

ACT 124

H.B. NO. 1165

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 414D, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§414D- Shares of stock and dividends prohibited; compensation; distribution. A corporation under this chapter shall not authorize or issue shares of stock except for limited-equity housing cooperatives. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter; provided that no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit.”

SECTION 2. Section 414D-14, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Department” means the department of commerce and consumer affairs, unless the context otherwise requires.”

SECTION 3. Chapter 428, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§428- Change of name by foreign limited liability company. (a) Whenever the name of a foreign limited liability company that is authorized to transact business in this State is changed by an amendment to its articles of organization, the foreign limited liability company, within sixty days after the amendment becomes effective, shall deliver to the department director a certificate evidencing the name change that is duly authenticated by the proper officer of the state or country under the laws of which it is organized. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign limited liability company that is authorized to transact business in this State changes its name to one that is substantially identical to the name of any business entity or trade name registered in this State, the foreign limited liability company 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 limited liability company 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 director a copy of a certificate of registration of a different name as a trade name and thereafter shall become authorized to transact business in this State under that name.”

SECTION 4. Chapter 482, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§482- **Revocation of a mark.** (a) Any person claiming to be the owner of a trademark or service mark for which a certificate of registration has been issued to another person pursuant to this part may file a verified petition in the office of the director for the revocation of the registration of the mark on the basis that:

- (1) The registered mark has been abandoned;
- (2) The registered mark has not been used by the registrant in accordance with the declaration either in this State or elsewhere in the United States for a period of three hundred sixty-five consecutive days and has not been registered in the name of the registrant in the United States Patent and Trademark Office;
- (3) The registration was granted improperly;
- (4) The registration was obtained fraudulently;
- (5) The registered mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered; or
- (6) The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office prior to the date of filing the application for registration under this part; provided that if a registrant proves that the registrant is the owner of a concurrent registration of a mark registered in the United States Patent and Trademark Office that covers an area including this State, the registration shall not be revoked for such an area.

The petition shall set forth facts in support of the petitioner’s ownership of the mark and the claim for revocation.

(b) The petitioner, at the petitioner’s expense, shall notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5, and the registrant shall be given the opportunity of a full hearing in accordance with chapter 91.

(c) After granting an opportunity for hearing to the petitioner and the registrant, the director shall grant or deny the petition for revocation, as the facts shall warrant.”

SECTION 5. Section 414-310, Hawaii Revised Statutes, is amended by amending the definition of “organizing articles” to read as follows:

““Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership[;] or limited liability partnership, [~~or limited partnership;~~] the registration statement; [~~and~~]
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.”

SECTION 6. Section 414-311.6, Hawaii Revised Statutes, is amended to read as follows:

“[E]§414-311.6[F] **Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 414-315(d). [Section

~~414-315(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.]”~~

SECTION 7. Section 414-315, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a ~~[nonsurviving entity is registered in this State and the surviving entity is not registered in this State, the nonsurviving]~~ foreign entity registered in this State does not survive the merger, the surviving entity shall file with the department director a certificate evidencing the merger as provided in paragraph (1), together with an application for [a certificate of] withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.”

SECTION 8. Section 414-401, Hawaii Revised Statutes, is amended to read as follows:

“**§414-401 Grounds for administrative dissolution.** [(a)] The department director may commence a proceeding under section 414-402 to administratively dissolve a corporation if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two ~~[consecutive]~~ years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

~~[(b) Upon the expiration of the period of duration stated in the articles of incorporation, the corporation shall be deemed to have been administratively dissolved.]”~~

SECTION 9. Section 414-402, Hawaii Revised Statutes, is amended to read as follows:

“**§414-402 Procedure for and effect of administrative dissolution.** (a) If the department director determines that one or more grounds exist under section ~~[414-401(a)] 414-401~~ for dissolving a corporation, the department director shall give written notice of the department director’s determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director’s written notice, the department director shall administratively dissolve the corporation by signing a decree of dissolution that recites the ground for dissolution and its effective date. The decree shall be filed in the department director’s office.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and

liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section 414-473. If a trustee is not appointed, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved corporation with full powers to settle its affairs.

(f) A corporation whose articles of incorporation have expired shall cease to exist by operation of law.

(g) If a corporation was dissolved due to the expiration of its period of duration, the corporation, at any time within two years of such dissolution, may amend its articles of incorporation to extend its period of duration; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if such name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of corporate existence shall be allowed only upon the registration of a new name by the corporation pursuant to part XI of this chapter."

SECTION 10. Section 414-404, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) If the department director denies a corporation's application for reinstatement following administrative dissolution, the department director shall mail a written notice to the corporation or its designated representative that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court within thirty days after [service-of] the notice of denial is [perfected-] mailed. The corporation [appeals] may appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the department director's certificate of dissolution, the corporation's application for reinstatement, and the department director's notice of denial."

SECTION 11. Section 414-422, Hawaii Revised Statutes, is amended to read as follows:

"[~~E~~§414-422~~] Trustees or receivers for dissolved corporations; appointment; powers; duties.~~ (a) When any corporation organized and authorized to issue shares under the laws of this State [~~shall be or shall have been~~] is dissolved[,] or [~~shall cease or shall have ceased~~] ceases to exist, the circuit court, upon application of any creditor, stockholder, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the [~~application complies with the requirements of subsection (b), and that the~~] persons responsible for settling the unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.

(b) [~~An application authorized by subsection (a) shall be made only if:~~

- (1) ~~At least five years have passed from the effective date of the dissolution in the case of a voluntary dissolution under section 414-381 or 414-382, or a voluntary dissolution under any statute previously effective in this State;~~
 - (2) ~~At least two years have passed from the effective date of the dissolution in the case of an administrative or judicial dissolution under section 414-402 or 414-414, or an administrative, involuntary, or judicial dissolution under any statute previously effective in this State; or~~
 - (3) ~~At least two years have passed from the date the corporation ceased to exist under this chapter, or any statute previously effective in this State.~~
- (c) ~~In the event of an appointment of any trustee or receiver of and for a corporation administratively dissolved under section 414-402, the trustee or receiver shall pay to the State out of any funds that may come into the trustee's or receiver's hands as trustee or receiver, a sum equal to any penalty imposed under section 414-473.~~
- (d) The relief provided in this section shall be in addition to, and shall not limit or diminish, any remedies otherwise available under the common law or other state or federal statutes or rules. In the event of a conflict between ~~[the terms and provisions of]~~ this section and any ~~[such]~~ common law, statute, or rule on the subject, the more beneficial provisions favoring the applicant shall prevail."

SECTION 12. 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 good standing or other similar record 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 that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate."

SECTION 13. Section 414-437, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~414-437] Registered office and registered agent of foreign corporation. Each foreign corporation authorized to ~~[transact]~~ business in this State must 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 in this State whose business office is identical with the registered office; or
 - (C) A foreign ~~[corporation or foreign not for profit corporation]~~ entity authorized to transact business [or conduct affairs] in this State whose business office is identical with the registered office."

