

ACT 181

H.B. NO. 3399

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Section 415-128, Hawaii Revised Statutes, is amended to read as follows:

**“§415-128 Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of corporate documents:

- (1) Articles of incorporation, [~~\$50;~~] \$100;
- (2) Articles of amendment, [~~\$25;~~] \$50;
- (3) Restated articles of incorporation, [~~\$25;~~] \$50;
- (4) Articles of merger or consolidation, [~~\$100;~~] \$200;
- (5) Articles of merger (subsidiary corporation), [~~\$50;~~] \$100;
- (6) Articles of dissolution, [~~\$25;~~] \$50;
- (7) Annual report of domestic and foreign corporations organized for profit, [~~\$15;~~] \$25;
- (8) [~~Filing any~~] Any other statement [or], report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, [~~\$25;~~] \$50;
- (9) Application for a certificate of authority, [~~\$50;~~] \$100;
- (10) Application for a certificate of withdrawal, [~~\$25;~~] \$50;
- (11) Reservation of corporate name, [~~\$10;~~] \$20;
- (12) Transfer of reservation of corporate name, [~~\$10;~~] \$20;
- (13) Good standing certificate, [~~\$15;~~] \$25;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, [~~\$40;~~] \$50;
- (15) Special handling fee for review of articles of merger or consolidation, [~~\$100;~~] \$150;
- (16) Special handling fee for certificates issued by the department, [~~\$10~~] \$20 per certificate; and
- (17) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to the special fund established for use by the department in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund.

The director shall adjust the fees assessed under this section, as necessary from time to time, through rules adopted under chapter 91 to ensure that the proceeds, together with all other receipts of the special fund under this section do not

surpass the annual operating costs of the program. All unexpended and unencumbered moneys remaining on balance with the fund at the close of each fiscal year which are deemed, by the director of finance, to be in excess of the moneys necessary to carry out the processing of corporate documents over the next following fiscal year shall lapse to the credit of the state general fund.”

SECTION 2. Section 415B-155, Hawaii Revised Statutes, is amended to read as follows:

“**\$415B-155 Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of corporate documents:

- (1) Articles of incorporation, [~~\$25;~~] \$50;
- (2) Articles of amendment, [~~\$10;~~] \$20;
- (3) Restated articles of incorporation, [~~\$10;~~] \$20;
- (4) Articles of merger or consolidation, [~~\$50;~~] \$100;
- (5) Articles of dissolution, [~~\$10;~~] \$20;
- (6) Annual report of nonprofit domestic and foreign corporations, [~~\$1;~~] \$5;
- (7) [~~Filing any~~] Any other statement [or], report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, [~~\$10;~~] \$20;
- (8) Application for a certificate of authority, [~~\$25;~~] \$50;
- (9) Application for a certificate of withdrawal, [~~\$10;~~] \$20;
- (10) Reservation of corporate name, [~~\$10;~~] \$20;
- (11) Transfer of reservation of corporate name, [~~\$10;~~] \$20;
- (12) Good standing certificate, [~~\$15;~~] \$20;
- (13) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, [~~\$40;~~] \$50;
- (14) Special handling fee for review of articles of merger or consolidation, [~~\$100;~~] \$150;
- (15) Special handling fee for certificates issued by the department, [~~\$10~~] \$20 per certificate; and
- (16) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to a special fund which may be established for use by the department in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund.”

SECTION 3. Section 425-12, Hawaii Revised Statutes, is amended to read as follows:

“**\$425-12 Fee for [~~recording,~~] filing documents and issuing certificates.**

[(a) The director of commerce and consumer affairs shall collect the following fees:

- (1) For each change of partnership name or statement of dissolution filed, a fee of \$1.50 per partner;
- (2) For each annual statement filed, a fee of \$3; and
- (3) For each general partnership registered, a fee of \$3 for each partner.

(b) The following special handling fees shall be assessed by the director for expeditious review of the following documents:

- (1) For general partnerships: registration statement, \$10; change of name statement, \$10; partnership dissolution statement, \$10; annual statement, \$10; certification of general partnership, \$1 a page; certificate of good standing, \$10;
- (2) For foreign general partnerships: registration statement of foreign general partnership, \$10; withdrawal application, \$10; annual statement,

\$10; certification of foreign general partnership, \$1 a page; certificate of good standing, \$10.]

