

JAN 22 2008

S.B. NO. 3006

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
5 professional corporations; appointment; powers; duties. (a)
6 When any professional corporation organized and authorized to
7 issue shares under the laws of this State shall be or shall have
8 been 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

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1 necessary for the final settlement of the unfinished business of
2 the corporation. The powers of the trustees or receivers shall
3 be effective for the time period determined by the circuit
4 court.

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

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

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

22 (b) If the corporation does not correct each ground for
23 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 or 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
11 affairs under section 414-385 and notify claimants under
12 sections 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~~

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

3 ~~(f) A corporation whose]~~ (e) Although a corporation's
4 period of duration specified in its articles of incorporation
5 [have] has expired [shall cease to exist by operation of law.],
6 the corporation continues its corporate existence but may not
7 carry on any business except that necessary to wind up and
8 liquidate its business and affairs under section 414-385 and
9 notify claimants under sections 414-386 and 414-387.

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

1 SECTION 3. 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
8 is unavailable for use in this State, a corporate
9 name that satisfies the requirements of section
10 414-436;

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

13 (3) Its date of incorporation [~~and period of duration~~];

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

18 (5) The names and usual business addresses of its current
19 directors and officers."

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

22 "(a) Except as provided in subsection (d), a corporation
23 may indemnify a former or current director made a party to a

1 proceeding, by reason of the fact that the individual was or is
2 a director, against liability incurred in the proceeding if:

3 (1) The individual conducted the individual's self in good
4 faith; and

5 (2) The individual reasonably believed:

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

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

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

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

17 "**§414D-249 Procedure for and effect of administrative**
18 **dissolution[~~r~~]** **and effect of expiration.** (a) If the department

19 director determines that one or more grounds exist under section
20 414D-248 for dissolving a corporation, the department director
21 shall give written notice of the department director's
22 determination by mailing the notice to the corporation at its

1 last known address appearing in the records of the department
2 director.

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

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

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

19 ~~[(e) Parties of interest may petition a court of competent~~
20 ~~jurisdiction to appoint a trustee to settle the affairs of any~~
21 ~~corporation so dissolved. If a trustee is not appointed, the~~
22 ~~last directors of the dissolved corporation shall be and act as~~

1 ~~trustees for the creditors, claimants, and members of the~~
2 ~~dissolved corporation with full powers to settle its affairs.~~

3 ~~(f) A corporation whose]~~ (e) Although a corporation's
4 period of duration specified in its articles of incorporation
5 [have] has expired [shall cease to exist by operation of law.],
6 the corporation continues its corporate existence but may not
7 carry on any activities except those necessary to wind up and
8 liquidate its business and affairs under section 414D-245 and
9 notify claimants under sections 414D-246 and 414D-247.

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

1 SECTION 6. Section 414D-273, 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 414D-276;
- 10 (2) The name of the state or country under whose law it is
11 incorporated;
- 12 (3) The date of incorporation [~~and period of duration~~];
- 13 (4) The mailing address of the corporation's principal
14 office, the street address of its registered office in
15 this State, and the name of its registered agent at
16 its registered office in this State;
- 17 (5) The names and usual business addresses of its current
18 directors and officers; and
- 19 (6) Whether the foreign corporation has members."

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

22 "**§415A-18 Administrative dissolution; expiration;**
23 **reinstatement.** (a) The director may commence a proceeding to

1 dissolve a professional corporation administratively if the
2 corporation fails to:

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

9 Before the director may declare a professional corporation
10 dissolved, the director shall give notice of the ground or
11 grounds for dissolution by mailing the notice to the
12 professional corporation at its last known address appearing in
13 the records of the director.

14 (b) If the professional corporation does not correct each
15 ground for dissolution or demonstrate to the reasonable
16 satisfaction of the director that each ground determined by the
17 director does not exist within sixty days after the date of
18 mailing of the director's written notice, the director shall
19 administratively dissolve the corporation by signing a decree of
20 dissolution that recites the ground or grounds for dissolution
21 and its effective date. The decree shall be filed in the
22 director's office. The administrative dissolution of a

1 corporation shall not terminate the authority of its registered
2 agent.

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

18 (d) In each case where the director has given a
19 professional corporation notice of intention to dissolve the
20 corporation on the grounds that its articles of incorporation
21 have been procured through fraud, the corporation shall be
22 entitled to petition for an administrative hearing under chapter
23 91 and shall give written notice to the director thereof, before

1 the director may declare the corporation dissolved under
2 subsection (a).

3 ~~[(e) Within two years after the administrative dissolution~~
4 ~~of a professional corporation under this section, the~~
5 ~~corporation may be reinstated by the director upon a written~~
6 ~~application executed by an officer of the corporation setting~~
7 ~~forth such information as the director may require, and contain~~
8 ~~a certificate from the department of taxation indicating that~~
9 ~~all taxes owed by the corporation have been paid, a payment~~
10 ~~arrangement has been entered into, or the unpaid tax liabilities~~
11 ~~are being contested in an administrative or judicial appeal with~~
12 ~~the department of taxation, the payment of all delinquent fees~~
13 ~~and penalties and the filing of all reports due and unfiled.]~~

14 (e) A professional corporation administratively dissolved
15 under this section may apply to the department director for
16 reinstatement within two years after the effective date of
17 dissolution. The application shall:

- 18 (1) Recite the name of the professional corporation and
19 the effective date of its administrative dissolution;
20 (2) Contain all reports due and unfiled;
21 (3) Contain the payment of all delinquent fees and
22 penalties; and

1 (4) Contain a certificate from the department of taxation
2 indicating that all taxes owed by the corporation have
3 been paid, a payment arrangement has been entered
4 into, or the unpaid tax liabilities are being
5 contested in an administrative or judicial appeal with
6 the department of taxation.