SECTION 14. Section 414-440, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~414-440] Service on foreign corporation. (a) ~~[The registered agent of a foreign corporation authorized to transact business in this State is the corpora-~~

tion's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A] Service of any notice or process authorized by law that is issued against any foreign corporation by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent, officer, or director of the foreign corporation who is found within the jurisdiction of the court, officer, or board; or if any registered agent, officer, or director cannot be found, upon the manager or superintendent of the foreign corporation or any person who is found in charge of the property, business, or office of the foreign corporation within the jurisdiction.

(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the foreign corporation can be found within the State, and if the foreign corporation has not filed with the department director pursuant to this chapter the name of a registered agent upon whom legal notice and process 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 foreign corporation [may be served] by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report [if the foreign corporation:

- (1) Has no registered agent or its registered agent cannot with reasonable diligence be served;
- (2) Has withdrawn from transacting business in this State under [section 414-451]; or
- (3) Has had its certificate of authority revoked under section 414-462].

(c) Service [is perfected under subsection (b)] using registered or certified mail is perfected at the earliest of:

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

(d) [This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.] Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner permitted by law."

SECTION 15. Section 414-451, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the department director for filing. The application shall set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;
- (3) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any action or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to [conduct affairs] transact business in this State may thereafter be made on such corporation by service thereof on the department director; and
- (4) A mailing address to which the department director may mail a copy of any process served on the department director under paragraph (3)."

SECTION 16. Section 414-461, Hawaii Revised Statutes, is amended to read as follows:

“§414-461 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 corporation fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual report for a period of two [consecutive] years;
 - (C) Appoint and maintain an agent for service of process as required; or
 - (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the corporation.”

SECTION 17. Section 414-462, Hawaii Revised Statutes, is amended by amending subsections (b) through (e) to read as follows:

“(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director’s written notice, the department director may revoke the foreign corporation’s certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. [The department director shall file the original of the certificate and serve a copy on the foreign corporation under section 414-440.]

(c) [The] Upon revoking any certificate of authority, the department director shall issue a certificate of revocation that shall be filed in the department director’s office, and the authority of a foreign corporation to transact business in this State [ceases on the date shown on the certificate revoking its certificate of authority.] shall immediately cease thereafter.

~~[(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 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.]~~

(e) ~~(d)~~ Revocation of a foreign corporation’s certificate of authority does not terminate the authority of the registered agent of the corporation.”

SECTION 18. Section 414-472, Hawaii Revised Statutes is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any [other provision] of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.”

SECTION 19. Section 414D-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (f) to read:
 “(f) The document must be certified and executed:
 (1) By the presiding officer of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;
 (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or
 (3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.”
2. By amending subsection (i) to read:
 “(i) The document ~~[must]~~ shall be delivered to the office of the department director for filing and ~~[must]~~ shall be accompanied by ~~[one exact or conformed copy (except as provided in sections 414D-73 and 414D-279);]~~ the correct filing fee~~;~~ and any ~~[license fee or]~~ penalty payment required ~~[by]~~ under this chapter ~~[or other law].~~”

SECTION 20. Section 414D-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~**§414D-5[F] 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, \$50;
- (2) Articles of amendment, \$20;
- (3) Restated articles of incorporation, \$20;
- (4) Articles of merger ~~[or consolidation]~~, \$100;
- (5) Articles of conversion, \$200;
- (6) Articles of dissolution, \$20;
- (7) Annual report of nonprofit domestic or foreign corporation, \$5;
- (8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, \$20;
- (9) Application for a certificate of authority, \$50;
- (10) Application for a certificate of withdrawal, \$20;
- (11) Reservation of corporate name, \$20;
- (12) Transfer of reservation of corporate name, \$20;
- (13) Good standing certificate, \$25;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or ~~[consolidation]~~ conversion, \$50;
- (15) Special handling fee for review of articles of conversion~~;~~ or merger, ~~[or consolidation]~~, \$150;
- (16) Special handling fee for certificates issued by the department, \$25 per certificate;
- (17) Special handling fee for certification of documents, \$25; and
- (18) Agent’s statement of change of registered office, \$20 for each affected domestic corporation or foreign corporation; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic corporation or foreign corporation.

(b) All special handling fees shall be credited to the compliance resolution fund established under section 26-9(o).

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

SECTION 21. Section 414D-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~**§414D-6** **Effective time and date of document.** (a) Except as otherwise provided in subsection (b)~~[,]~~ and section 414D-7(c), a document is effective:

- (1) At the time of filing on the date it is filed, as evidenced by the department director's endorsement on the original document; or
- (2) At the time specified in the document as its effective time on the date it is filed.

(b) ~~[A document]~~ Articles of dissolution, articles of conversion, and articles of merger 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 ~~[ninetieth]~~ thirtieth day after the date filed.”

SECTION 22. Section 414D-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the department director refuses to file a document, the department director shall return it to the domestic or foreign corporation~~[,]~~ or its designated representative, together with a brief, written explanation of the reason or reasons for the refusal.”

SECTION 23. Section 414D-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~**§414D-11** **Certificate of good standing.** (a) ~~Any person may apply to the department director to obtain a certificate of good standing for a domestic or foreign corporation.~~

(b) ~~The certificate of good standing shall set forth:~~

- (1) ~~The domestic corporation's corporate name, or the foreign corporation's corporate name used in this State;~~
- (2) ~~That the domestic corporation is duly incorporated under the laws of this State, the date of its incorporation, and the period of its duration if less than perpetual, or that the foreign corporation is authorized to transact business in this State;~~
- (3) ~~That all fees, taxes, and penalties owed to the State have been paid, if payment is reflected in the records of the department director and nonpayment affects the good standing of the domestic or foreign corporation;~~
- (4) ~~That its most recent annual report required by section 414D-308 has been delivered to the department director;~~
- (5) ~~That articles of dissolution have not been filed; and~~
- (6) ~~Other facts of record in the office of the department director that may be requested by the applicant.~~

(c) ~~Subject to any qualification stated in the certificate, a certificate of good standing issued by the department director may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this State.]~~

Certificates and certified copies to be received in evidence. All certificates issued by the department director pursuant to this chapter, and all copies of documents filed in the department director's office pursuant to this chapter when certified by the department director, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated therein. A certificate issued

by the department director under the seal of the department of commerce and consumer affairs as to the existence or nonexistence of the facts relating to corporations, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated therein.”

SECTION 24. Section 414D-32, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-32 Articles of incorporation.** (a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 414D-61;
- (2) The mailing address of the corporation’s initial principal office, the street address of the corporation’s initial registered office, and the name of its initial registered agent at its initial registered office;
- (3) The name and address of each incorporator;
- (4) Whether or not the corporation will have members; and
- (5) Provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (b) The articles of incorporation may set forth:
 - (1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
 - (2) The names and addresses of the individuals who are to serve as the initial directors;
 - (3) Provisions not inconsistent with law regarding:
 - (A) Managing and regulating the affairs of the corporation;
 - (B) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members), including but not limited to the power to merge with another corporation, convert to another type of entity, sell all or substantially all of the corporation’s assets, or dissolve the corporation; and
 - (C) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;
 - (4) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
 - (5) Provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of the director’s duties to the corporation and its members; provided that such a provision may not eliminate or limit the liability of a director:
 - (A) For any breach of the director’s duty of loyalty to the corporation or its members;
 - (B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
 - (C) For any transaction from which a director derived an improper personal economic benefit; or
 - (D) Under sections 414D-150 to 414D-152.

