

ACT 182

H.B. NO. 3400

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 415, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§415- Amended and restated articles of incorporation. (a) A domestic corporation may at any time amend and restate its articles of incorporation by complying with the procedures and requirements of sections 415-59, 415-60, and 415-64.

(b) Upon its adoption, the amended and restated articles of incorporation shall set forth:

- (1) All of the operative provisions of the articles of incorporation as theretofore amended;
- (2) The information required by section 415-61; and
- (3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(c) The amended and restated articles of incorporation shall be delivered to the director for filing. The director may certify the amended and restated articles of incorporation as the articles of incorporation currently in effect, without including the information required to be filed by subsection (b)(2) and (3).”

SECTION 2. Section 415-48.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation shall have the power to eliminate or limit the personal liability of its directors in any action brought by the shareholders or the corporation for monetary damages against any director of the corporation for a breach of fiduciary duty as a director, provided that:

- (1) The elimination or limitation shall be authorized, directed, or provided for[, and approved by the shareholders of the corporation,] in:
 - (A) The articles of incorporation of the corporation; or
 - (B) Any duly adopted amendment of the articles of incorporation; [or
 - (C) Any bylaw of the corporation, or amendment to the bylaws;] and

- (2) [The] If the provision eliminating or limiting the personal liability of a corporation's directors is authorized, directed, or provided for by amendments to the articles of incorporation, it shall be adopted upon the affirmative vote of the holders of two-thirds of the shares represented at the shareholders' meeting and having voting power; provided that the vote also constitutes a majority of the shares having voting power."

SECTION 3. Section 415-48.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The shareholders of the corporation shall receive written notice of any proposal by the corporation to eliminate or limit the personal liability of the directors under subsection [(a),] (a)(2), and the corporation shall in such cases submit the [written notice and the written proposal, if any,] duly adopted amendment to the articles of incorporation to the director of [the department of] commerce and consumer affairs. [The department may adopt guidelines as to the form of the written notice which is to be sent to the shareholders notifying them of the proposal to eliminate or limit the personal liability of the directors.]"

SECTION 4. Section 415-64, Hawaii Revised Statutes, is amended to read as follows:

"§415-64 Restated articles of incorporation. (a) A domestic corporation may at any time restate its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.

(b) Upon [the adoption of the resolution,] its adoption, restated articles of incorporation shall set forth all of the operative provisions of the articles of incorporation as theretofore amended, together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(c) The restated articles of incorporation shall be delivered to the director for filing. The director may certify the restated articles of incorporation currently in effect, without including the information required to be filed by subsection (b)."

SECTION 5. Section 415-83, Hawaii Revised Statutes, is amended to read as follows:

"§415-83 Voluntary dissolution by consent of shareholders. A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

Upon the execution of the written consent, a statement of intent to dissolve shall set forth:

- (1) The name of the corporation;
- (2) The names and respective residence addresses of its officers;
- (3) The names and respective residence addresses of its directors; and
- [(4) A copy of the written consent signed by all shareholders of the corporation; and
- (5)] (4) A statement that the written consent has been signed by all shareholders of the corporation, or signed in their names by their attorneys thereunto duly authorized."

SECTION 6. Section 415-84, Hawaii Revised Statutes, is amended to read as follows:

“§415-84 Voluntary dissolution by act of corporation. A corporation may be dissolved by the act of the corporation, when authorized, in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
- (2) Written notice shall be given to each shareholder record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, that one of the purposes of the meeting is to consider the advisability of dissolving the corporation;
- (3) With respect to corporations incorporated on or after July 1, 1987, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon;
- (4) With respect to corporations incorporated before July 1, 1987, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that said lesser proportion shall not be less than the proportion set forth in paragraph (3) of this section; and
- (5) Upon the adoption of the resolution, a statement of intent to dissolve shall set forth:
 - (A) The name of the corporation;
 - (B) The names and respective residence addresses of its officers;
 - (C) The names and respective residence addresses of its directors;
 - (D) [A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;] The date, time, and location of the shareholders meeting;
 - (E) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each class; and
 - (F) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.”

SECTION 7. Section 415-110, Hawaii Revised Statutes, is amended to read as follows:

“§415-110 Application for certificate of authority. To procure a certificate of authority to transact business in this State, a foreign corporation should make application therefor to the director, which application shall set forth:

- (1) The name of the corporation and the jurisdiction in which it is incorporated;
- (2) The date of incorporation and the period of duration of the corporation;
- (3) The mailing address of the principal office of the corporation in the jurisdiction in which it is incorporated;
- (4) The street address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at that address;
- (5) The primary specific purpose and such other purposes of the corporation which it proposes to pursue in the transaction of business in this State;
- (6) The names and respective addresses of the directors and officers of the corporation; and
- [(7)] An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this State during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during that year, and an estimate of the gross amount thereof which will be transacted by the corporation at or from places of business in this State during such year; and
- (8)] (7) Any additional information as may be necessary or appropriate to enable the director to determine whether the corporation is entitled to a certificate of authority to transact business in this State. The application shall be made on forms prescribed and furnished by the director which shall be delivered to the director for filing.”

SECTION 8. Section 415B-91, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon the adoption of a resolution, a statement of intent to dissolve the corporation shall be delivered to the director for filing and shall set forth:

- (1) The name of the corporation;
- (2) The names and respective residence addresses of the corporation’s officers and directors;
- (3) [A copy of the resolution adopted authorizing the dissolution;] The manner in which the resolution approving the dissolution was adopted; and
- (4) The number of votes by members or directors, as the case may be, cast in favor of the resolution.”

SECTION 9. Section 425-1.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A document is corrected:

- (1) By preparing a statement of correction that:
 - (A) Describes the document including its file date or attaches a copy of it to the statement;

- (B) Specifies the incorrect information and the reason it is incorrect or the manner in which the execution was defective; [and]
 - (C) Corrects the incorrect information or defective execution; and
 - (D) Is executed and certified by a general partner;
and
- (2) By delivering the statement to the director for filing.”

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 11. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.