The following fees shall be paid to the director upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$25;
- (3) Partnership dissolution statement, \$25;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$25;
- (6) Application for certificate of withdrawal, \$10;
- (7) Statement of correction, \$25;
- (8) Reservation of name, \$20;
- (9) Transfer of reservation of name, \$20;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$25;
- (12) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$25;
- (13) Special handling fee for review of any general partnership document, \$20;
- (14) Special handling fee for certificates issued by the director, \$20 per certificate; and
- (15) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to the special fund authorized by section 415-128.”

SECTION 4. Section 425-17, Hawaii Revised Statutes, is amended to read as follows:

**“§425-17 Withdrawal procedure for foreign general partnership.** Any foreign general partnership which has qualified to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director of commerce and consumer affairs a certificate of withdrawal. Any such general partnership shall file in the office of the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

- (1) The name of the foreign general partnership, and the state or country under the laws of which it is formed;
- (2) That the foreign general partnership is not transacting business in this State;
- (3) That the foreign general partnership surrenders its authority to transact business in this State;
- (4) That the foreign general partnership revokes the authority of its registered agent in this State to accept service of process, and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- (5) The name and residence address of each general partner;
- (6) The dates that notice of the foreign general partnership’s intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State. The foreign general partnership, with the approval of the director may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;

- (7) That all taxes, debts, obligations, and liabilities of the foreign general partnership in the State have been paid and discharged or that adequate provision has been made therefor;
- (8) A mailing address to which the director may mail a copy of any process against the foreign general partnership that may be served on the director; and
- (9) Such additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign general partnership.

Upon the filing [with and the approval by the director] of the [aforesaid] application[,] for withdrawal, and after the payment of a fee of [\$3,] \$10, the director shall issue [to such general partnership] a certificate [stating that it has withdrawn and surrendered its rights to engage in business within this State.] of withdrawal, which shall be effective as of the date of the filing of the application for withdrawal, and the authority of the foreign general partnership to transact business in this State shall then cease. No such general partnership may withdraw from this State without complying with the aforesaid conditions and until such compliance, service of legal notices, and processes may be made on any agent of the general partnership within the State, or if none can be found, service of such notices and processes upon the director of commerce and consumer affairs shall be deemed sufficient service of such notices and processes upon it.”

SECTION 5. Section 425D-1107, Hawaii Revised Statutes, is amended to read as follows:

**“§425D-1107 Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, [\$25;] \$50;
- (2) Any certificate of amendment, restatement, or correction, [\$10;] \$20;
- (3) Certificate of cancellation, [\$10;] \$20;
- (4) Annual statement for domestic or foreign limited partnership, [\$3;] \$10;
- (5) Any other certificate or document of domestic or foreign limited partnership, [\$10;] \$20;
- (6) Application for registration as a foreign limited partnership, [\$50;] \$100;
- (7) Any certificate of amendment or agent change for foreign limited partnership, [\$10;] \$20;
- (8) Application for certificate of withdrawal of foreign limited partnership, [\$10;] \$20;
- (9) Reservation of name, [\$10;] \$20;
- (10) Transfer of reservation of name, [\$10;] \$20;
- (11) Good standing certificate, [\$15;] \$20;
- (12) Special handling fee for review of any limited partnership document, [\$40;] \$50;
- (13) Special handling fee for certificates issued by the director, [\$10] \$20 per certificate; and
- (14) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to the special fund authorized by section 415-128.”

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

“(b) Before any person may receive a certificate of registration of a print, label, or trademark, the person shall file in the office of the director of commerce and consumer affairs an application for the registration of the print, label, or trademark, with a declaration, certified by the applicant, stating that the applicant is the sole and original proprietor or the assign of the proprietor of this print, label, or trademark, and describing the goods or manufactured articles for which the print, label, or trademark is used, and stating the manner in which the print, label, or trademark is used. Before any person may receive a certificate of registration of a service mark or trade name, the person shall file in the office of the director an application for the registration thereof, with a declaration, certified, as aforesaid, stating that the person is the sole and original proprietor of the service mark or trade name, or the assign of the proprietor and setting forth the nature of the business in which the service mark or trade name is used. The application shall be accompanied by two exact copies of the print, label, trademark, service mark, or trade name. Upon filing the application, the applicant shall pay to the director a fee of [\$25, of which \$15 shall be deposited in the special fund authorized by section 415-128, and the balance deposited to the general fund of the State.] \$50. A special handling fee of [\$10] \$20 for expediting registration of a trade name, print, label, trademark, or service mark shall be assessed by the department. All special handling fees shall be credited to the special fund authorized by section 415-128.”

SECTION 7. Section 482-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) 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 a 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 415-128, and the balance deposited to the general fund of the State.] \$50.”