(c) None of the provisions specified in this section shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

~~[(d) Each incorporator named in the articles must sign the articles.~~

(e)] (d) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.”

SECTION 25. Section 414D-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~[Unless a delayed effective date is specified, the corporate]~~ A corporation's existence begins when the articles of incorporation are filed with the department director.”

SECTION 26. Section 414D-61, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) to (c) to read:

“(a) A corporate name ~~[may]~~ shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 414D-51 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name ~~[must]~~ shall not be [distinguishable upon the records of the department director from:] the same as or substantially identical to:

- (1) The name of any entity registered or authorized to transact business ~~[or conduct affairs]~~ under the laws of this State;
- (2) A corporate name reserved or registered under section 414D-62[, 414D-63,] or 414-51, the exclusive right to which is reserved at the time in this State;
- (3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this State because its real name is unavailable; or
- (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 not distinguishable]~~ based upon the department director's records ~~[from]~~ is substantially identical to one or more of the names described in subsection

(b). The department director shall authorize the 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 upon the records of the department director from the name of the applying corporation; 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.”

2. By amending subsection (e) to read:

“(e) This chapter ~~[does]~~ shall not control the use of fictitious names.”

SECTION 27. Section 414D-71, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-71 Registered office and registered agent.** Each corporation 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 entity authorized to transact business in this State whose business office is identical with the registered office; or

- (C) A foreign entity authorized to transact business in this State whose business office is identical with the registered office.”

SECTION 28. Section 414D-74, Hawaii Revised Statutes, is amended to read as follows:

“[§414D-74]¹ **Service on corporation.** (a) ~~[A corporation’s registered agent shall be the corporation’s agent for service of process, notice, or demand required or permitted by law to be served on the corporation.]~~ Service of any notice or process authorized by law that is issued against any domestic or foreign corporation by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent, officer, or director of the corporation who is found within the jurisdiction of the court, officer, or board; or if any registered agent, officer, or director cannot be found, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

(b) ~~[If a corporation has no registered agent, or the registered agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the corporation at its principal office shown in the most recent annual report filed pursuant to section 414D-308.]~~ 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 if 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 from the courts of the State may be served, and 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 corporation at its principal office shown in its application for a certificate of authority or its most recent annual report.

~~(c) Service [shall be] by using registered or certified mail is perfected [under this subsection on] at the earliest of:~~

- (1) The date the corporation receives the ~~[notice via]~~ mail ~~[service]~~;
- (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 the postmark, if mailed postpaid and correctly addressed [with postage affixed].

~~[(e) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.]~~

~~(d) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.”~~

SECTION 29. Section 414D-184, Hawaii Revised Statutes, is amended by amending subsection (k) to read as follows:

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

- (1) Whether the restatement contains an amendment to the articles requiring ~~[shareholder]~~ member 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]~~ member approval, the information required by section 414D-183. The department director may certify the amended and restated articles of incorporation as the articles of incorporation cur-

rently in effect, without including the information required to be filed by subsection (j)(2) and (3).”

SECTION 30. Section 414D-201.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§414D-201.5**~~]]~~ **Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 414D-203(d). ~~[Section 414D-203(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.]”~~

SECTION 31. Section 414D-203, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) After a plan of merger is approved by the board of directors and, if required by section 414D-202, by the members and any other persons, the surviving or acquiring corporation shall deliver to the department director articles of merger setting forth:

- (1) The ~~[plan of merger;]~~ name and jurisdiction of incorporation of each of the corporations that are parties to the merger, and the name and jurisdiction of incorporation of the surviving corporation;
- (2) ~~[[~~ A statement that the plan of merger has been approved by the board of directors of each corporation involved in the merger and if required by section 414D-202, by the members; provided that if approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;
- (3) If approval by members was required:
 - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and
 - (B) The total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;
- (4) If approval of the plan by some person or persons other than the members or the board is required pursuant to section 414D-202, a statement that the approval was obtained;
- (5) If a merger, a statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and
- (6) A statement that includes:
 - (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 as its agent to accept service of process in any such proceeding, that includes the resident’s street address in this State; 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.”

2. By amending subsection (d) to read:

“(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or
- (2) If ~~[the nonsurviving entity or entities is or are registered in this State and the surviving entity is not registered in this State, the nonsurviving]~~ a foreign entity registered in this State does not survive the merger, the surviving entity [or entities] shall file with the department director a certificate [of] evidencing the merger as provided in subparagraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.”

SECTION 32. Section 414D-248, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-248 Grounds for administrative dissolution.** The department director may commence a proceeding under section 414D-249 to administratively dissolve a corporation if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two [consecutive] years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.”

SECTION 33. Section 414D-249, Hawaii Revised Statutes, is amended to read as follows:

“**[E]§414D-249[H] Procedure for and effect of administrative dissolution.**

(a) Upon determining that one or more grounds exist under section 414D-248 for dissolving a corporation, the department director shall give the corporation written notice of the department director’s determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director’s written notice, the department director may administratively dissolve the corporation by signing a decree of dissolution that recites the ground or grounds for dissolution and its effective date. The decree shall be filed in the department director’s office.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under section 414D-245 and notify its claimants under sections 414D-246 and 414D-247.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If a trustee is not appointed by a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved corporation with full powers to settle its affairs.

[(e)] (f) A corporation whose articles of incorporation have expired shall cease to exist by operation of law.

(g) If a corporation was dissolved due to the expiration of its period of duration, the corporation, at any time within two years of such dissolution, may amend its articles of incorporation to extend its period of duration; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if such name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of corporate existence shall be allowed only upon the registration of a new name by the corporation pursuant to part XI of this chapter."

SECTION 34. Section 414D-251, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The department director, upon denying a corporation's application for reinstatement following administrative dissolution, shall mail [the corporation under section 414D-74] a written notice to the corporation or its designated representative that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court within thirty days after [service of] the notice of denial is [perfected.] mailed. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the department director's certificate of dissolution, the corporation's application for reinstatement, and the department director's notice of denial."

SECTION 35. Section 414D-273, Hawaii Revised Statutes, is amended to read as follows:

"§414D-273 Application for certificate of authority. (a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the department director for filing. The application shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section 414D-276;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date of incorporation and period of duration;
- (4) The mailing address of the corporation's [initial] principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (5) The names and usual business or home addresses of its current directors and officers; and
- (6) Whether the foreign corporation has members.

(b) The foreign corporation shall deliver with the completed application a certificate of good standing [(c) or [a document of similar import)] other similar record 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 that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate."

SECTION 36. Section 414D-274, Hawaii Revised Statutes, is amended to read as follows:

~~“[§414D-274] Amended certificate of authority. (a) A foreign corporation authorized to transact business in this State shall obtain an amended certificate of authority from the department director if it changes:~~

- ~~(1) Its corporate name;~~
- ~~(2) The period of its duration; or~~
- ~~(3) The state or country of its incorporation.~~

~~(b) The requirements of section 414D-273 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.]~~

Change of name by foreign corporation. (a) Whenever the name of a foreign corporation that is authorized to transact business in this State is changed by an amendment to its articles of incorporation, the foreign corporation, within sixty days after the amendment becomes effective, shall deliver to the department director a certificate evidencing the name change that is 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 attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign corporation that is authorized to transact business in this State changes its name to one that is substantially identical to the name of any business entity or trade name registered in this State, 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 different name as a trade name and thereafter shall become authorized to transact business in the State under that name.”

