

ACT 93

S.B. NO. 1720

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 425, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART LIMITED LIABILITY PARTNERSHIP ACT

§425-A Name of part. This part may be cited as the Hawaii Limited Liability Partnership Act.

§425-B Definitions. As used in this part:

“Director” means the director of commerce and consumer affairs.

“Foreign limited liability partnership” means a partnership formed in accordance with the laws of any other jurisdiction as a limited liability partnership under the laws of that jurisdiction and registered as a foreign limited liability partnership pursuant to this part.

“Limited liability partnership” means a partnership formed in accordance with the laws of this State and registered as a limited liability partnership pursuant to this part.

§425-C Certificate of limited liability partnership. (a) In order to form a limited liability partnership, a certificate of limited liability partnership must be executed and delivered to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited liability partnership;
- (2) The street address of the principal place of business of the partnership;
- (3) The name and the residence street address of each partner;
- (4) The nature of the partnership business;
- (5) The fact that the partnership is a limited liability partnership; and
- (6) The fact that none of the partners are either a minor or an incompetent person.

(b) A limited liability partnership is formed at the time of the filing of the certificate of limited liability partnership in the office of the director.

§425-D Amendment to certificate. (a) A certificate of limited liability partnership is amended by delivering a certificate of amendment of limited liability partnership to the office of the director for filing. The certificate of amendment shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date of filing the certificate; and

(3) The amendment to the certificate.

(b) A partner who becomes aware that any statement in a certificate of limited liability partnership was false when made or that arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall amend the certificate within thirty days after the partner becomes aware of the inaccuracy.

(c) A certificate of limited liability partnership may be amended at any time for any other proper purpose that the partners determine. No person shall have any liability because an amendment to a certificate of limited liability partnership has not been filed to reflect the occurrence of any event as required by subsection (b).

(d) A restated certificate of limited liability partnership may be executed and filed in the same manner as a certificate of amendment. The restated certificate shall set forth all of the operative provisions of the certificate as amended.

§425-E Registration of foreign limited liability partnership. Before transacting business in this State, a foreign limited liability partnership shall register with the director. To register, a foreign limited liability partnership shall submit to the director an application for registration as a foreign limited liability partnership, certified and signed by a partner and setting forth:

- (1) The name of the foreign limited liability partnership;
- (2) The name and residence address of each partner residing in Hawaii;
- (3) The nature of the foreign limited liability partnership business;
- (4) The jurisdiction in which it was formed and the street address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited liability partnership;
- (5) The date of its formation and the date the partnership commenced business in the State;
- (6) The name and address of any qualified agent for service of process on the foreign limited liability partnership whom the foreign limited liability partnership elects to appoint; provided that the agent shall be an individual resident of this State or a domestic corporation;
- (7) The fact that the partnership is a foreign limited liability partnership; and
- (8) The fact that none of the partners are either a minor or an incompetent person.

Registration is effective at the time of the filing of the application for registration of the foreign limited liability partnership in the office of the director.

§425-F Changes and amendments. If any statement in the application was false when made or any arrangement of other facts described have changed, making the application inaccurate in any material respect, other than by admission or withdrawal of partners, the foreign limited liability partnership shall file, within thirty days after it becomes aware of the inaccuracy, in the office of the director a certificate, certified and signed by a partner, correcting the statement.

§425-G Annual statement. Every limited liability partnership and foreign limited liability partnership registered in this State shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year, containing the following:

- (1) The name of the limited liability partnership or foreign limited liability partnership;
- (2) In the case of a foreign limited liability partnership, the name and residence address of each partner resident in Hawaii or in the case of a

limited liability partnership, the name and residence address of each partner;

- (3) The nature of the partnership business;
- (4) The street address of the principal place of business of the partnership in this State and, if the partnership is a foreign limited liability partnership, the name of the jurisdiction where the foreign limited liability partnership was formed and the street address of the principal place of business of the partnership;
- (5) In the case of a foreign limited liability partnership, the name and street address of the qualified agent for service of process on the foreign limited liability partnership whom the foreign limited liability partnership elects to appoint; provided that the agent shall be an individual resident of this State or a domestic corporation;
- (6) The fact that the partnership is a limited liability partnership or foreign limited liability partnership; and
- (7) The fact that none of the partners are either a minor or an incompetent person.