SECTION 8. Section 482E-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) [In lieu of an offering circular meeting the requirements set forth in this section, franchises may be sold in this State by means of an offering circular or disclosure statement required by a federal or government agency of another state, or an offering circular or disclosure statement meeting the requirements approved by an association of state regulatory agencies; provided that the director determines that the<sup>1</sup> offering circular or disclosure statement substantially meets the disclosure requirements set forth in this section.] Every filing under this section shall expire two months after the end of each franchisor’s fiscal year. Applications for renewals shall be made not more than sixty days before the expiration date. An application for renewal shall be accompanied by the most recently amended offering circular required under subsection (b). Any applicant for renewal of a franchise filing who submits the renewal application after the expiration date shall be required to reapply as a new franchisor.”

SECTION 9. Section 482E-11, Hawaii Revised Statutes, is amended to read as follows:

“**§482E-11 Fees.** The director shall charge and collect a fee of [\$50] \$250 at the time of the filing of the offering circular [or the], a fee of \$250 for the filing of

any amended offering circular filed pursuant to section 482E-3(c)[.], and an annual renewal fee of \$250 to be collected pursuant to section 482E-3(d)."

SECTION 10. Section 485-4, Hawaii Revised Statutes, is amended to read as follows:

**"§485-4 Exempt securities.** The following securities are exempt from sections 485-8 and 485-25(a)(7):

- (1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state or territory, any political subdivision of a state or territory, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state or territory or any investment certificate issued by a financial services loan company duly licensed under the financial services loan law of the State of Hawaii;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state or territory and authorized to do business in the State;
- (5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state or territory and authorized to do business in the State;
- (6) Any security issued or guaranteed by any federal credit union, or any credit union or similar association organized and supervised under the laws of the State;
- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state or territory; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States or any state or territory;
- (8) Any security listed or approved for listing upon notice of issuance on any exchange registered or exempted under the Securities Exchange Act of 1934, as amended; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe for any of the foregoing;
- (9) Any security issued by any issuer organized and operated not for private profit but exclusively for religious, educational, benevolent,

- charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;
  - (11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan;
  - (12) Any option on a commodity futures contract subject to regulation under the Commodity Exchange Act;
  - (13) Any security issued by an "investment company" as defined by and registered under the "Investment Company Act of 1940" (15 U.S.C. [§]80a); provided that:

(A) The issuer is:

- (i) Advised by an investment adviser that is a depository institution, subsidiary, or affiliate thereof, any of which are exempt from registration under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1), or is currently registered as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. §80b-3) for at least three years immediately preceding an offer or sale of a security claimed to be exempt under this paragraph and the investment adviser has acted, or is affiliated with an investment adviser that has acted, as an investment adviser to one or more registered investment companies or unit investment trusts for at least three years immediately preceding an offer or sale of a security claimed to be exempt under this paragraph; or
- (ii) The issuer has a sponsor that has at all times throughout the three years prior to an offer or sale of a security claimed to be exempt under this paragraph, sponsored one or more registered investment companies or unit investment trusts whose aggregate total assets have exceeded \$100,000,000; and

(B) The commissioner has received prior to any sale exempted under this paragraph:

- (i) A notice of intention to sell setting forth the name and address of the issuer and the securities to be offered in this State; and
- (ii) An initial filing fee of \$200 per fund for open-end management companies or a fee of \$200 for unit investment trusts, and an annual renewal fee of \$50 thereafter, to be collected within two months of the end of the investment or trust company's fiscal year.

An exemption under this paragraph does not constitute an exemption from the licensing requirements for salespersons under section 485-14. If any offer or sale is to be made more than twelve months after the date notice under subparagraph (B)(i) is received by the commissioner, another notice and payment of the applicable fee shall be required.

For purposes of this paragraph, an investment adviser is affiliated with another investment adviser if the investment adviser controls, is controlled by, or is under common control with the other investment adviser;

- (14) Any cooperative association membership stock, membership certificates or share, or membership capital, pursuant to section 421C-36, or [chapters] chapter 421 [or 422];
- (15) Any security, except a security issued by an issuer registered as an open-end management company or unit investment trust under the Investment Company Act of 1940 (15 U.S.C. 80a), for which a registration statement has been filed under the Securities Act of 1933, provided that no sale shall be made until such registration statement has become effective; and
- (16) Any variable annuity contract which is an investment contract prepared by a life insurance company designed to offer continuous income through participation in a mutual fund portfolio or a variable annuity contract based upon a separate account which is registered as a management investment company with the Securities and Exchange Commission.”

