

CHAPTER 414D
HAWAII NONPROFIT CORPORATIONS ACT

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Protection of charitable assets; attorney general's authority, see §28-5.2.

Case Notes

Where church was not a hierarchical church, but a congregational church that made decisions by a vote of its members as set forth in its "petition for charter" of incorporation and bylaws, the church was governed by this chapter; thus, appellants should have been allowed to amend their complaint, had standing to contest their expulsion, and were not precluded from doing so by the ecclesiastical abstention doctrine; also, doctrine did not bar appellants' complaint to the extent it did not require resolution of controversies over church doctrine, law, or polity. 118 H. 165 (App.), 185 P.3d 913 (2008).

"PART I. GENERAL PROVISIONS

[\$414D-1] Short title. This chapter shall be known and may be cited as the "Hawaii Nonprofit Corporations Act". [L 2001, c 105, pt of §1]

" **[\$414D-2] Reservation of power to amend or repeal.** The Hawaii legislature has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal. [L 2001, c 105, pt of §1]

" **§414D-3 Filing requirements.** (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the department director.

(b) This chapter must require or permit filing of the document with the department director.

(c) The document must contain the information required by this chapter. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language.

However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of good standing required of foreign corporations need not be in English if accompanied by an English translation under oath of the translator.

(f) The document must be certified and executed:

- (1) By the presiding officer of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;
- (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or
- (3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing a document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but need not contain:

- (1) The corporate seal;
- (2) An attestation by the secretary or an assistant secretary; or
- (3) An acknowledgment, verification, or proof.

(h) If the department director has prescribed a mandatory form for a document under section 414D-4, the document must be in or on the prescribed form.

(i) The document shall be delivered to the office of the department director for filing and shall be accompanied by the correct filing fee and any penalty payment required under this chapter. [L 2001, c 105, pt of §1; am L 2003, c 124, §19]

" **§414D-4 Forms.** (a) The department director may prescribe and furnish on request, forms for:

- (1) An application for a certificate of good standing;
- (2) A foreign corporation's application for a certificate of authority to transact business in this State;
- (3) A foreign corporation's application for a certificate of withdrawal; and
- (4) The annual report.

If the department director so requires, use of these forms is mandatory.

(b) The department director may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory. [L 2001, c 105, pt of §1]

" **§414D-5 Filing, service, and copying fees.** (a) The following fees shall be paid to the department director upon the filing of corporate documents:

- (1) Articles of incorporation, \$50;
- (2) Articles of amendment, \$10;
- (3) Restated articles of incorporation, \$10;
- (4) Articles of merger, \$50;
- (5) Articles of conversion, \$50;

- (6) Articles of dissolution, \$10;
- (7) Annual report of nonprofit domestic or foreign corporation, \$5;
- (8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, \$10;
- (9) Application for a certificate of authority, \$50;
- (10) Application for a certificate of withdrawal, \$10;
- (11) Reservation of corporate name, \$10;
- (12) Transfer of reservation of corporate name, \$10;
- (13) Good standing certificate, \$5;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or conversion, \$25;
- (15) Special handling fee for review of articles of conversion or merger, \$75;
- (16) Special handling fee for certificates issued by the department, \$10 per certificate;
- (17) Special handling fee for certification of documents, \$10; and
- (18) For filings relating to registered agents, the fees established by section 425R-2.

(b) All special handling fees shall be credited to the compliance resolution fund established under section 26-9(o).

(c) The department director shall adjust the fees assessed under this section, as necessary from time to time, through rules adopted pursuant to chapter 91. [L 2001, c 105, pt of §1; am L 2003, c 124, §20; am L 2004, c 116, §4 and c 117, §2; am L 2009, c 55, §17]

" **§414D-6 Effective time and date of document.** (a) Except as otherwise provided in subsection (b) and section 414D-7(c), a document is effective:

- (1) At the time of filing on the date it is filed, as evidenced by the department director's endorsement on the original document; or
- (2) At the time specified in the document as its effective time on the date it is filed.

(b) Articles of dissolution, articles of conversion, and articles of merger may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date filed. [L 2001, c 105, pt of §1; am L 2003, c 124, §21]

" **[§414D-7] Correcting filed document.** (a) A domestic or foreign corporation may correct a document filed by the department director if the document:

- (1) Contains an incorrect statement; or
 - (2) Was defectively executed, attested, sealed, verified, or acknowledged.
- (b) A document is corrected by:
- (1) Preparing articles of correction that:
 - (A) Describe the document (including its filing date) or attach a copy of it to the articles;
 - (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
 - (C) Correct the incorrect statement or defective execution; and
 - (2) Delivering the articles of correction to the department director.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. [L 2001, c 105, pt of §1]

" **§414D-8 Filing duty of the department director.** (a) If a document delivered to the office of the department director for filing satisfies the requirements of section 414D-3, the department director shall file it.

(b) The department director files a document by stamping or otherwise endorsing it with the date and the time of receipt.

(c) If the department director refuses to file a document, the department director shall return it to the domestic or foreign corporation or its designated representative, together with a brief, written explanation of the reason or reasons for the refusal.

(d) The department director's duty to file documents under this section is ministerial. The department director's filing or refusal to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or in part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect. [L 2001, c 105, pt of §1; am L 2003, c 124, §22]

" **[\$414D-9] Appeal from the department director's refusal to file document.** (a) If the department director refuses to file a document delivered for filing to the department director's office, the domestic or foreign corporation may within thirty days after the return of the document appeal the refusal to the circuit court. The appeal shall be commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the department director's explanation of the refusal to file.

(b) The court may summarily order the department director to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings. [L 2001, c 105, pt of §1]

" **[\$414D-10] Evidentiary effect of copy of filed document.** A certificate attached to a copy of a document bearing the department director's signature (which may be in facsimile) and the seal of the department is conclusive evidence that the original document is on file with the department director. [L 2001, c 105, pt of §1]

" **§414D-11 Certificates and certified copies to be received in evidence.** All certificates issued by the department director pursuant to this chapter, and all copies of documents filed in the department director's office pursuant to this chapter when certified by the department director, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated therein. A certificate issued by the department director under the seal of the department of commerce and consumer affairs as to the existence or nonexistence of the facts relating to corporations, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated therein. [L 2001, c 105, pt of §1; am L 2003, c 124, §23]

" **[\$414D-12] Penalty for signing false document.** (a) A person commits an offense by signing a document the person knows is false in any material respect with intent that the document be delivered to the department director for filing.

(b) An offense under this section is a class C felony. [L 2001, c 105, pt of §1]

" **[\$414D-13] Department director; powers.** The department director has the power reasonably necessary to perform the duties required of the department director's office by this

chapter. The department director shall adopt necessary rules pursuant to chapter 91. [L 2001, c 105, pt of §1]

" **§414D-14 Definitions.** Unless the context otherwise requires in this chapter:

"Affiliate" means an entity that directly or indirectly controls, is controlled by, or is under common control with the public benefit corporation. Control includes the power to select the public benefit corporation's board of directors.

"Approved by the members" or "approval by the members" means an act approved or ratified by:

- (1) The affirmative vote of a majority of the votes represented and cast at a duly held meeting at which a quorum is present; provided that the affirmative votes cast constitute a majority of the required quorum;
- (2) A ballot or written consent in conformity with this chapter; or
- (3) The affirmative vote, ballot, or written consent of the greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or this chapter for any specified member action.

"Articles of incorporation" or "articles" includes amended and restated articles of incorporation, and articles of merger.

"Board" or "board of directors" means the board of directors of a corporation except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to section 414D-131.

"Bylaws" means the code or codes of rules (other than the articles) adopted pursuant to this chapter for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated.

"Class" refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For the purpose of this chapter, rights shall be considered the same if they are determined by a formula applied uniformly.

"Code" means the federal Internal Revenue Code of 1986, as amended.

"Corporation" means a nonprofit corporation unless otherwise specified.

"Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

"Deliver" includes mail.

"Department" means the department of commerce and consumer affairs, unless the context otherwise requires.

"Department director" means the director of the department of commerce and consumer affairs, unless the context otherwise requires.

"Directors" means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title, to act as members of the board.

"Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

"Domestic corporation" means a corporation organized under the laws of this State.

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

"Employee" does not include an officer or director who is not otherwise employed by the corporation.

"Entity" includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having a joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

"File", "filed", or "filing" means filed in the office of the department director.

"Foreign corporation" means a corporation organized under a law other than the law of this State.

"Governmental subdivision" includes authority, county, district, and municipality.

"Includes" denotes a partial definition.

"Individual" means a natural person.

"Means" denotes a complete definition.

"Member" means (without regard to what a person is called in the articles or bylaws) any person or persons having the rights and obligations of membership pursuant to a corporation's articles of incorporation or bylaws.

"Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

"Merger" means the procedure authorized by this part in which one domestic or foreign entity combines with one or more

domestic or foreign entities resulting in either one surviving entity or one new entity.

"Notice" is defined in section 414D-15.

"Person" includes any individual or entity.

"Principal office" means the office (in or out of the State) so designated in the annual report where the principal offices of a domestic or foreign corporation are located.

"Proceeding" includes civil suit and criminal, administrative, and investigatory action.

"Profit corporation" means a corporation organized for profit and registered under chapter 414.

"Public benefit corporation" means any corporation designated by statute as a public benefit corporation, or any corporation that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or that is organized for public or charitable purposes and upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

"Record date" means the date established under part VI or part VII on which a corporation determines the identity of its members for the purposes of this chapter.

"Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section 414D-153(b) for preparing the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

"State" when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

"United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

"Vote" includes authorization by ballot and written consent.

"Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors. [L 2001, c 105, pt of §1; am L 2002, c 41, §12; am L 2003, c 124, §2; am L 2004, c 121, §15 and c 171,

§4; am L 2006, c 184, §9; am L 2009, c 23, §3; am L 2010, c 43, §2; am L 2011, c 37, §3; am L 2012, c 58, §3]

" **§414D-15 Notice.** (a) Notice may be oral, in the form of an electronic transmission as described in subsections (i) and (j), or written.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; by mail or private carrier; or by electronic transmission as described in subsections (i) and (j). If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published; or by radio, television, or other form of public broadcast communication.

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

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

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

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

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

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

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

(i) Without limiting the manner by which notice otherwise may be given to members or directors, notice to members or directors given by the corporation under this chapter, the articles of incorporation, or the bylaws shall be effective if provided by electronic transmission consented to by the member or director to whom the notice is given. Any consent shall be revocable by the member or director by written notice or notice by electronic transmission to the corporation. Consent shall be deemed revoked if:

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

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

- (1) If by facsimile telecommunication, when directed to a number at which the member or director has consented to receive notice;
- (2) If by electronic mail, when directed to an electronic mail address at which the member or director has consented to receive notice;
- (3) If by posting on an electronic network together with separate notice to the member or director of the specific posting, upon the later of the posting and the giving of the separate notice; and
- (4) If by any other form of electronic transmission, when directed to the member or director.

An affidavit of the secretary, assistant secretary, transfer agent, or other agent of the corporation that the notice has been given by a form of electronic transmission, in the absence of fraud, shall be prima facie evidence of the fact of notice.

