

A Bill for an Act Relating to Business Names and Marks.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 416-12, Hawaii Revised Statutes, is amended to read as follows:

**“§416-12 Name.** [No corporation shall take a name (whether of a person or not) identical with the name of any corporation or copartnership previously authorized to do business and doing business under the laws of the State or with any trade name previously registered under the laws of the State or so nearly similar thereto as to lead to confusion and uncertainty.]

The articles of association of any proposed corporation having a name [in violation of the provisions hereof] substantially identical with the name of any corporation or partnership, registered to do business under the laws of the State or any trade name, service mark, or trademark previously registered shall not be recorded by the director of commerce and consumer affairs. The acceptance of the articles of incorporation for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark.”

SECTION 2. Section 418-4, Hawaii Revised Statutes, is amended to read as follows:

**“§418-4 [Declaration] Name; declaration not acceptable, when.** No declaration of a corporation required to file a declaration under section 418-1 or 418-2 shall be accepted by the director of commerce and consumer affairs if the name of the corporation is [the same as the name of] substantially identical with any corporation or [copartnership, domestic or foreign, previously authorized or qualified] partnership registered to do business under the laws of the State or with any trade name, service mark, or trademark previously registered under the

laws of the State[, or so nearly similar thereto as to lead to confusion and uncertainty].

The acceptance of a declaration for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark. The director may make, amend and repeal such rules as may be necessary to carry out the purposes of this section.

No declaration of a corporation required to file a declaration under [Section] section 418-1 shall be accepted by the director if the paid-in capital as shown on the declaration is less than [\$1,000.00.] \$1,000.”

SECTION 3. Section 425-6, Hawaii Revised Statutes, is amended to read as follows:

**“§425-6 Partnership name.** [No partnership shall take or use a name which is identical with any name registered in the office of the director of commerce and consumer affairs under the provisions of any statute, or which is so nearly similar to any such name as to lead to confusion or uncertainty.] No statement or certificate of any partnership [showing] having a name [in violation of the provisions hereof shall be recorded by the director.] substantially identical with the name of any corporation or partnership registered to do business under the laws of the State or with any trade name, service mark, or trademark previously registered shall be recorded by the director. The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark.

The director may make, amend and repeal such rules as may be necessary to carry out the purposes of this section.”

SECTION 4. Section 425-25, Hawaii Revised Statutes, is amended to read as follows:

**“§425-25 Partnership name. (a)** The surname of a limited partner shall not appear in the partnership name, unless (1) it is also the surname of a general partner, or (2) prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared.

A limited partner whose name appears in a partnership name contrary to the foregoing provisions is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

**(b)** No statement or certificate of any partnership having a name substantially identical with the name of any corporation or partnership registered to do business under the laws of the State or with any trade name, service mark, or trademark previously registered shall be recorded by the

director. The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark.

(c) The director may make, amend and repeal such rules as may be necessary to carry out the purposes of this section."

SECTION 5. Section 425-72, Hawaii Revised Statutes, is amended to read as follows:

**"[ ]§425-72[ ] Registration not acceptable, when.** No registration for a limited partnership shall be accepted by the director if the name of such limited partnership is [the same as] substantially identical with the name of any corporation or partnership, whether general or limited, domestic or foreign, previously authorized or qualified to do business under the laws of the State, or with any trade name, service mark, or trademark previously registered under the laws of the State[, or so nearly similar thereto as to lead to confusion and uncertainty]. The acceptance of a registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark.

The director may make, amend and repeal such rules as may be necessary to carry out the purposes of this section."

SECTION 6. Section 482-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"(a)** Any person desiring to [secure the exclusive use of] register any print, label, or trademark intended to be attached or applied to [any] goods or manufactured articles or to bottles, boxes, or packages containing the goods or manufactured articles to indicate the name of the manufacturer, and any person desiring to [secure the exclusive use of] register a service mark, or a trade name, may obtain a certificate of the registration of the print, label, trademark, service mark, or the<sup>1</sup> trade name in the manner hereinafter provided."

SECTION 7. Section 482-3, Hawaii Revised Statutes, is amended to read as follows:

**"§482-3 Record; issuance and effect of certificate.** Upon receiving the application [so] accompanied [and the payment of] by the fee, the director of commerce and consumer affairs shall cause the print, label, trademark, service mark, or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall [secure to the applicant] be constructive notice to all persons of the applicant's claim of the [exclusive] use of the print, label, or<sup>1</sup> trademark, service mark, or trade name throughout the State, for the term of [ten years] one year

from the date thereof; provided that the director shall not register any print, label, trademark, service mark,<sup>1</sup> or trade name which is substantially identical with any registered print, label, trademark, service mark or trade name or with the name of any corporation or partnership registered in accordance with chapters 416, 418, and 425; provided further that the print, label, trademark, service mark or trade name is continued in actual use by the applicant in the State or elsewhere in the United States or is registered in the name of the applicant in the patent [ [ ]and trademark[ ] ] office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark.

The registration of a print, label, trademark, service mark or trade name may be renewed at any time during a period of its registration for additional periods of ten years from the date of renewal by the filing of an application for renewal of registration in such form as the director may provide. Upon filing the application for renewal the applicant shall pay the director a fee of \$25, of which \$15 shall be deposited in the special fund authorized by section 416-97, and the balance deposited to the general fund of the State.

The director may make, amend and repeal such rules as may be necessary to carry out the purposes of this section."

SECTION 8. Section 482-4, Hawaii Revised Statutes, is amended to read as follows:

**"§482-4 Certain prints, labels, trademarks, service mark, union labels and trade names not to be adopted or used.** (a) It [is] shall be unlawful for any person to adopt or use a print, label, trademark, service mark, or trade name<sup>1</sup> which is identical to or confusingly similar with any registered print, label, trademark, service mark, or trade name, or [so similar as to be confused therewith, or any print, label, trademark, service mark,<sup>1</sup> or trade name identical with or similar to the name of any copartnership or corporation] the name of any partnership or corporation registered in accordance with [chapter 416 or chapter 418 or chapter 425;] the laws on partnerships or domestic or foreign corporations [and the director of commerce and consumer affairs shall not register any such print, label, trademark, service mark or trade name].

(b) When a bona fide labor union, or association of employees has adopted a device in the form [ [ ]of[ ] ] a label, brand, mark, name, or other character for the purpose of designating the products of the members of the union or association and the device has been registered pursuant to sections 482-2 and 482-3, then it shall be unlawful for any person to adopt, print, distribute, or otherwise use the device or one so similar as to be confused therewith[, and the director of commerce and consumer affairs shall not register any such similar device]. Any person, except the director of commerce and consumer

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affairs, found to be in violation of this subsection may, in addition to any other penalty assessed or otherwise imposed by law, be required to pay all costs and attorney's fees incurred in seeking enforcement of this subsection, and may be ordered by the court to pay damages to the bona fide labor union or association of employees involved in such amount as may be determined by the court; provided that the damages ordered shall not be less [ [ ]than[ ] ] \$250 nor more than \$5,000."

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 10. This Act shall take effect on October 1, 1984.

(Approved May 18, 1984.)

### Note

1. So in original.