SECTION 37. Section 414D-277, Hawaii Revised Statutes, is amended to read as follows:

“§414D-277 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this State shall continuously maintain in this State:

- (1) A registered office [with] that may be the same [address] as [that of its registered agent;] 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 [business or nonprofit corporation] entity authorized to transact business in this State whose office is identical with the registered office; or
 - (C) A foreign entity authorized to transact business in this State whose business office is identical with the registered office.”

SECTION 38. Section 414D-280, Hawaii Revised Statutes, is amended to read as follows:

~~“[§414D-280] Service on foreign corporation. (a) [The registered agent of a foreign corporation authorized to transact business in this State shall be the corporation’s agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.]~~

(b)-A] Service of any notice or process authorized by law that is issued against any foreign corporation by any court, judicial or administrative officer, or board may be made in the manner provided by law upon any registered agent, officer, or director of the foreign corporation who is found within the jurisdiction of the court, officer, or board; or if any registered agent, officer, or director cannot be found, upon the manager or superintendent of the foreign corporation or any person who is found in charge of the property, business, or office of the foreign corporation within the jurisdiction.

(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the foreign corporation can be found within the State, and if the foreign corporation has not filed with the department director pursuant to this chapter the name of a registered agent upon whom legal notice and process 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 foreign corporation [may be served] by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report filed under section 414D-308 [if the foreign corporation:

- (1) Has no registered agent or its registered agent cannot with reasonable diligence be served;
- (2) Has withdrawn from transacting business in this State under section 414D-282; or
- (3) Has had its certificate of authority revoked under section 414D-283].

(c) Service [is perfected under subsection (b)] using registered or certified mail is perfected at the earliest of:

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

(d) [This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.] Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner permitted by law.”

SECTION 39. Section 414D-283, Hawaii Revised Statutes, is amended to read as follows:

“§414D-283 Grounds for revocation of certificate of authority. [(a)] The department director may commence a proceeding under section 414D-284 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- (1) The corporation fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual report for a period of two [consecutive] years;
 - (C) Appoint and maintain an agent for service of process as required; or
 - (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the corporation.

~~[(b) The attorney general may commence a proceeding under section 414D-284 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if the corporation has continued to exceed or abuse the authority conferred upon it by law.]”~~

SECTION 40. Section 414D-284, Hawaii Revised Statutes, is amended to read as follows:

~~“[~~**§414D-284**~~]~~ **Procedure and effect of revocation.** (a) The department director upon determining that one or more grounds exist under section 414D-283 for revocation of a certificate of authority shall give written notice of the department director’s determination by mailing the notice to the foreign corporation at its last known address appearing in the records of the department director.

~~[(b) The attorney general upon determining that one or more grounds exist under section 414D-283(b) for revocation of a certificate of authority shall request the department director to give, and the department director shall give, the foreign corporation written notice of that determination by mailing the notice to the foreign corporation at its last known address appearing in the records of the department director.~~

~~(e)]~~ (b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the department director that each ground for revocation determined by the department director does not exist within sixty days after the date of mailing of the department director’s written notice, the department director may revoke the foreign corporation’s certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. ~~[The department director shall file the original of the certificate and serve a copy on the foreign corporation under section 414D-280.~~

~~(d) The]~~ (c) Upon revoking any certificate of authority, the department director shall issue a certificate of revocation that shall be filed in the department director’s office, and the authority of [a] the foreign corporation to transact business in this State shall immediately cease ~~[on the date shown on the certificate revoking its certificate of authority.~~

~~(e) The department director’s revocation of a foreign corporation’s certificate of authority appoints the department director as 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 shall be service on the foreign corporation. Upon receipt of process, the department director shall mail a copy of the process to the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communications 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].~~

~~[(f)]~~ (d) Revocation of a foreign corporation’s certificate of authority does not terminate the authority of the registered agent of the corporation.”

SECTION 41. Section 414D-308, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~“(c) Notwithstanding any [other provision] of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.”~~

SECTION 42. Section 415A-22, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any ~~[[other] provision]~~ of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required[,] may be voluntarily filed with the department director if the annual report complies with the requirements of this section.”

SECTION 43. Section 421-4, Hawaii Revised Statutes, is amended to read as follows:

“**§421-4 Articles of incorporation.** (a) Articles of incorporation shall be certified and executed by each of the incorporators, if natural persons, and by the president and secretary of ~~[associations]~~ the association and shall contain the following ~~[particulars]~~:

- (1) The name of the association;
- (2) The ~~[place of its principal office, which shall be in the State;]~~ mailing address of the association's principal office, the street address of the association's initial registered office, and the name of its initial registered agent at its initial registered office;
- (3) The purposes and powers of the association;
- (4) The proposed duration of the association;
- (5) The names and addresses of persons who are to act as the initial directors and officers of the association;
- (6) The names and addresses of the incorporators, and if organized with capital stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;
- (7) Whether organized with or without capital stock, and if organized with capital stock the total authorized number of shares and the par value of each share, if any; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the dividends to which each class shall be entitled; and
- (8) If organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the rule by which the rights and interests shall be determined.

(b) The articles may also contain any other provisions[,] consistent with law for regulating the association's business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent the districts[,] and the members residing therein, for voting by proxy, and the issuance, retirement, and transfer of membership and stock.”

SECTION 44. Section 421-22, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any ~~[[other provision]~~ of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.”

SECTION 45. Section 421C-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§421C-11]]~~ **Forms.** The department of commerce and consumer affairs ~~[shall prepare]~~ may prescribe and furnish on request forms for [association articles which may be used by association incorporators and associations, and which shall be supplied to them on request.] documents required or permitted to be filed by this chapter. The director of commerce and consumer affairs may require that the use of these forms be mandatory.”

SECTION 46. Section 421C-11.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Articles shall be certified and executed by each of the incorporators, if natural persons, and by the president and secretary of ~~[associations,]~~ the association, before any officer authorized to take acknowledgments, and shall contain the following ~~[particulars]:~~

- (1) The name of the association which shall contain the term “cooperative” or some abbreviation thereof notwithstanding section 421-5;
- (2) The ~~[street]~~ mailing address and zip code of its principal office, which shall be in the State~~;~~, the street address of the association’s initial registered office, and the name of its initial registered agent at its initial registered office;
- (3) The purposes and powers of the association;
- (4) The duration of the association;
- (5) The number, names, and titles~~[-, and residence addresses]~~ of the initial officers and directors, or similar officers;
- (6) The names and addresses of the incorporators, and if organized with stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;
- (7) If organized with stock, the total authorized number of shares and the par value of each share, if any; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the interest-dividends to which each class shall be entitled; and
- (8) If organized without stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the rule by which the rights and interest shall be determined.”

SECTION 47. Section 425-1, Hawaii Revised Statutes is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any ~~[other provision]~~ of the provisions of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.”

