
A BILL FOR AN ACT

RELATING TO BUSINESS REGISTRATION.

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

1 SECTION 1. Section 414-402, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:

3 "(e) If a corporation's period of duration specified in
4 its articles of incorporation has expired, the corporation [~~may~~
5 ~~continue~~] continues its corporate existence but may not carry on
6 any business except [~~as~~] that necessary to wind up and liquidate
7 its business and affairs under section 414-385 and notify
8 claimants under sections 414-386 and 414-387."

9 SECTION 2. Section 414-403, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) Within the applicable reinstatement period, should
12 the name of the corporation, or a name substantially identical
13 thereto be registered or reserved by another corporation,
14 partnership, limited partnership, limited liability company, or
15 limited liability partnership, or should the name or a name
16 substantially identical thereto be registered as a trade name,
17 trademark, or service mark, then reinstatement shall be allowed



1 only upon the registration of a new name by the [~~involuntarily~~]
2 administratively dissolved corporation pursuant to the amendment
3 provisions of this chapter."

4 SECTION 3. Section 414D-14, Hawaii Revised Statutes, is
5 amended by adding a new definition to be appropriately inserted
6 and to read as follows:

7 "Electronic transmission" means any form of communication,
8 not directly involving the physical transmission of paper, that
9 creates a record that may be retained, retrieved, and reviewed
10 by a recipient thereof, and that may be directly reproduced in
11 paper form by such a recipient through an automated process."

12 SECTION 4. Section 414D-15, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§414D-15 Notice.** (a) Notice may be oral or written.

15 (b) Notice may be communicated in person; by telephone,
16 telegraph, teletype, or other form of wire or wireless
17 communication; or by mail or private carrier. If these forms of
18 personal notice are impracticable, notice may be communicated by
19 newspaper of general circulation in the area where published; or
20 by radio, television, or other form of public broadcast
21 communication.



1 (c) Oral notice is effective when communicated if
2 communicated in a comprehensible manner.

3 (d) Written notice by a domestic or foreign corporation to
4 its members, if in a comprehensible form, shall be effective
5 when mailed, if mailed postpaid and correctly addressed to the
6 member's address shown in the corporation's current record of
7 members.

8 (e) Except as provided in subsection (d), written notice,
9 if in a comprehensible form, is effective at the earliest of the
10 following:

- 11 (1) When received;
- 12 (2) Five days after its deposit with the United States
13 Postal Service, as evidenced by the postmark; provided
14 the notice is mailed with the correct address and with
15 first class postage affixed; or
- 16 (3) On the date shown on the return receipt; if sent by
17 registered or certified mail, return receipt
18 requested, and the receipt is signed by or on behalf
19 of the addressee.

20 (f) Written notice is correctly addressed to a member of a
21 domestic or foreign corporation if addressed to the member's



1 last known address shown in the corporation's current list of
2 members.

3 (g) A written notice or report delivered as part of a
4 newsletter, magazine, or other publication regularly sent to
5 members shall constitute a written notice or report if addressed
6 or delivered to the member's last known address shown in the
7 corporation's current list of members, or in the case of members
8 who are residents of the same household and who have the same
9 address in the corporation's current list of members, if
10 addressed or delivered to one of the members, at the last known
11 address appearing on the current list of members.

12 (h) Written notice is correctly addressed to a domestic or
13 foreign corporation (authorized to transact business in the
14 State), other than in its capacity as a member, if addressed to
15 its registered agent or to its secretary at its principal office
16 shown in its most recent annual report or, in the case of a
17 foreign corporation that has not yet delivered an annual report,
18 in its application for a certificate of authority.

19 (i) Without limiting the manner by which notice otherwise
20 may be given to members, notice to members given by the
21 corporation under this chapter, the articles of incorporation,
22 or the bylaws shall be effective if provided by electronic



1 transmission consented to by the member to whom the notice is
2 given. Any consent shall be revocable by the member by written
3 notice to the corporation. Any consent shall be deemed revoked
4 if:

5 (1) The corporation is unable to deliver by electronic
6 transmission two consecutive notices given by the
7 corporation in accordance with such consent; and
8 (2) The inability to deliver becomes known to the
9 secretary or an assistant secretary of the
10 corporation, to the transfer agent, or other person
11 responsible for giving notice; provided that the
12 inadvertent failure to treat such inability as a
13 revocation shall not invalidate any meeting or other
14 action.

15 (j) Notice given pursuant to subsection (i) shall be
16 deemed given:

17 (1) If by facsimile telecommunication, when directed to a
18 number at which the member has consented to receive
19 notice;
20 (2) If by electronic mail, when directed to an electronic
21 mail address at which the member has consented to
22 receive notice;



1 (3) If by posting on an electronic network together with
2 separate notice to the member of such specific
3 posting, upon the later of the posting and the giving
4 of such separate notice; and

5 (4) If by any other form of electronic transmission, when
6 directed to the member.

7 An affidavit of the secretary, assistant secretary, transfer
8 agent, or other agent of the corporation that the notice has
9 been given by a form of electronic transmission, in the absence
10 of fraud, shall be prima facie evidence of the facts stated
11 therein.

