



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

HOUSE CONSUMER PROTECTION & COMMERCE COMMITTEE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

Wednesday, February 11, 2009
2:00 pm
Conference Room 325

**TESTIMONY ON HOUSE BILL NO. 1068
RELATING TO BUSINESS REGISTRATION**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE COMMITTEE:

Thank you for giving me the opportunity to testify. My name is Tung Chan, Commissioner of Securities and head of the Business Registration Division, Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to testify on House Bill No. 1068, which is an Administration bill relating to business registration. The Department strongly supports this measure and respectfully requests that the Committee pass House Bill No. 1068, as is.

This bill makes housekeeping amendments to clarify business registration laws and to correct technical errors, ambiguities and inconsistencies.

1) Corporate Existence

The first proposed change is to make the laws consistent with model law and other HRS provisions by deleting the word "may" in the corporation, nonprofit corporation, and professional corporation provisions that deal with the continuation of

corporate existence after dissolution. Technically, the corporation continues to exist after dissolution for the limited purpose of winding up business. It is not optional as "may" suggests and the model laws and other Hawaii laws reflect this. The Model Business Corporation Act ("MBCA") as well as the Model Nonprofit Corporation Act expressly provide that corporate existence "continues." The proposed change is to make the law consistent with this concept and with the model laws and Hawaii laws.

The affected Hawaii statutes are sections 414-402(e), 414D-249(e), 415A-18(c) and (f), HRS.

2) References to "Involuntary" Dissolutions and Cancellations

Second, the bill proposes to change references to "involuntary" dissolution or cancellation to "administrative" dissolution or cancellation in the corporation, nonprofit corporation, and general partnership statutes. The current references are incorrect and otherwise inconsistent with the rest of the business entity chapters that describe the formal term of the dissolution or cancellation as an "administrative" one. The affected statutes are sections 414-403(b) and 414D-250(b), HRS.

3) Procedures for Converting to Hawaii (domestic) Entity vs. Foreign (non-Hawaii) Entity

The third change is to clarify the technical administrative filing procedures for converting an entity into a domestic entity as opposed to a foreign entity. The bill deletes references to "foreign corporations" and places the adjective "domestic" in front of the description of partnerships in recognition of the fact that foreign entities cannot file like domestic entities because foreign entities must have origination documents in their

own jurisdiction. This bill makes the statute consistent with our technical filing procedures. The affected statutes are sections 415A-16.6(b), 425-193(c), 425E-1103(c), and 428-902.6(b), HRS.

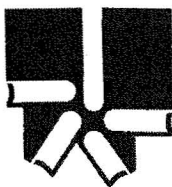
4) Clarification of When Reinstatement of General Partnerships are Available

This bill also clarifies that reinstatement for a cancelled general partnership is available if the partnership is a domestic Hawaii partnership. If a foreign partnership's filings are cancelled, the foreign partnership must seek reinstatement from the state in which it was originally formed. In order to draw this distinction between technical foreign and domestic reinstatement procedures, the word "domestic" is inserted before "general partnership" in section 425-14, HRS and "statement of foreign qualification" is deleted in section 425-164, HRS.

5) Electronic Transmission of Notice to Members of Nonprofit Corporations

This bill proposes to conform nonprofit corporation law with profit corporation law by adding to the nonprofit law the same option for notice by electronic transmission currently allowed to profit corporations. Language for a new definition of "electronic transmission" added to chapter 414D, HRS, was borrowed from section 414-3, HRS, and the nonprofit corporation notice provisions are amended to mirror the language in section 414-4, HRS. The affected statutes are sections 414D-14 and 414D-15, HRS.

I respectfully request your support of House Bill No. 1068 which will help improve the business climate in Hawaii. Thank you for the opportunity to testify. I will be happy to answer any questions the Committee may have.



February 10, 2009

Via email: CPCtestimony@Capitol.hawaii.gov

The Honorable Robert N. Herkes, Chair
The Honorable Glenn Wakai, Vice Chair
House Committee on Consumer Protection
State Capitol
Honolulu, HI 96813

RE: H.B. 1068, Sections 3 and 4

Dear Chair Herkes and Members of the Consumer Protection Committee:

I am J.N. Musto, Executive Director of the University of Hawai'i Professional Assembly ("UHPA"). UHPA supports the intent and language of Sections 3 and 4 of H.B. 1068 which will permit Hawaii nonprofit corporations with members to utilize electronic mail or telecopier (fax) to transmit notice of membership meetings in appropriate circumstances where the member has consented to receive notice in such manner.

The Hawaii's Business Corporation Act, HRS Chapter 414, was amended in 2003 to permit for profit corporations to utilize electronic transmission for shareholder meeting notices, including email when shareholders consent to its use. We understand the provisions in this Bill are modeled after such provisions in Chapter 414.

Permitting nonprofit membership organizations to utilize electronic mail or other form of electronic transmission for notice of member meetings will not only save nonprofit organizations the time and expense of copying and mailing such notices, but meet the growing demands of members to utilize efficient and modern means of electronic communication.

We respectfully ask you to pass H.B. 1068. Thank you for your consideration and for the opportunity to testify.

Sincerely,

J.N. Musto, Ph.D.
Executive Director

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY

1017 Palm Drive · Honolulu, Hawaii 96814-1928
Telephone: (808) 593-2157 · Facsimile: (808) 593-2160
Web Page: <http://www.uhpa.org>

