

ACT 129

H.B. NO. 600

A Bill for an Act Relating to Business Registration.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CONTROL SHARE ACQUISITIONS**

§ **-1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Acquiring person” means a person who is required to deliver an information statement.

“Beneficial ownership” shall be determined pursuant to section 13 of the federal Securities Exchange Act of 1934 and the rules adopted thereunder, as amended.

“Control share acquisition” means an acquisition of shares of an issuing public corporation resulting in beneficial ownership by an acquiring person of a new range of voting power specified in this chapter, but does not include an acquisition:

- (1) Before or pursuant to an agreement entered into before July 1, 1987;
- (2) By a donee pursuant to an inter vivos gift not made to avoid this chapter or by a distributee as defined in chapter 560;
- (3) Pursuant to a security agreement not created to avoid this chapter;
- (4) Pursuant to a merger or share exchange executed in accordance with applicable law, if the issuing public corporation is a party to the plan of merger or share exchange;
- (5) From the issuing public corporation;
- (6) That is approved by resolution of the board of directors of the issuing public corporation before the acquisition occurs; or
- (7) That the board of directors of the issuing public corporation determines, by resolution before the acquisition occurs, is not a control share acquisition.

“Issuing public corporation” means a corporation incorporated in this State with at least one hundred shareholders and having its principal place of business or substantial assets located in this State.

§ **-2 Control share acquisitions.** (a) Unless otherwise expressly provided in the articles of incorporation of an issuing public corporation, this section applies to a control share acquisition.

(b) All shares acquired by an acquiring person in violation of subsection (e) shall be denied voting rights for one year after acquisition. The shares shall be nontransferable on the books of the corporation for one year after acquisition and the corporation, during the one-year period, shall have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ending prior to the date of the call for redemption. The redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

(c) A person proposing to make a control share acquisition shall deliver to the issuing public corporation at its principal executive office an information statement containing all of the following:

- (1) The identity of the person;
- (2) A reference that the statement is made under this section;
- (3) The number of shares of the issuing public corporation beneficially owned by the person;
- (4) A specification of which of the following ranges of voting power in the election of directors would result from consummation of the control share acquisition:
 - (A) At least ten per cent but less than twenty per cent;
 - (B) At least twenty per cent but less than thirty per cent;
 - (C) At least thirty per cent but less than forty per cent;

- (D) At least forty per cent but less than a majority; or
- (E) At least a majority; and
- (5) The terms of the proposed control share acquisition, including, but not limited to, the source of funds or other consideration and the material terms of the financial arrangements for the control share acquisition; any plans or proposals of the acquiring person to liquidate the issuing public corporation, sell all or substantially all of its assets, or merge it or exchange its shares with any other person, change the location of its principal executive office or of a material portion of its business activities, change materially its management or policies of employment, alter materially its relationship with suppliers or customers or the communities in which it operates, or make any other material change in its business, corporate structure, management, or personnel, and such other information which would affect the decision of a shareholder with respect to voting on the proposed control share acquisition.

(d) Within five days after receipt of an information statement pursuant to subsection (c), a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 414-122, to vote on the proposed control share acquisition. The meeting shall be held no later than fifty-five days after receipt of the information statement, unless the acquiring person agrees to a later date and no sooner than thirty days after receipt of the information statement, unless the acquiring person so requests in writing when delivering the information statement. The notice of the meeting at a minimum shall be accompanied by a copy of the information statement, and a statement disclosing that the issuing public company recommends:

- (1) Acceptance of;
- (2) Expresses no opinion and is remaining neutral toward; or
- (3) Is unable to take a position with respect to;

the proposed control share acquisition.

The notice of meeting shall be given within twenty-five days after receipt of the information statement.

Notwithstanding any contrary provision of this chapter, a proxy relating to a meeting of shareholders required under this subsection must be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation and must not be solicited sooner than thirty days before the meeting unless otherwise agreed in writing by the acquiring person and the issuing public corporation.

(e) The acquiring person may consummate the proposed control share acquisition if and only if both the following occur:

- (1) The proposed control share acquisition is approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote which are not beneficially owned by the acquiring person. A class or series of shares of the corporation is entitled to vote as a class or series if any provision of the control share acquisition would, if contained in a proposed amendment to the articles, entitle the class or series to vote as a class or series; and
- (2) The proposed control share acquisition is consummated within one hundred eighty days after shareholder approval.”

SECTION 2. Chapter 414, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“~~[[~~CHAPTER 414~~]]~~
HAWAII ~~[REVISED]~~ BUSINESS CORPORATION ACT”

SECTION 3. Section 414-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§414-1~~]]~~ **Short title.** This chapter shall be known and may be cited as the “Hawaii ~~[Revised]~~ Business Corporation Act.””

SECTION 4. Section 414-3, Hawaii Revised Statutes, is amended by amending the definitions of “authorized shares”, “entity”, and “individual” to read as follows:

““Authorized shares” means the shares of all classes a domestic ~~[or foreign]~~ corporation is authorized to issue.

“Entity” includes ~~[corporation]~~ domestic and foreign ~~[corporation;]~~ corporations; domestic professional corporations; domestic and foreign limited liability companies; domestic and foreign not-for-profit ~~[corporation;]~~ corporations; ~~[profit and not-for-profit unincorporated association;]~~ business ~~[trust, estate, partnership, trust, and]~~ trusts; estates; domestic and foreign partnerships; domestic and foreign limited partnerships; domestic and foreign limited liability partnerships; trusts; two or more persons having a joint or common economic interest; and state, ~~[United States,]~~ federal, and foreign ~~[government,]~~ governments.

“Individual” ~~[includes]~~ means a natural person or the estate of an incompetent or deceased individual.”

SECTION 5. Section 414-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notice ~~[may be]~~ is effective if communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio~~[,]~~ television, or other form of public broadcast communication.”

SECTION 6. Section 414-11, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of ~~[existence]~~ good standing required of foreign corporations need not be in English if accompanied by ~~[a reasonably authenticated]~~ an English translation~~[.]~~ under oath of the translator.”

SECTION 7. Section 414-11, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The person executing the document shall sign it and ~~[state]~~ print beneath or opposite that person’s signature the person’s name and the capacity in which the person signs. The document may but need not contain:

- (1) The corporate seal;
- (2) An attestation by the secretary or an assistant secretary; or
- (3) An acknowledgment, verification, or proof.”

SECTION 8. Section 414-11, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) The document must be delivered to the office of the department director for filing and must be accompanied by ~~[one exact or conformed copy (except as~~

provided in sections 414-63 and 414-439),] the correct filing fee[, and any penalty required by this chapter.”

SECTION 9. Section 414-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department director may prescribe and furnish on request forms for:

- (1) An application for a certificate of [~~existence;~~] good standing;
- (2) A foreign corporation’s application for a certificate of authority to transact business in this State;
- (3) A foreign corporation’s application for a certificate of withdrawal; and
- (4) The annual report.

If the department director so requires, use of these forms is mandatory.”

SECTION 10. Section 414-13, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§414-13**~~]] Filing, service, and copying fees.~~ (a) The following fees shall be paid to the department director upon the filing of corporate documents:

- (1) Articles of incorporation, \$100;
- (2) Articles of amendment, \$50;
- (3) Restated articles of incorporation, \$50;
- (4) Articles of conversion[, or merger, [~~or consolidation,~~] \$200;
- (5) Articles of merger (subsidiary corporation), \$100;
- (6) Articles of dissolution, \$50;
- (7) Annual report of domestic and foreign corporations organized for profit, \$25;
- (8) Agent’s statement of change of registered office, \$50 for each affected domestic corporation or foreign corporation, except if simultaneous filings are made the fee is reduced to \$1 for each affected domestic corporation or foreign corporation in excess of two hundred;
- (9) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, \$50;
- (10) Application for a certificate of authority, \$100;
- (11) Application for a certificate of withdrawal, \$50;
- (12) Reservation of corporate name, \$20;
- (13) Transfer of reservation of corporate name, \$20;
- (14) Good standing certificate, \$25;
- (15) Special handling fee for review of corporation documents, excluding articles of conversion[, or merger, [~~or consolidation,~~] \$50;
- (16) Special handling fee for review of articles of conversion[, or merger, [~~or consolidation,~~] \$150;
- (17) Special handling fee for certificates issued by the department, [~~\$20~~] \$25 per certificate; and
- (18) Special handling fee for certification of documents, [~~\$1 per page.~~] \$25.

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

(c) The department director shall adjust the fees assessed under this section, as necessary from time to time, through rules adopted under chapter 91.

(d) The department director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, [~~25 cents per page and \$10~~] \$20 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the department director as agent for service of process of a corporation, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.”

SECTION 11. Section 414-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Articles of dissolution and articles of merger or [~~consolidation~~] share exchange may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date it is filed.”

SECTION 12. Section 414-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department director files a document by stamping or otherwise endorsing [~~“Filed”, together with the date and time of receipt, on both the original and the document copy. After filing a document, except as provided in sections 414-63 and 414-439, the department director shall deliver the document copy, stamped with the date and time of receipt, to the domestic or foreign corporation or its representative.]~~ the document including the date and time of receipt.”