7 Within the applicable reinstatement period, should the name
8 of the professional corporation, or a name substantially
9 identical thereto, be registered or reserved by another
10 corporation, partnership, limited liability company, or limited
11 liability partnership, or should the name or a name
12 substantially identical thereto be registered as a trade name,
13 trademark, or service mark, then reinstatement shall be allowed
14 only upon the registration of a new name by the [~~involuntarily~~]
15 administratively dissolved professional corporation pursuant to
16 the amendment provisions of this chapter.

17 (f) [~~A professional corporation whose~~] Although a
18 professional corporation's period of duration specified in its
19 articles of incorporation [~~have~~] has expired [~~shall cease to~~
20 exist by operation of law.], the professional corporation
21 continues its corporate existence but may not carry on any
22 business except that necessary to wind up and liquidate its

1 affairs under section 414-385 and notify claimants under
2 sections 414-386 and 414-387.

3 (g) [~~If a professional corporation was dissolved due to~~
4 ~~the expiration of its period of duration, the~~] The professional
5 corporation, at any time within two years of such [dissolution,]
6 expiration, may amend its articles of incorporation to extend
7 its period of duration[+], and upon the amendment, the
8 professional corporation may resume carrying on its business as
9 if the expiration had never occurred; provided that, if the name
10 of the professional corporation or a name substantially
11 identical thereto is registered or reserved by another
12 corporation, partnership, limited liability company, or limited
13 liability partnership, or if the name or a name substantially
14 identical thereto is registered as a trade name, trademark, or
15 service mark, then the extension of [corporate existence] its
16 period of duration shall be allowed only upon the registration
17 of a new name by the professional corporation pursuant to the
18 amendment provisions of this chapter."

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

21 "(c) The court may summarily order the director to
22 reinstate the [~~dissolved~~] administratively canceled limited

1 partnership or may take other action the court considers
2 appropriate."

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

5 "**§428-810 Procedure for and effect of administrative**
6 **termination.** (a) If the director determines that a ground
7 exists to terminate administratively a limited liability
8 company, the director may declare the company terminated. Before
9 the director declares a limited liability company terminated,
10 the director shall mail a notice of the grounds for termination
11 to the company and may give public notice of the intention to
12 terminate the limited liability company.

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

22 (c) A limited liability company administratively
23 terminated continues its existence temporarily but may carry on

1 only business necessary to wind up and liquidate its business
2 and affairs under section 428-802 and to notify claimants under
3 section 428-807. The company ceases existence upon the
4 completion of these matters.

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

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

21 ~~[(f) The director shall deliver a copy of the decree of~~
22 ~~termination for each administratively terminated limited~~

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1 ~~liability company to the director of taxation and financial~~
2 ~~officer of each county.] "~~

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

6 SECTION 11. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: _____

BY REQUEST

Report Title:

Business Registration

Description:

(1) To make the laws governing corporate dissolution and director's rights consistent; (2) to more accurately reflect the administrative procedures of administratively cancelling a limited partnership; (3) to make provisions regarding the expiration of corporations consistent with other entities; and (4) to streamline and conform limited liability company law filing requests.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

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

PURPOSE: (1) To make the laws governing corporate dissolution and director's rights consistent; (2) to more accurately reflect the administrative procedures of administratively cancelling a limited partnership; (3) to make provisions regarding the expiration of corporations consistent with other entities; and (4) to streamline and conform limited liability company law filing requests.

MEANS: Add a new section to chapter 415A, Hawaii Revised Statutes (HRS), and amend sections 414-402, 414-433(a), 414D-160(a), 414D-249, 414D-273(a), 415A-18, 425E-811(c) and 428-810, HRS.

JUSTIFICATION: This bill makes technical, housekeeping amendments to streamline and clarify the business registration laws and correct errors, ambiguities, and inconsistencies in the laws.

First, section 428-810, HRS, is amended to repeal a requirement that the Director of the Department of Commerce & Consumer Affairs ("DCCA") deliver a copy of the decrees of termination of all administratively terminated LLCs to the Department of Taxation and the financial officer of each county. This requirement was repealed for all other entity types in prior legislative sessions. This bill would simply conform the LLC law to those pertaining to other entities.

Second, 414D-249(e), HRS, appears to conflict with section 414D-245(b)(3), HRS, regarding who has control over the

winding-up of affairs when a nonprofit corporation dissolves. This bill clarifies that the trustees of a dissolved nonprofit corporation will be determined by the entity's articles of incorporation, rather than defaulting to the "last directors" of the entity.

This same issue occurs for for-profit and professional corporations and sections 414-402 and 415A-18 are amended accordingly.

Third, in section 425E-811, HRS, a minor amendment is made by deleting the reference to a "dissolved" limited partnership and replacing it with an "administratively canceled" limited partnership. This is to conform the language to the manner in which limited partnerships are terminated.

Fourth, sections 414-433 and 414D-273, HRS, include minor amendments to make provisions regarding profit and non-profit foreign corporations consistent with other entities by removing the requirement of stating a "period of duration" of the corporation.

Impact on the public: These changes will make the law clearer and more consistent for the public.

Impact on the department and other agencies: None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-111

OTHER AFFECTED AGENCIES: Department of Taxation and the financial officer of each county.

EFFECTIVE DATE: July 1, 2008