(k) If section 414D-105(b) or any other provision of this chapter prescribes notice requirements for particular circumstances, those requirements shall govern. If articles or

bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements shall govern. [L 2001, c 105, pt of §1; am L 2002, c 130, §38; am L 2009, c 23, §4; am L 2011, c 37, §4]

" **[§414D-16] Private foundations.** Except as otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Code:

- (1) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Code;
- (2) Shall not engage in any act of self-dealing as defined in section 4941(d) of the Code;
- (3) Shall not retain any excess business holdings as defined in section 4943(c) of the Code;
- (4) Shall not make any investments in such manner as to subject the corporation to tax under section 4944 of the Code;
- (5) Shall not make any taxable expenditures as defined in section 4945(d) of the Code. [L 2001, c 105, pt of §1]

" **§414D-17 Judicial relief.** (a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors or otherwise obtain their consent in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, or member, the court may order that the meeting be called or that a ballot or other form of obtaining the vote of members, delegates, or directors be authorized in a manner that the court finds fair and equitable under the circumstances.

(b) The court, in an order issued pursuant to this section, shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter. [L 2001, c 105, pt of §1; am L 2011, c 37, §5]

" **§414D-18 Miscellaneous charges.** The department director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, \$10; and
- (2) At the time of any service of process on the department director as agent for service of process of a corporation, \$10, which amount may be recovered as taxable costs by the party to the action causing the service to be made if that party prevails in the action. [L 2002, c 130, §4; am L 2004, c 116, §5]

" **[§414D-19] Shares of stock and dividends prohibited; compensation; distribution.** A corporation under this chapter shall not authorize or issue shares of stock except for limited-equity housing cooperatives. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter; provided that no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit. [L 2003, c 124, §1]

" **[§414D-20] Notice to the attorney general of commencement of proceeding.** (a) The attorney general shall be given written

notice of the commencement of any proceeding that this chapter authorizes the attorney general to bring but that has been commenced by another person within ten days of its commencement.

(b) Whenever any provision of this chapter requires that notice be given to the attorney general before or after the commencement of a proceeding or permits the attorney general to commence a proceeding:

- (1) If no proceeding has been commenced, the attorney general may take appropriate action, including but not limited to seeking injunctive relief; or
- (2) If a proceeding has been commenced by a person other than the attorney general, the attorney general, as of right, may intervene in such proceeding. [L 2004, c 171, §1]

"PART II. ORGANIZATION

[§414D-31] Incorporators. One or more individuals may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the department director for filing. [L 2001, c 105, pt of §1]

" **§414D-32 Articles of incorporation.** (a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 414D-61;
 - (2) The mailing address of the corporation's initial principal office and the information required by section 425R-4(a);
 - (3) The name and address of each incorporator;
 - (4) Whether or not the corporation will have members; and
 - (5) Provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (b) The articles of incorporation may set forth:
- (1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
 - (2) The names and addresses of the individuals who are to serve as the initial directors;
 - (3) Provisions not inconsistent with law regarding:
 - (A) Managing and regulating the affairs of the corporation;
 - (B) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members), including but not limited to the power to merge with another

corporation, convert to another type of entity, sell all or substantially all of the corporation's assets, or dissolve the corporation; and

- (C) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;
- (4) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
- (5) Provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of the director's duties to the corporation and its members; provided that such a provision may not eliminate or limit the liability of a director:
 - (A) For any breach of the director's duty of loyalty to the corporation or its members;
 - (B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
 - (C) For any transaction from which a director derived an improper personal economic benefit; or
 - (D) Under sections 414D-150 to 414D-152.

(c) None of the provisions specified in this section shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter. [L 2001, c 105, pt of §1; am L 2002, c 130, §39; am L 2003, c 124, §24; am L 2009, c 55, §18]

" **§414D-33 Incorporation.** (a) A corporation's existence begins when the articles of incorporation are filed with the department director.

(b) The department director's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation. [L 2001, c 105, pt of §1; am L 2003, c 124, §25]

" **[§414D-34] Liability for preincorporation transactions.** All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting. [L 2001, c 105, pt of §1]

" **[\$414D-35] Organization of corporation.** (a) After incorporation:

- (1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
- (2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to elect:
 - (A) Directors and complete the organization of the corporation; or
 - (B) A board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of the State in accordance with section 414D-143. [L 2001, c 105, pt of §1]

" **[\$414D-36] Bylaws.** (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation. [L 2001, c 105, pt of §1]

" **[\$414D-37] Emergency bylaws and powers.** (a) Unless the articles provide otherwise, the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency defined in subsection (d). The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

- (1) How to call a meeting of the board;
- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. [L 2001, c 105, pt of §1]

"PART III. PURPOSES AND POWERS

[§414D-51] Purposes. (a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in an activity that is subject to regulation under another statute of this State may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute. [L 2001, c 105, pt of §1]

" **[§414D-52] General powers.** Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, the power:

- (1) To sue and be sued, complain, and defend in its corporate name;
- (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;
- (3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the State, for regulating and managing the affairs of the corporation;
- (4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any entity;
- (7) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 414D-151;
- (9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (10) To conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this State;
- (11) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;
- (12) To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes, and for other purposes that further the corporate interest;
- (14) To impose dues, assessments, admission, and transfer fees upon its members;
- (15) To establish conditions for admission of members, admit members, and issue memberships;
- (16) To carry on a business;
- (17) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation. [L 2001, c 105, pt of §1]

Case Notes

Cited: 655 F. Supp. 2d 1139 (2009).

" **[§414D-53] Emergency powers.** (a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

- (1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
- (2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

- (1) Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
- (2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. [L 2001, c 105, pt of §1]

" **§414D-54 Ultra vires.** (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the attorney general, a director, or by a member or members in a derivative proceeding.

(c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee, or other legal representative, or in the case of a public benefit corporation, by the attorney general. [L 2001, c 105, pt of §1; am L 2004, c 171, §5]

"PART IV. NAMES

§414D-61 Corporate name. (a) A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 414D-51 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name shall not be the same as or substantially identical to:

- (1) The name of any entity registered or authorized to transact business under the laws of this State;
- (2) A corporate name reserved or registered under section 414D-62 or 414-51, the exclusive right to which is reserved at the time in this State;
- (3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this State because its real name is unavailable; or
- (4) Any trade name, trademark, or service mark registered in this State.

(c) A corporation may apply to the department director for authorization to use a name that, based upon the department director's records, is substantially identical to one or more of the names described in subsection (b). The department director shall authorize the use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents in writing to the use and registration of the name, and one or more words are added by the applicant to make the name distinguishable from the name on record; or
- (2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation that is used in this State if the other corporation is incorporated or authorized to do business in this State and the proposed user corporation:

- (1) Has merged with the other corporation;
- (2) Has been formed by reorganization of the other corporation; or
- (3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) This chapter shall not control the use of fictitious names. [L 2001, c 105, pt of §1; am L 2003, c 124, §26; am L 2012, c 58, §4]

" **[§414D-62] Reserved name.** (a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the department director for filing. Upon finding that the corporate name applied for is available, the department director shall reserve the name for the applicant's exclusive use for a one hundred twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the department director a signed notice of the transfer that states the name and address of the transferee. [L 2001, c 105, pt of §1]

" **§414D-63 REPEALED.** L 2003, c 124, §101.

" **§414D-64 Administrative order of abatement for infringement of corporate name.** (a) Any domestic corporation in good standing or foreign corporation authorized to do business in this State claiming that the name of another entity registered or authorized to transact business under the laws of this State is substantially identical to, or confusingly similar with its name, may file a petition with the department director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name but require the entity to register a new trade name with the department director under which the entity shall conduct business in this State; or
- (2) Require the entity to change its registered name, register a new name with the department director, and require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the department director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The department director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapters 414, 415A, 425, 425E, and 428, as applicable.

(c) Any person aggrieved by the department director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the department director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602. [L 2001, c 105, pt of §1; am L 2003, c 210, §6]

"PART V. OFFICE AND REGISTERED AGENT

§414D-71 Registered agent. Each corporation shall continuously maintain in this State a registered agent, who shall have a business address in this State and shall be:

- (1) An individual who resides in this State;
- (2) A domestic entity authorized to transact business or conduct affairs in this State; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State. [L 2001, c 105, pt of §1; am L 2002, c 130, §40; am L 2003, c 124, §27; am L 2012, c 58, §5]

" **§414D-72 Designation or change of registered agent.** (a) A corporation that does not already have a registered agent shall designate its registered agent by complying with section 425R-4.

(b) A corporation may change its registered agent by complying with section 425R-7.

(c) If the registered agent changes its name, address, or type or jurisdiction of organization, the agent shall comply with the requirements of section 425R-8 or 425R-9, whichever is applicable. [L 2001, c 105, pt of §1; am L 2002, c 130, §41; am L 2012, c 58, §6]

" **§414D-73 Resignation of registered agent.** A registered agent may resign from the registered agent's appointment by

complying with the requirements of section 425R-10. [L 2001, c 105, pt of §1; am L 2012, c 58, §7]

" **§414D-74 Service on corporation.** (a) Service of any notice or process authorized by law that is issued against any domestic or foreign corporation by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent, officer, or director of the corporation who is found within the jurisdiction of the court, officer, or board; or if any registered agent, officer, or director cannot be found, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and the corporation has not filed with the department director pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of the State may be served, or the person named is not found within the State, service may be made upon the corporation by registered or certified mail, return receipt requested, addressed to the corporation at its principal office.

(c) Service by using registered or certified mail is perfected at the earliest of:

- (1) The date the corporation receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law. [L 2001, c 105, pt of §1; am L 2002, c 130, §42; am L 2003, c 124, §28; am L 2006, c 184, §10]

"PART VI. MEMBERS AND MEMBERSHIPS

[§414D-81] Admission. (a) The articles or bylaws may establish criteria or procedures for the admission of members.

(b) No person shall be admitted as a member without the person's consent. [L 2001, c 105, pt of §1]

" **[§414D-82] Consideration.** Except as provided in its articles or bylaws, a corporation may admit members for no

consideration or for such consideration as is determined by the board. [L 2001, c 105, pt of §1]

" **[\$414D-83] No requirement of members.** A corporation is not required to have members. [L 2001, c 105, pt of §1]

" **[\$414D-84] Differences in rights and obligations of members.** (a) All members shall have the same rights and obligations with respect to voting, dissolution, redemption, and transfer; unless the articles or bylaws establish classes of membership with different rights or obligations.

(b) All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws. [L 2001, c 105, pt of §1]

" **[\$414D-85] Member's liability to third parties.** A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation. [L 2001, c 105, pt of §1]

" **[\$414D-86] Member's liability for dues, assessments, and fees.** A member may be liable to the corporation for dues, assessments, or fees; provided that the articles or bylaws or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, by itself, create liability. [L 2001, c 105, pt of §1]

" **[\$414D-87] Creditor's action against member.** (a) No action may be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation, and execution has been returned unsatisfied in whole or in part or unless such action would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's action brought under subsection (a) to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in the action. [L 2001, c 105, pt of §1]

" **§414D-88 REPEALED.** L 2002, c 130, §113.