SECTION 13. Section 414-51, Hawaii Revised Statutes is amended by amending subsections (a), (b), and (c) to read:

“(a) A corporate name:

- (1) Must contain the word “corporation”, “incorporated”, or “limited”, or the abbreviation “corp.”, “inc.”, or “ltd.” [~~or words or abbreviations of like import in another language~~]; and
- (2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 414-41 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name may not be the same as or substantially identical to:

- (1) The name of any [~~domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business or conduct affairs in this State;~~] entity registered or authorized to transact business or conduct affairs under the laws of this State;
- (2) A name the exclusive right to which is, at the time, reserved in this State;
- (3) The fictitious name adopted by a foreign corporation authorized to transact business in this State because its real name is unavailable; and
- (4) Any trade name, trademark, or service mark registered in this State.

(c) A corporation may apply to the department director for authorization to use a name that is substantially identical, based upon the department director’s records [~~from~~] to one or more of the names described in subsection (b). The department director shall authorize use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents to the use in writing and one or more words are added to make the name distinguishable from the name of the applying corporation; or
- (2) The applicant delivers to the department director a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State."

SECTION 14. Section 414-52, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A person may reserve the exclusive use of a domestic or foreign corporate name ~~[,] including a fictitious name for a foreign corporation whose corporate name is not available,~~ by delivering an application to the department director for filing. The application ~~[must]~~ shall set forth the name and address of the applicant and the name proposed to be reserved. If the department director finds that the corporate name applied for is available, the department director shall reserve the name for the applicant's exclusive use for a one hundred twenty-day period."

SECTION 15. Section 414-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any domestic corporation in good standing or foreign corporation authorized to do business in this State claiming that the name of any ~~[domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company]~~ entity registered or authorized to transact business ~~[in]~~ under the laws of this State is substantially identical to, or confusingly similar to, its name may file a petition with the department director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by chapter 91 and the registrant shall be given an opportunity to respond to the petition at the hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91."

SECTION 16. Section 414-61, Hawaii Revised Statutes is amended to read as follows:

"~~[§414-61]~~ **Registered office and registered agent.** (a) Except as provided in subsection (b), each corporation ~~[must]~~ shall continuously maintain in this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
 - (A) An individual who resides in this State and whose business office is identical with the registered office;
 - (B) A domestic ~~[corporation or not for profit domestic corporation]~~ entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office; or
 - (C) A foreign ~~[corporation or not for profit foreign corporation]~~ entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

(b) A corporation may, but shall not be required[,], to maintain a registered office and a registered agent in this State during the time that the corporation has at least one officer or director who is a resident of this State.”

SECTION 17. Section 414-62, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~~~§414-62~~~~[H]~~ **Designation or change of registered office or registered agent.** (a) A corporation that does not already have a registered office and registered agent may designate ~~[or change]~~ its registered office ~~[or]~~ and registered agent by delivering to the department director for filing a statement of ~~[change]~~ designation that sets forth:

- (1) The name of the corporation;
- (2) The street address of its ~~[current]~~ registered office;
- ~~[(3) If the current registered office is to be changed, the street address of the new registered office;~~
- (4) (3) The name of its ~~[current]~~ registered agent; and
- ~~[(5) If the current registered agent is to be changed, the name of the new registered agent; and~~
- (6) (4) That ~~[after the change or changes are made,]~~ the street addresses of its registered office and the business office of its registered agent will be identical.

(b) A corporation may change its registered office or registered agent by delivering to the department director for filing a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its registered agent;
- (5) If the current registered agent is to be changed, the name of the new registered agent; and
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

~~[(b)]~~ (c) If the street address of the registered agent’s business office changes, the registered agent may change the street address of the corporation’s registered office by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.”

SECTION 18. Section 414-63, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A registered agent may resign from the registered agent’s appointment by signing and delivering to the department director for filing the signed ~~[original and two exact or conformed copies of a]~~ statement of resignation. The statement may include a statement that the registered office is also discontinued.”

SECTION 19. Section 414-64, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and in case the corporation has not filed with the department director pursuant to this chapter, the name of a registered agent upon whom legal notice and process

ACT 129

from the courts of the State may be served, and likewise if the person named is not found within the State, service may be made upon the corporation by registered or certified mail, return receipt requested, addressed to ~~[the secretary of]~~ the corporation at its principal office. Service using registered or certified mail is perfected at the earliest of:

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

SECTION 20. Section 414-125, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Unless the bylaws require otherwise, if an annual or special shareholders’ meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 414-127, however, notice of the adjourned meeting [must] shall be given under this section to ~~[persons who are]~~ shareholders ~~[as]~~ who are entitled to notice of the new record date.”

SECTION 21. Section 414-141, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~~~§414-141~~~~[F]~~ **Shareholders’ list for meeting.** (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders’ meeting. The list ~~[must]~~ shall be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders’ list must be available for inspection by any shareholder, beginning two business days after notice of the meeting ~~[is given]~~ for which the list was prepared is given and continuing through the meeting, at the corporation’s principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, the shareholder’s agent, or ~~the shareholder’s~~ attorney, is entitled on written demand to inspect and to copy the list, during regular business hours and at the shareholder’s expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders’ list available at the meeting, and any shareholder, ~~[the]~~ shareholder’s agent, or shareholder’s attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, the shareholder’s agent, or the shareholder’s attorney, to inspect the shareholders’ list before or at the meeting (or copy the list as permitted by subsection (b)), the circuit court, on application of the shareholder, may summarily order the inspection or copying at the corporation’s expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders’ list does not affect the validity of action taken at the meeting.”

SECTION 22. Section 414-143, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form. The appointment form shall be signed

by either the shareholder personally or by the shareholder's attorney-in-fact. A shareholder may authorize another person to act as a proxy for the shareholder by:

- (1) Executing a writing authorizing another person or persons to act as a proxy for the shareholder, which may be accomplished by the shareholder or the shareholder's authorized attorney-in-fact, officer, director, employee, or agent signing the writing or causing the shareholder's signature to be affixed to the writing by any reasonable means, including without limitation the use of a facsimile signature; or
- (2) Transmitting or authorizing the transmission of a telegram, cablegram, facsimile, or other means of electronic transmission authorizing the person or persons to act as a proxy for the [shareholders] shareholder to the person or persons who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided that any such transmission shall specify that the transmission was authorized by the shareholder.

A copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created pursuant to the foregoing may be used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that any such copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original writing or transmission."

SECTION 23. Section 414-145, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation [if] acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and to give it effect as the act of the shareholder if:

- (1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
- (2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (4) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
- (5) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis to doubt the validity of the signature on the vote, consent, waiver, or proxy appointment or [about] the signatory's authority to sign for the shareholder."

ACT 129

SECTION 24. Section 414-222, Hawaii Revised Statutes, is amended to read as follows:

“~~[§]414-222[§]~~ Limitation of liability of directors; shareholder approval required. (a) A corporation may 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 any action taken, or any failure to take any action, as a director; provided that:

- (1) The elimination or limitation shall be authorized, directed, or provided for in:
 - (A) The articles of incorporation of the corporation; or
 - (B) Any duly adopted amendment of the articles of incorporation; and
- (2) 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 entitled to vote; provided that the vote also constitutes a majority of the shares entitled to vote.

(b) A corporation shall not eliminate or limit the personal liability of a director for:

- (1) The amount of a financial benefit received by a director to which the director is not entitled;
- (2) An intentional infliction of harm on the corporation or the shareholders;
- (3) A violation of section 414-223; or
- (4) An intentional violation of criminal law.

(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)(2), and the corporation shall in such cases submit the duly adopted amendment to the articles of incorporation to the department director.

~~[(d) No provision pursuant to subsection (a)(1) shall be authorized by the corporation to eliminate or limit the liability of directors for acts, omissions, or causes of action occurring, accruing, or arising prior to June 7, 1989.~~

~~[(e) (d) Nothing in this section shall impair or affect the validity of any provisions of the bylaws of a corporation eliminating or limiting the personal liability of the directors, which were authorized, directed, or provided for and approved by the shareholders of the corporation in compliance with then existing law prior to July 1, 1996.]”~~

SECTION 25. Section 414-234, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any officer ~~[or agent]~~ may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but the removal shall be without prejudice to the contract rights, if any, of the person so removed. ~~[Election or appointment of an officer or agent shall not of itself create contract rights.]”~~

SECTION 26. Section 414-263, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director, as set forth in paragraph (2) of the definition of ~~[related person]~~ ‘related person’ in section 414-261, is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the

transaction such that the director may not make the required disclosure described in paragraph (2) of the definition of ~~[related person]~~ “required disclosure” in section 414-261, then disclosure is sufficient for purposes of subsection (a) if the director:

- (1) Discloses to the directors voting on the transaction the existence and nature of the director’s conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction; and
- (2) Plays no part, directly or indirectly, in their deliberations or vote.”