§425-H Execution of statements. (a)¹ Each statement required by this part to be filed in the office of the director shall be executed and certified in the following manner:

- (1) The initial certificate of limited liability partnership of a limited liability partnership must be signed by all partners;
- (2) The initial application for registration of a foreign limited liability partnership must be signed by at least one partner;
- (3) A certificate of correction or certificate of amendment must be signed by at least one partner; and
- (4) Any other statement or document must be signed by at least one partner.

§425-I Filing requirements; filing duty of the director. (a) A document must satisfy the requirements of this part to be entitled to filing by the director.

(b) The document shall contain the information required by this part. It may contain other information as well.

(c) If the director has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(d) The director's duty to file documents under this chapter is ministerial. The filing or refusal to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the documentation is valid or invalid, or the information contained in the document is correct or incorrect.

§425-J Forms to be furnished by director. The registration, annual statement, and other statements required by this part shall be filed on forms to be furnished by the director.

§425-K Laws of this State to apply. The internal affairs of a limited liability partnership including the liability of partners for debts, obligations, and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of this State, regardless of where the limited liability partnership may do business.

§425-L Foreign limited liability partnerships, powers and liabilities. (a)

A foreign limited liability partnership, on filing an application for registration as required by section 425-E and subject to continuing compliance with the other provisions of this part, shall have the same powers and privileges, and be subject to the same disabilities as are by law conferred upon limited liability partnerships; provided that the purposes for which the partnership is formed are not repugnant to or in conflict with any law of the State.

(b) Subject to the Constitution of this State, the laws of the state in which a foreign limited liability partnership is formed govern its organization and internal affairs and the individual liability of its partners.

§425-M Minors and incompetent persons. A minor or incompetent person may not be a partner, but may have a beneficial interest in a limited liability partnership or foreign limited liability partnership through a trustee or duly appointed guardian.

§425-N Name. (a) The name of a limited liability partnership as set forth in its certificate of limited liability partnership, shall contain the words "limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.

(b) No certificate of a limited liability partnership or registration for a foreign limited liability partnership shall be accepted by the director if the name of the partnership:

- (1) Is the same as, or substantially identical to, the name of any corporation or partnership, whether general, limited, limited liability, domestic, or foreign, previously authorized or 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 a name the exclusive right to which is, at the time, reserved, except that this provision shall not apply if the partnership applying for registration files with the director any one of the following:
 - (A) The written consent of the holder of the registered or reserved name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
 - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited liability partnership to use the name in this State; and
- (2) In the case of a foreign limited liability partnership, is not transliterated into letters of the English alphabet, if the name is not in English.

(c) If a foreign limited liability partnership is unable to change its name to a name which is available to it under the laws of this State, it may deliver to the director a copy of a certificate of registration of trade name for the foreign limited liability partnership's file and thereafter become registered to transact business in the State under that name.

(d) Subject to chapter 91, the director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section.

§425-O Reservation of partnership name. The exclusive right to the use of a partnership name may be reserved by any:

- (1) Person intending to organize a limited liability partnership;
- (2) Limited liability partnership intending to change its name;

- (3) Foreign limited liability partnership intending to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein;
- (4) Foreign limited liability partnership authorized to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein and intending to change its name; or
- (5) Person intending to organize a foreign limited liability partnership and intending to have the partnership to do or carry on any business in the state or to take, hold, sell, demise, or convey real estate or other property therein.

Reservations shall be made by filing with the director an application in such form as the director shall prescribe to reserve a specified partnership name, and payment to the director of a fee equivalent to that paid by a corporation for the same service. If the director finds that the name is available for partnership use, the director shall reserve the name for the exclusive use of the applicant for a period of one-hundred-twenty days.

