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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 415A, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:  
4           "§415A- Trustees or receivers for dissolved professional  
5 corporations; appointment; powers; duties. (a) When any  
6 professional corporation organized and authorized to issue  
7 shares under the laws of this state shall be or shall have been  
8 dissolved or shall cease or shall have ceased to exist, the  
9 circuit court, upon application of any creditor, stockholder, or  
10 director of the corporation, or any other person who shows good  
11 cause therefor, and upon a finding that the persons responsible  
12 for settling the unfinished business and winding up the affairs  
13 of the corporation either are not diligently pursuing such  
14 obligations, or cannot be found or otherwise are not available,  
15 may either appoint one or more of the directors of the  
16 corporation to be trustees or appoint one or more persons to be  
17 receivers of and for the corporation, to do all acts that are  
18 necessary for the final settlement of the unfinished business of



1 the corporation. The powers of the trustees or receivers shall  
2 be effective for the time period determined by the circuit  
3 court.

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

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

13 **"§414-402 Procedure for and effect of administrative**  
14 **dissolution[.] and effect of expiration.** (a) If the department  
15 director determines that one or more grounds exist under section  
16 414-401 for dissolving a corporation, the department director  
17 shall give written notice of the department director's  
18 determination by mailing the notice to the corporation at its  
19 last known address appearing in the records of the department  
20 director.

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



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

8 (c) A corporation administratively dissolved continues its  
9 corporate existence but may not carry on any business except  
10 that necessary to wind up and liquidate its business and affairs  
11 under section 414-385 and notify claimants under sections  
12 414-386 and 414-387.

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

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



1 ~~the dissolved corporation with full powers to settle its~~  
2 ~~affairs.~~

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

5 ~~(g) If a corporation was dissolved due to the expiration~~  
6 ~~of its period of duration, the] Although a corporation's period~~  
7 ~~of duration specified in its articles of incorporation has~~  
8 ~~expired, the corporation continues its corporate existence but~~  
9 ~~may not carry on any business except that necessary to wind up~~  
10 ~~and liquidate its business and affairs under section 414-385 and~~  
11 ~~notify claimants under sections 414-386 and 414-387.~~

12 ~~(f) The~~ corporation, at any time within two years of [~~such~~  
13 ~~dissolution,~~] the expiration of its period of duration, may  
14 amend its articles of incorporation to extend its period of  
15 duration, and upon the amendment, the corporation may resume  
16 carrying on its business as if the [~~dissolution~~] expiration had  
17 never occurred; provided that if the name of the corporation, or  
18 a name substantially identical is registered or reserved by  
19 another entity, or if that name or a name substantially  
20 identical is registered as a trade name, trademark, or service  
21 mark, the extension of [~~corporate existence~~] its period of  
22 duration shall be allowed only upon the registration of a new



1 name by the corporation pursuant to the amendment provisions of  
2 this chapter."

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

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

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

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



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

5           (1) The individual conducted the individual's self in good  
6 faith; and

7           (2) The individual reasonably believed:

8           (A) In the case of conduct in an official capacity,  
9 that the individual's conduct was in the  
10 corporation's best interests;

11           (B) In all other cases, the individual's conduct, at  
12 a minimum, did not oppose the corporation's best  
13 interests; and

14           (3) In the case of any criminal proceeding, the individual  
15 had no reasonable cause to believe the individual's  
16 conduct was unlawful."

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

19           "**§414D-249 Procedure for and effect of administrative**  
20 **dissolution[~~-~~] and effect of expiration.** (a) If the department  
21 director determines that one or more grounds exist under section  
22 414D-248 for dissolving a corporation, the department director



1 shall give written notice of the department director's  
2 determination by mailing the notice to the corporation at its  
3 last known address appearing in the records of the department  
4 director.

