

A Bill for an Act Relating to Limited Liability Partnerships.

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

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

**“LIMITED LIABILITY PARTNERSHIPS**

**§425-A Name.** The name of a limited liability partnership shall end with “Registered Limited Liability Partnership”, “Limited Liability Partnership”, “R.L.L.P.”, “L.L.P.”, “RLLP”, or “LLP”.

**§425-B Limited liability partnerships; formation.** (a) A partnership may become a limited liability partnership if the partnership:

- (1) Obtains the partnership’s approval of the terms and conditions upon which the partnership shall become a limited liability partnership;
- (2) Files a registration statement with the director pursuant to part I, either prior to, or simultaneously with the filing of a statement of qualification as provided by this subpart; and
- (3) Is in good standing pursuant to part I.

(b) The terms and conditions upon which a partnership becomes a limited liability partnership shall be approved by the vote necessary to amend the partnership agreement; provided that where a partnership agreement specifies the vote necessary to amend provisions of the partnership agreement controlling obligations to contribute to the partnership, approval shall be by the vote necessary to amend those provisions.

(c) The filing of a statement of qualification pursuant to this subpart establishes that a partnership has satisfied all conditions precedent to qualification of the partnership as a limited liability partnership.

**§425-C Statement of qualification.** (a) A statement of qualification shall contain:

- (1) The name of the partnership;
- (2) The street address of the partnership’s chief executive office and, if different, the street address of an office in this State, if any;
- (3) If the partnership does not have an office in this State, the name and street address of the partnership’s agent for service of process; and
- (4) A statement that the partnership elects to be a limited liability partnership.

(b) The agent of a limited liability partnership for service of process shall be an individual who is a resident of this State or other person qualified or registered with the director to do business in this State.

**§425-D Amendment of statement of qualification.** (a) If any statement in the statement of qualification was false when made, or any arrangement of other facts described have changed, making the statement inaccurate in any material respect, the limited liability partnership, within thirty days after it becomes aware of the inaccuracy, shall file with the director a statement certified and signed by a partner, correcting the statement of qualification. No person shall have any liability resulting from a failure to file an amendment to a statement of qualification pursuant to this subsection.

(b) A statement of qualification may be amended at any time for any proper purpose determined by the partners.

(c) A statement of qualification shall be amended by delivering a statement of amendment of limited liability partnership to the director for filing. The statement of amendment shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date on which the limited liability partnership's statement of qualification was filed; and
- (3) The amendment to the statement of qualification.

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

(e) An amendment to a statement of qualification or restated statement of qualification shall be effective when filed.

**§425-E Status as limited liability partnership; cancellation.** (a) The status of a partnership as a limited liability partnership shall be effective upon the filing of the statement of qualification.

(b) Status as a limited liability partnership shall continue, regardless of changes in the partnership, until canceled pursuant to section 425-14 or revoked pursuant to 425-N. Cancellation of a statement of qualification is effective upon filing.

(c) The status of a partnership as a limited liability partnership and the liability of its partners shall not be affected by errors in or amendments made to the information required to be contained in the statement of qualification under section 425-C.

**§425-F Foreign limited liability partnerships.** (a) Before transacting business in this State, a foreign limited liability partnership shall register pursuant to part I of this chapter and file a statement of foreign qualification with the director.

(b) A foreign limited liability partnership shall not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this State.

**§425-G Law governing foreign limited liability partnership.** (a) The law under which a foreign limited liability partnership is formed shall govern relations among the partners, between the partners and the partnership, and the liability of partners for obligations of the partnership.

(b) A statement of foreign qualification shall not be construed to authorize a foreign limited liability partnership to engage in any business or exercise any power prohibited to a limited liability partnership in this State.

**§425-H Statement of foreign qualification.** (a) A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with:
  - (A) The law of the state or other jurisdiction under which the foreign limited liability partnership is formed; and
  - (B) Section 425-C;
- (2) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any;
- (3) The name and street address of the partnership's agent for service of process; and

(4) The total number of partners on the date the statement is filed.

(b) The agent of a foreign limited liability partnership for service of process shall be an individual who is a resident of this State or other person qualified or registered with the director to do business in the State.

**§425-I Amendment of statement of foreign qualification.** If any statement in the statement of foreign qualification was false when made or any arrangement of other facts described have changed making the statement inaccurate in any material respect, the foreign limited liability partnership, within thirty days after it becomes aware of the inaccuracy, shall file with the director a statement, certified and signed by a partner, correcting the statement of foreign qualification. No person shall have any liability resulting from a failure to file an amendment to a restatement of foreign qualification pursuant to this subsection.

(b) A statement of foreign qualification may be amended at any time for any purpose determined by the partners.

(c) A statement of foreign qualification shall be amended by delivering a statement of amendment of foreign limited liability partnership to the director for filing. The statement shall set forth:

(1) The name of the foreign limited liability partnership;

(2) The date on which the foreign limited liability partnership and statement of foreign qualification was filed; and

(3) The amendment to the statement of foreign qualification.

(d) A restated statement of foreign qualification may be executed and filed in the same manner as a statement of amendment. The restated statement shall set forth all of the operative provisions of the statement as amended.

