissolved under
21 section 414D-249 may apply to the department director for

H .B. NO. 2313

1 reinstatement within two years after the effective date of
2 dissolution. The application shall:

- 3 (1) State the name of the corporation and the effective
4 date of its administrative dissolution;
- 5 (2) State that the ground or grounds for dissolution
6 either did not exist or have been eliminated; and
- 7 (3) Contain a certificate from the department of taxation
8 [~~reciting~~] indicating that all taxes owed by the
9 corporation have been paid[-], a payment arrangement
10 has been entered into, or the unpaid tax liabilities
11 are being contested in an administrative or judicial
12 appeal with the department of taxation."

13 SECTION 9. Section 415A-16.8, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§415A-16.8[+] **Effect of conversion.** When a conversion
16 becomes effective:

- 17 (1) The converting entity shall continue to exist without
18 interruption but in the organizational form of the
19 converted entity;
- 20 (2) All rights, title, and interest in all real estate and
21 other property owned by the converting entity shall
22 automatically be owned by the converted entity without

- 1 reversion or impairment, subject to any existing liens
2 or other encumbrances thereon;
- 3 (3) All liabilities and obligations of the converting
4 entity shall automatically be liabilities and
5 obligations of the converted entity without impairment
6 or diminution due to the conversion;
- 7 (4) The rights of creditors of the converting entity shall
8 continue against the converted entity and shall not be
9 impaired or extinguished by the conversion;
- 10 (5) Any action or proceeding pending by or against the
11 converting entity may be continued by or against the
12 converted entity without any need for substitution of
13 parties;
- 14 (6) The shares and other forms of ownership in the
15 converting entity that are to be converted into shares
16 or other forms of ownership in the converted entity as
17 provided in the plan of conversion shall be converted,
18 and if the converting entity is a professional
19 corporation, the former shareholders of the
20 professional corporation shall be entitled only to the
21 rights provided in the plan of conversion or to the
22 rights to dissent under section 415-80;

- 1 (7) A shareholder, partner, member, or other owner of
2 the converted entity shall be liable for the debts
3 and obligations of the converting entity that
4 existed before the conversion takes effect only to
5 the extent that [~~such~~] the shareholder, partner,
6 member, or other owner:
- 7 (A) Agreed in writing to be liable for [~~such~~] the
8 debts or obligations;
- 9 (B) Was liable under applicable law prior to the
10 effective date of the conversion for [~~such~~] the
11 debts or obligations; or
- 12 (C) Becomes liable under applicable law for existing
13 debts and obligations of the converted entity by
14 becoming a shareholder, partner, member, or other
15 business owner of the converted entity;
- 16 (8) If the converted entity is a foreign corporation
17 or other business entity, incorporated, formed, or
18 organized under a law other than the laws of this
19 State, the converted entity shall[+] file with the
20 director:
- 21 (A) [~~Appoint a resident of this State as its agent~~
22 ~~for service of process in a proceeding to~~

H.B. NO. 2313

1 ~~enforce any obligation or the rights of~~
2 ~~dissenting shareholders of the converting~~
3 ~~domestic corporation; and] An agreement that
4 the converted entity may be served with process
5 in this State in any action or proceeding for
6 the enforcement of any liability or obligation
7 of the converting domestic corporation;~~

8 (B) [~~Promptly pay the dissenting shareholders of~~
9 ~~the converting domestic corporation the amount,~~
10 ~~if any, to which they are entitled under~~
11 ~~section 415-81;] An irrevocable appointment of
12 a resident of this State, including the street
13 address, as its agent to accept service of
14 process in any such proceeding; and~~

15 (C) An agreement for the enforcement, as provided
16 in this chapter, of the right of any dissenting
17 shareholder, partner, member, or other owner to
18 receive payment for their interest against the
19 converted entity; and

20 (9) If the converting entity is a professional
21 corporation, [~~sections 415-80 and 415-81] part XIV~~

1 of chapter 414 shall apply as if the converted entity
2 were the survivor of a merger with the converting
3 entity."

4 SECTION 10. Section 415A-18, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§415A-18 Administrative dissolution; reinstatement.** (a)

7 The director may commence a proceeding to dissolve a
8 professional corporation administratively if the corporation
9 fails to:

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

16 Before the director may declare a corporation dissolved,
17 the director shall give notice of the ground or grounds for
18 dissolution by mailing the notice to the professional
19 corporation at its last known address appearing in the records
20 of the director.