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

14 (c) A corporation administratively dissolved continues its  
15 corporate existence but may not carry on any activities except  
16 those necessary to wind up and liquidate its affairs under  
17 section 414D-245 and notify its claimants under sections 414D-  
18 246 and 414D-247.

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

21 (e) [~~Parties of interest may petition a court of competent~~  
22 ~~jurisdiction to appoint a trustee to settle the affairs of any~~



1 ~~corporation so dissolved. If a trustee is not appointed, the~~  
2 ~~last directors of the dissolved corporation shall be and act as~~  
3 ~~trustees for the creditors, claimants, and members of the~~  
4 ~~dissolved corporation with full powers to settle its affairs.~~

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

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

14 (f) The corporation, at any time within two years of the  
15 ~~[dissolution,]~~ expiration of its period of duration, may amend  
16 its articles of incorporation to extend its period of duration  
17 and, upon the amendment, the corporation may resume carrying on  
18 its [business] activities as if the [dissolution] expiration had  
19 never occurred; provided that if the name of the corporation, or  
20 a name substantially identical is registered or reserved by  
21 another entity, or if that name or a name substantially  
22 identical is registered as a trade name, trademark, or service





1 mark, the extension of [~~corporate existence~~] its period of  
2 duration shall be allowed only upon the registration of a new  
3 name by the corporation pursuant to the amendment provisions of  
4 this chapter."

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

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

11 (1) The name of the foreign corporation or, if its name is  
12 unavailable for use in this State, a corporate name  
13 that satisfies the requirements of section 414D-276;

14 (2) The name of the state or country under whose law it is  
15 incorporated;

16 (3) The date of incorporation [~~and period of duration~~];

17 (4) The mailing address of the corporation's principal  
18 office, the street address of its registered office in  
19 this State, and the name of its registered agent at  
20 its registered office in this State;

21 (5) The names and usual business addresses of its current  
22 directors and officers; and



1 (6) Whether the foreign corporation has members."

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

4 "**§415A-18 Administrative dissolution; expiration;**

5 **reinstatement.** (a) The director may commence a proceeding to  
6 dissolve a professional corporation administratively if the  
7 corporation fails to:

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

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

19 (b) If the professional corporation does not correct each  
20 ground for dissolution or demonstrate to the reasonable  
21 satisfaction of the director that each ground determined by the  
22 director does not exist within sixty days after the date of



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

8 (c) [~~Parties of interest may petition a court of competent~~  
9 ~~jurisdiction to appoint a trustee to settle the affairs of any~~  
10 ~~professional corporation so dissolved. If a trustee is~~  
11 ~~appointed, the trustee shall pay to the State out of any funds~~  
12 ~~that may come into the trustee's hands as trustee, a sum equal~~  
13 ~~to any penalty imposed under section 414-473. If a trustee is~~  
14 ~~not appointed by a court of competent jurisdiction, the last~~  
15 ~~directors of the dissolved corporation shall be and act as~~  
16 ~~trustees for the creditors and shareholders of the dissolved~~  
17 ~~professional corporation with full powers to settle its~~  
18 ~~affairs.] A professional corporation administratively dissolved  
19 continues its corporate existence but may not carry on any  
20 business except that necessary to wind up and liquidate its  
21 business and affairs under section 414-385 and notify claimants  
22 under sections 414-386 and 414-387.~~



1 (d) In each case where the director has given a  
2 professional corporation notice of intention to dissolve the  
3 corporation on the grounds that its articles of incorporation  
4 have been procured through fraud, the corporation shall be  
5 entitled to petition for an administrative hearing under chapter  
6 91 and shall give written notice to the director thereof, before  
7 the director may declare the corporation dissolved under  
8 subsection (a).

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



1 years after the effective date of dissolution. The application

2 shall:

3 (1) Recite the name of the professional corporation and  
4 the effective date of its administrative dissolution;

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 indicating that all taxes owed by the professional  
10 corporation have been paid, a payment arrangement has  
11 been entered into, or the unpaid tax liabilities are  
12 being contested in an administrative or judicial  
13 appeal with the department of taxation.