SECTION 27. Section 414-271, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof[;]
- (5) ~~If the converted entity is a domestic corporation, the articles of incorporation of the domestic corporation shall be attached; and~~
- (6) ~~If the converted entity is not a domestic corporation, proof that the converted entity is registered in this State shall be attached.]”~~

SECTION 28. Section 414-271, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) After a conversion of a domestic or foreign corporation is approved, and at any time before the conversion becomes effective, the plan of conversion may be abandoned by the converting entity without shareholder action and in accordance with the procedures set forth in the plan of conversion or, if these procedures are not provided in the plan, in the manner determined by the board of directors. If articles of conversion have been filed with the department director but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the department director prior to the effective date of the conversion. If the department director finds the statement satisfies the requirements provided by law, the department director, after all fees have been paid shall:

- (1) Stamp the ~~[word “Filed” on the]~~ statement and include the date of the filing;
- (2) File the document in the department director’s office; and
- (3) Issue a certificate of abandonment to the converting entity or its authorized representatives.”

SECTION 29. Section 414-272, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§414-272[H] Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 414-271 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:

- (A) The name, type of entity, and state[;] or country of incorporation, formation, or organization of the converting [~~entity;~~] and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section 414-271;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any shareholder, partner, member, or owner of the converting entity or the converted entity;
- (2) If the converting entity is a domestic corporation, the number of shares outstanding and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each class or series;
 - (3) If the converting entity is a domestic corporation, the number of shares outstanding that voted for and against the plan, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series that voted for and against the plan; and
 - (4) If the converting entity is a foreign corporation or other entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the department director. ~~[If the converted entity is a domestic corporation, the articles of incorporation shall also be delivered to the department director with]~~ The converted entity, if a domestic corporation, domestic professional corporation, domestic non-profit corporation, domestic general partnership, domestic limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.

(c) If the department director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the department director, after all fees have been paid, shall:

- (1) Stamp ~~[the word "Filed" on]~~ the articles of conversion and include the date of the filing;
- (2) File the document in the department director's office; and
- (3) Issue a certificate of conversion to the converted entity or its authorized representatives."

SECTION 30. Section 414-273, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§414-273[H] Effective date of the conversion. [Upon]~~ A conversion shall be effective upon the [issuance] filing of the certificate of conversion [by the department director, the conversion shall be effective].”

SECTION 31. Section 414-274, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§414-274[H] Effect of conversion. When a conversion becomes effective:~~

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic corporation, the shareholders of the domestic corporation shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 414-342;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that the shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for the debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for the debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign corporation or other entity, the converted entity shall:
 - (A) ~~Appoint a resident of this State, as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the converting domestic corporation; and~~
 - (B) ~~Promptly pay the dissenting shareholders of the converting domestic corporation the amount, if any, to which they are entitled under part XIV; and] file with the director:~~
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State including the street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity; and
- (9) If the converting entity is a domestic corporation, part XIV shall apply as if the converted entity were the survivor of a merger with the converting entity.”

SECTION 32. Section 414-287, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§414-287~~]]~~ Restated,² **amended and restated articles of incorporation.** (a) A corporation’s board of directors may restate its articles of incorporation at any time with or without shareholder action.

~~[(b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in section 414-283.~~

~~[(e)] (b) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders’ meeting in accordance with section 414-125. The notice ~~[must] shall~~ also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement ~~[that identifies any amendment or other change it would make in the articles of] incorporation~~.~~

~~[(d)] (c) A corporation restating its articles of incorporation shall deliver to the department director for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a [certificate setting forth:~~

- ~~(1) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or~~
- ~~(2) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 414-286.] statement that the restatement of incorporation correctly sets 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 any amendments thereto.~~

~~[(e)] (d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.~~

~~[(f)] (e) The department director may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the [certificate] information required by subsection ~~[(d)-] (c)~~.~~

(f) A domestic corporation, at any time, may amend and restate its articles of incorporation by complying with the procedures and requirements of part XI of this chapter.

(g) 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 414-286; and
- (3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(h) The amended and restated articles of incorporation shall be delivered to the department director for filing together with a statement setting forth:

- (1) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or
- (2) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 414-286. The department 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 (g)(2) and (3)."

SECTION 33. Section 414-315, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A merger or share exchange takes effect upon the effective time and date of the filing of articles of merger or share exchange[-], or upon the time and date subsequent to the filing as set forth in the articles of merger or share exchange; provided not more than thirty days elapse from the date of filing."

SECTION 34. Section 414-317, is amended to read as follows:

"[§414-317] Merger or share exchange with foreign corporation. (a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

- (1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;
- (2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;
- (3) The foreign corporation complies with section 414-315 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; ~~and~~
- (4) The foreign corporation, if it is the surviving corporation of the merger, delivers a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated to the director within sixty days after the merger becomes effective; and

~~[(4)]~~ (5) Each domestic corporation complies with the applicable provisions of sections 414-311 to 414-314 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 414-315.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

- (1) To irrevocably appoint [the department director] a resident of this State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and
- (2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under part XIV.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise."

SECTION 35. Section 414-318, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any corporation owning at least ninety per cent of the outstanding shares of any class of two or more corporations may adopt a plan of merger pursuant to section 414-314 [and deliver] that shall be delivered to the department

director for filing including articles of merger. The articles of merger shall be signed by the parent corporation and the surviving subsidiary corporation~~[, and the]~~. The plan of merger shall set forth:

- (1) The name of the parent corporation owning at least ninety per cent of the shares of the subsidiary corporations, the name of any nonsurviving subsidiary corporation, and the name of the surviving subsidiary corporation; and
- (2) The manner and basis of converting the shares of any nonsurviving subsidiary corporation into shares, obligations, or other securities of the surviving subsidiary corporation or of any other corporation or, in whole or in part, into cash or other property.”

SECTION 36. Section 414-319, Hawaii Revised Statutes, is amended to read as follows:

“~~[§414-319]~~ **Merger with or into domestic or foreign limited liability company.** (a) As used in this section, the terms “limited liability company” and “foreign limited liability company” shall have the meanings defined in section 428-101.

(b) One or more corporations or foreign corporations may merge with or into one or more limited liability companies or foreign limited liability companies if in the case of a domestic corporation the board of directors and the shareholders approve a plan of merger as provided in sections 414-311 and 414-313, and in the case of a foreign corporation it complies with section ~~[414-312.]~~ 414-317.

(c) In addition to the requirements of section 414-311, the plan of merger shall also set forth:

- (1) The name of each limited liability company and foreign limited liability company proposing to merge; and
- (2) If the surviving entity is a limited liability company or a foreign limited liability company:
 - (A) The manner and basis of converting the shares of each corporation or foreign corporation and the interests as members of each limited liability company or foreign limited liability company into interests as members of the surviving domestic limited liability company or foreign limited liability company pursuant to the merger, or a statement that the information is contained in the operating agreement proposed for the surviving entity;
 - (B) The contents of the articles of organization of the surviving entity pursuant to the merger in accordance with section 428-203 if a domestic limited liability company is the surviving entity, or in accordance with comparable provisions of applicable law if a foreign limited liability company is the surviving entity; and
 - (C) The contents of the operating agreement to be entered into among the persons who will be the members of the surviving entity pursuant to the merger, which, if not separately provided in the plan of merger, shall state the manner and basis for the conversion of the shares of each merging corporation or foreign corporation and the interests as members of each merging limited liability company or foreign limited liability company into interests as members of the surviving entity and that notice of the approval of the merger will be deemed to be execution of the operating agreement by these persons.

(d) After a plan of merger is approved by the shareholders of each corporation and foreign corporation as provided in subsection (b), and by the members of

each domestic limited liability company as provided in section 428-904, or as provided in comparable provisions of applicable law for each foreign limited liability company, the surviving entity shall deliver to the ~~[office of the]~~ department director for filing articles of merger complying with section 414-315, executed on behalf of each party to the merger. The articles of merger shall:

- (1) Comply with section 414-315 if the surviving entity is a domestic or foreign corporation; or
- (2) Comply with section 428-905 if the surviving entity is a domestic or foreign limited liability company.

(e) Section 414-316 shall be applicable to each corporation that is a party to the plan of merger.

~~[(f) If a foreign corporation is a party to the merger, section 414-317 shall apply to the foreign corporation.]”~~

SECTION 37. Section 414-332, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§414-332~~]]~~ Sale of assets other than in regular course of business.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the goodwill), otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation’s board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(b) For a transaction to be authorized:

- (1) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and
- (2) The shareholders entitled to vote must approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders’ meeting in accordance with section 414-125. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(e) With respect to ~~[the]~~ corporations incorporated on or after July 1, 1987, at the meeting the shareholders may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. The authorization shall require 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 authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(f) With respect to corporations incorporated before July 1, 1987, at the meeting the shareholders may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions therefor. The authorization shall require the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote as a class thereon 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 the lesser proportion shall not be less than the proportion set forth in subsection (e).

(g) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.

(h) A transaction that constitutes a distribution is governed by section 414-111 and not by this section.

(i) A sale, lease, exchange, or other disposition of the property of a corporation shall not be deemed to be the sale, lease, exchange, or other disposition of all or substantially all the property of the corporation if the corporation is retaining sufficient property to continue one or more significant business segments or lines of the corporation after the sale, lease, exchange, or other disposition. Furthermore, the business segments or lines retained must not be only temporary operations or merely a pretext to avoid shareholders' rights which might otherwise arise under this chapter."