The right to the exclusive use of a specified partnership name so reserved may be transferred by filing in the office of the director a notice of a transfer executed by the applicant for whom the name is reserved specifying the name and address of the transferee.

§425-P Statement of dissolution. Whenever a limited liability partnership is dissolved, and the business is not continued within the meaning of section 425-141(1), (3), (5), or (6), a statement thereof showing the cause of dissolution shall be filed in the office of the director within thirty days after dissolution. The statement shall be certified by all partners except in cases in which circumstances make it impossible to secure the signature of all partners, which circumstances shall be set forth in the statement.

§425-Q Prior liens on limited liability partnership property on dissolution. Upon dissolution of a limited liability partnership, any lawful taxes, imposts, license fees, or assessments for which the partnership, or any partner in respect thereof, is liable shall constitute a prior lien upon the assets of the partnership but not as against the interest of those creditors who have prior recorded liens.

§425-R Record of statements. The director shall cause books or files to be kept in the director's office, in which shall be recorded the information required by this part to be filed in the director's office; and these books or files shall be open to public inspection.

§425-S Fee for recording. (a) The director shall collect the following fees for documents filed under this part:

- (1) For each change of partnership name or statement of dissolution filed, a fee of \$5 per partner, subject to a maximum fee of \$5,000;
- (2) For each annual statement filed, a fee of \$50;
- (3) For each limited liability partnership registered, a fee of \$100 for each partner, subject to a maximum fee of \$10,000;
- (4) For each foreign limited liability partnership registered, a fee of \$1,000 if the partnership has fewer than ten partners; \$5,000 if the partnership has ten or more but fewer than fifty partners; and \$10,000 if the partnership has fifty or more partners;
- (5) For each reservation or transfer of limited liability partnership name, a fee of \$100;

- (6) For each certificate of correction or certificate of amendment, a fee of \$100;
 - (7) For each certificate of good standing, a fee of \$100; and
 - (8) For any other certificate, statement, or document, a fee of \$100;
 - (9) For each certification of domestic or foreign partnership, a fee of \$100.
 - (b) The following special handling fees shall be assessed by the director for expeditious review of the following documents:
 - (1) For limited liability partnerships: certificate of limited liability partnership, \$100; certificate of correction, \$100; change of name statement, \$100; partnership dissolution statement, \$100; annual statement, \$100; certification of limited liability partnership, \$1 a page; certificate of good standing, \$100;
 - (2) For foreign limited liability partnerships: registration statement, \$100; certificate of correction, \$100; withdrawal application, \$100; annual statement, \$100; certification of foreign partnership, \$1 a page; certificate of good standing, \$100; and
 - (3) For any other certificate or document authorized by this part, \$100.
- All special handling fees shall be credited to the special fund authorized by section 415-128. All other fees collected under this section shall be managed in accordance with section 26-9(1).

§425-T Personal liability and penalty. (a) If a partnership neglects or fails to substantially comply with any provision of this part, each partner shall severally forfeit to the State \$25 for each and every month while the default shall continue, to be recovered by action brought in the name of the State by the director; provided that the director, for good cause shown, may reduce or waive the same.

(b) Any person who signs or certifies as correct any statement or certificate filed pursuant to this part, or who presents any statement or certificate for filing, knowing that the statement or certificate is false in any material respect and with the intent to deceive or defraud, shall be guilty of a class C felony.

(c) Any person who negligently, but without intent to deceive or defraud, signs or certifies as correct any statement or certificate filed pursuant to this part, which is in fact false, may be punished by a civil fine not to exceed \$500.

§425-U Cancellation of registration. If any limited liability partnership or foreign limited liability partnership fails or neglects for a period of two years to file any annual statement as required by this part, the director may cancel the registration of the partnership. The cancellation of the registration shall not relieve the partners of liability for the penalties due to the State for the failure to file any statement or certificates required by this part.

