

ACT 257

A Bill for an Act to Amend Part II 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 II of Chapter 172 of the Revised Laws of Hawaii 1955, is hereby amended by adding thereto a new section to be numbered Section 172-15.5 to follow immediately after Section 172-15 and to read as follows:

“Section 172-15.5. Officers. The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the by-laws, a secretary, and a treasurer, each of whom shall be elected or appointed by the board of directors at such time and in such manner as may be prescribed by the by-laws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the by-laws. Any two or more offices may be held by the same person.

“All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws, or as may be determined by resolution of the board of directors not inconsistent with the by-laws.”

SECTION 2. Section 172-19 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

“Section 172-19. Extensions and renewals of charters and articles. The director shall at any time not more than fifteen years prior to the expiration of any articles of association or charter of any corporation extend the duration of the same, and shall at any time not more than five years after the expiration of any articles of association or charter renew the same, in each case for such period of extension or renewal as is agreed upon, which may be perpetual, and in each case on application to him for that purpose, upon the filing in his office of a verified certificate signed by any two authorized officers of the corporation, showing that the proposed extension or renewal

has been approved by the vote of the holders of not less than two-thirds of all its issued and outstanding shares of stock, voting without regard to class, at a meeting duly called and held for the purpose, or, in the case of a nonstock corporation, by the vote of not less than two-thirds of the members present at a duly called meeting thereof; provided, that no extension of the charter of a nonprofit corporation shall become effective until the same is allowed by the director.

"All extensions or renewals of articles of association and charters granted prior to April 1, 1939, are ratified and confirmed."

SECTION 3. Section 172-20 of the Revised Laws of Hawaii 1955 as amended, is hereby further amended to read as follows:

"Section 172-20. Amendments of charters and articles. Subject to the provisos hereinbelow set forth in this section, the articles of association or charter of any corporation may be amended by the vote of the holders of not less than two-thirds of all of its stock issued and outstanding and having voting power, or by such larger vote as may be required by the articles of association or charter, at a meeting duly called and held for the purpose, or, in case of a nonstock corporation, by the vote of not less than two-thirds of the members present at a meeting duly called and held for the purpose. No such amendment shall be or become effective unless there shall be filed in the office of the director a verified certificate, signed by any two authorized officers of the corporation, setting forth the amendment by stating that the articles of association or charter has been amended to read as set forth in the certificate in full or by stating that any provision or provisions of the articles of association or charter, which shall be identified by the numerical or other designation or designations thereof in the articles of association or charter or by stating the wording thereof, has or have been amended to read as set forth in the certificate, and certifying that the amendment was adopted by the required vote as aforesaid at a meeting duly called and held for the purpose. Any such amendment so adopted shall become effective and the articles of association or charter shall be and become amended on the date of filing of the certificate of amendment or on such later date as shall be specified in the certificate of amendment. Any provision of this section to the apparent contrary notwithstanding. (a) no amendment shall confer any other or greater powers or privileges than could lawfully be conferred or obtained in an original charter or articles of association; (b) no amendment changing the name of the corporation shall become effective until the director has determined that such amendment is not in conflict with the provisions of section 172-11 and until a certificate of such change of name has been filed in the Bureau of Conveyances of the State, and the registrar shall accept such certificate for recording when issued by the director or any one authorized to act in his behalf; (c) no amendment to the charter of a nonprofit corporation shall become effective until the same is allowed by the director; and (d) if an amendment would make any change which would adversely affect the rights of the holders of

shares of any class, then the holders of each class of shares so affected by the amendment shall be entitled to vote as a class upon such amendment, regardless of other limitations or restrictions on the voting power of such class, and in addition to the vote otherwise required, a vote of the holders of two-thirds of each class so affected by the amendment shall be necessary to the adoption thereof. There may be filed in the office of the director at any time a copy, verified by any two officers of the corporation by authority of its board of directors, of the articles of association or charter of the corporation restated to include all amendments to and including the date of such verification and upon such filing such restated articles of association or charter shall be and become the articles of association or charter of the corporation."