" **§414D-89 Termination, expulsion, and suspension.** (a) No member may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable, and is carried out in good faith.

- (b) A procedure shall be fair and reasonable when either:
 - (1) The articles or bylaws set forth a procedure that provides:
 - (A) Not less than fifteen days prior written notice of the expulsion, suspension, or termination and the reasons therefor; and
 - (B) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or
 - (2) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.
- (c) Any written notice given by mail shall be sent to the last known address of the member shown on the corporation's records.
- (d) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, shall commence within one year after the effective date of the expulsion, suspension, or termination.
- (e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to the expulsion or suspension.
- (f) If the expulsion or termination of membership is the result of a judicial or nonjudicial foreclosure proceeding, no other proceeding may be brought to challenge the expulsion or termination and in no event shall this provision give rise to any right of redemption. [L 2001, c 105, pt of §1; am L 2002, c 130, §43]

Case Notes

Where church was not a hierarchical church, but a congregational church that made decisions by a vote of its members as set forth in its "petition for charter" of incorporation and by-laws, the church was governed by this chapter; thus, appellants should have been allowed to amend their complaint, had standing to contest their expulsion, and were not precluded from doing so by the ecclesiastical abstention doctrine; also, doctrine did not bar appellants' complaint to the extent it did not require resolution of controversies over church doctrine, law, or polity. 118 H. 165 (App.), 185 P.3d 913 (2008).

" **[§414D-89.5] Amendment terminating or canceling members; redemption of membership.** (a) Any amendment to the articles or bylaws which would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships shall meet the requirements of this chapter and this section.

(b) Prior to adopting a resolution proposing such an amendment, the board of the corporation shall give notice of the general nature of the amendment to the members.

(c) After adopting a resolution proposing such an amendment, the notice to members proposing such amendment shall include one or more statements of up to five hundred words opposing the proposed amendment if such statement is submitted by any five members, or by members having three per cent or more of the voting power, whichever is less, not later than twenty days after the board has voted to submit such amendment to the members for approval. The production and mailing costs shall be paid by the corporation.

(d) Any such amendment shall be approved by the members, whether through attendance or proxy, by two-thirds of the votes cast by each class present at the meeting at which the amendment is voted upon.

(e) Section 414D-89 shall not apply to any amendment meeting the requirements of this chapter and this section. [L 2003, c 81, §1]

" **§414D-90 Derivative suits.** (a) A proceeding may be brought on behalf of a domestic or foreign corporation to procure a judgment in its favor by any member or members having five per cent or more of the voting power, or by fifty members, whichever is less, or any director.

(b) In any such proceeding, each complainant shall be a member or director at the time the proceeding is initiated.

(c) A complaint in a proceeding brought on behalf of a corporation shall be verified and allege with particularity the demand made, if any, to obtain action by the directors, and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(d) On termination of the proceeding, the court may require the complainants to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(e) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the

complainants or otherwise is successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise, or settlement of an action or claim, the court may award the complainants reasonable expenses (including counsel fees).

(f) The complainants shall notify the attorney general within ten days after commencing any proceeding under this section if the proceeding involves a public benefit corporation. [L 2001, c 105, pt of §1; am L 2004, c 171, §6]

" **[§414D-91] Delegates.** (a) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

(b) The articles or bylaws may set forth provisions relating to:

- (1) The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;
- (2) Calling, noticing, holding, and conducting meetings of delegates; and
- (3) Carrying on corporate activities during and between meetings of delegates. [L 2001, c 105, pt of §1]

"PART VII. MEMBERS' MEETINGS, AND VOTING

§414D-101 Annual and regular meetings. (a) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

(d) At the annual meeting:

- (1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and
- (2) The members shall consider and act upon other matters as may be raised consistent with the notice requirements of sections 414D-105 and 414D-111.

(e) At regular meetings, the members shall consider and act upon matters as may be raised consistent with the notice requirements of sections 414D-105 and 414D-111.

(f) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws shall not affect the validity of any corporate action.

(g) If authorized by the board of directors in its sole discretion, members or proxies of members may participate at an annual or regular meeting of members by means of the Internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to:

- (1) Read or hear the proceedings substantially concurrently with the occurrence of the proceedings;
- (2) Vote on matters submitted to the members;
- (3) Pose questions; and
- (4) Make comments.

A member or proxy of a member participating in a meeting by means authorized by this subsection shall be deemed to be present in person at the meeting. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the Internet, teleconference, or other electronic transmission technology is a member or proxy of a member. [L 2001, c 105, pt of §1; am L 2011, c 37, §6]

" **§414D-102 Special meetings.** (a) A corporation with members shall hold a special meeting of members:

- (1) On call of its board, or the person or persons authorized to do so by the articles or bylaws; or
- (2) Unless the articles or bylaws provide otherwise, if the holders of at least five per cent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) The close of business on the thirtieth day before delivery of the demand or demands for a special meeting to any corporate officer shall be the record date for the purpose of determining whether the five per cent requirement of subsection (a) has been met.

(c) If a notice for a special meeting demanded under subsection (a)(2) is not given pursuant to section 414D-105 within thirty days after the date the written demand or demands are delivered to a corporate officer, [regardless of] notwithstanding the requirements of subsection (d), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section 414D-105.

(d) Special meetings of members may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with

the bylaws, special meetings shall be held at the corporation's principal office.

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by section 414D-105 shall be conducted at a special meeting of members.

(f) If authorized by the board of directors in its sole discretion, members or proxies of members may participate at a special meeting of members by means of the Internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to:

- (1) Read or hear the proceedings substantially concurrently with the occurrence of the proceedings;
- (2) Vote on matters submitted to the members;
- (3) Pose questions; and
- (4) Make comments.

A member or proxy of a member participating in a meeting by means authorized by this subsection shall be deemed to be present in person at the meeting. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the Internet, teleconference, or other electronic transmission technology is a member or proxy of a member. [L 2001, c 105, pt of §1; am L 2002, c 130, §44; am L 2011, c 37, §7]

" **§414D-103 Court-ordered meetings.** (a) The court of the county where a corporation's principal office (or, if none in this State, in the city and county of Honolulu) is located may summarily order a meeting to be held:

- (1) On application of any member or other person entitled to participate in an annual or regular meeting, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting;
- (2) On application of any member or other person entitled to participate in a regular meeting, if a regular meeting is not held within forty days after the date it was required to be held; or
- (3) On application of a member or members entitled to call a special meeting, who signed a demand for a special meeting valid under section 414D-102.

(b) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on

those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) The court may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order in the event of a court-ordered meeting. [L 2001, c 105, pt of §1; am L 2009, c 55, §19]

" **§414D-104 Action by written consent.** (a) Unless limited or prohibited by the articles or bylaws, action required or permitted by this chapter to be approved by the members at a meeting may be approved without a meeting of members if the action is approved by members holding at least eighty per cent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty per cent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under section 414D-103 or 414D-107, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a).

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the director.

(d) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten days after the written notice is given. [L 2001, c 105, pt of §1; am L 2002, c 130, §45]

" **§414D-104.5 Action by ballot.** (a) Except as otherwise restricted by the articles of incorporation or bylaws of a corporation, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a ballot to every member entitled to vote on the matter. The corporation may deliver ballots by electronic transmission.

(b) A ballot shall:

- (1) Be either in written form or in the form of an electronic transmission;
- (2) Set forth each proposed action;
- (3) Provide an opportunity to vote for or withhold a vote for each candidate for election as a director or officer; and
- (4) Provide an opportunity to vote for or against each proposed action.

(c) Approval by ballot pursuant to this section shall be valid only if:

- (1) The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting to authorize the action; and
- (2) The number of affirmative votes equals or exceeds the number of affirmative votes for approval that would be required to approve the action at a meeting.

(d) All solicitations for votes by ballot shall:

- (1) Indicate the number of responses needed to meet the quorum requirements;
- (2) State the percentage of approvals necessary to approve each action; and
- (3) Specify the time by which a ballot shall be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws of the corporation, a ballot shall not be revoked. [L 2011, c 37, §2; am L 2012, c 58, §8]

" **§414D-105 Notice of meeting.** (a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided that notice of matters referred to in subsection (c)(2) shall be given as provided in subsection (c).

(c) Notice shall be fair and reasonable if:

- (1) The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten or more than sixty days before the meeting date;
- (2) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under sections 414D-150, 414D-164, 414D-182, 414D-202, 414D-222, 414D-241, and 414D-242; and
- (3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 414D-107, however, notice of the adjourned meeting shall be

given under this section to the members of record as of the new record date. [L 2001, c 105, pt of §1; am L 2002, c 130, §46]

" **[\$414D-106] Waiver of notice.** (a) A member may waive any notice required by this chapter, the articles, or the bylaws before or after the date and time stated in the notice. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

- (1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and
- (2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented. [L 2001, c 105, pt of §1]

" **[\$414D-107] Record date; determining members entitled to notice and vote.** (a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(b) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day

prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(d) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members occurs.

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy days after the record date for determining members entitled to notice of the original meeting.

(f) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting. [L 2001, c 105, pt of §1]

" **§414D-108 REPEALED.** L 2002, c 130, §114.

" **§414D-109 Members' list for meeting.** (a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list shall show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members shall be available for inspection by any member for the purpose of communication with other members concerning the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held, beginning two business days after notice of the meeting for which the list was prepared is given, and continuing through the meeting. A member, a member's agent, or a member's attorney is entitled on written demand to inspect and, subject to the limitations of sections 414D-302(c) and 414D-305, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection; provided that a labor union organized under this chapter with a tax exemption under section 501(c)(5) of the federal Internal Revenue Code of 1986, as amended, shall not be required to provide copies of the membership list if doing so would violate any federal or state law relating to labor unions.

(c) The corporation shall make the list of members available at the meeting; provided that a request for the list is submitted no fewer than five business days prior to the scheduled date of the meeting. Any member, member's agent, or member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), the court of the county where a corporation's principal office (or if none in this State, in the city and county of Honolulu) is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section shall not affect the validity of action taken at the meeting.

(f) This section shall not apply to time share owners associations as defined in chapter 514E. [L 2001, c 105, pt of §1; am L 2002, c 130, §47; am L 2009, c 55, §20]

" **[\$414D-110] Voting entitlement generally.** (a) The right of the members, or any class or classes of members, to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation. Unless so limited, enlarged, or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(b) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting shall have the following effect:

- (1) If only one votes, the act binds all; and
- (2) If more than one votes, the vote shall be divided on a pro rata basis. [L 2001, c 105, pt of §1]

" **[\$414D-111] Quorum requirements.** (a) Unless this chapter, the articles, or the bylaws provide for a higher or lower quorum, ten per cent of the votes entitled to be cast on a matter shall be represented at a meeting of members to constitute a quorum on that matter.

(b) A bylaws amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(c) A bylaws amendment to increase the quorum required for any member action shall be approved by the members.