21 (b) If the corporation does not correct each ground for
22 dissolution or demonstrate to the reasonable satisfaction of the

1 director that each ground determined by the director does not
2 exist within sixty days after the date of mailing of the
3 director's written notice, the director shall administratively
4 dissolve the corporation by signing a decree of dissolution that
5 recites the ground for dissolution and its effective date. The
6 decree shall be filed in the director's office. The
7 administrative dissolution of a corporation [~~does~~] shall not
8 terminate the authority of its registered agent.

9 (c) Parties of interest may petition a court of competent
10 jurisdiction to appoint a trustee to settle the affairs of any
11 professional corporation so dissolved. If a trustee is
12 appointed, the trustee shall pay to the State out of any funds
13 that may come into the trustee's hands as trustee, a sum equal
14 to any penalty imposed under section 414-473. If a trustee is
15 not appointed by a court of competent jurisdiction, the last
16 directors of the dissolved corporation shall be and act as
17 trustees for the creditors and shareholders of the dissolved
18 professional corporation with full powers to settle its affairs.

19 (d) In each case where the director has given a
20 professional corporation notice of intention to dissolve the
21 corporation on the grounds that its articles of incorporation
22 have been procured through fraud, the corporation shall be

1 entitled to petition for an administrative hearing under
2 chapter 91 and shall give written notice to the director
3 thereof, before the director may declare the corporation
4 dissolved under subsection (a) [~~of this section~~].

5 (e) Within two years after the [~~involuntary~~]
6 administrative dissolution of a professional corporation under
7 this section, the corporation may be reinstated by the director
8 upon a written application executed by [~~any two officers~~] an
9 officer of the corporation setting forth such information as the
10 director may require, and contain a certificate from the
11 department of taxation indicating that all taxes owed by the
12 corporation have been paid, a payment arrangement has been
13 entered into, or the unpaid tax liabilities are being contested
14 in an administrative or judicial appeal with the department of
15 taxation, the payment of all delinquent fees[~~7~~] and penalties
16 [~~, assessments, taxes, costs of involuntary dissolution,~~] and the
17 filing of all reports due and unfiled. Within the applicable
18 reinstatement period, should the name of the professional
19 corporation, or a name substantially identical thereto, be
20 registered or reserved by another corporation, partnership,
21 limited liability company, or limited liability partnership, or
22 should the name or a name substantially identical thereto be

1 registered as a trade name, trademark, or service mark, then
2 reinstatement shall be allowed only upon the registration of a
3 new name by the involuntarily dissolved professional corporation
4 pursuant to the amendment provisions of this chapter.

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

8 (g) If a professional corporation was dissolved due to the
9 expiration of its period of duration, the professional
10 corporation, at any time within two years of such dissolution,
11 may amend its articles of incorporation to extend its period of
12 duration; provided that, if the name of the professional
13 corporation or a name substantially identical thereto is
14 registered or reserved by another corporation, partnership,
15 limited liability company, or limited liability partnership, or
16 if the name or a name substantially identical thereto is
17 registered as a trade name, trademark, or service mark, then the
18 extension of corporate existence shall be allowed only upon the
19 registration of a new name by the professional corporation
20 pursuant to the amendment provisions of this chapter."

21 SECTION 11. Section 425-1, Hawaii Revised Statutes, is
22 amended by amending subsections (a) and (b) to read as follows:

1 "(a) Whenever any general partnership is formed under the
2 laws of this State to do business in this State, or any general
3 partnership formed under the laws of any other jurisdiction
4 shall do business in this State, [~~such~~] the partnership shall
5 file in the office of the director of commerce and consumer
6 affairs the registration and annual statements [~~hereinafter~~
7 ~~provided.~~] prescribed in this chapter. A registration statement
8 shall be filed by a partnership formed under the laws of this
9 State within thirty days after the partnership is formed and by
10 a partnership formed under the laws of any other jurisdiction
11 within thirty days after the commencement of business in this
12 State. Every [~~such~~] registration statement shall contain the
13 following information:

- 14 (1) The name of the partnership;
15 (2) The name and address of each partner;
16 (3) The mailing address of the partnership's [~~initial~~]
17 principal office, the street address of the
18 partnership's [~~initial~~] registered office in [~~the~~]
19 this State, and the name of its [~~initial~~] registered
20 agent at its [~~initial~~] registered office in [~~the~~] this
21 State; provided that if the partnership is one formed

H.B. NO. 2313

1 under the laws of any other jurisdiction, the name of
2 the jurisdiction shall also be [~~set forth,~~] specified;

3 (4) The date the partnership was formed and, if the
4 partnership is one formed under the laws of any other
5 jurisdiction, the date the partnership commenced
6 business in this State; and

7 (5) The fact that none of the partners is either a minor
8 or an incompetent person.

9 (b) Every domestic and foreign partnership shall file
10 an annual statement with the director which shall contain
11 the information specified in subsection (a)(1), (2), (3),
12 [~~(4),~~] and (5) and a listing of the names of any partner
13 admitted, withdrawn, or who has died during the year;
14 provided that the information provided to satisfy the
15 requirements of subsection [~~(a)(4)~~] (a)(3) shall indicate the
16 current registered office and agent. A domestic or foreign
17 partnership that has filed with the department director a
18 statement of qualification or statement of foreign
19 qualification to register as a limited liability
20 partnership or foreign limited liability partnership shall
21 file the annual report prescribed in section 425-163 in
22 lieu of the annual statement required in this section.

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

3 SECTION 12. Section 425-14, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Within two years after the [~~involuntary~~]
6 administrative cancellation of a general partnership under this
7 section, the registration statement of the general partnership
8 may be reinstated by the director upon written application
9 executed by any partner of the general partnership. The
10 application shall:

- 11 (1) Recite the name of the general partnership and the
12 effective date of its [~~involuntary~~] administrative
13 cancellation;
- 14 (2) Contain all statements due and unfiled;
- 15 (3) Contain the payment of all delinquent fees and
16 penalties; and
- 17 (4) Contain a certificate from the department of taxation
18 [~~reciting~~] indicating that all taxes owed by the
19 general partnership have been paid[-], a payment
20 arrangement has been entered into, or the unpaid tax
21 liabilities are being contested in an administrative
22 or judicial appeal with the department of taxation."

H.B. NO. 2313

1 SECTION 13. Section 425-158, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§425-158 Statement of foreign qualification.** A statement
4 of foreign qualification shall contain:

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

7 (A) The law of the state or other jurisdiction under
8 which the foreign limited liability partnership
9 is formed; and

10 (B) Section 425-151;

11 (2) A statement that the partnership elects to be a
12 foreign limited liability partnership; and

13 (3) The mailing address of the partnership's [~~initial~~]
14 principal office, the street address of the
15 partnership's [~~initial~~] registered office in [~~the~~]
16 this State, and the name of its [~~initial~~] registered
17 agent at its [~~initial~~] registered office in [~~the~~] this
18 State."

19 SECTION 14. Section 425-163, Hawaii Revised
20 Statutes, is amended by amending subsection (a) to read as
21 follows:

22 "(a) Every limited liability partnership and foreign

1 limited liability partnership authorized to transact
2 business in this State shall file an annual report in the
3 office of the director that contains:

- 4 (1) The name of the limited liability partnership or
5 foreign limited liability partnership;
- 6 (2) The mailing address of the partnership's
7 principal office, the street address of the
8 partnership's registered office in [~~the~~] this State,
9 and the name of its registered agent at its registered
10 office in [~~the~~] this State[.]; provided that if the
11 partnership is formed under the laws of any other
12 jurisdiction, the name of the other jurisdiction shall
13 also be specified;
- 14 (3) The name and address of each partner; and
- 15 (4) The fact that none of the partners is either a
16 minor or an incompetent person."

17 SECTION 15. Section 425-164, Hawaii Revised Statutes, is
18 amended by amending subsection (c) to read as follows:

19 "(c) A partnership whose statement of qualification or
20 statement of foreign qualification has been administratively
21 revoked may apply to the director for reinstatement within two

H.B. NO. 2313

1 years after the effective date of the revocation. The
2 application shall:

3 (1) Recite the name of the partnership and the effective
4 date of the revocation;

5 (2) Contain all reports due and unfiled;

6 (3) Contain the payment of all delinquent fees and
7 penalties; and

8 (4) Contain a certificate from the department of taxation
9 ~~[reciting]~~ indicating that all taxes owed by the
10 partnership have been paid[-], a payment arrangement
11 has been entered into, or the unpaid tax liabilities
12 are being contested in an administrative or judicial
13 appeal with the department of taxation."