SECTION 48. Section 425-1.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§425-1.5]]~~ **Filing in office of the director~~[-]; effective time and date.~~**
 (a) A certified and executed partnership registration statement, any other statement or certification, or any judicial decree of dissolution or cancellation, a registration statement for a foreign general partnership, or any other statement or certification relating thereto, shall be delivered to the director for filing. Unless the director finds

that any statement or certificate does not conform to law, upon receipt of all filing fees required by law, the director shall:

- (1) Stamp the word "Filed" and the date of delivery thereof; and
- (2) File the document in the director's office.

(b) Upon the filing of a partnership dissolution statement or judicial decree of dissolution in the office of the director, the domestic general partnership shall be dissolved as set forth therein, and upon the effective date of a certificate of withdrawal or a judicial decree thereof, the foreign general partnership shall be withdrawn.

(c) Articles of conversion and articles of merger may specify a delayed effective time and date, and if 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 the document is filed."

SECTION 49. Section 425-9, Hawaii Revised Statutes, is amended to read as follows:

"§425-9 Statement of dissolution. Whenever a domestic general partnership is dissolved, and the business is not continued, a statement thereof showing the cause of dissolution shall be filed in the office of the director of commerce and consumer affairs within thirty days after the dissolution. The statement shall be certified by ~~[all partners except in such cases as the circumstances make it obviously impossible to secure the signature of one or more partners, which circumstances shall be set forth in the statement.]~~ at least one partner who shall certify that the dissolution was approved by all of the partners."

SECTION 50. Section 425-14, Hawaii Revised Statutes, is amended to read as follows:

"§425-14 Cancellation of registration. (a) The director may commence a proceeding to cancel the registration of a general partnership if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two ~~[consecutive]~~ years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

The cancellation of such registration or certificate shall not relieve the partners of liability for the penalties for the failure to file any statement or certificates required by this part.

(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 unfiled].~~ The application shall:

- (1) Recite the name of the general partnership and the effective date of its involuntary cancellation;
- (2) Contain all statements due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation reciting that all taxes owed by the general partnership have been paid.

(c) 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.

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the involuntary cancellation and the general partnership may resume its business as if the involuntary cancellation had never occurred."

SECTION 51. Section 425-21, Hawaii Revised Statutes, is amended to read as follows:

"[~~E~~§425-21(~~H~~) Service on partnership. (a) Service of any notice or process authorized by law ~~[on]~~ that is issued against any domestic or foreign partnership; ~~whether domestic or foreign,~~ by any court, judicial or administrative officer, or board~~;~~ may be made in the manner provided by law upon any registered agent or partner of the partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or partner cannot be found, upon any person who is found in charge of the property, business, or office of the partnership within the jurisdiction of the court, officer, or board.

(b) If no partner or other person in charge of the property, business, or office of the partnership can be found within the State, and ~~[in case]~~ if the partnership has not filed with the director of commerce and consumer affairs pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of the State may be served, and the person named is not found within the State, service may be made upon the partnership by registered or certified mail, return receipt requested, addressed to the partnership at its principal office~~;~~ shown in its application for a certificate of authority or in its most recent annual report.

(c) Service by registered or certified mail ~~[shall be]~~ is perfected at the earliest of:

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

~~[(e)]~~ (d) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a partnership in any other manner permitted by law."

SECTION 52. Section 425-154, Hawaii Revised Statutes, is amended to read as follows:

"§425-154 [~~Correcting, amending~~] Amending and restating, amending, and restating the statement of qualification; voluntary cancellation. ~~[(a)] If any statement in the statement of qualification was false when made, or any arrangement of other facts described have changed, making the statement inaccurate in any material respect, the limited liability partnership, within thirty days after it becomes aware of the inaccuracy, shall file with the director articles of correction certified and signed by a partner, correcting the statement of qualification. The articles of correction shall:~~

- (1) Describe the document including its file date or attach a copy of the document to the articles;
- (2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
- (3) Correct the incorrect statement or defective execution.

Articles of correction are effective on the effective date of the document they correct, except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. No person shall have any liability resulting from a failure to file articles of correction to a statement of qualification pursuant to this subsection.

(b)] (a) A statement of qualification may be amended and restated at any time for any proper purpose determined by the partners. The amended and restated statement of qualification shall set forth:

- (1) All of the operative provisions of the statement of qualification as previously amended; and
- (2) A statement that the amended and restated statement of qualification supersedes the original statement of qualification and all amendments thereto.

The amended and restated statement of qualification shall be delivered to the director for filing. The director may certify the amended and restated statement of qualification as the statement of qualification currently in effect, without including the information required to be filed by paragraph (2).

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

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

[{d)] (c) A restated statement of qualification may be executed and filed in the same manner as a statement of amendment. The restated statement of qualification shall set forth all of the operative provisions of the statement of qualification as previously amended, together with a statement that the restated statement of qualification correctly sets forth without change the corresponding provisions of the statement of qualification as previously amended, and that the restated statement of qualification supersedes the original statement of qualification and all amendments thereto. The director may certify the restated statement of qualification currently in effect, without including the information required to be set forth in the restatement by this subsection.

[{e)] (d) An amended, restated, or amended and restated statement of qualification shall be effective when filed.

[{f)] (e) A limited liability partnership validly created under this chapter may voluntarily cancel its limited liability status [in] with an amendment to a statement of qualification."

SECTION 53. Section 425-156, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Before transacting business in this State, a foreign limited liability partnership shall register pursuant to part I of this chapter, file a statement of foreign qualification with the director, and submit a certificate of good standing [from] or other similar record duly authenticated by the secretary of state or other official having custody of limited liability partnership records in the state [in which the partnership was] or country under whose law it was formed; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the

application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 54. Section 425-159, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“§425-159 [~~Correcting, amending,~~] Amending, restating, and amending and restating the statement of foreign qualification; voluntary cancellation. (a) A foreign limited liability partnership shall [~~correct,~~] amend, restate, and amend and restate the statement of qualification in the same manner prescribed for domestic limited liability partnerships in section 425-154.”

SECTION 55. Section 425-163, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any [~~other provision~~] of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.”

SECTION 56. Section 425-164, Hawaii Revised Statutes, is amended by amending subsections (a) through (c) to read as follows:

“(a) The director may revoke the statement of qualification of a limited liability partnership or statement of foreign qualification of a foreign limited liability partnership if:

- (1) The partnership fails to:**
 - (A) Pay any fees prescribed by law;**
 - (B) File its annual report for a period of two [~~consecutive~~] years;**
 - (C) Appoint and maintain an agent for service of process as required; or**
 - (D) File a statement of a change in the name or business address of the agent as required; or.**
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.**

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

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

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

- (1) [~~The~~] Recite the name of the partnership and the effective date of the revocation; [~~and~~]**
- (2) [~~That the ground for revocation either did not exist or has been corrected.~~] Contain all reports due and unfilled;**
- (3) Contain the payment of all delinquent fees and penalties; and**

- (4) Contain a certificate from the department of taxation reciting that all taxes owed by the partnership have been paid.”