(d) Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice. [L 2001, c 105, pt of §1]

" **[§414D-112] Voting requirements.** (a) Unless this chapter, the articles, or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting (which affirmative votes also constitute a majority of the required quorum) is the act of the members.

(b) A bylaws amendment to increase or decrease the vote required for any member action shall be approved by the members. [L 2001, c 105, pt of §1]

" **§414D-113 Proxies.** (a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact. A member may authorize another person to act as a proxy for the member by:

- (1) Executing a writing authorizing another person or persons to act as a proxy for the member, which may be accomplished by the member or the member's authorized attorney-in-fact, officer, director, employee, or agent signing the writing or causing the member's signature to be affixed to the writing by any reasonable means, including without limitation the use of a facsimile signature; or
- (2) Transmitting or authorizing the transmission of a telegram, cablegram, facsimile, or other means of electronic transmission authorizing the person or persons to act as a proxy for the member to the person or persons who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided that any such transmission shall specify that the transmission was authorized by the member. A copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created pursuant to the foregoing may be

used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that any such copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form; provided that no proxy shall be valid for more than three years from its date of execution, unless otherwise specifically provided in the corporation's bylaws.

(c) An appointment of a proxy is revocable by the member.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest without limitation include the appointment of:

- (1) A pledgee;
- (2) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (3) An employee of the corporation whose employment contract requires the appointment; or
- (4) A party to a voting agreement created under section 414D-117.

(f) Subject to section 414D-116 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment. [L 2001, c 105, pt of §1; am L 2002, c 130, §§48, 49]

" **§414D-114 Cumulative voting for directors.** (a) If the articles or bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates.

(b) Unless otherwise provided in the articles or bylaws, cumulative voting shall not be permitted. If authorized in the articles or bylaws, cumulative voting may be permitted; provided that:

- (1) The meeting notice or statement accompanying the notice states that cumulative voting shall take place;
- (2) A member gives notice of the member's intent to cumulatively vote not less than forty-eight hours before the meeting or such longer period as may be required by the articles or bylaws; and
- (3) If one member gives notice of intent to cumulatively vote, all other members participating in the election may cumulate their votes without giving further notice.

(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of section 414D-138 are met unless the votes cast against removal or not consenting in writing to the removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the director's most recent election were then being elected; provided that if the action is taken by ballot, all members entitled to vote had voted.

(d) Members may not cumulatively vote if the directors and members are identical. [L 2001, c 105, pt of §1; am L 2002, c 130, §50; am L 2011, c 37, §8]

" **§414D-115 Other methods of electing directors.** A corporation may provide in its articles or bylaws for the election of directors by members or delegates:

- (1) On the basis of chapter or other organizational unit;
- (2) By region or other geographic unit;
- (3) By preferential voting; or
- (4) By any other reasonable method. [L 2001, c 105, pt of §1; am L 2002, c 130, §51; am L 2003, c 87, §1; am L 2011, c 37, §9]

" **§414D-116 Corporation's acceptance of votes.** (a) If the name signed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, acting in good faith, is entitled to accept the vote, ballot, consent, waiver, or proxy appointment and to give it effect as the act of the member.

(b) If the name signed on a vote, ballot, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless

entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if:

- (1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;
- (2) The name signed purports to be that of an attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;
- (3) Two or more persons hold the membership as co-tenants or fiduciaries, the name signed purports to be the name of at least one of the co-holders, and the person signing appears to be acting on behalf of all the co-holders;
- (4) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment; and
- (5) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment.

(c) The corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to a member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(f) A ballot may be signed by means of an electronic signature in accordance with chapter 489E. [L 2001, c 105, pt of §1; am L 2011, c 37, §10]

" **[§414D-117] Voting agreements.** (a) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. The agreements may be valid for a period of up to ten years.

(b) A voting agreement created under this section is specifically enforceable. [L 2001, c 105, pt of §1]

"PART VIII. DIRECTORS AND OFFICERS

[§414D-131] Requirement for and duties of the board. (a) Each corporation shall have a board of directors.

(b) Except as provided in this chapter or subsection (c), all corporate powers shall be exercised by or under the authority of its board including the management of the corporation's affairs.

(c) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities. [L 2001, c 105, pt of §1]

" **[§414D-132] Qualifications of directors.** All directors shall be individuals. A director need not be a resident of this State or a member of the corporation unless required by the articles of incorporation or the bylaws. The articles or bylaws may prescribe other qualifications for directors. [L 2001, c 105, pt of §1]

" **[§414D-133] Number of directors.** (a) A board of directors shall consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(b) The number of directors may be increased or decreased (but to no fewer than three) from time to time by amendment to or in the manner prescribed in the articles or bylaws. [L 2001, c 105, pt of §1]

" **[§414D-134] Election, designation, and appointment of directors.** (a) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated representative.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board. [L 2001, c 105, pt of §1]

" **[\$414D-135] Terms of directors generally.** (a) The articles or bylaws shall specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be elected for successive terms.

(b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the articles or bylaws:

- (1) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and
- (2) The term of a director filling any other vacancy expires at the end of the unexpired term that the director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies, or until there is a decrease in the number of directors. [L 2001, c 105, pt of §1]

" **[\$414D-136] Staggered terms for directors.** The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform. [L 2001, c 105, pt of §1]

" **[\$414D-137] Resignation of directors.** (a) A director may resign at any time by delivering written notice to the board of directors, its presiding officer, or to the president or secretary.

(b) A resignation is effective when the notice is effective, unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date. [L 2001, c 105, pt of §1]

" **[§414D-138] Removal of directors elected by members or directors.** (a) The members may remove one or more directors elected by them without cause unless otherwise provided in the articles or bylaws.

(b) If a director is elected by a class, chapter, or other organizational unit, or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(c) Except as provided in subsection (i), a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b) to (d), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a) to (e).

(h) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws; provided that a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(i) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal. [L 2001, c 105, pt of §1]

" **[§414D-139] Removal of designated or appointed directors.**

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director.

(c) The person removing the director shall do so by giving written notice of the removal to the director, and either the presiding officer of the board or the corporation's president or secretary.

(d) A removal is effective when the notice is effective unless the notice specifies a future effective date. [L 2001, c 105, pt of §1]

" **§414D-140 Removal of directors by judicial proceeding.**

(a) The circuit court of the county where a corporation's principal office is located may remove any director of the corporation from office in a proceeding commenced either by the corporation or its members holding at least ten per cent of the voting power of any class, or the attorney general in the case of a public benefit corporation, if the court finds that with respect to the corporation, the director's removal is in the best interest of the corporation due to:

- (1) The director's fraudulent or dishonest conduct;
- (2) The director's gross abuse of authority or discretion;
or
- (3) A final judgment finding that the director has violated a duty set forth in sections 414D-149 and 414D-152, and that removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(c) If members or the attorney general commence a proceeding under subsection (a), the corporation shall be made a party defendant.

(d) If a public benefit corporation or its members commence a proceeding under subsection (a), within ten days of its commencement, they shall give the attorney general written notice of the proceeding. [L 2001, c 105, pt of §1; am L 2004, c 171, §7]

" **[§414D-141] Vacancy on board.** (a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (1) The members, if any, may fill the vacancy; if the vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of

the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members;

- (2) The board of directors may fill the vacancy; or
- (3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under section 414D-137(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs. [L 2001, c 105, pt of §1]

" **[§414D-142] Compensation of directors.** Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation of directors. [L 2001, c 105, pt of §1]

" **[§414D-143] Regular and special meetings.** (a) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(b) A board of directors may hold regular or special meetings in or out of this State.

(c) Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. [L 2001, c 105, pt of §1]

" **[§414D-144] Action without meeting.** (a) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by

each director, and included in the minutes filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. [L 2001, c 105, pt of §1]

" **§414D-145 Call and notice of meetings.** (a) Unless the articles, bylaws, or subsection (c) provides otherwise, regular meetings of the board may be held without notice.

(b) Unless the articles, bylaws, or subsection (c) provides otherwise, special meetings of the board shall be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(c) In corporations without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members, shall not be valid unless each director is given at least seven days' notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to section 414D-146.

(d) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or twenty per cent of the directors then in office may call and give notice of a meeting of the board. [L 2001, c 105, pt of §1; am L 2011, c 37, §11]

" **[§414D-146] Waiver of notice of meeting.** (a) A director may at any time waive any notice required by this chapter, the articles, or the bylaws. Except as provided in subsection (b), the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director at the beginning of the meeting or prior to the vote on a matter not noticed in conformity with this chapter, the articles, or the bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected to action. [L 2001, c 105, pt of §1]

" **[§414D-147] Quorum and voting.** (a) Except as otherwise provided in this chapter, the articles, or the bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the

greater of one-third of the number of directors in office or two directors.

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this chapter, the articles, or the bylaws require the vote of a greater number of directors. [L 2001, c 105, pt of §1]

" **[§414D-148] Committees of the board.** (a) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors, who serve at the pleasure of the board.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:

- (1) A majority of all the directors in office when the action is taken; or
- (2) The number of directors required by the articles or bylaws to take action under section 414D-147.

(c) Sections 414D-143 to 414D-147, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, shall apply to committees of the board and their members as well.

(d) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 414D-131.

(e) A committee of the board may not, however:

- (1) Authorize distributions;
- (2) Approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;
- (3) Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or
- (4) Adopt, amend, or repeal the articles or bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 414D-149. [L 2001, c 105, pt of §1]

" **§414D-149 General standards for directors.** (a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging the director's duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

(f) Any person who serves as a director to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this section, remuneration does not include payment of reasonable expenses and indemnification or insurance for actions as a director as allowed by sections 414D-159 to 414D-167. [L 2001, c 105, pt of §1; am L 2002, c 130, §52]

" **§414D-150 Director conflict of interest.** (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (b).

(b) A transaction in which a director has a conflict of interest may be approved if:

- (1) In the case of a public benefit corporation, the transaction is approved by the attorney general, before or after the transaction is consummated;
- (2) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the transaction was authorized, approved, or ratified by the board or committee of the board; or
- (3) The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(c) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

- (1) Another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or
- (2) Another entity of which the director is a director, officer, or trustee is a party to the transaction.

(d) For purposes of subsection (b), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors either on the board or on the committee, who have no direct or indirect interest in the transaction; provided that a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection [(b)(2)]; provided the transaction is otherwise approved as provided in subsection (b).

(e) For purposes of subsection [(b)(3)], a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (c)(1), may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection [(b)(3)]. The vote of these members, however, is counted in determining whether the transaction is approved under other

sections of this chapter. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(f) The articles, the bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions. [L 2001, c 105, pt of §1; am L 2004, c 171, §8]

" **[§414D-151] Loans to or guaranties for directors and officers.** (a) A corporation may not lend money to or guaranty the obligation of a director or officer of the corporation.