14 SECTION 16. Section 425-195, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§425-195 Effect of conversion.** When a conversion becomes
17 effective:

18 (1) The converting entity shall continue to exist without
19 interruption, but in the organizational form of the
20 converted entity;

21 (2) All rights, title, and interest in all real estate and
22 other property owned by the converting entity shall

1 automatically be owned by the converted entity without
2 reversion or impairment, subject to any existing liens
3 or other encumbrances thereon;

4 (3) All liabilities and obligations of the converting
5 entity shall automatically be liabilities and
6 obligations of the converted entity without impairment
7 or diminution due to the conversion;

8 (4) The rights of creditors of the converting entity shall
9 continue against the converted entity and shall not be
10 impaired or extinguished by the conversion;

11 (5) Any action or proceeding pending by or against the
12 converting entity may be continued by or against the
13 converted entity[7] without any need for substitution
14 of parties;

15 (6) The partnership interests[7] and other forms of
16 ownership in the converting entity that are to be
17 converted into partnership interests, or other forms
18 of ownership, in the converted entity as provided in
19 the plan of conversion shall be converted;

20 (7) A shareholder, partner, member, or other owner of the
21 converted entity, shall be liable for the debts and
22 obligations of the converting entity that existed

H.B. NO. 2313

1 before the conversion takes effect only to the extent
2 that such shareholder, partner, member, or other
3 owner:

4 (A) Agreed in writing to be liable for such debts or
5 obligations;

6 (B) Was liable under applicable law prior to the
7 effective date of the conversion for such debts
8 or obligations; or

9 (C) Becomes liable under applicable law for existing
10 debts and obligations of the converted entity by
11 becoming a shareholder, partner, member, or other
12 owner of the converted entity;

13 (8) If the converted entity is a foreign general
14 partnership, limited liability partnership, or other
15 business entity[7] incorporated, formed, or organized
16 under a law other than the law of this State, the
17 converted entity shall [~~appoint a resident of the~~
18 ~~State as its agent, for service of process in a~~
19 ~~proceeding to enforce any obligation or rights of~~
20 ~~dissenting partners of the converting domestic~~
21 ~~partnership or limited liability partnership; and]~~
22 file with the director:

H.B. NO. 2313

1 (A) An agreement that the converted entity may be
2 served with process in this State in any action or
3 proceeding for the enforcement of any liability or
4 obligation of the converting domestic general
5 partnership;

6 (B) An irrevocable appointment of a resident of
7 this State including the street address, as
8 its agent to accept service of process in any
9 such proceeding; and

10 (C) An agreement for the enforcement, as provided
11 in this chapter, of the right of any dissenting
12 shareholder, partner, member, or other owner to
13 receive payment for their interest against the
14 converted entity; and

15 (9) If the converting partnership is a domestic general
16 partnership, or limited liability partnership, section
17 425-203 shall apply as if the converted entity were
18 the survivor of a merger with the converting entity."

19 SECTION 17. Section 425-204, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§425-204 Articles of merger.** (a) After approval of the
22 plan of merger, unless the merger is terminated, articles of

1 merger shall be signed on behalf of each general partnership [~~or~~
2 ~~limited liability partnership~~], and each entity that is a party
3 to the merger and delivered to the director for filing. The
4 articles shall set forth:

- 5 (1) The name and jurisdiction of formation or organization
6 of each entity that is a party to the merger, and the
7 name, address, and jurisdiction of organization of the
8 entity with or into which they propose to merge, which
9 is hereinafter designated as the surviving entity;
- 10 (2) A statement that the plan of merger was approved by
11 each entity that is a party to the merger;
- 12 (3) A statement indicating any changes in the organizing
13 articles of the surviving entity to be given effect by
14 the merger; provided that if no changes are made, a
15 statement that the organizing articles of the
16 surviving entity shall not be amended pursuant to the
17 merger;
- 18 (4) The future effective date (which shall be a date
19 certain) of the merger if it is not to be effective
20 upon the filing of the articles of merger; provided
21 that the effective date shall not be more than thirty
22 days from the filing date; and