14 Within the applicable reinstatement period, should the name  
15 of the professional corporation, or a name substantially  
16 identical thereto, be registered or reserved by another  
17 [~~corporation, partnership, limited liability company, or limited~~  
18 ~~liability partnership,~~] entity or [~~should the~~] if that name or a  
19 name substantially identical [~~thereto be~~] is registered as a  
20 trade name, trademark, or service mark, then reinstatement shall  
21 be allowed only upon the registration of a new name by the  
22 [~~involuntarily~~] administratively dissolved professional



1 corporation pursuant to the amendment provisions of this  
2 chapter.

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

6 ~~(g) If a professional corporation was dissolved due to the~~  
7 ~~expiration of its period of duration, the] Although a~~  
8 professional corporation's period of duration specified in its  
9 articles of incorporation has expired, the professional  
10 corporation continues its corporate existence but may not carry  
11 on any business except that necessary to wind up and liquidate  
12 its business and affairs under section 414-385 and notify  
13 claimants under sections 414-386 and 414-387.

14 (g) The professional corporation, at any time within two  
15 years of [~~such dissolution,~~] expiration of its period of  
16 duration, may amend its articles of incorporation to extend its  
17 period of duration[+], and upon the amendment, the professional  
18 corporation may resume carrying on its business as if the  
19 expiration had never occurred; provided that, if the name of the  
20 professional corporation or a name substantially identical  
21 thereto is registered or reserved by another [~~corporation,~~  
22 partnership, limited liability company, or limited liability



1 ~~partnership,~~ entity, or if ~~[the]~~ that name or a name  
2 substantially identical ~~[thereto]~~ is registered as a trade name,  
3 trademark, or service mark, then the extension of ~~[corporate~~  
4 ~~existence]~~ its period of duration shall be allowed only upon the  
5 registration of a new name by the professional corporation  
6 pursuant to the amendment provisions of this chapter."

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

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

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

15 "**§428-810 Procedure for and effect of administrative**  
16 **termination.** (a) If the director determines that ~~[a ground~~  
17 ~~exists]~~ one or more grounds exist to ~~[terminate]~~  
18 administratively terminate a limited liability company, the  
19 director may declare the company terminated. Before the  
20 director declares a limited liability company terminated, the  
21 director shall mail a notice of the grounds for termination to



1 the company and may give public notice of the intention to  
2 terminate the limited liability company.

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

12 (c) A limited liability company administratively  
13 terminated continues its existence temporarily but may carry on  
14 only business necessary to wind up and liquidate its business  
15 and affairs under section 428-802 and to notify claimants under  
16 section 428-807. The company ceases existence upon the  
17 completion of these matters.

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

21 (e) Any manager, member, or creditor of an  
22 administratively terminated limited liability company may





1 petition the circuit court to appoint a trustee to settle its  
2 affairs. If a trustee is appointed, the trustee shall pay to  
3 the State out of any funds that may come into the trustee's  
4 possession as trustee a sum equal to any penalties imposed  
5 pursuant to section 428-1302. Up until the time a trustee is  
6 appointed by the circuit court, or indefinitely if a trustee is  
7 not appointed by the circuit court, the last managers of the  
8 limited liability company if the company was manager-managed, or  
9 if not manager-managed the last members of the limited liability  
10 company, shall be and act as trustees for the creditors and  
11 members of the limited liability company with full powers to  
12 settle its affairs.

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

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

20 SECTION 11. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

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



**Report Title:**

Business Registration; Corporation Dissolution

**Description:**

Makes laws governing corporate dissolution and director's rights consistent. Amends the law to more accurately reflect the administrative procedures of administratively cancelling a limited partnership. Makes provisions regarding the expiration of corporations consistent with other entities. Streamlines and conforms limited liability company law filing requests. (SB3006 HD1)