SECTION 38. Section 414-382, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For a proposal to dissolve to be adopted:

- (1) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and
- (2) The shareholders entitled to vote must approve the proposal to dissolve as provided in ~~[subsection]~~ subsections (e)[-] and (f).”

SECTION 39. Section 414-383, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A corporation is dissolved upon the effective date of its articles of dissolution. The articles of dissolution may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document shall be effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date it is filed.”

SECTION 40. Section 414-385, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) Subject its ~~[directoꝛ]~~ directors or officers to standards of conduct different from those prescribed in part IX;
- (4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (5) Prevent commencement of a proceeding by or against the corporation in its corporate name;

- (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) Terminate the authority of the registered agent of the corporation.’’

SECTION 41. Section 414-386, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which may not be fewer ~~[[~~than~~]]~~ one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.’’

SECTION 42. Section 414-403, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the ~~[[~~involuntarily~~]]~~ dissolved corporation pursuant to the amendment provisions of this chapter.’’

SECTION 43. Section 414-415, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§414-415~~]]~~ **Election to purchase in lieu of dissolution.** (a) In a proceeding under section 414-411(2) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under section 414-411(2) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation, within ten days thereafter, shall give written notice to all shareholders, other than the ~~[petitioner-]~~ petitioning shareholder. The notice ~~[must]~~ shall state the name and number of shares owned by the ~~[petitioner]~~ petitioning shareholder and the name and number of shares owned by each electing shareholder and ~~[must]~~ shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate ~~[must]~~ shall file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under section 414-411(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of the shareholder’s shares, unless

the court determines that it would be equitable to the corporation and the shareholders, other than the [~~petitioner~~], petitioning shareholder, to permit the discontinuance, settlement, sale, or other disposition.

(c) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the [~~petitioner's~~] petitioning shareholder's shares, the court shall enter an order directing the purchase of [~~petitioner's~~] the petitioning shareholder's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c), the court, upon application of any party, shall stay the section 414-411(2) proceedings and determine the fair value of the [~~petitioner's~~] petitioning shareholder's shares as of the day before the date on which the petition under section 414-411(2) was filed or as of any other date the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon the terms and conditions that the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating [~~petitioner's~~] the petitioning shareholder's shares among holders of different classes of shares, the court [~~should~~] shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under section 414-411(2)(B) or (D), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the petitioning shareholder.

(f) Upon entry of an order under [~~subsections~~] subsection (c) or (e), the court shall dismiss the petition to dissolve the corporation under section 414-411, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to the petitioning shareholder by the order of the court that shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e), shall be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 414-382 and 414-383, which articles [~~must~~] shall then be adopted and filed within fifty days thereafter. Upon filing of the articles of dissolution, the corporation shall be dissolved in accordance with sections 414-385 to 414-387, and the order entered pursuant to subsection (e) shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) and the [~~petitioner~~] petitioning shareholder may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under [~~subsections~~] subsection (c) or (e), other than an award of fees and expenses pursuant to subsection (e), is subject to section 414-111."

SECTION 44. Section 414-433, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The foreign corporation shall deliver with the completed application a certificate of ~~[existence (or a document of similar import)]~~ good standing duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated[-]; provided the certificate shall be dated not earlier than sixty days prior to the filing of the application.”

SECTION 45. Section 414-434, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§414-434[H]~~ **Change of name by foreign corporation.** (a) Whenever the name of a foreign corporation authorized to transact business in this State is changed by the amendment of its articles of incorporation, the foreign corporation, within ~~[thirty]~~ sixty days after the amendment becomes effective, shall deliver to the department director a certificate evidencing the name change, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.

(b) Whenever a foreign corporation that is authorized to transact business in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the foreign corporation shall not thereafter transact any business in this State until it has changed its name to a name that is available to it under the laws of this State or has otherwise complied with this chapter.

(c) If a foreign corporation is unable to change its name to a name that is available to it under the laws of this State, it may deliver to the department director a copy of a certificate of registration of a trade name ~~[for the foreign corporation's file]~~ and thereafter shall become authorized to transact business in the State under that name.”

SECTION 46. Section 414-436, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation may not be the same as, or substantially identical to:

- (1) The name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State;
- (2) A name the exclusive right to which is, at the time, reserved in this State;
- (3) The fictitious name of another foreign corporation authorized to transact business in this State; and
- (4) Any trade name, trademark, or service mark registered in this State.

(c) A foreign corporation may apply to the department director for authorization to use in this State the name of another corporation (incorporated or authorized to transact business in this State) that is substantially identical based upon the department director's records ~~[from]~~ to the name applied for. The department director shall authorize use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents to the use in writing and one or more words are added to the other entity's name to make the name distinguishable from the name of the applicant; or

- (2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State."

SECTION 47. Section 414-439, Hawaii Revised Statutes, is amended to read as follows:

"[H]§414-439[H] Resignation of registered agent of foreign corporation.

(a) The registered agent of a foreign corporation may resign from the registered agent's appointment by signing and delivering to the department director for filing ~~[the original and two exact or conformed copies of]~~ a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) The registered agent shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The ~~[department director]~~ registered agent shall mail ~~[the other]~~ a second copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The appointment of the agent is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed."

SECTION 48. Section 414-461, Hawaii Revised Statutes, is amended to read as follows:

"[H]§414-461[H] Grounds for revocation. The department director may commence a proceeding under section 414-462 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- (1) The foreign corporation has failed to file its annual report with the department director for a period of two years;
- (2) The foreign corporation is without a registered agent or registered office in this State as required by this chapter;
- (3) The foreign corporation does not inform the department director under section 414-438 or 414-439 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;
- (4) An incorporator, director, officer, or agent of the foreign corporation signed a document that the incorporator, director, officer, or agent knew was false in any material respect with intent that the document be delivered to the department director for filing; or
- (5) The department director receives a duly authenticated certificate from the ~~[department director or other]~~ official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger."

SECTION 49. Section 414-462, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The department director's revocation of a foreign corporation's certificate of authority appoints the department director the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this State. Service of process on the department director under this subsection is service on the foreign corporation. Upon receipt of process, the department director shall mail a copy of the

process to the [secretary of the] foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.”

SECTION 50. Section 414-472, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414-472]]~~ **Annual report.** (a) Each domestic corporation, and each foreign corporation authorized to transact business in this State, shall deliver to the department director for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The address of its registered office and the name of its registered agent at that office in this State;
- (3) The address of its principal office;
- (4) The names and business addresses of its directors and [principal] officers; and
- (5) A brief description of the nature of its business[;]
- ~~(6) The].~~

Domestic corporations shall also provide the total number of authorized shares, itemized by class and series, if any, within each class[;], and

[~~(7) The]~~ the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(b) Information in the annual report must reflect the state of the corporation’s affairs as of December 31, of the year preceding the year of filing.

~~(c) [The first annual report must be delivered to the department director between January 1 and April 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the department director between January 1 and April 1 of the following calendar years.]~~ Each annual report of a corporation shall be delivered to the director between January 1 and March 31 of each year in the case of a domestic corporation, or between January 1 and June 30 in the case of a foreign corporation, except that the first annual report of a corporation shall be filed between January 1 and March 31 in the case of a domestic corporation, or between January 1 and June 30 in the case of a foreign corporation, of the year next succeeding the calendar year in which its articles of incorporation or its application for a certificate of authority, as the case may be, was filed by the director.

(d) If an annual report does not contain the information required by this section, the department director shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the department director within thirty days after the effective date of notice, it is deemed to be timely filed.”

SECTION 51. Section 414-484, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414-484]]~~ **Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity [does] shall not affect other provisions or applications of [the] this chapter that can be given effect without the invalid provision or application, and to this end the provisions of [the] this chapter are severable.”

SECTION 52. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

- “**§415A-8 Corporate name.** The name of a professional corporation:
- (1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule [~~or regulation~~] of the licensing authority of the profession; and
 - (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the applicant files with the director either of the following:
 - (A) The written consent from the entity or holder of a reserved or registered 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 applicant to the use of the name in this State.”

SECTION 53. Section 415A-10, Hawaii Revised Statutes, is amended to read as follows:

“**§415A-10 Death or disqualification of a shareholder.** (a) Upon the death of a shareholder of a professional corporation, or if a shareholder of a professional corporation becomes a disqualified person, or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares of the deceased shareholder or of the disqualified person may be transferred to a qualified person and, if not so transferred, shall be purchased or redeemed by the corporation to the extent of funds which may be legally made available for such purchase; provided that upon the death of a sole shareholder of a professional corporation, the personal representative of the estate of the deceased sole shareholder may elect to dissolve the professional corporation, by delivering for filing verified articles of dissolution signed by the personal representative and the surviving officer of the professional corporation. If the personal representative elects to dissolve the professional corporation, the personal representative may publish a notice to creditors in lieu of a statement of intent as required by section 415-92(3).