- 1 (5) A statement that includes:
- 2 (A) An agreement that the surviving entity may be
- 3 served with process in this State in any action
- 4 or proceeding for the enforcement of any
- 5 liability or obligation of any entity previously
- 6 subject to suit in this State which is to merge;
- 7 (B) An irrevocable appointment of a resident of this
- 8 State as its agent to accept service of process
- 9 in any ~~such~~ proceeding~~[7]~~ pursuant to this
- 10 paragraph, that includes the resident's street
- 11 address in this State; and
- 12 (C) An agreement for the enforcement, as provided in
- 13 this chapter, of the right of any dissenting
- 14 member, shareholder, or partner to receive
- 15 payment for their interest against the surviving
- 16 entity.
- 17 (b) If the articles of merger provide for a future
- 18 effective date, and:
- 19 (1) The plan of merger is amended to change the future
- 20 effective date;

1 (2) The plan of merger permits the amendment of the
2 articles of merger to change the future effective date
3 without an amendment to the plan of merger; or

4 (3) The plan of merger is amended to change any other
5 matter contained in the articles of merger so as to
6 make the articles of merger inaccurate in any material
7 respect, prior to the future effective date; then the
8 articles of merger shall be amended by filing with the
9 director a certificate of amendment that identifies
10 the articles of merger and sets forth the amendment to
11 the articles of merger.

12 If the articles of merger provide for a future effective
13 date and if the plan of merger is terminated prior to the future
14 effective date, the articles of merger shall be terminated by
15 filing with the director a certificate of termination that
16 identifies the articles of merger and states that the plan of
17 merger has been terminated.

18 ~~[(c) Articles of merger shall operate as an amendment to~~
19 ~~the general partnership's or limited liability partnership's~~
20 ~~organizing articles.~~

21 ~~(d) Articles of merger shall act as a statement of~~
22 ~~dissolution or as an application for withdrawal for the~~

H.B. NO. 2313

1 ~~respective domestic or foreign general partnership or domestic~~
2 ~~or foreign limited liability partnership that is not the~~
3 ~~surviving entity in the merger.]"~~

4 SECTION 18. Section 425E-810, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) A limited partnership that has been administratively
7 dissolved may apply to the director for reinstatement within two
8 years after the effective date of dissolution. The application
9 shall be delivered to the director for filing and:

- 10 (1) State the name of the limited partnership and the
11 effective date of its administrative dissolution;
- 12 (2) State that the grounds for dissolution either did not
13 exist or have been eliminated;
- 14 (3) State that the limited partnership's name satisfies
15 the requirements of section 425E-108; and
- 16 (4) Include a certificate from the department of taxation
17 [~~reciting~~] indicating that all taxes owed by the
18 limited partnership have been paid[-], a payment
19 arrangement has been entered into, or the unpaid tax
20 liabilities are being contested in an administrative
21 or judicial appeal with the department of taxation."

1 SECTION 19. Section 425E-902, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) A foreign limited partnership may apply for a
4 certificate of authority to transact business in this State by
5 delivering an application to the director for filing. The
6 application shall state:

7 (1) The name of the foreign limited partnership and, if
8 the name does not comply with section 425E-108, an
9 alternate name adopted pursuant to section 425E-905
10 (a);

11 (2) The name of the state or other jurisdiction under
12 whose law the foreign limited partnership is
13 organized;

14 (3) The mailing address of the foreign limited
15 partnership's [~~initial~~] principal office, the street
16 address of its [~~initial~~] registered office in this
17 State, and the name of its [~~initial~~] registered agent
18 at its [~~initial~~] registered office[+] in this State;

19 (4) The name and address of each general partner;

20 (5) Whether the foreign limited partnership is a foreign
21 limited liability limited partnership; and

H.B. NO. 2313

1 (6) The address of the office at which is kept a list of
2 the names and addresses of the limited partners and
3 their capital contributions, together with a written
4 commitment on the part of the foreign limited
5 partnership that it will keep those records until the
6 registration of the foreign limited partnership in
7 this State is canceled or withdrawn."

