

JAN 26 2009

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
18 only upon the registration of a new name by the [~~involuntarily~~]

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

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

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

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

13 "**§414D-15 Notice.** (a) Notice may be oral or written.

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

21 (c) Oral notice is effective when communicated if
22 communicated in a comprehensible manner.

S.B. NO. 886

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

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

9 (1) When received;

10 (2) Five days after its deposit with the United States
11 Postal Service, as evidenced by the postmark; provided
12 the notice is mailed with the correct address and with
13 first class postage affixed; or

14 (3) On the date shown on the return receipt; if sent by
15 registered or certified mail, return receipt
16 requested, and the receipt is signed by or on behalf
17 of the addressee.

18 (f) Written notice is correctly addressed to a member of a
19 domestic or foreign corporation if addressed to the member's
20 last known address shown in the corporation's current list of
21 members.

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

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

17 (i) Without limiting the manner by which notice otherwise
18 may be given to members, notice to members given by the
19 corporation under this chapter, the articles of incorporation,
20 or the bylaws shall be effective if provided by electronic
21 transmission consented to by the member to whom the notice is
22 given. Any consent shall be revocable by the member by written

1 notice to the corporation. Any consent shall be deemed revoked

2 if:

3 (1) The corporation is unable to deliver by electronic
4 transmission two consecutive notices given by the
5 corporation in accordance with such consent; and

6 (2) The inability to deliver becomes known to the
7 secretary or an assistant secretary of the
8 corporation, to the transfer agent, or other person
9 responsible for giving notice; provided that the
10 inadvertent failure to treat such inability as a
11 revocation shall not invalidate any meeting or other
12 action.

13 (j) Notice given pursuant to subsection (i) shall be
14 deemed given:

15 (1) If by facsimile telecommunication, when directed to a
16 number at which the member has consented to receive
17 notice;

18 (2) If by electronic mail, when directed to an electronic
19 mail address at which the member has consented to
20 receive notice;

21 (3) If by posting on an electronic network together with
22 separate notice to the member of such specific

1 posting, upon the later of the posting and the giving
2 of such separate notice; and
3 (4) If by any other form of electronic transmission, when
4 directed to the member.

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

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

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

18 "(e) If a corporation's period of duration specified in
19 its articles of incorporation has expired, the corporation [~~may~~
20 ~~continue~~] continues its corporate existence but may not carry on
21 any activities except those necessary to wind up and liquidate

S.B. NO. 886

1 its business and affairs under section 414D-245 and notify
2 claimants under sections 414D-246 and 414D-247."

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

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

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

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

S.B. NO. 886

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 by amending subsection (c) to read as follows:

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

10 SECTION 9. Section 415A-18, Hawaii Revised Statutes, is
11 amended by amending subsection (f) to read as follows:

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 10. 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 11. 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 12. 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 13. 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 14. Section 428-902.6, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:

S.B. NO. 886

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 15. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 16. This Act shall take effect on July 1, 2009.

11
12
13

INTRODUCED BY: _____



BY REQUEST

Report Title:

Business Registration

Description:

Proposes housekeeping amendments to clarify and streamline business registration laws.

SB 886

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

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

PURPOSE: To make housekeeping amendments to clarify business registration laws and to correct errors, ambiguities and inconsistencies by: (1) clarifying that corporate existence continues (without choice) after dissolution for limited purposes; (2) changing the terminology pertaining to "involuntary" corporate dissolution and partnership cancellation to "administrative" dissolution and cancellation to conform to other provisions in the business registration laws; (3) clarifying the laws relating to procedures for entity conversion when the converted entity is a foreign (i.e., non-Hawaii) versus a domestic (i.e., Hawaii) entity; 4) clarifying that reinstatements of canceled partnerships are allowed only when the partnership is a domestic one; when the partnership is a foreign entity, it must file a new statement of foreign qualification with the State; and (5) conforming the nonprofit corporation notice provisions with profit corporation notice provisions by permitting notice by electronic transmission to members who have consented to such method of notice.