(b) If the price for the shares of the corporation is not fixed by its articles of incorporation or bylaws or by private agreement, the corporation within six months after such death or thirty days after such disqualification or transfer, as the case may be, shall make a written offer to pay for the shares at a specified price deemed by the corporation to be the fair value thereof as of the date of the death, disqualification, or transfer. The offer shall be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and shall be accompanied by a balance sheet of the corporation, as of the latest available date and not more than twelve months prior to the making of the offer, and a profit and loss statement of the corporation for the [{}twelve-month{}] period ended on the date of that balance sheet.

(c) If within thirty days after the date of the written offer from the corporation the fair value of the shares is agreed upon between the disqualified person and the corporation, payment therefor shall be made within sixty days, or such other period as the parties may fix by agreement, after the date of the offer, upon surrender of the certificate or certificates representing the shares. Upon payment of the agreed value the disqualified person shall cease to have any interest in the shares.

(d) If within such period of thirty days the disqualified person and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from the disqualified person given within sixty days after the date of the corporation's written offer or at its election at any time within such period of sixty days, shall file a petition in any court of competent jurisdiction in the circuit where the principal office of the corporation is located requesting that the fair value of the shares be found and determined. If the corporation fails to file a petition as provided in this subsection, the disqualified person may file a petition within sixty days after delivery of a written demand to the corporation. The disqualified person, wherever residing, shall be made a party to the proceeding as an action against the person's shares quasi in rem. A copy of the petition shall be served on the disqualified person, if a resident of this State, and shall be served by registered or certified mail on the disqualified person, if a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. The disqualified person shall be entitled to judgment against the corporation for the amount of the fair value of the person's shares as of the date of death, disqualification, or transfer upon surrender to the corporation of the certificate or certificates representing the shares. The court, in its discretion, may order that the judgment be paid in such installments as the court may determine. The court, if it so elects, may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof.

(e) The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all of the circumstances, from the date of death, disqualification, or transfer.

(f) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of the costs and expenses may be apportioned and assessed as the court may deem equitable against the disqualified person if the court finds that the action of the disqualified person in failing to accept the offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to the disqualified person such sum as the court may determine to be reasonable compensation to any expert or experts employed by the disqualified person in the proceeding.

(g) If a purchase, redemption, or transfer of the shares of a deceased or disqualified shareholder or of a transferee who is a disqualified person is not completed within ten months after the death of the deceased shareholder or five months after the disqualification or transfer, as the case may be, the corporation shall cancel the shares on its books and the disqualified person shall have no further interest as a shareholder in the corporation other than the person's right to payment for the shares under this section.

(h) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as provided in this section,

may be held and disposed of by the corporation as in the case of other treasury shares.

(i) This section shall not require the purchase of shares of a disqualified person where the period of disqualification is for less than five months from the date of disqualification or transfer.

(j) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, bylaws, or any private agreement shall be specifically enforceable in the courts of this State.

(k) Nothing contained herein shall prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

(l) Under this section, unless otherwise stated, references to a "disqualified person" shall also be construed to include deceased shareholders and personal representatives of deceased shareholders."

SECTION 54. Section 415A-16.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof;
- (5) ~~If the converted entity is a professional corporation, the articles of incorporation of the professional corporation shall be attached; and~~
- (6) ~~If the converted entity is not a professional corporation, proof that the converted entity is registered in this State shall be attached].”~~

SECTION 55. Section 415A-16.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§415A-16.6[H] Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 415A-16.5 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, type of entity, and state[;] or country of incorporation, formation, or organization of the converting [entity, and organizational form of the converting entity;] and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section 415A-16.5;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any shareholder of the converting entity or the converted entity;
- (2) If the converting entity is a professional corporation, the number of shares outstanding and, if the shares of any class or series are entitled to

vote as a class, the designation and number of outstanding shares of each such class or series;

- (3) If the converting entity is a professional corporation, the number of shares outstanding that voted for and against the plan and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series that voted for and against the plan; and
- (4) If the converting entity is another entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director. ~~[If the]~~ The converted entity [is a professional corporation, the articles of incorporation shall also be delivered to the director], if a domestic corporation, domestic professional corporation, domestic nonprofit corporation, foreign corporation, general partnership, limited partnership, or domestic limited liability company, shall attach a copy of its respective registration documents with the articles of conversion.

(c) If the director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the director, after all fees have been paid shall:

- (1) Stamp the ~~[word “Filed” on the]~~ articles of conversion and include the date of the filing;
- (2) File the document in the director’s office; and
- (3) Issue a certificate of conversion to the converted entity or its authorized representatives.’’

SECTION 56. Section 415B-87, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the shares or other forms of ownership, of the converting entity into shares or other forms of ownership, of the converted entity, or any combination thereof[;]
- (5) ~~If the converted entity is a domestic corporation, the articles of incorporation of the domestic corporation shall be attached; and~~
- (6) ~~If the converted entity is not a domestic corporation, proof that the converted entity is registered in this State shall be attached].’’~~

SECTION 57. Section 415B-125, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-125 Filing of application for certificate of authority.** The application of a foreign corporation for a certificate of authority shall be delivered to the director, together with a certificate of good standing duly certified by the proper officer of the jurisdiction in which the foreign corporation is incorporated, which certificate shall be dated not earlier than ~~[thirty]~~ sixty days prior to the filing of the application. If the certificate of good standing is in a foreign language, a translation under oath of the translator shall accompany the certificate.’’

SECTION 58. Section 415B-156, Hawaii Revised Statutes, is amended to read as follows:

- “§415B-156 Miscellaneous charges.** The director shall charge and collect:
- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, 25 cents a page and [\$10]¹ \$20 for the certificate and affixing the seal thereto; and
 - (2) At the time of any service of process on the director as agent for service of process of a corporation, \$25, which amount may be recovered as taxable costs by the party to the action causing the service to be made if that party prevails in the action.”

SECTION 59. Section 417E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition of “broker-dealer” to be appropriately inserted and to read:

““Broker-dealer” means a “dealer” as defined in section 485-1.”

2. By amending the definition of “beneficial owner” to read:

““Beneficial owner” includes, but is not limited to, any person who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise has or shares the power to vote or direct the voting of a security ~~[and/or]~~ or the power to dispose of, or direct the disposition of, the security. Beneficial ownership includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities, or otherwise. The securities subject to these options, warrants, rights, or conversion privileges held by a person shall be deemed to be outstanding securities of the class owned by this person, but shall not be deemed to be outstanding for the purpose of computing the percentages of the class owned by any other person. A person shall be deemed the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of this person, any trust or estate in which this person owns ten per cent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which this person owns ten per cent or more of the equity, and any affiliate or associate of this person.”

SECTION 60. Section 420-1, Hawaii Revised Statutes, is amended to read as follows:

“§420-1 Definitions. As used in this chapter, the following words and phrases, unless ~~[differently defined or described,]~~ the context otherwise requires, shall have the meanings and references as follows:

“Board of directors”~~[-The]~~ means the board of directors of the corporation created under this chapter.

“Corporation”~~[-A]~~ means a business development corporation created under this chapter.

“Financial institution”~~[-Any]~~ means any banking corporation or trust company, building and loan association, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

“Loan limit”~~[-For]~~ means for any member, the maximum amount permitted to be outstanding at one time on loans made by the members to the corporation, as determined under this chapter.

“Member”~~[-Any]~~ means any person, corporation, company, association, partnership, foundation, or other institution, including any financial institution, which or who undertakes to lend money to a corporation created under this chapter, upon its call, and in accordance with this chapter, but not including the Small Business Administration and any other federal agency.

“Pacific Islands”~~[-The]~~ means the State of Hawaii, American Samoa, Guam, the Cook Islands, Easter Island, the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, New Caledonia, Niue, the Northern Mariana Islands, Belau (Palau), Papua New Guinea, Pitcairn Island, the Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis and Futuna, French Polynesia, and Western Samoa.”

SECTION 61. Section 421-1, Hawaii Revised Statutes, is amended by amending the definition of “association” to read as follows:

““Association” means any corporation organized under this chapter for the mutual benefit of its members, as agricultural producers, and which confines its operations to purposes authorized by this chapter and restricts the return on the stock or membership capital and the amount of its business with nonmembers to the limits placed thereon by this chapter for associations organized hereunder; provided that any fish marketing association organized pursuant to chapter 422 and in existence on May 7, 1991, shall be considered an association for purposes of this chapter. [Association] Associations shall be classified as and deemed to be nonprofit corporations, inasmuch as their primary object is not to pay dividends on invested capital, but to render service and provide means and facilities by or through which the producers of agricultural products may receive a reasonable and fair return for their products.”

SECTION 62. Section 421-5, Hawaii Revised Statutes, is amended to read as follows:

“**§421-5 Name.** Section 415B-7 shall apply to associations formed under this chapter and no ~~[Hawaiian]~~ domestic corporation not organized under this chapter shall use the word “cooperative” as a part of its name.”

SECTION 63. Section 421-20, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities or products and its relation to the prospective volume of consumption, selling prices, and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under ~~[[a]]~~ program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus.”

SECTION 64. Section 421-21.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§421-21.6]]~~ **Mergers and consolidation; procedures; approval by members.** (a) Unless otherwise prohibited, any association organized under this chapter may merge or consolidate with another association or with any association incorporated under the laws of another state by complying with this section or the law of the state where the surviving or new association will exist.