(b) The fact that a loan or guaranty is made in violation of this section shall not affect the borrower's liability on the loan. [L 2001, c 105, pt of §1]

" **[§414D-152] Liability for unlawful distributions.** (a) Unless a director complies with the applicable standards of conduct described in section 414D-149, a director who votes for or assents to a distribution made in violation of this chapter shall be personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(b) A director held liable for an unlawful distribution under subsection (a) is entitled to contribution from:

- (1) Every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section 414D-149; and
- (2) Each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter. [L 2001, c 105, pt of §1]

" **§414D-153 Required officers.** (a) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The bylaws or the board shall delegate responsibility to one of the officers to prepare minutes of the directors' and members' meetings and to authenticate records of the corporation.

(c) The same individual may simultaneously hold more than one office in a corporation.

(d) Officers of the corporation shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed for a term not to exceed one year

by the board of directors. [L 2001, c 105, pt of §1; am L 2002, c 130, §53]

" **[§414D-154] Duties and authority of officers.** Each officer has the authority and shall perform the duties set forth in the bylaws, or to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers. [L 2001, c 105, pt of §1]

" **§414D-155 Standards of conduct for officers.** (a) An officer with discretionary authority shall discharge the officer's duties under that authority:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(b) In discharging an officer's duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented; or
- (2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer acted in compliance with this section.

(e) Any person who serves as an officer to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of or failure to perform duties of the position to which the person was appointed, unless the person was grossly negligent in the performance of or failure to perform the duties. For purposes of this section, remuneration does not include payment of reasonable expenses and indemnification or insurance for actions as an officer as

allowed by sections 414D-159 to 414D-167. [L 2001, c 105, pt of §1; am L 2002, c 130, §54]

" **§414D-156 Resignation and removal of officers.** (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(b) Except as otherwise provided in the articles of incorporation or bylaws, a board may remove any officer at any time with or without cause. [L 2001, c 105, pt of §1; am L 2002, c 130, §55]

" **[§414D-157] Contract rights of officers.** (a) The appointment of an officer shall not itself create contract rights.

(b) An officer's removal shall not affect the officer's contract rights, if any, with the corporation. An officer's resignation shall not affect the corporation's contract rights, if any, with the officer. [L 2001, c 105, pt of §1]

" **[§414D-158] Officers' authority to execute documents.** Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in category 1 below, or by one officer in category 1 below and one officer in category 2 below.

- (1) Category 1: The presiding officer of the board and the president; and
- (2) Category 2: A vice president, the secretary, treasurer, and executive director. [L 2001, c 105, pt of §1]

" **[§414D-159] Definitions.** Sections 414D-160 to 414D-167 shall incorporate the following definitions:

"Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding.

"Official capacity" means with respect to a director, the office of director in a corporation and with respect to an individual other than a director as contemplated in section 414D-165, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

"Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal. [L 2001, c 105, pt of §1]

" **§414D-160 Authority to indemnify.** (a) Except as provided in subsection (d), a corporation may indemnify a former or current director made a party to a proceeding by reason of the fact that the individual was or is a director, against liability incurred in the proceeding if:

- (1) The individual conducted the individual's self in good faith; and
- (2) The individual reasonably believed:
 - (A) In the case of conduct in an official capacity, that the individual's conduct was in the corporation's best interests;

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

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

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (a)(2)(B).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, is not by itself determinative of a director's failure to meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director's liability under this section where the director's liability has been determined:

(1) In connection with a proceeding by or in the right of the corporation; or

(2) In connection with any other proceeding whether or not involving action in an official capacity, in which the director was found liable on the basis of the director's improper receipt of a personal benefit.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding. [L 2001, c 105, pt of §1; am L 2008, c 54, §4]

" **[§414D-161] Mandatory indemnification.** Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation, against reasonable expenses actually incurred by the director in connection with the proceeding. [L 2001, c 105, pt of §1]

" **[§414D-162] Advance for expenses.** (a) A corporation, before final disposition of a proceeding, may advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding; provided:

(1) The director furnishes the corporation with a written affirmation of the director's good faith belief that

the director has met the standard of conduct described in section 414D-160;

- (2) The director furnishes the corporation with a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and
- (3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 414D-164. [L 2001, c 105, pt of §1]

" **§414D-163 Court-ordered indemnification.** Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification in the amount it considers proper if it determines:

- (1) The director is entitled to mandatory indemnification under section 414D-161, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or
- (2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 414D-160(a) or was found liable as described in section 414D-160(d), but if the director was found liable indemnification is limited to reasonable expenses incurred. [L 2001, c 105, pt of §1]

" **§414D-164 Determination and authorization of indemnification.** (a) A corporation may not indemnify a director under section 414D-160 unless authorized in the specific case after a determination has been made that the director has met the standard of conduct set forth in section 414D-160.

(b) The determination shall be made by the board of directors by majority vote of a quorum consisting of directors who are not at the time parties to the proceeding.

(c) The determination shall be made by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding if a quorum cannot be obtained under subsection (b).

(d) The determination shall be made by special legal counsel selected by:

- (1) The board of directors or its committee in the manner prescribed in subsection (b) or (c); or
- (2) Majority vote of the full board (in which selection directors who are parties may participate) if a quorum of the board cannot be obtained under subsection (b) and a committee cannot be designated under subsection (c).

(e) The determination shall be made by the members but directors who are at the time parties to the proceeding may not vote on the determination.

(f) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (d) to select counsel. [L 2001, c 105, pt of §1; am L 2002, c 130, §56]

" **[§414D-165] Indemnification of officers, employees, and agents.** (a) An officer of the corporation who is not a director, unless limited by a corporation's articles of incorporation, is entitled to mandatory indemnification under section 414D-161, and is entitled to apply for court-ordered indemnification under section 414D-163 in each case, to the same extent as a director.

(b) The corporation, unless limited by a corporation's articles of incorporation, may indemnify and advance expenses under this part to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director.

(c) A corporation may also, unless limited by a corporation's articles of incorporation, indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or

specific action of its board of directors, or contract. [L 2001, c 105, pt of §1]

" **[§414D-166] Insurance.** A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under section 414D-160 or 414D-161. [L 2001, c 105, pt of §1]

" **§414D-167 Application of this part.** (a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this part. If articles of incorporation limit indemnification or advances for expenses, indemnification and advances for expenses are valid only to the extent consistent with the articles.

(b) This part shall not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

(c) A corporation, by a provision in its articles of incorporation or bylaws, in a resolution adopted, or in a contract approved by its board of directors or members, may obligate itself, in advance of the act or omission giving rise to a proceeding, to provide indemnification in accordance with section 414D-160 or advance funds to pay for or reimburse expenses in accordance with section 414D-162. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in [sections] 414D-164 and 414D-162(c). Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 414D-162 to the fullest extent permitted by law, unless the provision

specifically provides otherwise. [L 2001, c 105, pt of §1; am L 2003, c 81, §2]

"PART IX. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

[§414D-181] Authority to amend. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment. [L 2001, c 105, pt of §1]

" §414D-182 Procedure to amend articles of incorporation.

(a) Amendments to the articles of incorporation shall be made in the following manner:

- (1) If any members are entitled to vote on an amendment, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at an annual, regular, or special meeting of the members. Notice setting forth the proposed amendment or a summary of the changes to be effected by the proposed amendments shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes that members present at the meeting or represented by proxy are entitled to cast; and
- (2) If there are no members or no members entitled to vote on an amendment, an amendment shall be adopted at a meeting of the board of directors upon its receiving the vote of a majority of the directors in office.

(b) Any number of amendments may be submitted and voted upon at any one meeting. [L 2001, c 105, pt of §1; am L 2011, c 37, §12; am L 2012, c 58, §9]

" [§414D-183] Articles of amendment. A corporation amending its articles shall deliver to the department director articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption;
- (4) If approval of members was not required, a statement to that effect and a statement that the amendment was

approved by a sufficient vote of the board of directors or incorporators;

- (5) If approval by members was required:
 - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and
 - (B) Either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class;
- (6) If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to section 414D-188, a statement that the approval was obtained.
[L 2001, c 105, pt of §1]

" **§414D-184 Restated, amended and restated, articles of incorporation.**

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members or any other person.

(b) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.

(c) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in accordance with section 414D-105. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement.

(d) If the board seeks to have the restatement approved by the members by ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement.

(e) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under section 414D-182.

(f) A corporation restating its articles shall deliver to the department director articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a statement that the restatement of incorporation correctly sets forth without change

the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and any amendments thereto.

(g) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(h) The department director may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the information required by subsection (f).

(i) A domestic corporation may at any time amend and restate its articles of incorporation by complying with the procedures and requirements of this part.

(j) Upon its adoption, the amended and restated articles of incorporation shall set forth:

- (1) All of the operative provisions of the articles of incorporation as theretofore amended;
- (2) The information required by section 414D-183; and
- (3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(k) The amended and restated articles of incorporation shall be delivered to the director for filing together with a statement setting forth:

- (1) Whether the restatement contains an amendment to the articles requiring member approval and, if it does not, that the board of directors adopted the restatement; or
- (2) If the restatement contains an amendment to the articles requiring member approval, the information required by section 414D-183. The department director may certify the amended and restated articles of incorporation as the articles of incorporation currently in effect, without including the information required to be filed by subsection (j)(2) and (3). [L 2001, c 105, pt of §1; am L 2003, c 124, §29; am L 2011, c 37, §13]

" **[§414D-185] Amendment pursuant to judicial reorganization.**

(a) A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to section 414D-188 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles after amendment contain only provisions required or permitted by section 414D-32.

(b) The individual or individuals designated by the court shall deliver to the department director articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment approved by the court;
- (3) The date of the court's order or decree approving the articles of amendment;
- (4) The title of the reorganization proceeding in which the order or decree was entered; and
- (5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section shall not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan. [L 2001, c 105, pt of §1]

" **[\$414D-186] Effect of amendment and restatement.** An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any trust upon which the property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name. [L 2001, c 105, pt of §1]

" **[\$414D-187] Bylaws.** The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation. [L 2001, c 105, pt of §1]

" **[\$414D-188] Approval by third persons.** The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such a provision in the articles may only be amended with the approval in writing of such person or persons. [L 2001, c 105, pt of §1]

"PART X. MERGER

[\$414D-200] Definitions. As used in this part:

"Association" means an association organized under chapter 421 or 421C.

"Merger" means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

"Organizing articles" means:

- (1) For an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

"Other business entity" means a profit corporation, limited liability company, general partnership, limited partnership, limited liability partnership, or association. [L 2004, c 121, §1]

" **§414D-201 Merger.** (a) Pursuant to a plan of merger approved as provided in section 414D-202, a domestic or foreign corporation may merge with one or more domestic professional corporations, or with one or more associations, one or more corporations, or other business entities organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, associations, domestic or foreign corporations, or other business entities whether domestic or foreign, being the surviving entity as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign corporation that is a party to the merger is organized.

(b) The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger, and the name of the surviving entity into which each plans to merge;
- (2) The terms and conditions of the merger;
- (3) The manner and basis for converting memberships of each merging corporation into memberships, obligations, or securities of the surviving entity or into cash or other property in whole or part;
- (4) The street address of the surviving entity's principal place of business, or if no street address is available, the rural post office number or post office

box designated or made available by the United States Postal Service; and

- (5) Amendments, if any, to the organizing articles of the surviving entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.