SECTION 11. Section 485-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Procedure for registration by notification. Securities entitled to registration by notification shall be registered by the filing by the issuer or by any registered dealer interested in the sale thereof, in the office of the commissioner, of a statement with respect to the securities containing the following:

- (1) Name of issuer, location and, if incorporated, place of incorporation;
- (2) A brief description of the securities, including the amount of the issue;
- (3) Amount of securities to be offered in the State;
- (4) A statement of the amount of the issuer’s income, expenses, and fixed charges during the last three years, certified to by a public accountant;
- (5) A balance sheet showing the amount and general character of its assets and liabilities as of the last fiscal year immediately preceding, certified to by a public accountant;
- (6) A brief statement of the facts which show that the securities fall within one of the classes in this section defined;
- (7) The price at which the securities are to be offered for sale to the public;
- (8) A statement that the issuer has complied with all the laws of the United States relating to the sale of securities; and
- (9) Such further information as the commissioner may require.

All of the statements, exhibits, and documents of every kind required by the commissioner under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the commissioner.

In the case of securities falling within the class defined by subsection (a)(1) or (2), a copy of the circular to be used for the public offering shall be filed in the office of the commissioner with the statement or within two days thereafter or within such further time as the commissioner allows.

In the case of securities falling within the classes defined by subsection (a)(3), (4), (5), (6), and (7), the circular to be used for the public offering shall be filed with the statement.

The filing of such statement in the office of the commissioner and the payment of the fee hereinafter provided shall constitute the registration of the



security. Upon such registration, the securities may be sold in the State by any registered dealer giving notice in the manner provided in section 485-14(o) subject to the further order of the commissioner as hereinafter provided.

At the time of filing the statement, as prescribed in this section, the applicant shall pay to the commissioner a fee of one-twentieth of one per cent of the aggregate offering price of the securities to be offered in the State for which the applicant is seeking registration, but in no case shall the fee be more than [\$250.] \$500.”

SECTION 12. Section 485-10, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) At the time of filing the application for registration as prescribed in this section, the applicant shall pay to the commissioner, a fee of one-tenth of one per cent of the aggregate offering price of the securities to be sold in the State for which the applicant is seeking registration, but in no case shall the fee be less than [\$50] \$250 nor more than [\$500.] \$2,500.”

SECTION 13. Section 485-10, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Registration under this section is effective for a period of one year and may be renewed for additional periods of one year by filing, by a date not later than fifteen days prior to expiration of registration, a prospectus meeting the requirements of subsection (b)(3) or (4), and containing information as of a date not more than ninety days prior to the date of filing, together with the payment of a renewal fee of [\$50.] \$250.”

SECTION 14. Section 485-14, Hawaii Revised Statutes, is amended by amending subsection (l) to read as follows:

“(l) Recording; duration; renewal; fee. The name and addresses of all persons found eligible for registration as dealers, investment advisers, salespersons, or investment adviser representatives and all orders with respect thereto shall be recorded in a register of dealers, investment advisers, salespersons, and investment adviser representatives kept in the office of the commissioner which shall be open to public inspection. Except as hereinafter provided, every registration for investment advisers and investment adviser representatives under this section shall expire on December 31 in each odd-numbered year, and every registration for dealers and salespersons under this section shall expire on December 31 of each year. Applications for renewals shall be made not less than thirty nor more than sixty days before the end of the expiration year or as provided through the Central Registration Depository system. Any applicant for renewal of a dealer, investment adviser, salesperson, or investment adviser representative registration who does not submit the application within the time prescribed by this section shall pay a penalty of one hundred per cent of the applicable renewal fee. Any applicant for renewal of a dealer or investment adviser registration who submits the application after December 31 of the expiration year shall be required to reapply as a new dealer or investment adviser. The registration of any dealer, investment adviser, salesperson, or investment adviser representative may be revoked or terminated prior to its expiration by written notice filed with the commissioner by the registered dealer, registered salesperson, registered investment adviser, or registered investment adviser representative concerned, and the revocation shall take effect as of the date and time of filing of the notice. Upon revocation or termination of the registration of any dealer, investment adviser, salesperson, or investment adviser representative, the dealer’s,

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investment adviser's, salesperson's, or investment adviser representative's certificate of registration shall be surrendered to the commissioner for cancellation. The fee for registration and for each renewal shall be [\$100] \$200 in the case of dealers and investment advisers and [\$25] \$50 in the case of salespersons and investment adviser representatives."

SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 16. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

### Note

1. Prior to amendment "such" appeared here.