

ACT 82

A Bill for an Act to Amend Part III 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. Section 172-45 of the Revised Laws of Hawaii 1955,

as amended, is hereby further amended to read as follows:

“Section 172-45. Stock, classes. Any corporation incorporated under the laws of the State with power to issue stock may issue two or more classes of stock with such terms, preferences, voting powers, restrictions and qualifications thereof as shall be fixed in its articles of association or charter (either as originally executed by the incorporators or as from time to time amended) or as shall be fixed by a resolution authorizing the issue thereof adopted by the affirmative vote of the holders of two-thirds of all of its stock or, if two or more classes of stock have been issued, of the holders of two-thirds of each class of stock outstanding and entitled to vote. The articles of association or charter (either as originally executed by the incorporators or as from time to time amended) may authorize the board of directors to issue authorized and unissued shares of any class and to divide authorized and unissued shares of any class into series and issue any such series and to fix the terms, preferences, voting powers, restrictions and qualifications of any class or series of any class. Whenever such terms, preferences, voting powers, restrictions and qualifications are fixed by resolution of the board of directors or stockholders without amendment to the articles of association or charter, a certified copy of such resolution shall be filed in the office of the director of regulatory agencies of the State. Any such corporation may provide, by its charter or articles of association or by the affirmative vote of the holders of the two-thirds of all of its stock or, if two or more classes of stock have been issued, of two-thirds of each class of stock outstanding and entitled to vote, that any of its authorized shares, issued or unissued, with or without par value, shall be convertible at the option of the holders thereof into shares with or without par value of any other class or classes or of any other series of the same class upon such terms and conditions and with such limitations as may be fixed in the charter or articles of association or in such resolution or, if the charter or articles of association or such resolution authorizes the board of directors to fix before issuance the terms and conditions with or without limitations on which any class of stock or any series of any class of stock which may be issued in series shall be so convertible, then upon such terms and conditions and with such limitations as may be fixed by the board of directors; provided, that no convertible shares so authorized shall be issued nor shall issued shares be changed into convertible shares nor shall the conversion privileges of issued convertible shares be changed unless, at the time of such issuance or such change in issued shares, the capital represented by the convertible shares plus the additional value, if any, which must be paid upon conversion, is at least equal to the consideration required by law for the shares to be issued pursuant to the conversion.

SECTION 2. Section 172-51 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

“Section 172-51. Increase of capital, authorization; certificate to be filed with director. No increase or extension of the capital stock of any corporation organized under the laws of the State, having authority under its articles of association or charter to increase its capital

stock, shall be legal and effective unless such increase or extension has been authorized by a vote of not less than two-thirds of all of the shares of stock, or if two or more classes of stock have been issued, of two-thirds of each class of stock, outstanding and entitled to vote at any meeting duly called and held for such purpose; and unless a verified certificate has first been filed with the director, signed by any two authorized officers of the corporation, showing: That the meeting had been properly called and held; that the increase or extension had been authorized by the required vote; and showing also (a) the present authorized capital stock of the corporation; (b) the amount to which the capital stock thereof may be increased or extended under its articles of association or charter; (c) the amount of increase or extension of the capital stock duly authorized by its stockholders; and (d) in the case of stock having a par value, that not less than ten per cent of the total authorized stock as increased has been paid in, in cash or property, or that the corporation holds cash or property of a value equal to ten per cent of the total authorized stock as increased; which certificate shall be accompanied by payment of the fee required to be paid upon the amount of increase so authorized. The director shall not receive or file any such certificate without such payment. Any such increase of capital shall become effective and the capital of the corporation shall be and become increased on the date of filing of the certificate prescribed by this section or on such later date as shall be specified in such certificate."

SECTION 3. Section 172-52(c) of the Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

"(c) Certificates. A verified certificate shall be signed by any two authorized officers of the corporation and shall be presented to the director of regulatory agencies of the State setting forth therein facts showing that the required vote or other determination pursuant to the provisions of this section of the proposed reduction of capital or capital stock has been obtained or made, and certifying that no distribution of assets representing the surplus created by such reduction will be made at any time unless the remaining assets of the corporation then equal in value the total par value of the remaining capital stock of the corporation, and unless the remaining assets of the corporation then equal in value twice the amount of indebtedness of the corporation and, in the case of a reduction of capital or capital stock by release or cancellation of subscriptions to stock, certifying that the remaining assets of the corporation, upon such reduction, will equal in value the total par value of the remaining capital stock of the corporation and will then equal in value twice the amount of the indebtedness of the corporation."

SECTION 4. This Act shall take effect upon its approval.
(Approved May 14, 1965.) S.B. 473.