8 SECTION 20. Section 425E-1105, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~§~~**425E-1105**~~§~~ **Effect of conversion.** When a conversion
11 becomes effective:

12 (1) The converting entity shall continue to exist without
13 interruption, but in the organizational form of the
14 converted entity;

15 (2) All rights, title, and interest in all real estate and
16 other property owned by the converting entity shall
17 automatically be owned by the converted entity without
18 reversion or impairment, subject to any existing liens
19 or other encumbrances thereon;

20 (3) All liabilities and obligations of the converting
21 entity shall automatically be liabilities and

H.B. NO. 2313

- 1 obligations of the converted entity without impairment
2 or diminution due to the conversion;
- 3 (4) The rights of creditors of the converting entity shall
4 continue against the converted entity and shall not be
5 impaired or extinguished by the conversion;
- 6 (5) Any action or proceeding pending by or against the
7 converting entity may be continued by or against the
8 converted entity[~~r~~] without any need for substitution
9 of parties;
- 10 (6) The partnership interests and other forms of ownership
11 in the converting entity that are to be converted into
12 partnership interests, or other forms of ownership, in
13 the converted entity[~~r~~] as provided in the plan of
14 conversion shall be converted;
- 15 (7) A shareholder, partner, member, or other owner of the
16 converted entity shall be liable for the debts and
17 obligations of the converting entity that existed
18 before the conversion takes effect only to the extent
19 that [~~such~~] the shareholder, partner, member, or other
20 owner:
- 21 (A) Agreed in writing to be liable for such debts or
22 obligations;

H.B. NO. 2313

- 1 (B) Was liable under applicable law prior to the
2 effective date of the conversion for such debts
3 or obligations; or
- 4 (C) Becomes liable under applicable law for existing
5 debts and obligations of the converted entity by
6 becoming a shareholder, partner, member, or other
7 owner of the converted entity;
- 8 (8) If the converted entity is a foreign limited
9 partnership or other business entity[~~+~~] incorporated,
10 formed, or organized under a law other than the law of
11 this State, the converted entity shall [~~appoint a~~
12 ~~resident of this State as its agent for service of~~
13 ~~process in a proceeding to enforce any obligation or~~
14 ~~rights of dissenting limited partners of the~~
15 ~~converting domestic limited partnership; and] file
16 with the director:~~
- 17 (A) An agreement that the converted entity may be
18 served with process in this State in any action
19 or proceeding for the enforcement of any
20 liability or obligation of the converting
21 domestic limited partnership;
- 22 (B) An irrevocable appointment of a resident of

H.B. NO. 2313

1 this State including the street address, as
2 its agent to accept service of process in any
3 such proceeding; and

4 (C) An agreement for the enforcement, as provided
5 in this chapter, of the right of any dissenting
6 shareholder, partner, member, or other owner to
7 receive payment for their interest against the
8 converted entity; and

9 (9) If the converting partnership is a domestic limited
10 partnership, section 425E-1106 shall apply as if the
11 converted entity were the survivor of a merger with
12 the converting entity."

13 SECTION 21. Section 428-811, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) A limited liability company administratively
16 terminated may apply to the director for reinstatement within
17 two years after the effective date of termination. The
18 applicant shall:

19 (1) Recite the name of the company and the effective date
20 of its administrative termination;

21 (2) State that all delinquent annual reports have been

H.B. NO. 2313

1 filed and that all delinquent fees, penalties,
2 assessments, and costs have been paid; and
3 (3) Contain a certificate from the director of taxation
4 reciting that all taxes owed by the company have been
5 paid[-], a payment arrangement has been entered into,
6 or the unpaid tax liabilities are being contested in
7 an administrative or judicial appeal with the
8 department of taxation."

9 SECTION 22. Section 428-903, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§428-903 Effect of conversion.** When a conversion becomes
12 effective:

- 13 (1) The converting entity shall continue to exist
14 without interruption, but in the organizational
15 form of the converted entity;
- 16 (2) All rights, title, and interest in all real estate and
17 other property owned by the converting entity shall
18 automatically be owned by the converted entity without
19 reversion or impairment, subject to any existing liens
20 or other encumbrances thereon;
- 21 (3) All liabilities and obligations of the converting
22 entity shall automatically be liabilities and