SECTION 4. Section 172-21 of the Revised Laws of Hawaii 1955, is hereby amended to read as follows:

"Section 172-21. Same pre-emptive rights. The articles of association or charter of any corporation for profit may deny, limit or restrict, or may be amended so as to deny, limit or restrict, the right of the stockholders of such corporation, which may exist by virtue of the common law or by virtue of provisions in the existing articles of association or charter, to subscribe for additional shares of stock, whether then or thereafter authorized; provided, that any such amendment of the articles of association or charter of any such corporation shall be made in accordance with the provisions of section 172-20. No amendment authorized by this section shall be construed as a limitation or restriction on any other amendment or amendments that might otherwise be permitted by law.

"Nothing contained in this section shall affect the validity of any such action taken prior to April 21, 1953, by any corporation."

SECTION 5. Section 172-23 of the Revised Laws of Hawaii 1955, is hereby amended to read as follows:

"Section 172-23. Powers, express. Every corporation created in the State, whether created before or after the effective date of this section, shall have the following powers, in addition to any other powers set forth in or reasonably implied from its articles of association or charter, except as otherwise expressly limited or denied by its articles of association or charter:

"(a) To have succession by its corporate name for the period limited in its articles of association or charter, but not beyond the period, if any, limited by law, and when no period is limited, perpetually:

"(b) To sue and be sued in any court:

"(c) To make and use a common seal, and alter the same at its pleasure:

"(d) To hold, purchase and convey such property as the purposes of the corporation require, not exceeding the amount limited by its articles of association or charter if any limit is therein prescribed, and to mortgage, pledge and hypothecate the same to secure any debt of the corporation;

“(e) To appoint such subordinate officers and agents as the business of the corporation requires;

“(f) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

“(g) To lend money to its employees, officers and directors, and otherwise assist its employees, officers and directors;

“(h) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

“(i) To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;

“(j) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

“(k) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act in any state, territory, district, or possession of the United States, or in any foreign country;

“(l) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;

“(m) To make and alter by-laws, not inconsistent with its articles of association or charter or with the laws of this State;

“(n) To make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war to make donations in aid of war activities;

“(o) In time of war to transact any lawful business in aid of the United States in the prosecution of the war;

“(p) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; and to make any other indemnification that shall be authorized by the articles of association or charter or by any by-laws or resolution adopted by the shareholders after notice;

“(q) To pay pension and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans and other

incentive plans for any or all of its directors, officers and employees;
 “(r) To cease its corporate activities and surrender its corporate franchise;

“(s) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.”

SECTION 6. Section 172-26 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

“Section 172-26. **Charitable donations, pensions, by corporation.** Except as otherwise provided by the articles of association or charter of a corporation, the powers to make donations, and to pay pensions and establish pension plans and incentive plans as set forth in section 172-23 (n) and section 172-23 (q) may be exercised by the board of directors of the corporation; provided, however, that in the case of a corporation which is being liquidated or dissolved, donations for the public welfare or for charitable, educational or scientific purposes, and pensions and severance allowances may be paid by the corporation only if authorized by the affirmative vote of the holders of a majority of all of the shares of stock issued and outstanding and having voting power, or by such larger vote as may be required by the articles of association or charter. Nothing contained in this section shall affect the validity of any such action taken prior to May 14, 1947, by any such corporation.”

SECTION 7. Section 172-27 of the Revised Laws of Hawaii 1955, is hereby amended to read as follows:

“Section 172-27. **Same; fiduciary may vote stock.** Without incurring any individual liability, any trust company or other fiduciary, holding in trust for another, stock in any corporation, either domestic or foreign, which is being liquidated or dissolved, may vote such stock in favor of donations or pensions to retired or disabled employees or to their dependents, or severance allowances to employees of such corporation, whenever in the sole judgment and discretion of the fiduciary the donations or pensions or severance allowances are reasonable. Nothing contained in this section shall affect the validity of any such action taken prior to May 14, 1947, by any fiduciary.”

SECTION 8. This Act shall take effect upon its approval.
 (Approved July 9, 1965.) S.B. 474.