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S.B. NO. 2276

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# 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;

- 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."

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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

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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

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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[7] 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

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~~[-]~~, 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."

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:

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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

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 "[~~f~~]**S414D-210**[~~f~~] **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

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           "~~[f]~~§414D-241~~[j]~~ **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~~[r]~~ 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~~[r]~~

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(c). 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

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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~~

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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

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."

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

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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

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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:

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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<sup>[7]</sup> 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~~

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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

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

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[] 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[] 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;

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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

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

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;

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- 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[~~7~~] 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~~

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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:   
22 BY REQUEST

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.