(b) The board or a committee selected by the board or the members shall adopt a written plan of merger or consolidation setting forth:

- (1) The names of the associations proposing to merge or consolidate;
- (2) The name of the surviving or new association;
- (3) The manner and basis of converting the stock or membership of each association into stock or membership in the surviving or new association;

- (4) The terms of the merger or consolidation;
- (5) The proposed effect of the consolidation or merger on the members of the association; and
- (6) For a consolidation, the articles of the new association.

(c) The board of each association shall mail a notice of the proposed merger or consolidation to each member. The notice shall contain the full text of the merger or consolidation plan and the time and place of the meeting at which the plan will be considered. An association with more than two hundred members may publish the notice as provided in section ~~[[~~421-12~~]]~~.

(d) At the meeting, a vote of the members shall be taken on the proposed plan~~[-];~~ provided that a quorum of the members is registered as being present or represented by proxy vote at the meeting. The plan shall be approved upon receiving the affirmative vote of:

- (1) Two-thirds of the votes cast; or
- (2) For an association with articles or bylaws requiring more than two-thirds of the votes cast or other conditions for approval, a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

After the plan has been approved, the chair, vice-chair, president, vice president, secretary, or assistant secretary of each association merging or consolidating shall sign the articles of merger or consolidation and a statement that the plan was adopted according to this section.

(e) The articles of merger or consolidation shall be filed with the director of commerce and consumer affairs.

(f) For a merger, the articles of the surviving cooperative or association shall be deemed amended to the extent provided in the articles of merger.

(g) The merger or consolidation shall become effective upon the effective date and time of filing the articles of merger or consolidation, or upon a date and time subsequent to the filing as set forth in the articles, but not more than thirty days after being filed.

(h) The director of commerce and consumer affairs shall issue a certificate of merger or consolidation.

(i) A certified copy of the articles or of a certificate of merger or consolidation issued by the director shall be filed with the department of agriculture.

~~[(+)]~~ (j) After the effective date, the associations that are parties to the plan shall become a single association. For a merger, the surviving association shall be the association designated in the plan. For a consolidation, the new cooperative shall be the association provided for in the plan. Except for the surviving or new association, the separate existence of all cooperatives and associations that are parties to the plan shall cease on the effective date of the merger or consolidation.

The surviving or new association shall possess all of the rights and property of each of the merged or consolidated associations, and shall be responsible for all their obligations. The title to property of the merged or consolidated association shall be vested in the surviving or new association without reversion or impairment of the title caused by the merger or consolidation.

~~[(+)]~~ (k) The rights of creditors shall not be impaired by the merger or consolidation without the creditors' consent.

~~[(+)]~~ (l) The director of commerce and consumer affairs may charge a filing fee for filing the articles.''

SECTION 65. Section 421C-12, Hawaii Revised Statutes, is amended to read as follows:

“§421C-12 **Bylaws; contents.** The bylaws shall contain:

- (1) The maximum amount or percentage of capital which may be owned or controlled by one member[-];
- (2) A provision that in all decisions to amend the articles or bylaws, as the case may be, the members shall be informed of those decisions at least thirty days in advance through a mailing or a prominent notice at all association locations[-];
- (3) The method and terms of admission to membership and the disposal of members' interests on termination of membership for any reason[-];
- (4) A provision stating that a majority of the directors, or five per cent of the[-] members or two hundred fifty[-] members, whichever is less, may submit a petition in writing and demand a special membership meeting, which shall be called by the secretary within thirty days of that demand[-];
- (5) A provision that notice for all meetings shall be made through posting prominent signs at all association locations or by mailing to the last known address of each member or director. Notices for special meetings shall specify the purpose of the meeting[-];
- (6) A provision that associations shall not discriminate on their acceptance of members on a basis of race, gender, religion, income, marital status, or nationality[-]; and
- (7) A provision stating that within a specified period of time, any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition [of] by at least five per cent of the[-] members or two hundred fifty[-] members, whichever is less, or by majority vote [~~of at least a majority~~] of the directors; provided that rights of third parties which have vested between the time of action by the directors and approval or disapproval by the members shall not be impaired.”

SECTION 66. Section 421C-25, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The [reserve] surplus fund established in subsection (a) may be expended for capital improvements or emergencies upon a two-thirds majority vote of the directors, or may be expended under section 421C-22, 421C-23, or 421C-24, by majority vote of the directors.”

SECTION 67. Section 425-1, Hawaii Revised Statutes, is amended to read as follows:

“§425-1 **Registration and annual statements.** (a) Whenever any general partnership is formed under the laws of this State to do business in this State, or any general partnership formed under the laws of any other jurisdiction shall do business in this State, such partnership shall file in the office of the director of commerce and consumer affairs the registration and annual statements hereinafter provided. A registration statement shall be filed by a partnership formed under the laws of this State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in this State. An annual statement shall be filed on or before March 31 of each year, as of December 31 of the preceding year. Every such registration statement shall contain the following information:

- (1) The name of the partnership;
- (2) The name and address of each partner;

- (3) The street address of the chief executive office of the partnership in the State and, if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction and the street address of the partnership's chief executive office and of one office in this State, if there is one;
- (4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in this State;
- (5) The fact that none of the partners is either a minor or an incompetent person; and
- (6) In the case of a foreign general partnership, the designation of a person residing within this State as agent for service of process and notice, and the person's street address[; ~~and~~];
- (7) ~~The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership, and may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter].~~

(b) Every such annual statement shall contain the information specified in [H]subsection (a)[H] (1), (2), (3), (5), [H]and[H] (6) and a listing of the names of any partner admitted, withdrawn, or who has died during the year.

(c) The registration statement of a domestic partnership shall be certified by each partner, and the registration statement of a foreign partnership shall be certified by at least one partner. Each annual statement shall be certified as correct by any partner.

(d) The registered agent of a foreign general partnership may be:

- (1) An individual who resides in this State and whose business office is identical with the registered office;
- (2) A domestic entity whose business office is identical with the registered office; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office."

SECTION 68. Section 425-5, Hawaii Revised Statutes, is amended to read as follows:

“§425-5 Minors and incompetent persons. A minor or incompetent person may not be a partner, but may have a beneficial interest in a partnership through a trustee or duly appointed guardian.

This section shall not apply to the current partners in any duly registered partnership [nøw] doing business in the State[;] as of July 14, 1969.”

SECTION 69. Section 425-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) No statement or certificate of any partnership shall be recorded by the director unless the name[;]

- (1) ~~Is~~ is not the same as, or substantially identical to the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this

provision shall not apply if the partnership files with the director any one of the following:

~~[(A)]~~ (1) The written consent from the entity or holder of a reserved or registered 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)]~~ (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the partnership to the use of the name in this State.

(b) The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, limited partnership, limited liability company, or limited liability partnership name, trade name, trademark, or service mark.”

SECTION 70. Section 425-12, Hawaii Revised Statutes, is amended to read as follows:

“**§425-12 Fee for filing documents and issuing certificates.** (a) 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) Articles of conversion, \$200;
- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$25;
- (14) Special handling fee for review of any general partnership document, [~~\$20;~~] \$50;
- (15) Special handling fee for certificates issued by the director, [~~\$20]~~ \$25 per certificate;
- (16) Special handling fee for certification of documents, [~~\$1 per page;~~] \$25;
- (17) Special handling fee for review of articles of conversion, \$150; and
- (18) Agent’s statement of change of address, \$25 for each affected foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign general partnership.

(b) The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a general partnership, \$20 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as agent for service of process of a general partnership, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

~~[(b)]~~ (c) All fees collected under this section shall be managed in accordance with section 26-9(1).”

SECTION 71. Section 425-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within two years after the involuntary cancellation of a general partnership under this section, the registration statement of the general partnership may be reinstated by the director upon written application executed by any partner of the general partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfilled. Within the applicable reinstatement period, should the name of the general partnership, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily canceled general partnership pursuant to the amendment provisions of this chapter.”

SECTION 72. Section 425-17, Hawaii Revised Statutes, is amended to read as follows:

“**§425-17 Withdrawal procedure for foreign general partnership.** (a) 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 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 this State³]~~ daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide, or a statement that publication was not made;
- (6) That all taxes, debts, obligations, and liabilities of the foreign general partnership in this State have been paid and discharged or that adequate provision has been made therefor;
- (7) 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
- (8) 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.

(b) Upon the filing of the application for withdrawal, and after the payment of a fee of \$10, the director shall issue a certificate 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 this 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 73. Section 425-153, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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.~~ shall be:

- (1) An individual who resides in this State and whose business office is identical with the registered office;
- (2) A domestic entity whose business office is identical with the registered office; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.”

SECTION 74. Section 425-168, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§425-168**~~]]~~ **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;]~~ \$25;
- (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;]~~ \$50;
- (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;]~~ \$100;
- (4) For each certificate of correction or statement of amendment, a fee of ~~[\$100;]~~ \$50;
- (5) For each certificate of good standing, a fee of ~~[\$100;]~~ \$25;
- (6) For review of articles of conversion, a fee of \$200;
- (7) For any other certificate, statement, or document, a fee of ~~[\$100;]~~ \$50; and
- (8) For each certification of domestic or foreign partnership, a fee of ~~[\$100;]~~ \$20;
- (9) For each agent’s statement of change of registered office, \$20 for each affected domestic or foreign limited liability partnership; provided that if an agent files more than two hundred statements of change of registered office at the same time, the fee shall be reduced to \$1 for each affected domestic or foreign limited liability partnership.