SECTION 57. Section 425-201, Hawaii Revised Statutes, is amended by amending the definition of “organizing articles” to read as follows:

““Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership[, or limited liability partnership, [or limited partnership,] the registration statement; [and]
- (3) For a limited partnership, the certificate of limited partnership; and
~~[(3)]~~ (4) For a limited liability company, the articles of organization.”

SECTION 58. Section 425-202, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]§425-202[H]~~ **Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 425-204(d). ~~[Section 425-204(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.]”~~

SECTION 59. Section 425-204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign general partnership or domestic or foreign limited liability partnership that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or
- (2) ~~If a [nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving]~~ foreign entity registered in this State does not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in subparagraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.”

SECTION 60. Section 425D-111, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]§425D-111[H]~~ **Service on partnership.** (a) Service of any notice or process authorized by law ~~[on]~~ that is issued against any domestic or foreign limited partnership[, whether domestic or foreign,] by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent or general partner of the limited partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or general partner cannot be found, upon any person who is found in charge of the property, business, or office of the limited partnership within the jurisdiction of the court, officer, or board.

(b) If no general partner or other person in charge of the property, business, or office of the limited partnership can be found within the State, and [in case] if the limited partnership has not filed with the director pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of the State

may be served, and the person named is not found within the State, service may be made upon the limited partnership by registered or certified mail, return receipt requested, addressed to the limited partnership at its principal office[-] shown in its application for a certificate of authority or its most recent report.

(c) Service by registered or certified mail ~~[shall be]~~ is perfected at the earliest of:

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

[(e)] (d) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited partnership in any other manner permitted by law."

SECTION 61. Section 425D-203.6, Hawaii Revised Statutes, is amended to read as follows:

"§425D-203.6 Cancellation of registration. (a) The director may commence a proceeding to cancel the certificate of a limited partnership ~~[administratively]~~ if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two ~~[consecutive]~~ years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required.

The cancellation of the certificate shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.

(b) Within two years after the involuntary cancellation of a certificate of limited partnership under this section, the certificate of limited partnership may be reinstated by the director upon written application executed by any general partner of the limited 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].~~ The application shall:

- (1) Recite the name of the limited partnership and the effective date of its involuntary cancellation;
- (2) State that all delinquent annual statements have been filed and that all delinquent fees, penalties, assessments, and costs have been paid; and
- (3) Contain a certificate from the department of taxation reciting that all taxes owed by the limited partnership have been paid.

(c) Within the applicable reinstatement period, should the name of the limited partnership, or a name substantially identical thereto, be registered or reserved by another corporation, 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 limited partnership pursuant to the amendment provisions of this chapter.

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the involuntary cancellation and the limited partnership may resume its business as if the involuntary cancellation had never occurred."

SECTION 62. Section 425D-204, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each certificate required by this chapter to be filed in the office of the director shall be executed in the following manner:

- (1) An original certificate of limited partnership ~~[must]~~ shall be signed by at least one general partner;
- (2) A certificate of amendment ~~[must]~~ shall be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner;
- (3) A certificate of cancellation ~~[must]~~ shall be signed by ~~[all]~~ at least one general [partners;] partner who shall certify that all partners have agreed to the cancellation;
- (4) Any other certificate or document ~~[must]~~ shall be signed by ~~[all]~~ at least one general [partners;] partner; and
- (5) A designation or change of a registered office or agent ~~[must]~~ shall be signed by at least one general partner.”

SECTION 63. Section 425D-206, Hawaii Revised Statutes, is amended to read as follows:

“[H§425D-206()] Filing in the office of the director[-]; effective time and date. (a) A certified and executed certificate of limited partnership, any certificate of amendment or cancellation, or of any judicial decree of amendment or cancellation, an application for registration as a foreign limited partnership, or any certificate relating thereto, shall be delivered to the director for filing. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person’s authority as a prerequisite to filing. Unless the director finds that any certificate does not conform to law, upon receipt of all filing fees required by law, the director shall:

- (1) Stamp the word “Filed” and the date of delivery thereof; and
- (2) File the document in the director’s office.

(b) Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the director, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership is canceled.

(c) Except as otherwise provided in subsection (d) and section 425D-206.6, a document accepted for filing is effective at the time of filing on the date it is filed, as evidenced by the department director’s date and time endorsement on the original document.

(d) Articles of conversion and articles of merger may specify a delayed effective time and date, and if 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 64. Section 425D-902, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The foreign limited partnership shall deliver with the completed application a certificate of good standing or other similar record duly authenticated by the secretary of state or other official having custody of limited partnership records in the state or country under whose law it is formed; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 65. Section 425D-906.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any ~~[other provision]~~ of the provisions of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.”

SECTION 66. Section 425D-906.6, Hawaii Revised Statutes, is amended to read as follows:

“**§425D-906.6 Cancellation of registration.** A certificate of registration of a foreign limited partnership to transact business in this State may be canceled by the director if:

- (1) The partnership fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual ~~[report]~~ statement for a period of two ~~[con-~~
~~secutive]~~ years;
 - (C) Appoint and maintain an agent for service of process as required; or
 - (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

The cancellation of such registration shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.”

SECTION 67. Section 425D-1201, Hawaii Revised Statutes, is amending by amending the definition of “organizing articles” to read as follows:

““Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership~~[-]~~ or limited liability partnership, ~~[or limited partnership;]~~ the registration statement; ~~[and]~~
- (3) For a limited partnership, the certificate of limited partnership; and
- ~~[(3)]~~ (4) For a limited liability company, the articles of organization.”

SECTION 68. Section 425D-1202, Hawaii Revised Statutes, is amended to read as follows:

“**[E]§425D-1202[H] Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 425D-1204(d). ~~[Section 425D-1204(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.]”~~

SECTION 69. Section 425D-1204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited partnership that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of

which the foreign entity was organized no later than sixty days after the merger is effective; or

- (2) If a ~~[nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving]~~ foreign entity registered in this State does not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.

SECTION 70. Section 428-107, Hawaii Revised Statutes, is amended to read as follows:

~~“[§428-107]—Designated~~ **Registered office and agent [for service of process].** [(a)] A limited liability company and a foreign limited liability company authorized to ~~[do]~~ transact business in this State shall ~~[designate and]~~ continuously maintain in this State:

- (1) ~~An office, which need not be a place of its business in this State; and~~
 (2) ~~An agent and street address of the agent for service of process on the company.~~

~~(b) An agent shall be an individual resident of this State, a domestic corporation, or another limited liability company.]~~

- (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 entity authorized to transact business in this State whose business office is identical with the registered office; or
 (C) A foreign entity authorized to transact business in this State whose business office is identical with the registered office.”

SECTION 71. Section 428-109, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the [partnership] company at its principal office.”~~

SECTION 72. Section 428-110, Hawaii Revised Statutes, is amended to read as follows:

~~“§428-110 Service of process. (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.]~~

Service of any notice or process authorized by law that is issued against a domestic or foreign limited liability company by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent,

manager, if the company is manager-managed, or upon any member if the company is member-managed, who is found within the jurisdiction of the court, officer, or board; or if any registered agent, manager, or member cannot be found, upon any person who is found in charge of the property, business, or office of the company within the jurisdiction of the court, officer, or board.