(c) A plan of merger may set forth other provisions relating to the merger.

(d) If a foreign corporation survives a merger, it shall not do business in this State until an application for a certificate of authority is filed with the department director if the foreign corporation is not already authorized to do business in the State.

(e) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member or shareholder of any entity that is a party to the merger. [L 2001, c 105, pt of §1; am L 2002, c 41, §13; am L 2004, c 121, §16]

" **§414D-201.5 Foreign mergers.** (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger in the form prescribed by subsection (a). [L 2002, c 41, §2; am L 2003, c 124, §30; am L 2004, c 121, §17]

" **§414D-202 Action on plan by board, members, and third persons.** (a) Unless this chapter, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection

(c)) require a greater vote or voting by class, a plan of merger to be adopted shall be approved:

- (1) By the board;
- (2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 414D-188 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, the merger shall be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which the approval is to be obtained in accordance with section 414D-145(c). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 414D-105. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by written consent or ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 414D-184 or 414D-187. The plan shall be approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors. A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the board of directors of any constituent corporation notwithstanding approval of the plan by the stockholders of all or any of the constituent corporations. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the department director. A plan of merger may allow the boards of directors of the constituent corporations to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the stockholders of any constituent corporation shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights or any of them to be received in exchange for or on conversion of all or any of the interests of the constituent corporation;
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger; or
- (3) Alter or change any of the terms and conditions of the plan if the alteration or change would adversely affect the holders of any interest of the constituent corporation.

If the plan of merger is amended after the articles are filed with the department director but before the plan has become effective, articles of amendment shall be filed with the department director.

[(h)] A merger takes effect on the filing date of the articles of merger, or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date. [L

2001, c 105, pt of §1; am L 2002, c 41, §14; am L 2011, c 37, §14]

" **§414D-203 Articles of merger.** (a) After a plan of merger is approved by the board of directors and, if required by section 414D-202, by the members and any other persons, articles of merger shall be signed on behalf of each corporation and each other entity that is a party to the merger and shall be delivered to the department director for filing. The articles of merger shall set forth:

- (1) The name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity;
 - (2) A statement that the plan of merger has been approved by each entity involved in the merger;
 - (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and
 - (4) A statement that includes:
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State that is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in a proceeding under subparagraph (A), that includes the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.
- (b) If the articles of merger provide for a future effective date, and:
- (1) The plan of merger is amended to change the future effective date;
 - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
 - (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to

make the articles of merger inaccurate in any material respect, prior to the future effective date; then the articles of merger shall be amended by filing with the department director articles of amendment that identify the articles of merger and set forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the department director a certificate of termination that identifies the articles of merger and the plan of merger and states that the plan of merger has been terminated.

(c) Articles of merger operate as an amendment to the corporation's articles of incorporation. [L 2001, c 105, pt of §1; am L 2002, c 41, §15; am L 2003, c 124, §31; am L 2004, c 121, §18; am L 2006, c 184, §11]

" **§414D-204 Effect of merger.** (a) When a merger takes effect:

- (1) Every corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
- (2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;
- (3) The surviving corporation has all liabilities and obligations of each corporation party to the merger;
- (4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and
- (5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving corporation at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the corporation receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed. [L 2001, c 105, pt of §1; am L 2002, c 41, §16]

" **§414D-205 REPEALED.** L 2002, c 41, §28.

" **[\$414D-206] Bequests, devises, and gifts.** Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides. [L 2001, c 105, pt of §1]

" **§414D-207 REPEALED.** L 2012, c 37, §1.

" **§414D-208 REPEALED.** L 2012, c 37, §2.

" **§414D-209 REPEALED.** L 2003, c 124, §102.

" **§414D-210 REPEALED.** L 2012, c 37, §3.

" **[\$414D-211] Limitations on merger by public benefit corporations.** (a) Without the prior approval of the circuit court for the first circuit in a proceeding in which the attorney general has been given written notice, a public benefit corporation may merge only with:

- (1) A public benefit corporation;
- (2) A foreign corporation that would qualify under this chapter as a public benefit corporation;
- (3) A wholly owned corporation, if the public benefit corporation is the surviving corporation and continues to be a public benefit corporation after the merger;
- (4) A corporation; provided that:
 - (A) On or prior to the effective date of the merger, assets with an equal value to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the public benefit corporation, or the fair market value of the public benefit corporation if it were to be operated as a business concern, are transferred to one or more persons who would have

received its assets under section 414D-245(a)(5) and (6) had it dissolved;

- (B) The public benefit corporation shall return, transfer, or convey an asset held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and
- (C) The merger is approved by a majority of directors of the public benefit corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(b) At least twenty days before the consummation of any merger of a public benefit corporation pursuant to subsection (a)(4), notice, including a copy of the proposed plan of merger, shall be delivered to the attorney general.

(c) Without the prior written approval of the attorney general or the circuit court for the first circuit, in a proceeding in which the attorney general has been given written notice, no member of a public benefit corporation may receive or keep anything as a result of a merger other than a membership in the surviving public benefit corporation. The court shall approve the transaction if it is in the public interest. [L 2004, c 171, §2]

"PART XI. SALE OF ASSETS

[§414D-221] Sale of assets in regular course of activities and mortgage of assets. (a) A corporation, on the terms and conditions and for the consideration determined by the board of directors, may:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or
- (2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(b) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (a) is not required. [L 2001, c 105, pt of §1]

" **§414D-222 Sale of assets other than in regular course of activities.** (a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property

(with or without the goodwill) other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection (b).

(b) Unless this chapter, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (d)) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

- (1) By the board;
- (2) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 414D-188 for an amendment to the articles or bylaws.

(c) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which the approval is to be obtained in accordance with section 414D-145(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 414D-105. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If the board needs to have the transaction approved by the members by written consent or ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights), without further action by the members or any other person who approved the transaction in

accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

(h) A sale, lease, exchange, or other disposition of the property of a corporation shall not be deemed to be the sale, lease, exchange, or other disposition of all or substantially all the property of the corporation if the corporation is retaining sufficient property to continue one or more significant business segments or lines of the corporation after the sale, lease, exchange, or other disposition. Furthermore, the business segments or lines retained must not be only temporary operations or merely a pretext to avoid members' rights which might otherwise arise under this chapter.

(i) A public benefit corporation shall give written notice to the attorney general twenty days before it sells, leases, exchanges, or otherwise disposes of all, or substantially all, of its property if the transaction is not in the regular course of its activities, unless the attorney general has given the corporation a written waiver of this subsection. [L 2001, c 105, pt of §1; am L 2004, c 171, §9; am L 2011, c 37, §15]

"PART XII. DISTRIBUTIONS

[§414D-231] Prohibited distributions. Except as authorized by section 414D-232, a corporation shall not make any distributions. [L 2001, c 105, pt of §1]

" **§414D-232 Authorized distributions.** (a) A corporation may purchase its memberships if, after the purchase is completed:

- (1) The corporation would be able to pay its debts as they become due in the usual course of its activities; and
- (2) The corporation's total assets would be equal to at least the sum of its total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with part XIII.

(c) The public benefit corporation, in conformity with its purposes, may make distributions to and confer benefits on a member or an affiliate that is another public benefit corporation if, after any distribution is completed:

- (1) The public benefit corporation would be able to pay its debts as they become due in the usual course of its activities; and
- (2) The public benefit corporation's total assets would be equal to at least the sum of its total liabilities. [L 2001, c 105, pt of §1; am L 2002, c 130, §58; am L 2010, c 43, §3]

" **§414D-233 Notice to the attorney general of intention to dissolve.** (a) A public benefit corporation shall give the attorney general written notice that it intends to dissolve before the time it delivers the articles of dissolution to the department director. The notice shall include a copy or summary of the plan of dissolution.

(b) No assets shall be transferred or conveyed by a public benefit corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection (a) to the attorney general or until the attorney general has consented in writing to the dissolution, or indicated in writing that the attorney general will take no action in respect to, the transfer or conveyance, whichever is earlier.

(c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those (other than creditors) to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person (other than creditors) who received assets and indicate what assets each received. [L 2004, c 171, §3; am L 2005, c 22, §24]

"PART XIII. DISSOLUTION

§414D-241 Dissolution by incorporators, initial directors, and third persons. A majority of the incorporators or initial directors of a corporation that has no members and has not commenced business, subject to any approval required by the articles or bylaws, may dissolve the corporation by delivering to the department director articles of dissolution that set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation;
- (3) That the corporation has no members and that the corporation has not commenced business;
- (4) That a plan of dissolution, indicating to whom the assets owned or held by the corporation shall be distributed after all creditors have been paid, has been adopted; and
- (5) That a majority of the incorporators or initial directors authorized the dissolution. [L 2001, c 105, pt of §1; am L 2006, c 235, §7]

" **§414D-242 Dissolution by directors, members, and third persons.** (a) Unless this chapter, any other state law, the

articles, the bylaws, or the board of directors or members (acting pursuant to subsection (c)) require a greater vote or voting by class, dissolution is authorized if it is approved:

- (1) By the board;
- (2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 414D-188 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which the approval is to be obtained in accordance with section 414D-145(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 414D-105. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(e) If the board seeks to have dissolution approved by the members by written consent or ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(f) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid. [L 2001, c 105, pt of §1; am L 2011, c 37, §16]

" **[§414D-243] Articles of dissolution.** (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the department director articles of dissolution setting forth:

- (1) The name of the corporation;
- (2) The date dissolution was authorized;

- (3) A statement that dissolution was approved by a sufficient vote of the board;
- (4) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;
- (5) If approval by members was required:
 - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and
 - (B) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class;
- (6) If approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to section 414D-242(a)(3), a statement that the approval was obtained.

(b) A corporation is dissolved upon the effective date of its articles of dissolution. The articles of dissolution may specify a delayed effective time and date, and if it does so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date it is filed. [L 2001, c 105, pt of §1]

" **§414D-244 Revocation of dissolution.** (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the department director for filing articles of revocation of

dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If member or third person action was required to revoke the dissolution, the information required by section 414D-243(a)(5) or (6).

(d) Within the applicable revocation of dissolution period, should the name of the corporation, or a name substantially identical thereto, be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then revocation of dissolution shall be allowed only upon the registration of a new name by the dissolved corporation pursuant to the amendment provisions of this chapter.