MEANS: Amends sections 414-402(e), 414-403(b), 414D-14, 414D-15, 414D-249(e), 414D-250(b), 415A-16.6(b), 415A-18(c) and (f), 425-14, 425-164(c) and (d), 425-193(c), 425E-1103(c), and 428-902.6(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Corporate Existence
This bill deletes the word "may" in the corporation, nonprofit corporation, and professional corporation provisions that deal with the continuation of corporate

existence after dissolution. The continuation of the corporation is not optional and the word "may" incorrectly suggests an option. In addition, the language as corrected mirrors model laws and would otherwise be inconsistent with other provisions in the Hawaii laws governing entities. The affected statutes are sections 414-402(e), 414D-249(e), and 415A-18(c) and (f), HRS.

References to "Involuntary" Dissolutions and Cancellations

The measure proposes to change references to "involuntary" dissolution or cancellation to "administrative" dissolution or cancellation in the corporation, nonprofit corporation, and the general partnership statutes. The current references are incorrect and otherwise inconsistent with the rest of the business entity chapters, which 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.

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

Hawaii law currently allows entities to convert from one business structure to another, as well as from foreign to domestic and vice versa. To clarify the procedures for all conversions, the bill deletes references to "foreign corporations" and places the adjective "domestic" in front of the description of partnerships in the context of the technical procedures for converting entities. The change would clarify that when converting into a Hawaii entity, you would file in one manner and when converting into a non-Hawaii entity, you would file in a different manner. This would be 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.

Clarification of When Reinstatement of
General Partnerships are Available

The Statement of General Partnership is the document that forms a partnership under Hawaii business registration law. This bill clarifies that reinstatement for a canceled general partnership is available if the partnership is a domestic Hawaii partnership. If a foreign partnership's filings are canceled, the foreign partnership must seek reinstatement from the state in which it was originally formed. The bill adds "domestic" before "general partnership" in Section 425-14, HRS and deletes "statement of foreign qualification" in Section 425-164, HRS. The affected provisions are sections 425-14(b)-(d) and 425-164(c) and (d), HRS.

Electronic Transmission of Notice to Members
of Nonprofit Corporations

Under current law, chapter 414D, HRS, does not contain authority for nonprofit corporations to provide notice by electronic transmission to its members who have consent to such method of notice. By contrast, chapter 414, HRS, relating to profit corporations, allows notice by electronic transmissions to shareholders. This bill proposes to afford nonprofit corporations the same option for notice currently allowed to profit corporations. Language for a new definition 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.

Impact on the public: Clarification of these laws helps businesses to comply more closely with their responsibilities. These amendments will enable businesses to better predict how to rectify business registration problems by making the laws more uniform across all chapters of the HRS that impact

business entity registration. Conformity of nonprofit corporation electronic notice provisions to profit corporation provisions will ease compliance and allow greater flexibility and equal treatment for nonprofits.

Impact on the department and other agencies:
These amendments will enable the Business Registration Division to administer the laws consistently. The amendments may impact forms, which will be modified to track the changes in the law.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-111

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2009.



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

TO THE SENATE COMMITTEE ON
COMMERCE and CONSUMER PROTECTION
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

Tuesday, March 3, 2009
10:00 am
Conference Room 229

**TESTIMONY ON SENATE BILL NO. 886
RELATING TO BUSINESS REGISTRATION**

TO THE HONORABLE ROSALYN H. BAKER, 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, 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 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 by their foreign jurisdiction, the foreign partnership must seek reinstatement from the state in which it was originally formed. If a foreign partnership's Hawaii Certificate of Authority is cancelled, they must just file another Certificate of Authority with the State. 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.

SB No. 886
Testimony of Tung Chan
March 3, 2009
Page 4 of 4

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.