

ACT 117

A Bill for an Act Amending Chapter 173, Revised Laws of Hawaii 1955, Relating to Consolidation and Merger of Corporations.

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

SECTION 1. Chapter 173 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding thereto a new part to follow after Part I thereof to be designated Part I-A and to read as follows:

"PART I-A. MERGER OF SUBSIDIARY CORPORATIONS.

"Sec. 173-31. Application of part. This part shall not be applicable to banks as defined in section 178-2, building and loan associations as defined in section 180-2, cooperative associations subject to the provisions of Chapter 176, trust companies as defined in section 179-1, nonprofit corporations, or any corporation engaged in the business of issuing insurance policies for its own account under the provisions of Chapter 181.

"Sec. 173-32. Merger of parent corporation and subsidiary. Any corporation organized or existing under the laws of this State or under the laws of any other state or jurisdiction subject to the laws of the United States, if the laws of such other state or jurisdiction

shall permit such a merger, owning at least ninety per cent of the outstanding shares of each class of the stock of any other corporation or corporations organized or existing under the laws of this State, or under the laws of any other state or jurisdiction subject to the laws of the United States, if the laws of such other state or jurisdiction shall permit such a merger, may file in the office of the director of regulatory agencies of the State a certificate of such ownership and of merger in its name and under its corporate seal, signed by any two authorized officers of the corporation and setting forth a copy of the resolution of its board of directors to merge such other corporation or corporations into it and to assume all of its or their obligations and the date of the adoption thereof; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash or other consideration into which shares of stock of the subsidiary corporation or corporations not owned by the parent corporation are to be converted. Upon the minute, hour, and day of filing of the certificate of ownership and merger pursuant to this section, or if a subsequent minute, hour, and day has been specified in such certificate then upon such subsequent minute, hour, and day, the separate existence of the subsidiary corporation or corporations shall cease and all and singular the rights, privileges, franchises and property of the subsidiary corporations and all debts and liabilities due or to become due to such subsidiary corporations, including subscriptions for shares and things in action and every interest or asset of conceivable value or benefit, shall be deemed fully and finally and without any right of reversion transferred to and vested in the surviving parent corporation without further act or deed, and such surviving parent corporation shall have and hold the same in its own right as fully as the same was possessed and held by the subsidiary corporation from which it was, by operation of the provisions of this part, transferred; and except as and to the extent otherwise provided in section 173-33 each share of stock of the subsidiary corporation or corporations not theretofore owned by the parent corporation shall be deemed converted into the securities, cash or other consideration provided in the certificate of ownership and merger. All debts, liabilities and obligations due or to become due of, and all claims or demands for any cause existing against, each subsidiary corporation shall upon such merger be and become the debts, liabilities and obligations of and the claims and demands against the surviving parent corporation in the same manner as if the surviving parent corporation had itself incurred or otherwise become liable for them. All rights of creditors and all liens upon the property of each of the subsidiary corporations shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the time of the merger. Any action or proceedings pending by or against any such subsidiary corporation shall not be deemed to have abated or been discontinued but may be prosecuted to judgment with the right to appeal or review as in other cases

as if such merger or consolidation had not taken place or the surviving parent corporation may be substituted for any such subsidiary corporation.

“Sec. 173-33. Rights of stockholders of merged subsidiary corporation. In the event all of the stock of a subsidiary Hawaii corporation party to a merger affected under this part is not owned by the parent corporation immediately prior to the merger, the surviving corporation shall within ten days after the date on which the certificate of ownership and merger has been filed pursuant to this part notify each stockholder of such subsidiary Hawaii corporation that the certificate of ownership and merger has been filed and the terms and conditions of the merger. The notice shall be sent by registered or certified mail addressed to the stockholder at his last known address as it appears on the books of the subsidiary corporation. If within thirty days after the date on which the notice of filing of the certificate of ownership and merger and terms and conditions of the merger is mailed any stockholder shall make demand upon the surviving corporation in the manner provided in section 173-20 (other than the first sentence thereof), then all of the provisions of section 173-20 (excepting the first sentence of section 173-20) to section 173-30, both inclusive, shall be and become applicable; and each stockholder making such demand and the surviving corporation shall have all of the rights and duties provided in said sections, but no stockholder of the surviving corporation shall have any such rights or duties nor shall any of the provisions of this section or of sections 173-19 to 173-30, both inclusive, apply to any stockholder of the surviving corporation.

“Sec. 173-34. Merger of domestic corporations with foreign corporations; foreign surviving corporations; conveyance of real property upon merger of foreign corporations. To the extent not contrary to sections 173-31, 173-32, and 173-33, sections 173-16, 173-17 and 173-18 are hereby made applicable to this part.”

SECTION 2. This Act shall take effect upon its approval.
(Approved June 16, 1965.) **S.B. 199.**