(e) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(f) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred. [L 2001, c 105, pt of §1; am L 2002, c 130, §59; am L 2004, c 121, §19]

" **§414D-245 Effect of dissolution.** (a) A dissolved corporation continues its corporate existence but shall not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (1) Preserving and protecting its assets and minimizing its liabilities;
- (2) Discharging or making provision for discharging its liabilities and obligations;
- (3) Disposing of its properties that will not be distributed in kind;

- (4) Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which occurs by reason of the dissolution in accordance with that condition;
 - (5) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
 - (6) If the corporation is a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets to one or more persons described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or if the dissolved corporation is not described in Section 501(c)(3) of the Internal Revenue Code, to one or more public benefit corporations;
 - (7) If the corporation is not a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefiting or serving; and
 - (8) Doing every other act necessary to wind up and liquidate its assets and affairs.
- (b) Dissolution of a corporation does not:
- (1) Transfer title to the corporation's property;
 - (2) Subject its directors or officers to standards of conduct different from those prescribed in part VIII;
 - (3) Change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
 - (4) Prevent commencement of a proceeding by or against the corporation in its corporate name;
 - (5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
 - (6) Terminate the authority of the registered agent. [L 2001, c 105, pt of §1; am L 2004, c 171, §10; am L 2010, c 43, §4]

" **[§414D-245.5] Trustees or receivers for dissolved corporations; appointment; powers; duties.** (a) When any corporation organized under the laws of this State shall be or shall have been dissolved or shall cease or shall have ceased to

exist, the circuit court, upon application of any creditor, member, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the persons responsible for settling the unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.

(b) The relief provided in this section shall be in addition to, and shall not limit or diminish, any remedies otherwise available under the common law or other state or federal statutes or rules. In the event of a conflict between this section and any common law, statute, or rule on the subject, the more beneficial provisions favoring the applicant shall prevail. [L 2004, c 121, §2]

" **[§414D-246] Known claims against dissolved corporation.**

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice shall:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

- (1) If a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline; or
- (2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. [L 2001, c 105, pt of §1]

" **§414D-247 Unknown claims against dissolved corporation.**

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

- (1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this State, in the city and county of Honolulu) is or was last located;
- (2) List the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

- (1) A claimant who did not receive written notice under section 414D-246;
 - (2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and
 - (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim may be enforced under this section:
- (1) Against the dissolved corporation, to the extent of its undistributed assets; or
 - (2) If the assets have been distributed in liquidation against any person other than a creditor of the corporation, to whom the corporation distributed the lesser of its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to the person in liquidation; provided the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee. [L 2001, c 105, pt of §1; am L 2009, c 55, §21]

" **§414D-248 Grounds for administrative dissolution.** The department director may commence a proceeding under section 414D-249 to administratively dissolve a corporation if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under chapter 425R. [L 2001, c 105, pt of §1; am L 2002, c 130, §60; am L 2003, c 124, §32; am L 2009, c 55, §22]

" **§414D-249 Procedure for and effect of administrative dissolution and effect of expiration.** (a) If the department director determines that one or more grounds exist under section 414D-248 for dissolving a corporation, the department director shall give written notice of the department director's determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

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

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

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

(e) If a corporation's period of duration specified in its articles of incorporation has expired, the corporation continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its business and affairs under section 414D-245 and notify claimants under sections 414D-246 and 414D-247.

(f) The corporation, at any time within two years of the expiration of its period of duration, may amend its articles of incorporation to extend its period of duration and, upon the amendment, the corporation may resume carrying on its activities

as if the expiration had never occurred; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if that name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of its period of duration shall be allowed only upon the registration of a new name by the corporation pursuant to the amendment provisions of this chapter. [L 2001, c 105, pt of §1; am L 2003, c 124, §33; am L 2006, c 184, §12; am L 2008, c 54, §5; am L 2009, c 23, §5]

" **§414D-250 Reinstatement following administrative dissolution.** (a) A corporation administratively dissolved under section 414D-249 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

(b) Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the administratively dissolved corporation pursuant to the amendment provisions of this chapter.

(c) If the department director determines that the application contains the information required by subsection (a) and that the information is correct, the department director shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and mail a copy to the corporation at its last known address appearing in the records of the department director.

(d) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its

activities as if the administrative dissolution had never occurred. [L 2001, c 105, pt of §1; am L 2006, c 184, §13 and c 235, §8; am L 2009, c 23, §6; am L 2012, c 58, §10]

" **§414D-251 Appeal from denial of reinstatement.** (a) The department director, upon denying a corporation's application for reinstatement following administrative dissolution, shall mail a written notice to the corporation or its designated representative that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court within thirty days after the notice of denial is mailed. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the department director's certificate of dissolution, the corporation's application for reinstatement, and the department director's notice of denial.

(c) The court may summarily order the department director to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings. [L 2001, c 105, pt of §1; am L 2003, c 124, §34]

" **§414D-252 Grounds for judicial dissolution.** (a) The court may dissolve a corporation in a proceeding by the attorney general if it is established that:

- (1) The corporation obtained its articles of incorporation through fraud;
- (2) The corporation has continued to exceed or abuse the authority conferred upon it by law;
- (3) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or
- (4) The corporation is a public benefit corporation and is no longer able to carry out its activities.

(b) In a proceeding by fifty members or members holding five per cent of the voting power, whichever is less, or by a director or any person specified in the articles, the court may dissolve a corporation if it is established that:

- (1) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;
- (2) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
- (3) The members are deadlocked in voting power and have failed, for a period that includes at least two

consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired; or

(4) The corporate assets are being misapplied or wasted.

(c) The court may dissolve a corporation in a proceeding by a creditor if it is established that:

(1) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(2) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(d) The court may dissolve a corporation in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(e) Prior to dissolving a corporation, the court shall consider whether there are reasonable alternatives to dissolution, whether dissolution is in the public interest, provided the corporation serves a public purpose, and whether dissolution is the best way of protecting the interests of members. [L 2001, c 105, pt of §1; am L 2004, c 171, §11]

" **§414D-253 Procedure for judicial dissolution.** (a) Venue for a proceeding by the attorney general to dissolve a corporation shall be in the circuit court for the first circuit. Venue for a proceeding brought by any other party named in section 414D-252 shall be in the county where a corporation's principal office (or, if none in this State, its registered office) is or was last located.

(b) Directors or members shall not be deemed necessary parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(d) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit corporation, within ten days of its commencement, shall give written notice of the proceeding to the attorney general. [L 2001, c 105, pt of §1; am L 2002, c 130, §61; am L 2004, c 171, §12]

" **[§414D-254] Receivership or custodianship.** (a) A court in a judicial proceeding brought to dissolve a corporation may

appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian shall have exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual, or a domestic or foreign business or nonprofit corporation (authorized to transact business in this State) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. In addition to other powers:

(1) The receiver may:

- (A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; provided the receiver's power to dispose of the assets of the corporation shall be subject to any trust and other restrictions that would be applicable to the corporation; and
- (B) Sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this State.

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and its creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets. [L 2001, c 105, pt of §1]

" **[\$414D-255] Decree of dissolution.** (a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in section 414D-252 exist, it may enter a decree dissolving the corporation and specifying the

effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the department director, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with section 414D-245 and the notification of its claimants in accordance with sections 414D-246 and 414D-247. [L 2001, c 105, pt of §1]

" **[§414D-256] Deposit with director of finance.** Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them, shall be reduced to cash subject to known trust restrictions and deposited with the director of finance for disposition in accordance with chapter 523A. [L 2001, c 105, pt of §1]

"PART XIV. FOREIGN CORPORATIONS

[§414D-271] Authority to transact business required. (a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the department director.

(b) The following activities, in addition to others, do not constitute transacting business within the meaning of subsection (a):

- (1) Maintaining, defending, or settling any proceeding;
- (2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities, or maintaining trustees or depositaries with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail, through employees, agents, or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (9) Owning, without more, real or personal property;

- (10) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
 - (11) Transacting business in interstate commerce.
- (c) The list of activities in subsection (b) shall not be limited to the activities listed. [L 2001, c 105, pt of §1]

Cross References

Foreign mergers, see, §414D-201.5.

" **[§414D-272] Consequences of transacting business without authority.** (a) A foreign corporation transacting business in this State without a certificate of authority shall not maintain a proceeding in any court in this State until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this State without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding on that cause of action in any court in this State until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation that transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an amount equal to all fees that would have been imposed by this chapter upon the corporation had it duly applied for and received a certificate of authority to transact business in this State as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay the fees.

The attorney general shall bring proceedings to recover all amounts due this State under this section.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority shall not impair the validity of its corporate acts or prevent it from defending any proceeding in this State. [L 2001, c 105, pt of §1]

" **§414D-273 Application for certificate of authority.** (a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the department director for filing. The application shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section 414D-276;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date of incorporation;
- (4) The mailing address of the corporation's principal office and the information required by section 425R-4(a);
- (5) The names and usual business addresses of its current directors and officers; and
- (6) Whether the foreign corporation has members.

(b) The foreign corporation shall deliver with the completed application a certificate of good standing or other similar record duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate. [L 2001, c 105, pt of §1; am L 2002, c 130, §62; am L 2003, c 124, §35; am L 2007, c 202, §1; am L 2008, c 54, §6; am L 2009, c 55, §23]

" **§414D-274 Change of name by foreign corporation.** (a) Whenever the name of a foreign corporation that is authorized to transact business in this State is changed by an amendment to its articles of incorporation, the foreign corporation, within sixty days after the amendment becomes effective, shall deliver to the department director a certificate evidencing the name change that is duly authenticated by the proper officer of the state or country under the laws of which it is incorporated. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign corporation that is authorized to transact business in this State changes its name to one that is substantially identical to the name of any business entity or trade name registered in this State, the foreign corporation shall not thereafter transact any business in this State until it has changed its name to a name that is available to it under the laws of this State or has otherwise complied with this chapter.

(c) If a foreign corporation is unable to change its name to a name that is available to it under the laws of this State, it may deliver to the department director a copy of a certificate of registration of a different name as a trade name and thereafter shall become authorized to transact business in the State under that name. [L 2001, c 105, pt of §1; am L 2003, c 124, §36]

" **[§414D-275] Effect of certificate of authority.** (a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this State subject to the right of the State to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as and, except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this State. [L 2001, c 105, pt of §1]

" **§414D-276 Corporate name of foreign corporation.** (a) If the corporate name of a foreign corporation does not satisfy the requirements of section 414D-61, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this State, may use a fictitious name to transact business in this State if its real name is unavailable and it delivers to the department director for filing a certificate of registration of a trade name by the foreign corporation under which the foreign corporation will transact business in this State.

(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation shall not be the same as or substantially identical to:

- (1) The name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business in this State;
- (2) A name the exclusive right to which is, at the time, reserved in this State;

- (3) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this State; or
- (4) Any trade name, trademark, or service mark registered in this State.

(c) A foreign corporation may apply to the department director for authorization to use in this State the name of another corporation (incorporated or authorized to transact business in this State) that is substantially identical based upon the records of the department director to the name applied for. The department director shall authorize use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents to the use in writing, and one or more words are added to the other entity's name to make the name distinguishable from the name of the applicant; or
- (2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) A foreign corporation may use in this State the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation that is used in this State if the other corporation is incorporated or authorized to transact business in this State and the foreign corporation:

- (1) Has merged with the other corporation;
- (2) Has been formed by reorganization of the other corporation; or
- (3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this State changes its corporate name to one that does not satisfy the requirements of section 414D-61, it shall not transact business in this State under the changed name until it adopts a name satisfying the requirements of section 414D-61 and obtains an amended certificate of authority under section 414D-274. [L 2001, c 105, pt of §1; am L 2002, c 130, §63]

" **§414D-277 Registered agent of foreign corporation.** Each foreign corporation authorized to transact business in this State shall continuously maintain in this State a registered agent, who shall have a business address in this State and may be:

- (1) An individual who resides in this State;

- (2) A domestic entity authorized to transact business in this State; or
- (3) A foreign entity authorized to transact business in this State. [L 2001, c 105, pt of §1; am L 2002, c 130, §64; am L 2003, c 124, §37; am L 2009, c 55, §24]

" **§414D-278 Change of registered agent of foreign corporation.** (a) A foreign corporation authorized to transact business in this State may change its registered agent by complying with the requirements of section 425R-7.