1 obligations of the converted entity without
2 impairment or diminution due to the conversion;
3 (4) The rights of creditors of the converting entity
4 shall continue against the converted entity and
5 shall not be impaired or extinguished by the
6 conversion;
7 (5) Any action or proceeding pending by or against the
8 converting entity may be continued by or against the
9 converted entity without any need for substitution of
10 parties;
11 (6) The shares and other forms of ownership in the
12 converting entity that are to be converted into
13 shares, or other forms of ownership, or other
14 securities in the converted entity as provided in
15 the plan of conversion shall be converted, and if
16 the converting entity is a domestic limited
17 liability company, the former members of the domestic
18 limited liability company shall be entitled only to
19 the rights provided in the plan of conversion or to
20 the rights to dissent under section 414-342;

H.B. NO. 2313

- 1 (7) A shareholder, partner, member, or other owner of the
2 converted entity shall be liable for the debts and
3 obligations of the converting entity that existed
4 before the conversion takes effect only to the extent
5 that such shareholder, partner, member, or other owner:
6 (A) Agreed in writing to be liable for [~~such~~] the
7 debts or obligations;
8 (B) Was liable under applicable law prior to the
9 effective date of the conversion, for [~~such~~] the
10 debts or obligations; or
11 (C) Becomes liable under applicable law for existing
12 debts and obligations of the converted entity by
13 becoming a shareholder, partner, member, or other
14 owner of the converted entity; and
15 (8) If the converted entity is a foreign limited liability
16 company or other business entity[~~r~~] incorporated,
17 formed, or organized under a law other than the law of
18 this State, such converted entity shall [~~appoint a~~
19 ~~resident of this State as its agent for service of~~
20 ~~process in a proceeding to enforce any obligation or~~
21 ~~the rights of dissenting members of the converting~~

H.B. NO. 2313

1 ~~domestic limited liability company.]~~ file with the
2 director:

3 (A) An agreement that the converted entity may be
4 served with process in this State in any action
5 or proceeding for the enforcement of any
6 liability or obligation of the converting
7 domestic limited liability company;

8 (B) An irrevocable appointment of a resident of
9 this State, including the street address, as its
10 agent to accept service of process in any such
11 proceeding; and

12 (C) An agreement for the enforcement, as provided in
13 this chapter, of the right of any dissenting
14 shareholder, partner, member, or other owner to
15 receive payment for their interest against the
16 converted entity."

17 SECTION 23. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 24. This Act shall take effect on January 1, 2007.

20
21 INTRODUCED BY: Calvin K. H. Day
22 BY REQUEST
JAN 23 2006

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs.

TITLE: A BILL FOR AN ACT RELATING TO BUSINESS REGISTRATION.

PURPOSE: To clarify and correct ambiguities and errors in Hawaii's business registration laws.

MEANS: Add one new section to chapter 425; and amend sections 414-274, 414-403(a), 414-433(a), 414D-207(a) and (b), 414D-210, 414D-241, 414D-250(a), 415A-16.8, 415A-18, 425-1(a) and (b), 425-14(b), 425-158, 425-163(a), 425-164(c), 425-195, 425-204, 425E-810(a), 425E-902(a), 425E-1105, 428-811(a), and 428-903, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Effective business registration is one of the primary goals of the department of commerce and consumer affairs. The business registration chapters of the Hawaii Revised Statutes contain some errors, ambiguities, and inconsistencies due to changes in division policies and procedures, common law, and drafting errors. This bill addresses these errors, ambiguities, and inconsistencies.

With respect to general housekeeping corrections, this bill will add a section to chapter 425 that was mistakenly left out from the previous general partnership chapter regarding the activities that do not constitute transacting business in this State; provide that general partnerships ("GP") that have elected limited liability status to become limited liability partnerships ("LLP") shall file the LLP annual report in lieu of the GP annual statement; clarify that an entity that has made provisions for its tax payments to the State may be reinstated after being administratively dissolved or cancelled.

There are other miscellaneous housekeeping amendments to chapters 414, 414D, 415A, 421, 425, 425E, and 428 that (with the above amendments) are intended to promote uniformity throughout the business registration chapters of the HRS.

Impact on the public: This bill improves consumer protection by clarifying ambiguities and inconsistencies in the business registration laws.

Impact on the department and other agencies: This bill will not significantly affect the Department's regulatory and registration responsibilities with respect to business registration.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-111.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: January 1, 2007.