(e) The amendment to a statement of foreign qualification or restated statement of foreign qualification shall be effective when filed.

**§425-J Status as qualified foreign limited liability partnership; cancellation.** (a) The status of a partnership as a qualified foreign limited liability partnership shall be effective upon the filing of the statement of foreign qualification.

(b) Status as a qualified foreign limited liability partnership shall continue, regardless of changes in the partnership, until canceled pursuant to section 425-14 or revoked pursuant to section 425-N. Cancellation of a statement of foreign qualification is effective when it is filed.

(c) The status of a partnership as a foreign limited liability partnership and the liability of its partners shall not be affected by errors in or amendments made to the information required to be contained in the statement of foreign qualification under section 425-H.

**§425-K Foreign limited liability partnerships; effect of failure to qualify.**

(a) A foreign limited liability partnership engaged in the transaction of business in this State shall not maintain an action or proceeding in this State unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification shall not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by the transaction of business in this State without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this State without a statement of foreign qualification, the director shall be its agent for service of process with respect to a right of action arising out of a business transaction in this State.

**§425-L Foreign limited liability partnerships; activities not constituting the transaction of business.** (a) Activities of a foreign limited liability partnership that do not constitute the transaction of business for the purpose of this subpart include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
- (8) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and
- (10) Transacting business in interstate commerce.

(b) For purposes of this subpart, the ownership in this State of income-producing real property or income-producing tangible personal property, other than property excluded under subsection (a), constitutes the transaction of business in this State.

(c) This section shall not apply to a determination of contracts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

**§425-M Annual reports.** (a) Every limited liability partnership and foreign limited liability partnership authorized to transact business in this State shall file an annual report in the office of the director that contains:

- (1) The name of the limited liability partnership or foreign limited liability partnership;
- (2) In the case of a foreign limited liability partnership, the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;
- (3) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any; and
- (4) If the partnership does not have an office in this State, the name and street address of the partnership's current agent for service of process.

(b) An annual report as of the preceding December 31 shall be filed on or before March 31 of each year following the calendar year in which a limited liability partnership files a statement of qualification or a foreign limited liability partnership becomes authorized to transact business in this State.

**§425-N Revocation of statement of qualification.** (a) The director may revoke the statement of qualification of a limited liability partnership or statement of foreign qualification of a foreign limited liability partnership that fails to file an annual report for a period of two years or fails to pay the required filing fee. The director shall provide the partnership at least sixty days written notice of intent to

revoke the statement. The notice shall be mailed to the partnership at its last known address appearing in the records of the director. The notice shall specify the annual report that has not been filed or the fee that has not been paid, and the effective date of the revocation. The revocation shall not be effective if the specified annual report is filed and the specified fee is paid before the effective date of the revocation.

(b) Revocation under subsection (a) shall only affect a partnership's status as a limited liability partnership or foreign limited liability partnership and shall not be deemed an event of dissolution of the partnership.

(c) A partnership whose statement of qualification or statement of foreign qualification has been revoked may apply to the director for reinstatement within two years after the effective date of the revocation. The application shall state:

- (1) The name of the partnership and the effective date of the revocation; and
- (2) That the ground for revocation either did not exist or has been corrected.

(d) A reinstatement under subsection (c) shall relate back to and take effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership or foreign limited liability partnership shall continue upon reinstatement as if the revocation had never occurred.

**§425-O Execution of statements.** Each statement or document required by this subpart to be filed with the director shall be signed and certified by at least one partner.

**§425-P Filing requirements; filing duty of the director.** (a) A document shall satisfy the requirements of this subpart to be entitled to filing by the director.

(b) A document shall contain the information required by this subpart and may contain additional information.

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

(d) The director's duty to file documents under this subpart is ministerial. The filing or refusal to file a document shall 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-Q Correction of filed documents.** (a) A limited liability partnership or foreign limited liability partnership may correct a document filed with the director if the document:

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) To correct a document, a limited liability partnership or foreign limited liability partnership shall prepare and deliver to the director for filing, a certificate of correction that:

- (1) Identifies the document, including its filing date, or includes a copy of the document to be corrected, attached to the certificate;
- (2) Identifies the incorrect statement, if any;
- (3) Explains why the incorrect statement, if any, is incorrect, or describes the manner in which execution of the document was defective; and
- (4) Corrects the incorrect statement or defective execution.

(c) A certificate of correction is effective retroactive to the effective date of the document corrected except as to persons relying on the uncorrected document

and adversely affected by the correction, as to which persons, a certificate of correction is effective from the time of filing.