(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;]~~ \$50;
 - (B) Certificate of correction, ~~[\$100;]~~ \$50;

- (C) Statement of amendment of limited liability partnership, [~~\$100;~~] \$50;
- (D) Annual report, [~~\$100;~~] \$50;
- (E) Certification of limited liability partnership, [~~\$1 a page;~~] \$25;
- (F) Certificate of good standing, [~~\$100;~~] \$25; and
- (G) Articles of conversion, \$150;
- (2) For foreign limited liability partnerships:
 - (A) Statement of foreign qualification of limited liability partnership, [~~\$100;~~] \$50;
 - (B) Certificate of correction, [~~\$100;~~] \$50;
 - (C) Statement of amendment of foreign limited liability partnership, [~~\$100;~~] \$50;
 - (D) Annual report, [~~\$100;~~] \$50;
 - (E) Certification of foreign partnership, [~~\$1 a page;~~] \$25;
 - (F) Certificate of good standing, [~~\$100;~~] \$25; and
 - (G) Articles of conversion, \$150; and
- (3) For any other certificate or document authorized by this subpart, [~~\$100;~~] \$50.

(c) The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a limited liability partnership, \$20 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as agent for service of process of a limited liability partnership, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

[(e)] (d) All fees collected under this section shall be managed in accordance with section 26-9(l).”

SECTION 75. Section 425-192, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the partnership interests, or other forms of ownership of the converting entity into partnership interests, or other forms of ownership of the converted entity, or any combination thereof[;]
- (5) ~~If the converted entity is a domestic partnership or limited liability partnership, the registration statement of the domestic partnership or limited liability partnership shall be attached; and~~
- (6) ~~If the converted entity is not a domestic partnership, or limited liability partnership, proof that the converted entity is registered in this State shall be attached].”~~

SECTION 76. Section 425-193, Hawaii Revised Statutes, is amended to read as follows:

“[~~§425-193~~] **Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 425-192 and has not been abandoned, articles

of conversion shall be executed by a partner, officer, or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, type of entity, and state[;] or country of incorporation, formation, or organization of the converting [entity and the organizational form of the converting entity;] and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section 425-192;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or the converted entity after the conversion on written request and without cost, to any partner, shareholder, owner, or member of the converting entity or the converted entity; and
- (2) A statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized.
 - (b) The articles of conversion shall be delivered to the director.
 - (c) ~~[If the converted entity is a domestic partnership, the registration statement of the domestic partnership or limited liability partnership shall also be delivered to the director with the articles of conversion.]~~ The converted entity, if a domestic corporation, domestic professional corporation, foreign corporation, domestic nonprofit corporation, general partnership, limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.

SECTION 77. Section 425-194, Hawaii Revised Statutes, is amended to read as follows:

“[H]§425-194[H] Effective date of the conversion. ~~[Upon the issuance]~~ The conversion shall be effective upon the filing of a certificate of conversion [by the director, the conversion shall be effective].”

SECTION 78. Section 425D-101, Hawaii Revised Statutes, is amended by amending the definition of “other entity” to read as follows:

““Other entity” includes a domestic or foreign corporation, whether organized for profit or not, a domestic or foreign partnership, limited liability partnership, limited liability company, or a domestic professional corporation.”

SECTION 79. Section 425D-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The exclusive right to the use of a name, including a fictitious name for a foreign limited partnership whose partnership name is not available, may be reserved by:

- (1) Any person intending to organize a limited partnership under this chapter and to adopt that name;
- (2) Any domestic limited partnership or any foreign limited partnership registered in this State which, in either case, intends to adopt that name;
- (3) Any foreign limited partnership intending to register in this State and adopt that name; and

- (4) Any person intending to organize a foreign limited partnership and intending to have it registered in this State and to adopt that name.”

SECTION 80. Section 425D-206.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A domestic or foreign limited 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.”

SECTION 81. Section 425D-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person becomes a limited partner:

- (1) At the time the limited partnership is formed; or
- (2) [The] On the date stated in the records of the limited partnership as the date that person becomes a limited partner.”

SECTION 82. Section 425D-902, Hawaii Revised Statutes, is amended to read as follows:

“**§425D-902 Registration.** Before transacting business in this State, a foreign limited partnership shall register with the director. In order to register, a foreign limited partnership shall submit to the director an application for registration as a foreign limited partnership, certified and signed by a general partner and setting forth:

- (1) The name of the foreign limited partnership;
- (2) The state and date of its formation;
- (3) The name and street address of any qualified agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent [~~shall be an individual resident of this State or a domestic corporation;~~] shall be:
 - (A) An individual who resides in this State and whose business office is identical with the registered office;
 - (B) A domestic entity whose business office is identical with the registered office; or
 - (C) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office;
- (4) The 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 partnership;
- (5) The name and address of each general partner; and
- (6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this State is canceled or withdrawn.”

SECTION 83. Section 425D-904, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No registration for a foreign limited partnership shall be accepted by the director unless the name of such foreign limited partnership:

- (1) Is not the same as, or substantially identical to, the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the foreign limited partnership files with the director either of the following:
 - (A) The written consent from the entity or holder of a reserved or registered 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 partnership to the use of the name in this State; and
- (2) Is transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 84. Section 425D-1107, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Certificate of limited partnership, \$50;
 - (2) Any certificate of amendment, restatement, or correction, \$20;
 - (3) Certificate of cancellation, \$20;
 - (4) Annual statement for domestic or foreign limited partnership, \$10;
 - (5) Any other certificate or document of domestic or foreign limited partnership, \$20;
 - (6) Application for registration as a foreign limited partnership, \$100;
 - (7) Any certificate of amendment or agent change for foreign limited partnership, \$20;
 - (8) Application for certificate of withdrawal of foreign limited partnership, \$20;
 - (9) Reservation of name, \$20;
 - (10) Transfer of reservation of name, \$20;
 - (11) Good standing certificate, [~~\$20;~~] \$25;
 - (12) Filing articles of conversion, \$200;
 - (13) Special handling fee for review of articles of conversion, \$150;
 - (14) Special handling fee for review of any limited partnership document, \$50;
 - (15) Special handling fee for certificates issued by the director, [~~\$20]~~ \$25 per certificate;
 - (16) Special handling fee for certification of documents, [~~\$1 per page;~~] \$25; and
 - (17) Agent’s statement of change of address, \$20 for each affected foreign limited partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign limited partnership.
- (b) The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a limited partnership, \$20 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as agent for service of process of a limited partnership, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

~~[(b)]~~ (c) All fees collected under this section shall be managed in accordance with section 26-9(1).”

SECTION 85. Section 425D-1110, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) A plan of conversion shall set forth:
- (1) The name of the converting entity and the converted entity;
 - (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
 - (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
 - (4) The manner and basis of converting the partnership interests, or other forms of ownership of the converting entity into partnership interests, or other forms of ownership of the converted entity, or any combination thereof[;]
 - ~~(5) If the converted entity is a domestic limited partnership, the certificate of limited partnership shall be attached; and~~
 - ~~(6) If the converted entity is not a domestic limited partnership, proof that the converted entity is registered in this State shall be attached].”~~

SECTION 86. Section 425D-1111, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§425D-1111[H]~~ **Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 425D-1110 and has not been abandoned, articles of conversion shall be executed by a partner, officer, or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, entity type, and state[;] or country of incorporation, formation, or organization of the converting [entity, and the organizational form of the converting entity;] and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section 425D-1110;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof;
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or the converted entity after the conversion, on written request and without cost, to any limited partner of the converting entity or the converted entity; and
 - (2) A statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized.
- (b) The articles of conversion shall be delivered to the director.

(c) ~~[If the converted entity is a domestic limited partnership, the certificate of limited partnership shall also be delivered to the director]~~ The converted entity, if a domestic corporation, domestic professional corporation, foreign corporation, domestic nonprofit corporation, general partnership, limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.

SECTION 87. Section 425D-1112, Hawaii Revised Statutes, is amended to read as follows:

~~“[§425D-1112] Effective date of the conversion. [Upon] The conversion shall be effective upon the [issuance] filing of a certificate of conversion [by the director, the conversion shall be effective].”~~

SECTION 88. Section 428-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as authorized by subsections (c) and (d), the name of a limited liability company shall not be the same as, or substantially identical to:

- (1) The name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State;
- (2) The name of any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State;
- (3) A name the exclusive right to which is reserved under the laws of this State;
- (4) A fictitious name approved under section 428-1005 for a foreign limited liability company authorized to transact business in this State because its real name is unavailable; or
- (5) Any trade name, trademark, or service mark registered in this State.”

SECTION 89. Section 428-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person may reserve the exclusive use of the name of a limited liability company or a foreign limited liability company, including a fictitious name for a foreign limited liability company whose company name is not available, by delivering an application to the director for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the director finds that the name applied for is available, it shall be reserved for the applicant’s exclusive use for a ~~[nonrenewable]~~ one hundred twenty-day period from the date of filing.”