(b) If a registered agent changes its name, its address, or its type or jurisdiction of organization, the agent shall comply with the requirements of chapter 425R. [L 2001, c 105, pt of §1; am L 2002, c 130, §65; am L 2009, c 55, §25]

" **§414D-279 Resignation of registered agent of foreign corporation.** The registered agent of a foreign corporation may resign as agent by complying with the requirements of section 425R-10. [L 2001, c 105, pt of §1; am L 2009, c 55, §26]

" **§414D-280 Service on foreign corporation.** (a) Service of any notice or process authorized by law that is issued against any foreign corporation by any court, judicial or administrative officer, or board may be made in the manner provided by law upon any registered agent, officer, or director of the foreign corporation who is found within the jurisdiction of the court, officer, or board; or if any registered agent, officer, or director cannot be found, upon the manager or superintendent of the foreign corporation or any person who is found in charge of the property, business, or office of the foreign corporation within the jurisdiction.

(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the foreign corporation can be found within the State, and if the foreign corporation has not filed with the department director pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of the State may be served, and likewise if the person named is not found within the State, service may be made upon the foreign corporation by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report filed under section 414D-308.

(c) Service using registered or certified mail is perfected at the earliest of:

- (1) The date the foreign corporation receives the mail;

- (2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner permitted by law. [L 2001, c 105, pt of §1; am L 2003, c 124, §38]

" **[§414D-281] Application to corporations heretofore authorized to transact business in this State.** A foreign corporation that is duly authorized to transact business in this State on July 1, 2002, for a purpose or purposes for which a corporation might secure the authority under this chapter, shall be entitled to all of the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this State under this chapter, and from July 1, 2002, the corporation shall be subject to all of the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this State under this chapter. [L 2001, c 105, pt of §1]

Revision Note

"On July 1, 2002" substituted for "at the time this chapter takes effect" and the second reference to "July 1, 2002" substituted for "the time this takes effect".

" **§414D-282 Withdrawal of foreign corporation.** (a) A foreign corporation authorized to transact business in this State shall not withdraw from this State until it obtains a certificate of withdrawal from the department director.

(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the department director for filing. The application shall set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;
- (3) That it revokes the authority of its registered agent to accept service on its behalf, and consents that

service of process in any action or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the department director; and

- (4) A mailing address to which the department director may mail a copy of any process served on the department director under paragraph (3).

(c) After the withdrawal of the corporation is effective, service of process on the department director under this section is service on the foreign corporation. Upon receipt of process, the department director shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

(d) After the filing of the application of withdrawal, the department director shall issue a certificate of withdrawal that shall be effective as of the date of the filing of the application of withdrawal, and the authority of the foreign corporation to transact business in this State shall cease. [L 2001, c 105, pt of §1; am L 2002, c 130, §66]

" **§414D-283 Grounds for revocation of certificate of authority.** The department director may commence a proceeding under section 414D-284 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- (1) The corporation fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual report for a period of two years;
 - (C) Appoint and maintain an agent for service of process as required; or
 - (D) File a statement of a change in the name or business address of the agent as required by chapter 425R; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the corporation. [L 2001, c 105, pt of §1; am L 2002, c 130, §67; am L 2003, c 124, §39; am L 2009, c 55, §27]

" **§414D-284 Procedure and effect of revocation.** (a) The department director upon determining that one or more grounds exist under section 414D-283 for revocation of a certificate of authority shall give written notice of the department director's determination by mailing the notice to the foreign corporation

at its last known address appearing in the records of the department director.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the department director that each ground for revocation determined by the department director does not exist within sixty days after the date of mailing of the department director's written notice, the department director may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date.

(c) Upon revoking any certificate of authority, the department director shall issue a certificate of revocation that shall be filed in the department director's office, and the authority of the foreign corporation to transact business in this State shall immediately cease.

(d) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation. [L 2001, c 105, pt of §1; am L 2003, c 124, §40]

" **[§414D-285] Appeal from revocation.** (a) A foreign corporation may appeal the department director's revocation of its certificate of authority to the circuit court within thirty days after the certificate of revocation is signed. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the department director's certificate of revocation.

(b) The court may summarily order the department director to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings. [L 2001, c 105, pt of §1]

"PART XV. RECORDS AND REPORTS

[§414D-301] Corporate records. (a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by section 414D-148(d).

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the

name and address of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

- (1) Articles or restated articles of incorporation and all amendments to them currently in effect;
- (2) Bylaws or restated bylaws and all amendments to them currently in effect;
- (3) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (4) Minutes of all meetings of members and records of all actions approved by the members for the past three years;
- (5) All written financial statements furnished for the past three years under section 414D-306;
- (6) A list of the names and business or home addresses of its current directors and officers; and
- (7) The most recent annual report delivered to the department director under section 414D-308. [L 2001, c 105, pt of §1]

" **§414D-302 Inspection of records by members.** (a) Subject to sections 414D-301(e) and 414D-303(c), a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in section 414D-301(e) if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

(b) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

- (1) Excerpts from any records required to be maintained under section 414D-301(a), to the extent not subject to inspection under subsection (a);
- (2) Accounting records of the corporation; and
- (3) Subject to sections 414D-109(b) and 414D-305, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) only if:

- (1) The member's demand is made in good faith and for a proper purpose;
 - (2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and
 - (3) The records are directly connected with this purpose.
- (d) This section does not affect:
- (1) The right of a member to inspect records:
 - (A) Under section 414D-109; or
 - (B) If the member is in litigation with the corporation to the same extent as any other litigant; or
 - (2) The power of a court, independently of this chapter, to compel the production of corporate records for examination. [L 2001, c 105, pt of §1; am L 2002, c 130, §68]

" **[§414D-303] Scope of inspection rights.** (a) A member's agent or attorney shall have the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under section 414D-302 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and materials, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a member's demand to inspect the record of members under section 414D-302(b)(3) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand. [L 2001, c 105, pt of §1]

" **§414D-304 Court-ordered inspection.** (a) If a corporation does not allow a member who complies with section 414D-302(a) to inspect and copy any records required by that section to be available for inspection, the court in the county where the corporation's principal office (or, if none in this State, in the city and county of Honolulu) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with section 414D-302(b) and (c) may apply to the court in the county where the corporation's principal office (or, if none in this State, in the city and county of Honolulu) is located for an order to permit inspection and copying of the

records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis to doubt the right of the member to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member. [L 2001, c 105, pt of §1; am L 2009, c 55, §28]

" **§414D-305 Limitations on use of membership list.** Without consent of the board, a membership list or any part thereof shall not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board, a membership list or any part thereof shall not be:

- (1) Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
 - (2) Used for any commercial purpose;
 - (3) Sold to or purchased by any person; or
 - (4) Published in whole or in part to the general public.
- [L 2001, c 105, pt of §1; am L 2002, c 130, §69]

" **[§414D-306] Financial statements for members.** (a) A corporation upon written demand from a member shall furnish that member its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

- (1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

- (2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year. [L 2001, c 105, pt of §1]

" **[§414D-306.5] Inspection of records by directors.** (a) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation, including the records described in section 414D-301, at any reasonable time to the extent reasonably related to the performance of the director's duties, including the director's duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation or law.

(b) The circuit court of the county where the corporation's principal office (or if none in this State, registered office) is located may order inspection and copying of the books, records, and documents demanded at the corporation's expense, upon application of a director who has been refused such inspection or copying rights, unless the corporation establishes that the director is not entitled to such inspection or copying rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the demanding director from using information obtained upon exercise of the inspection or copying rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the demanding director for the director's costs, including reasonable attorney's fees, incurred in connection with making the application. [L 2013, c 126, §1]

" **[§414D-307] Report of indemnification to members.** If a corporation indemnifies or advances expenses to a director under sections 414D-160 to 414D-163, in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members. [L 2001, c 105, pt of §1]

" **§414D-308 Annual report.** (a) Each domestic corporation, and each foreign corporation authorized to transact business in the State, shall deliver to the department director an annual report on a form prescribed and furnished by the department director that sets forth:

- (1) The name of the corporation and the jurisdiction under whose law it is incorporated;

- (2) The mailing address of its principal office and the information required by section 425R-4(a);
- (3) The names and addresses of its directors and officers; and
- (4) A brief description of the nature of its activities.

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for a domestic or foreign corporation whose date of incorporation or registration in this State falls between:

- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the corporation's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the corporation's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the corporation's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the corporation's affairs as of October 1 of the year when filed;

provided that if a domestic or foreign corporation is incorporated or registered in the same year in which the annual report is due, the domestic or foreign corporation shall not be required to file an annual report for that year. Thereafter, the domestic or foreign corporation shall comply with the requirements of this section.

(e) If an annual report does not contain the information required by this section, the department director shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the department director within thirty days after the effective date of notice, it shall be deemed to have been timely filed. [L 2001, c 105, pt of §1; am L 2002, c 130,

§70; am L 2003, c 124, §41; am L 2004, c 121, §20; am L 2009, c 55, §29]

"[PART XVI.] SUPERSEDING CHAPTERS

§414D-311 Superseding chapters. In the event of any conflict between the provisions of this chapter and the provisions of chapter 421J, 514A, 514B, or 514E, the provisions of chapter 421J, 514A, 514B, or 514E shall supersede and control the provisions of this chapter. [L 2002, c 130, §3; am L 2004, c 164, §11; am L 2005, c 93, §7; am L 2008, c 28, §8]

"PART XVII. TRANSITION PROVISIONS

Note

Part renumbered by L 2002, c 130, §37.

§414D-321 Application to existing domestic corporations. This chapter applies to all domestic corporations in existence on July 1, 2002, that were incorporated under any general statute of this State providing for incorporation of nonprofit corporations. [L 2001, c 105, pt of §1; am L 2002, c 130, §71]

" **[§414D-322] Application to qualified foreign corporations.** A foreign corporation authorized to transact business in this State on July 1, 2002 shall be subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter. [L 2001, c 105, pt of §1]

Revision Note

"July 1, 2002" substituted for "the effective date of this chapter".

" **§414D-323 Saving provisions.** (a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:

- (1) The operation of the statute or any action taken under it before its repeal;
- (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
- (3) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

- (4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or
- (5) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

(c) Nothing in this chapter shall affect the validity of any action taken by any corporation, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation, prior to July 1, 2002. [L 2001, c 105, pt of §1; am L 2002, c 130, §72]

Revision Note

"July 1, 2002" substituted for "the effective date of this chapter".

" **[§414D-324] Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [L 2001, c 105, pt of §1]