(b) If [a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the agent's address,] no manager, member, or other person in charge of the property, business, or office of the company can be found within the State, and if the company has not filed with the department director pursuant to this chapter, the name of a registered agent upon whom legal notice and process from the courts of the State may be served, and the person named is not found within the State, service [of process] may be made upon the limited liability company or foreign limited liability company by registered or certified mail, return receipt requested, addressed to the limited liability company or foreign limited liability company at its [last designated office or] principal office [as disclosed by the records in the office of the director.] shown in its application for a certificate of authority or its most recent annual report.

(c) Service by registered or certified mail is [effected under subsection (b)] perfected at the earliest of:

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

(d) [This section shall not affect the right to serve process, notice, or demand in any other manner provided by law.] Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company or foreign limited liability company in any other manner permitted by law."

SECTION 73. Section 428-206, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

"[E]§428-206[F] Filing in office of director[-]; effective time and date."

2. By amending subsections (c) through (e) to read:

"(c) [Articles of organization or amendment] Except as otherwise provided in subsection (d) and section 428-207, a record accepted for filing [by the director are] is effective [as of] at the [date and] time [they are] of filing on the date it is filed [with the director-], as evidenced by the director's date and time endorsement on the original record.

(d) Articles of termination, articles of conversion, and articles of merger may [become] specify a delayed effective [at a later] time and date, [as] and if so, the record becomes effective at the time and date specified [in the record, but not more]. If a delayed effective date but no time is specified, the record is effective at the close of business on that date. A delayed effective date for a record may not be later than [thirty days] the thirtieth day after the date [of filing with the director-] it is filed.

(e) [If a delayed effective date for a record is specified but no time is specified, the record is effective at 12:01 a.m. on that date.] A specified delayed effective date that is later than the thirtieth day after the record is filed makes the record effective as of the thirtieth day."

SECTION 74. Section 428-901, Hawaii Revised Statutes, is amended by amending the definition of “organizing articles” to read as follows:

““Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership~~[-]~~ or limited liability partnership, ~~[or limited partnership;]~~ the registration statement; ~~[and]~~
- (3) For a limited partnership, the certificate of limited partnership; and
- ~~[(3)]~~ (4) For a limited liability company, the articles of organization.”

SECTION 75. Section 428-901.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[F]§428-901.5[F]~~ **Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 428-905(d). ~~[Section 428-905(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.]”~~

SECTION 76. Section 428-903, Hawaii Revised Statutes, is amended to read as follows:

“**§428-903 Effect of conversion.** ~~[(a)]~~ 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 the 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, or other securities in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic limited liability company, the members of the domestic limited liability company shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section ~~[415-80;]~~ 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 such shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for such debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for such 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 limited liability company or other entity, such converted entity shall 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 members of the converting domestic limited liability company; and
- (9) If the converting entity is a domestic limited liability company, section 428-907 shall apply as if the converted entity were the survivor of a merger with the converting entity.

~~[(b) The conversion shall be effective upon the filing of the certificate of conversion.]”~~

SECTION 77. Section 428-905, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) After approval of the plan of merger under section 428-904(e), unless the merger is terminated under section 428-904(h), articles of merger shall be signed on behalf of each limited liability company and each other entity that is a party to the merger and delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction of formation or organization of each of the entities that are parties to the merger, and the name, address, and jurisdiction of organization of the ~~[limited liability company]~~ surviving entity into which they propose to merge, which is hereinafter designated as the surviving entity;
- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
- (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
- (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
- (5) A statement that includes:
 - (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 as its agent to accept service of process in any such proceeding, that includes the resident’s street address in this State; 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.”

2. By amending subsection (d) to read:

“(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited liability company that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or

- (2) If a ~~[nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving]~~ foreign entity registered in this State does not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.

SECTION 78. Section 428-1002, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the director for filing. The application shall set forth:

- (1) The name of the foreign limited liability company or, if its name is unavailable for use in this State, a name that satisfies the requirements of section 428-1005;
- (2) The name of the state or country under whose law it is organized;
- (3) A representation and warranty that a list of the names of and addresses of all members and their respective capital contributions are kept and will be kept at this principal office until cancellation, in accordance with section 428-1007, of the foreign limited liability company’s authority to transact business in this State;
- (4) The mailing address of its ~~[initial]~~ principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its initial registered office in this State;
- (5) Whether the duration of the company is for a specified term and, if so, the period specified;
- (6) Whether the company is manager-managed, and:
 - (A) If so, the name and address of each manager; or
 - (B) If not, the name and address of each member;
- (7) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 428-303(c); and
- (8) Any additional information as may be necessary or appropriate to enable the director to determine whether the foreign limited liability company is entitled to obtain authority to transact business in this State.”

SECTION 79. 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]~~ mailing the notice to the foreign limited liability company at 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 that shall be filed in the office of the director. The authority of the company to transact business in this State shall cease upon the issuance of the certificate of revocation.”

SECTION 80. Chapter 482, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“CHAPTER 482
TRADEMARKS, [PRINTS, LABELS,] SERVICE MARKS, AND
TRADE NAMES, REGISTRATION AND PROTECTION OF”**

SECTION 81. Chapter 482, Hawaii Revises Statutes, is amended by amending the title of part I to read as follows:

“PART I. TRADE NAMES[, PRINTS, AND LABELS]”

SECTION 82. Section 482-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
~~““Individual” means a natural person, and includes the estate of an incompetent or deceased individual.”~~
2. By amending the definitions of “applicant,” “person,” and “registered” to read:
~~““Applicant” includes the person filing an application for registration of a trade name or mark under this chapter, and the legal representatives, successors, or assigns of such person.~~
~~“Person” and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under this chapter, includes an individual, firm, partnership, corporation, limited liability company, union, association, estate, business trust, trust, government, governmental agency or instrumentality, two or more of any of the foregoing having a joint or common interest, or other organization capable of suing and being sued in a court of law.~~
~~“Registrant” includes the person to whom the registration of a trade name or mark under this chapter is issued, and the legal representatives, successors, or assigns of the person.”~~

SECTION 83. Section 482-2, Hawaii Revised Statutes, is amended to read as follows:

~~“§482-2 Certificate. (a) Any person desiring to register any [print or label intended to be attached or applied to goods or manufactured articles or to bottles, boxes, or packages containing the goods or manufactured articles to indicate the name of the manufacturer, and any person desiring to register a] trade name may obtain a certificate of [the] registration of the [print, label, or] trade name in the manner hereinafter provided.~~

~~(b) Before any person may receive a certificate of registration of a [print or label,] trade name, the person shall file in the office of the director an application for the registration [of the print or label,] thereof, with a certified declaration[, certified by the applicant,] stating that the [applicant] person is the sole and original proprietor of the trade name or the assign of the proprietor [of this print or label, and describing the goods or manufactured articles for which the print or label, is used,] and [stating] setting forth the [manner] nature of business in which the [print or label] trade name is used. [The application shall be accompanied by one exact copy of the print, label, or trade name.]~~

~~(c) Upon filing the application, the applicant shall pay to the director a fee of \$50. A special handling fee of \$20 for expediting registration of a trade name[, print, or label] shall be assessed by the director. All special handling fees shall be credited to the compliance resolution fund established under section 26-9(o).”~~

SECTION 84. Section 482-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director shall cause the ~~[print, label, or]~~ trade name to be recorded and shall issue to the applicant a certificate of registration ~~[under the seal of the director; and the]~~. The certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the ~~[print, label, or]~~ trade name throughout the State, for the term of ~~[one year]~~ five years from the date thereof; provided that the director shall not register any ~~[print, label, or]~~ trade name which is substantially identical with any registered ~~[print, label, or]~~ trade name or with the name of any corporation, partnership, limited partnership, limited liability partnership, or limited liability company registered in accordance with chapters 414, 414D, 415A, 425, 425D, and 428; provided further that the ~~[print, label, or]~~ trade name is continued in actual use by the applicant in the State or elsewhere in the United States~~[, or is registered in the name of the applicant in the patent and trademark office of the United States]~~. The acceptance of an application and issuance of a certificate of 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 partnership, or limited liability company name, or trade name.