SECTION 90. Section 428-110, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company. A registered agent shall be:

- (1) An individual who resides in this State and whose business office is identical with the registered office;
- (2) A domestic entity whose business office is identical with the registered office; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.”

SECTION 91. Section 428-205, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§428-205]]~~ **Signing of records.** (a) Except as otherwise provided in this chapter, a record to be filed by or on behalf of a limited liability company in the office of the director shall be certified and signed by a:

- (1) Manager of a manager-managed company;
- (2) Member of a member-managed company;
- (3) Person organizing the company, if the company has not been formed; or
- (4) Fiduciary, if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary.

~~[(b) A record signed under subsection (a) shall state the name and capacity of the signer adjacent to the signature.~~

(e) (b) The signer of a record to be filed under subsection (a) may do so as an attorney-in-fact by stating beneath or opposite the signature the name of the person for whom the signer is the attorney-in-fact. The power of attorney need not be filed with the record.”

SECTION 92. Section 428-207, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A record is corrected:

- (1) By preparing articles of correction that:
 - (A) Describe the record, including its filing date, or attach a copy of it to the articles of correction;
 - (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the certification or signing was defective; and
 - (C) Corrects the incorrect statement or defective certification or signing; and
- (2) By delivering the ~~[corrected record]~~ articles of correction to the director for filing.”

SECTION 93. Section 428-402, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A member’s obligation to contribute money, property, or other benefit to, or to perform services for, a limited liability company is not excused by the member’s death, disability, or other inability to perform personally. If a member does not make the required contribution of property or services, the member or the member’s ~~[executors,]~~ executor, as the case may be, is obligated at the option of the company to contribute money equal to that portion of the value of the stated contribution which has not been made.”

SECTION 94. Section 428-404, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The only matters of a limited liability company’s business that require the consent of all the members are:

- (1) Amendments to the operating agreement under section 428-103;
- (2) Authorization or ratification of acts or transactions under section 428-103(b)(2)(B) which would otherwise violate the duty of loyalty;
- (3) Amendments to the articles of organization under section 428-204;
- (4) Compromising an obligation to make a contribution under section 428-402(b);

- (5) Compromising among members, [ef] an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;
- (6) Making interim distributions under section 428-405(a);
- (7) Admission of a new member;
- (8) Use of the company's property to redeem an interest subject to a charging order;
- (9) Consent to dissolve the company under section 428-801(2);
- (10) Waiving of the right to have the company's business wound up and the company terminated under section 428-802(b);
- (11) Merging the company with another entity under section 428-904(c)(1); and
- (12) Selling, leasing, exchanging, or otherwise disposing of all, or substantially all, of the company's property with or without goodwill."

SECTION 95. Section 428-803, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to section 428-806, settle disputes by mediation or arbitration, and perform other necessary acts and ~~[shall]~~ may publish notice of intent to terminate as provided in section 428-808."

SECTION 96. Section 428-808, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The notice shall:

- (1) Be published at least once in each of four successive weeks (four publications) in a ~~[newspaper of general circulation in this State;]~~ daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide;
- (2) Describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent; and
- (3) State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within two years after the later of the last publication date of the notice or the date of filing of the articles of termination."

SECTION 97. Section 428-809, Hawaii Revised Statutes, is amended to read as follows:

"~~[H]§428-809[H]~~ **Grounds for administrative termination.** The director may commence a proceeding to terminate a limited liability company administratively if the company ~~[has not, pursuant to section 428-210, filed its annual report for a period of two years.]~~ fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two years pursuant to section 428-210;
- (3) Appoint and maintain an agent for service of process as required by this part; or
- (4) File a statement of a change in the name or business address of the agent as required by this part."

SECTION 98. Section 428-902.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Any foreign limited liability company or other entity may adopt a plan of conversion and convert to a domestic limited liability company if the conversion is permitted by and complies with the laws of the state or country in which the foreign ~~[corporation]~~ limited liability company or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof;
- (5) ~~If the converted entity is a domestic limited liability company the articles of organization of the domestic limited liability company shall be attached; and~~
- (6) ~~If the converted entity is not a domestic limited liability company, proof that the converted entity is registered in this State shall be attached].”~~

SECTION 99. Section 428-902.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~~~§428-902.6~~ **Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 428-902.5 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, type of entity, and state[;] or country of incorporation, formation, or organization of the converting [entity,] and [organizational form of the converting entity;] converted entities;
 - (B) That a plan of conversion has been approved;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any member, shareholder, partner, or owner of the converting entity or the converted entity;
- (2) If the converting entity is a domestic limited liability company, the total number of authorized votes, and the number voted for and against the plan; and
- (3) If the converting entity is a foreign limited liability company or other entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director. ~~[If the]~~ The converted entity [is], if a domestic corporation, domestic professional corporation, foreign corporation, domestic nonprofit corporation, general partnership, limited

partnership, or domestic limited liability company [the articles of organization of the domestic limited liability company,] shall [also be delivered to the director] attach a copy of its respective registration documents with the articles of conversion.

(c) If the director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the director, after all fees have been paid shall:

- (1) Stamp the [~~word “Filed” on the~~] articles of conversion and include the date of the filing;
- (2) File the document in the director’s office; and
- (3) Issue a certificate of conversion to the converted entity or its authorized representatives.’’

SECTION 100. Section 428-903, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [~~Upon~~] The conversion shall be effective upon the [issuance] filing of the certificate of conversion [by the director, the conversion shall be effective].”

SECTION 101. Section 428-1006, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director may not revoke a certificate of authority of a foreign limited liability company unless the director sends the company notice of the revocation, at least sixty days before its effective date, by a record addressed to its agent for service of process in this State, or if the company fails to appoint and maintain a proper agent in this State, addressed to [~~the office required to be maintained by section 428-107.]~~ its last known address appearing in the director’s records. The notice shall identify the cause for the revocation of the certificate of authority. If the foreign limited liability company does not cure its failure by the date specified in the notice of revocation, the director may issue a certificate of revocation in duplicate, file one of the certificates in the office of the director and mail the other certificate addressed as described in the preceding sentence to the foreign limited liability company. The authority of the company to transact business in this State shall cease upon the issuance of the certificate of revocation.’’

SECTION 102. Section 428-1007, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A foreign limited liability company intending to cancel its authority to transact business in this State may publish notice of its cancellation and request persons having claims against the company to present them in accordance with the notice. The notice shall:

- (1) Be published at least once in each of four successive weeks (four publications) in a [~~newspaper of general circulation in this State;~~] daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide; and
- (2) Describe the information required to be contained in a claim and provide a mailing address where the claim may be sent.’’

SECTION 103. Section 428-1301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing and issuance of records under this chapter:

- (1) Articles of organization, \$100;
- (2) Articles of amendment, \$50;
- (3) Restated articles of organization, \$50;
- (4) Articles of merger or conversion, \$200;

- (5) Statement of dissociation, \$50;
- (6) Articles of termination, \$50;
- (7) Application for reinstatement for administratively terminated limited liability company, \$50;
- (8) Annual report, \$25;
- (9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, \$50;
- (10) Agent's statement of change of address, \$50 for each affected domestic limited liability company or foreign limited liability company; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic limited liability company or foreign limited liability company;
- (11) Any other statement or document of a domestic or foreign limited liability company, \$50;
- (12) Application for certificate of authority for foreign limited liability company, \$100;
- (13) Application for cancellation of authority of foreign limited liability company, \$50;
- (14) Reservation of name, \$25;
- (15) Good standing certificate, \$25;
- (16) Any other record not otherwise covered in this part, \$50;
- (17) Certified copy of any record relating to a limited liability company or foreign limited liability company, [~~25 cents per page, and \$10~~] \$20 for the certificate and affixing the seal thereto;
- (18) Special handling fee for review of any record other than articles of merger or conversion, [~~\$80;~~] \$50;
- (19) Special handling fee for review of articles of merger or conversion, [~~\$200;~~] \$150;
- (20) Special handling fee for certificate issued by the director not otherwise covered by this section, [~~\$10~~] \$25 per certificate;
- (21) Special handling fee for certification of record, [~~\$1 per page;~~] \$25; and
- (22) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, [~~\$50;~~] \$25, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action."

SECTION 104. Section 485-14, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Recording; duration; renewal; fee. The names 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 and shall be open to public inspection. Except as hereinafter provided, every registration for dealers, investment advisers, salespersons, and investment adviser representatives under this section shall expire on December 31 ~~in~~ of 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, 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 \$200 in the case of dealers and investment advisers and \$50 in the case of salespersons and investment adviser representatives.”

SECTION 105. Section 415-171, Hawaii Revised Statutes, is repealed.

SECTION 106. Section 415-172, Hawaii Revised Statutes, is repealed.

SECTION 107. Statutory material to be repealed is bracketed and stricken.⁴ New statutory material is underscored.

SECTION 108. This Act shall take effect on July 1, 2001.

(Approved May 22, 2001.)

Notes

1. So in original.
2. Comma should be underscored.
3. Prior to amendment “,” appeared here.
4. Edited pursuant to HRS §23G-16.5.