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TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009

Monday, March 16, 2009  
2:20 pm  
Conference Room 325

**TESTIMONY ON SENATE BILL NO. 886, S.D. 1  
RELATING TO BUSINESS REGISTRATION**

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

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 Senate Bill No. 886, Senate  
Draft 1, which is an Administration bill relating to business registration. The Department  
strongly supports this measure and respectfully requests that the Committee pass  
Senate Bill No. 886 as it was originally introduced. Our objections to the Senate Draft 1  
are detailed at the end of our testimony.

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 and is not optional as "may" suggests. 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) 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 by their foreign jurisdiction, the 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.

Objections to Senate Draft 1

BREG's annual housekeeping bill is intended to make our business registration law as consistent in language as possible to avoid any unforeseen problems in

interpretation of provisions from one HRS chapter to the next. Whenever possible, we also track the language of model laws to provide uniformity with other states' laws and ease compliance for businesses.

The Senate Draft 1 was introduced by the previous committee to make what was described as merely "technical changes." Unfortunately, those changes inadvertently introduce inconsistencies in our law that actually would take it out of step with the provisions that the bill is intended to track.

First, Section 5 of the Senate Draft 1, relating to corporate existence for non-profit corporations, adds a reference to HRS section 414D-245.5. This is an incorrect reference and is inconsistent with other identical provisions. The mistake, however, is understandable since it relates to a highly technical area. Section 5 is meant to allow corporate existence to continue but only for ordinary business activities necessary to wind up affairs. HRS section 414D-245.5 allows certain parties to ask a court to appoint a trustee or receiver if the party believes that the persons responsible for the wind up are not adequately performing their duties. Appointments of trustees and receivers are exceptional and are not meant to be ordinary and regular activity for winding up the business. Such appointments are a remedy for a particular harm. Thus, the reference to HRS section 414D-245.5 is inappropriate.

Second, Section 4 of the bill attempts to allow nonprofits to provide notice to members by electronic transmission. We modeled the language after HRS section 414-4, the profit corporations provision. Thus, the changes made to Section 4 of the bill by

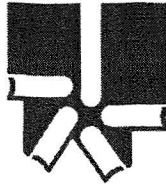
Senate Draft 1 would take the language out of step with the statute that it was intended to mirror.

Third, in Sections 1, 5, 8, and 9 of the Senate Draft 1, the language allowing a narrow scope of activities to continue after dissolution changes “may” to “shall” as follows:

“...the corporation [~~may continue~~] continues its corporate existence but [~~may~~] shall not carry on any business except [as] that necessary to wind up and liquidate its business and affairs...”

This change would take the provisions dealing with the “Procedures and Effect of Administrative Dissolution” (HRS sections 414-402(e), 414D-249(e), 415A-18(c) and (f), HRS) out of alignment with the language in parallel provisions dealing with the “Effects of Dissolution” (HRS section 414-385, and 414D-245). Any difference in language (especially when intentionally made different through legislation) forces courts to read distinctions into the law and it may have unintended consequences in the future.

To ensure that this bill carries out its intent to make the law consistent and to clarify ambiguities, we ask that the language be restored to the original Senate Bill 886, as introduced. I respectfully request your support of Senate Bill No. 886, 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.



March 13, 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: S.B. 886 SD1, Sections 3 and 4

Dear Chair Herkes and Members of the Consumer Protection Committee:

UHPA supports the intent and language of Sections 3 and 4 of S.B. 886 SD1 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 S.B. 886. We understand that the DCCA would prefer it be passed out in its original form, not SD1, and that is acceptable to our organization. Thank you for your consideration and for the opportunity to testify.

Sincerely,

Kristeen Hanselman  
Associate Executive Director

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