§425-V Withdrawal procedure for foreign limited liability partnership. (a) Any foreign limited liability partnership that has registered under section 425-E to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director a certificate of withdrawal. Any such partnership shall file in the office of the director an application for withdrawal, certified and signed by a partner, that shall set forth:

- (1) The name of the foreign limited liability partnership, and the jurisdiction in which, or in accordance with the laws of which, it is formed;
- (2) That the foreign limited liability partnership is not transacting business in this State;
- (3) That the foreign limited liability partnership surrenders its authority to transact business in this State;

- (4) That the foreign limited liability 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 resident address of each partner resident in Hawaii;
- (6) The dates that notice of the foreign limited liability 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 limited liability 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 limited liability 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 limited liability partnership that may be served on the director; and
- (9) Additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign limited liability partnership.

(b) Upon the filing and the approval by the director of the application under subsection (a), and after the payment of a fee of \$100, the director shall issue to the partnership a certificate stating that it has withdrawn and surrendered its rights to engage in business within this State. No partnership may withdraw from this State without complying with the conditions of this section and until compliance, service of legal notices and processes may be made on any agent of the partnership within the State. If none can be found within the State, and in case the partnership, if a foreign limited liability partnership, has not filed with the director pursuant to section 425-E, the name of a person upon whom legal notice and process from the courts of the State may be served, and likewise if the person so named is not found within the State, service may be made upon the partnership by registered or certified mail, return receipt requested, addressed to a partner of the partnership at its principal office. Service using registered or certified mail is perfected at the earliest of:

- (1) The date the partnership receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the partnership; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) Nothing in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a partnership in any other manner permitted by law.

§425-W Transaction of business without registration. (a) A foreign limited liability partnership transacting business in this State may not maintain any action, suit, or proceeding in any court of this State until it has registered in this State.

(b) The failure of a foreign limited liability partnership to register in this State does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any action, suit, or proceeding in any court of this State.

(c) A partner in a foreign limited liability partnership is not individually liable for debts, obligations, or liabilities of or chargeable to the partnership solely by reason of the limited liability partnership having transacted business in this State without registration.

(d) Notwithstanding the foregoing provisions of this section, if a foreign or domestic corporation, limited partnership, general partnership, or limited liability company registered to transact business in this State changes its legal form to a foreign limited liability partnership, it must register under section 425-E within thirty days of becoming a foreign limited liability partnership, and may maintain any previously commenced actions, suits, and proceedings in courts of this State pending the filing of its application for registration under section 425-E.

§425-X Action by director. The director may bring an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this chapter.

§425-Y Limitation on partner's liability. (a) Notwithstanding any provision in part IV, a partner or former partner in a limited liability partnership shall not be individually and personally liable for debts, obligations, and liabilities of or chargeable to the partnership, whether in contract, tort, or otherwise arising out of negligence, including negligent acts and negligent omissions; wrongful acts or omissions; misconduct; or malpractice committed while the partnership is a limited liability partnership and in the course of the partnership business, unless the negligence, wrongful acts or omissions, misconduct, or malpractice were committed by the partner or by a person or persons under the partner's direct supervision and control.

(b) Notwithstanding any provision in part IV, a partner or former partner in a limited liability partnership shall not be directly or indirectly, including by way of contribution, indemnification, assessment, or otherwise, liable for, or obligated to pay to the partnership, any partner thereof, or any other person, any debt, obligation, liability, or loss of or chargeable to the partnership whether arising in tort, contract, or otherwise if, by operation of subsection (a), the partner or former partner is not individually and personally liable for the debt, obligation, liability, or loss.

§425-Z Errors in registration. The status of a limited liability partnership or a foreign limited liability partnership as such shall not be affected by:

- (1) Errors in the registration or annual statement required by sections 425-C, 425-E, and 425-G; or
- (2) Changes which occur after a registration or annual statement is filed pursuant to sections 425-C, 425-E, and 425-G.

§425-AA Corrections to filed documents. (a) A limited liability partnership or foreign limited liability partnership may correct a document filed by the director if the document:

- (1) Contains an incorrect statement; or
 - (2) Was defectively executed, attested, sealed, verified, or acknowledged.
- (b) A document is corrected:
- (1) By preparing a certificate of correction that:
 - (A) Describes the document including its file date or attaches a copy of it to the certificate;
 - (B) Specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
 - (C) Corrects the incorrect statement or defective execution; and
 - (2) By delivering the certificate to the director for filing.

