

ACT 110

A Bill for an Act to Amend Part VII of Chapter 172, Revised Laws of Hawaii 1955, as Amended, Relating to Corporations.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Part VII of chapter 172 of the Revised Laws of Hawaii 1955, as amended, is hereby amended by adding thereto a new section to follow immediately after section 172-136 to be numbered section 172-137 and to read as follows:

“Section 172-137. Jurisdiction of circuit courts to dissolve and liquidate assets and business of corporations. (a) The respective circuit courts shall have full power to dissolve and liquidate the assets and business of a corporation in an action by a stockholder when it is established:

“(1) That the directors are deadlocked in the management of the corporate affairs and the stockholders are unable to break the deadlock and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

“(2) That the stockholders are deadlocked in voting power and have failed for a period which includes at least two consecutive annual meeting dates to elect successors to directors whose term have expired or would have expired upon the election of their successors and that irreparable injury to the corporation is being suffered or is threatened by reason thereof. Proceedings under this section shall be brought in the circuit in which the principal office of the corporation is situated. It shall not be necessary to make stockholders parties to any such action or proceeding unless relief is sought against them personally.

“(b) Procedure in liquidation of corporation by court. In proceedings to liquidate the assets and business of a corporation, the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had. After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by stockholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its stockholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings. The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets. A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

“(c) Qualifications of receivers. A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this State, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

“(d) Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the

court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

“(e) **Discontinuance of liquidation proceedings.** The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

“(f) **Decree of involuntary dissolution.** In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its stockholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. A copy of the decree shall be filed with the director of regulatory agencies.”

SECTION 2. This Act shall take effect upon its approval.
(Approved June 3, 1965.) **S.B. 471.**