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

- (1) For each annual report filed, a fee of \$50;
- (2) For each statement of qualification of limited liability partnership, a fee of \$100 for each partner, subject to a maximum fee of \$10,000;
- (3) For each statement of foreign qualification of limited liability partnership, 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;
- (4) For each certificate of correction or statement of amendment, a fee of \$100;
- (5) For each certificate of good standing, a fee of \$100;
- (6) For review of articles of conversion, a fee of \$200;
- (7) For any other certificate, statement, or document, a fee of \$100; and
- (8) 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 handling and review of the following documents:

- (1) For limited liability partnerships:
    - (A) Statement of qualification of limited liability partnership, \$100;
    - (B) Certificate of correction, \$100;
    - (C) Statement of amendment of limited liability partnership, \$100;
    - (D) Annual report, \$100;
    - (E) Certification of limited liability partnership, \$1 a page;
    - (F) Certificate of good standing, \$100; and
    - (G) Articles of conversion, \$150;
  - (2) For foreign limited liability partnerships:
    - (A) Statement of foreign qualification of limited liability partnership, \$100;
    - (B) Certificate of correction, \$100;
    - (C) Statement of amendment of foreign limited liability partnership, \$100;
    - (D) Annual report, \$100;
    - (E) Certification of foreign partnership, \$1 a page;
    - (F) Certificate of good standing, \$100; and
    - (G) Articles of conversion, \$150; and
  - (3) For any other certificate or document authorized by this subpart, \$100.
- (c) All fees collected under this section shall be managed in accordance with section 26-9(l).

**§425-S Revocation if instrument dishonored.** The director may revoke the filing of a document filed under this subpart 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. Documents revoked under this section shall be returned and notice of revocation shall be given to the filing party by regular mail. Failure to give or receive the notice shall not invalidate revocation under this section. Revocation of a filing under this section shall not affect an earlier filing.

**§425-T Record of statements.** The director shall keep books or files in which shall be recorded the information required by this subpart to be filed with the director. The books or files shall be open to public inspection.

**§425-U Action by director.** The director may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this subpart.

**§425-V Personal liability and penalty.** (a) Each partner of a partnership that neglects or fails to substantially comply with any provision of this subpart shall severally forfeit to the State \$25 for each and every month while the default continues, 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 subpart, 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 subpart, that is in fact false, shall be subject to a civil fine not to exceed \$500.

**§425-W Transition rules for limited liability partnerships and foreign limited liability partnerships under prior law.** (a) All entities that were limited liability partnerships registered under the law in effect on the date preceding the effective date of this subpart, shall be converted into and be deemed partnerships that have registered under part I and filed a statement of qualification of limited liability partnership pursuant to this subpart.

(b) All entities that were foreign limited liability partnerships registered under the law in effect on the date preceding the effective date of this subpart, shall be converted into and be deemed foreign limited liability partnerships that have registered under part I and filed a statement of foreign qualification pursuant to this subpart.”

SECTION 2. Chapter 425, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART  
MISCELLANEOUS PROVISIONS**

**§425-AA Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

**§425-BB Short title.** This chapter may be cited as the Uniform Partnership Act (1977).”

SECTION 3. Section 425-101, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “limited liability partnership” to read:  
 ““Limited liability partnership” means a partnership that has filed a [certificate of limited liability partnership under section 425-153] statement of qualification under section 425-B and does not have a similar statement in effect in any other jurisdiction.”

2. By amending the definition of “statement” to read:  
 ““Statement” means a registration or annual statement filed under section 425-1, a statement of correction filed under section 425-1.7, a statement of change filed under section 425-7, a statement of dissolution filed under section 425-9, a statement of denial filed under section 425-115, a statement of dissociation filed

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under section 425-136, a statement of qualification under section 425-C, a statement of foreign qualification under section 425-H, an amendment, or any other document filed under this chapter.”

SECTION 4. Section 425-103, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The partnership agreement shall not:

- (1) Vary the rights and duties under section 425-105 except to eliminate the duty to provide copies of statements to all of the partners;
- (2) Unreasonably restrict the right of access to books and records under section 425-122(b);
- (3) Eliminate the duty of loyalty under section 425-123(b) or 425-132(b)(3), but:
  - (A) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or
  - (B) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (4) Unreasonably reduce the duty of care under section 425-123(c) or 425-132(b)(3);
- (5) Eliminate the obligation of good faith and fair dealing under section 425-123(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (6) Vary the power to dissociate as a partner under section 425-131(a), except to require the notice under section 425-130(1) to be in writing;
- (7) Vary the right of a court to expel a partner in the events specified in section 425-130(5);
- (8) Vary the requirement to wind up the partnership business in cases specified in section 425-138(4), (5), or (6); or
- (9) [Vary the law applicable to a limited liability partnership under section 425-161; or
- (10)] Restrict rights of third parties under this part.”

SECTION 5. Section 425-106, Hawaii Revised Statutes, is amended to read as follows:

“**§425-106 Governing law.** [Except as otherwise provided in section 425-161, the] The law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.”

SECTION 6. Section 425-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A limited liability partnership continues to be the same entity that existed before the filing of a [certificate of limited liability partnership] statement of qualification under section [425-153] 425-C.”

SECTION 7. Section 425-145, Hawaii Revised Statutes, is repealed.

SECTION 8. Chapter 425, part V, Hawaii Revised Statutes, is repealed.



**SECTION 9.** If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**SECTION 10.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

**SECTION 11.** Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

**SECTION 12.** In codifying the new subpart and part added to chapter 425, Hawaii Revised Statutes, by sections 1 and 2 of this Act, and references to new sections in sections 3 and 6 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designation of new sections.

**SECTION 13.** This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.