12 [~~(i)~~] (k) If section 414D-105(b) or any other provision of
13 this chapter prescribes notice requirements for particular
14 circumstances, those requirements shall govern. If articles or
15 bylaws prescribe notice requirements, not inconsistent with this
16 section or other provisions of this chapter, those requirements
17 shall govern."

18 SECTION 5. Section 414D-249, Hawaii Revised Statutes, is
19 amended by amending subsection (e) to read as follows:

20 "(e) If a corporation's period of duration specified in
21 its articles of incorporation has expired, the corporation [~~may~~
22 ~~continue~~] continues its corporate existence but may not carry on



1 any activities except those necessary to wind up and liquidate
2 its business and affairs under section 414D-245 and notify
3 claimants under sections 414D-246 and 414D-247."

4 SECTION 6. Section 414D-250, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

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

16 SECTION 7. Section 415A-16.6, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) The articles of conversion shall be delivered to the
19 director. The converted entity, if a domestic corporation,
20 domestic professional corporation, domestic nonprofit
21 corporation, [~~foreign corporation,~~] general partnership, limited
22 partnership, or domestic limited liability company, shall attach



1 a copy of its respective registration documents with the
2 articles of conversion."

3 SECTION 8. Section 415A-18, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (c) to read:

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

11 2. By amending subsection (f) to read:

12 "(f) If a professional corporation's period of duration
13 specified in its articles of incorporation has expired, the
14 professional corporation [~~may continue~~] continues its corporate
15 existence but may not carry on any business except [~~as~~] that
16 necessary to wind up and liquidate its business and affairs
17 under section 414-385 and notify claimants under sections 414-
18 386 and 414-387."

19 SECTION 9. Section 425-14, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§425-14 Cancellation of registration.** (a) The director
22 may commence a proceeding to cancel the registration of a



1 domestic or foreign general partnership if the partnership fails
2 to:

- 3 (1) Pay any fees prescribed by law;
- 4 (2) File its annual statement 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 The cancellation of such registration or certificate shall not
10 relieve the partners of liability for the penalties for the
11 failure to file any statement or certificates required by this
12 part.

13 (b) Within two years after the administrative cancellation
14 of a domestic general partnership under this section, the
15 registration statement of the domestic general partnership may
16 be reinstated by the director upon written application executed
17 by any partner of the domestic general partnership. The
18 application shall:

- 19 (1) Recite the name of the domestic general partnership
20 and the effective date of its administrative
21 cancellation;
- 22 (2) Contain all statements due and unfiled;



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

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

20 (d) When the reinstatement is effective, it relates back
21 to and takes effect as of the effective date of the
22 [~~involuntary~~] administrative cancellation and the domestic



1 general partnership may resume its business as if the
2 [~~involuntary~~] administrative cancellation had never occurred."

3 SECTION 10. Section 425-164, Hawaii Revised Statutes, is
4 amended by amending subsections (c) and (d) to read as follows:

5 "(c) A partnership whose statement of qualification [~~or~~
6 ~~statement of foreign qualification~~] has been administratively
7 revoked may apply to the director for reinstatement within two
8 years after the effective date of the revocation. The
9 application shall:

- 10 (1) Recite the name of the partnership and the effective
11 date of the revocation;
- 12 (2) Contain all reports due and unfiled;
- 13 (3) Contain the payment of all delinquent fees and
14 penalties; and
- 15 (4) Contain a certificate from the department of taxation
16 indicating that all taxes owed by the partnership have
17 been paid, a payment arrangement has been entered
18 into, or the unpaid tax liabilities are being
19 contested in an administrative or judicial appeal with
20 the department of taxation.
- 21 (d) A reinstatement under subsection (c) shall relate back
22 to and take effect as of the effective date of the revocation,



1 and the partnership's status as a limited liability partnership
2 [~~or foreign limited liability partnership~~] shall continue upon
3 reinstatement as if the revocation had never occurred."

4 SECTION 11. Section 425-193, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) The converted entity, if a domestic corporation,
7 domestic professional corporation, [~~foreign corporation,~~]
8 domestic nonprofit corporation, general partnership, limited
9 partnership, or domestic limited liability company shall attach
10 a copy of its respective registration documents with the
11 articles of conversion."

12 SECTION 12. Section 425E-1103, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

14 "(c) The converted entity, if a domestic corporation,
15 domestic professional corporation, [~~foreign corporation,~~]
16 domestic nonprofit corporation, domestic general partnership,
17 domestic limited partnership, or domestic limited liability
18 company shall attach a copy of its respective registration
19 documents to the articles of conversion."

20 SECTION 13. Section 428-902.6, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) The articles of conversion shall be delivered to the
2 director. The converted entity, if a domestic corporation,
3 domestic professional corporation, [~~foreign corporation,~~
4 domestic nonprofit corporation, general partnership, limited
5 partnership, or domestic limited liability company shall attach
6 a copy of its respective registration documents with the
7 articles of conversion."

8 SECTION 14. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 15. This Act shall take effect on July 1, 2009.



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Report Title:

Business Registration

Description:

Proposes housekeeping amendments to clarify and streamline business registration laws. (SB886 SD1 HD1)

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