(c) A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a certificate of correction is effective when filed.

§425-BB Insurance and financial responsibility of registered limited liability partnerships. (a) At the time of registration pursuant to section 425-C in the case of a limited liability partnership, and section 425-E, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims of the type described in section 425-Y, or based upon acts, errors, or omissions, a limited liability partnership or foreign limited liability partnership shall comply with one, or pursuant to subsection (b) some combination, of the following:

- (1) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount of at least \$100,000 multiplied by the number of licensed persons rendering professional services on behalf of the partnership, or at least \$100,000 multiplied by the number of partners in the case of a nonprofessional limited liability partnership; however, the maximum amount of insurance is not required to exceed \$5,000,000 against which no claims are outstanding.
- (2) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least \$100,000 multiplied by the number of licensed persons rendering professional services, or at least \$100,000 multiplied by the number of partners in the case of a nonprofessional limited liability partnership; however, the maximum amount of security is not required to exceed \$5,000,000 against which no claims are outstanding.
- (3) A limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding \$10,000,000. In order to comply with this alternative method of meeting the requirements established in this section, a limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the director, signed by an authorized member of the limited liability partnership or foreign limited liability partnership, accompanied by such forms as prescribed by the director. In order to be current in a given year, the partnership form of confirming compliance with this optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(b) For purposes of satisfying the security requirements of this section, a limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subsection (a)(1), (2), and (3). Any limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subsection (a)(3) shall file all informa-

tion that may be required by the director on such forms and in such manner as the director may prescribe.

(c) For purposes of subsection (a) a limited liability partnership is a professional partnership if it is engaged in the delivery of professional services under chapters 442, 448, 453, 455, 458, 459, 460, 461, 463E, 466, and 471.

(d) Neither the existence of the requirements of subsection (a) nor the extent of the limited liability partnership's or foreign limited liability partnership's compliance with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A limited liability partnership that has been the subject of such a proceeding and that conducts business after the proceeding ends shall thereafter comply with subsection (a), in order to obtain the limitations on liability afforded by this chapter.

(f) If a partnership falsely represents in its certificate or amended certificate of limited liability, or in its registration or amended registration as a foreign limited liability partnership, that it has obtained the minimum amount of insurance required by this section, all partners of the limited liability partnership or foreign limited liability partnership shall be liable jointly for all of the debts and liabilities of the partnership.

(g) The director is not responsible for determining if a partnership is in compliance with the requirements of this section.

§425-CC Revocation if instrument dishonored. The director may revoke the filing of a document filed under this part if the director determines that the filing fee for the document was paid by an instrument that was dishonored when presented by the State for payment. The director shall return the document and give notice of revocation to the filing party by regular mail. Failure to give or receive notice does not invalidate the revocation. A revocation of a filing does not affect an earlier filing.

§425-DD Partnerships for the practice of law; disallowed. The formation of limited liability partnerships or the registration of foreign limited liability partnerships for the practice of law shall not be allowed under this part."

SECTION 2. Section 466-3, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"“Partner” means a partner in any general partnership, foreign general partnership, limited liability partnership, or foreign limited liability partnership.

“Partnership” means any general partnership, foreign general partnership, limited liability partnership, or foreign limited liability partnership.”

SECTION 3. Section 425-106, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) But any association formed under any other statute of this State, or any statute adopted by authority, other than the authority of this State, is not a partnership under this part, unless such association would have been a partnership in this State prior to the adoption of this part; but this part shall apply to limited partnerships, limited liability partnerships, and subject to section 425-L, foreign limited

liability partnership, except insofar as the statutes relating to such partnerships are inconsistent herewith.”

SECTION 4. In codifying the new part added to chapter 425, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designation of the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect April 1, 1997.

(Approved June 7, 1996.)

Note

1. No (b) designation.