(b) The registration of a ~~[print, label, or]~~ trade name may be renewed at any time during ~~[a]~~ the period of its registration for additional five year periods ~~[of ten years from the date of renewal]~~ by ~~[the]~~ filing ~~[of an application for]~~ a renewal ~~[of registration in a form as the director may provide:]~~ application within six months prior to the expiration of the current term and complying with the renewal requirements prescribed by the director. Upon filing the application for renewal, the applicant shall pay the director a fee of \$50.”

SECTION 85. Section 482-4, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“§482-4 Certain ~~[prints, labels, union labels, and]~~ trade names not to be adopted or used. (a) It shall be unlawful for any person to adopt or use a ~~[print, label, or]~~ trade name ~~[which]~~ that is substantially identical ~~[to]~~ or confusingly similar ~~[with]~~ to any registered ~~[print, label, or]~~ trade name, or the name of any corporation, partnership, or limited liability company existing or registered, or authorized to transact business[;] in accordance with the laws of this State, ~~[on corporations, partnerships, or limited liability companies,]~~ or a name the exclusive right to which is, at the time, reserved in this State.”

SECTION 86. Section 482-5, Hawaii Revised Statutes, is amended to read as follows:

“§482-5 Penalty. Any person using such substantially identical or confusingly similar ~~[print, label, or]~~ trade name as set forth in section 482-4, shall be fined not more than \$1,000.”

SECTION 87. Section 482-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If any ~~[print, label, or]~~ trade name is not used by the registrant in accordance with the declaration ~~[either]~~ in this State ~~[or elsewhere in the United States]~~ for a period of three hundred sixty-five consecutive days, ~~[and the print, label, or trade name has not been registered in the name of the registrant in the patent and trademark office of the United States,]~~ the certificate of registration shall be subject to revocation.

(b) Any person desiring such revocation shall file a verified petition in the office of the director, setting forth facts indicating such nonuse for a period of three

hundred sixty-five consecutive days immediately preceding the date of the filing of the petition~~[-, and alleging the nonregistration in the patent and trademark office of the United States]~~. The petitioner ~~[shall]~~, at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5, and the registrant shall be given the opportunity of a full hearing in accordance with chapter 91."

SECTION 88. Section 482-7, Hawaii Revised Statutes, is amended to read as follows:

"§482-7 Application of law; reissue on nonuser. (a) Sections 482-1 to 482-9 are applicable to all registrations filed in the office of the director; the intent being that all ~~[prints, labels, or]~~ trade names not used by the applicant in this State or elsewhere in the United States ~~[and not registered in the name of the applicant in the patent and trademark office of the United States]~~ may be immediately reissued to such applicant who is actually using the same.

(b) The fact that a ~~[print, label, or]~~ trade name has not been used in this State for a period of one year shall be prima facie proof of the fact that the same has not been used elsewhere for such period."

SECTION 89. Section 482-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person claiming to be the owner of a ~~[print, label, or]~~ trade name for which a certificate of registration pursuant to this chapter has been issued to any other person shall file a verified petition in the office of the director for the revocation of the registration of such ~~[print, label, or]~~ trade name. The petition shall set forth facts in support of the ownership by such petitioner of such ~~[print, label, or]~~ trade name and in support of the claim of the petitioner that the certificate of registration should be revoked."

SECTION 90. Section 482-8.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but require the entity to:
 - (A) Register a new trade name with the director; and
 - (B) ~~[Conduct]~~ Transact business in this State under the new trade name; or
- (2) Require the entity to change its registered name, and to:
 - (A) Register a new trade name with the director; and
 - (B) ~~[Conduct]~~ Transact business in this State under the new trade name.

If the entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapter 414, 414D, 415A, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. ~~[The trial by the circuit court of any such proceeding shall be de novo.]~~ Review of any final decision of the circuit court shall be governed by chapter 602."

SECTION 91. Section 482-9, Hawaii Revised Statutes, is amended to read as follows:

“§482-9 Appeal. Any person aggrieved by any action of the director under this chapter in issuing or revoking a certificate of registration of a ~~[print, label, or]~~ trade name or in denying an application ~~[may]~~, within thirty days after the action by the director, or ~~[in the event]~~ if no order has been entered either granting or denying the application within four months after the filing of the application, may commence proceedings to obtain judicial review thereof by the circuit court of the first circuit by filing in the court a notice of appeal. ~~[The trial by the circuit court of any such proceeding shall be de novo.]~~ Proceedings for review by the supreme court may be had and taken in the same manner as is provided for a review of a judgment of a circuit court.”

SECTION 92. Section 482-21, Hawaii Revised Statutes, is amended to read as follows:

“[§482-21] Registrability. A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

- (1) Consists of ~~[:]~~ or comprises immoral, deceptive, or scandalous matter;
- (2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;
- (3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;
- (4) Consists of or comprises the name, signature, or portrait identifying a particular living individual, except by the individual’s written consent;
- (5) Consists of a mark ~~[which]~~ that:
 - (A) When used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;
 - (B) When used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or
 - (C) Is primarily a surname;
 provided that nothing in this paragraph shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant’s goods or services. The director may accept as evidence that the mark has become distinctive as used on or in connection with the applicant’s goods or services, proof of continuous use thereof as a mark by the applicant in this State for the five years before the date on which the claim of distinctiveness is made; or
- (6) Consists of ~~[or comprises]~~ a mark which so resembles a mark registered in this State or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.”

SECTION 93. Section 482-22, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Subject to the limitations set forth in this part, any person who uses a mark may file in the office of the director, in a manner complying with the requirements of the director, an application for registration of that mark setting forth at least the following information:

- (1) The name and business address of the person or entity applying for such registration[;] and[, if a corporation,] the state of organization or incorporation, or if a partnership, the state in which the partnership is [organized and the names of the general partners, as specified by the director, or if a limited liability company, the names of the members or managers, as specified by the director;] formed;
- (2) The goods or services on or in connection with which the mark is used, the mode or manner in which the mark is used on or in connection with such goods or services, and the class in which such goods or services fall;
- (3) The date when the mark was first used anywhere, and the date when it was first used in this State by the applicant or a predecessor in interest; and
- (4) A statement that the applicant is the owner of the mark, the mark is in use, and to the knowledge of the person verifying the application, no other person has registered, either federally or in this State, or has the right to use, the mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of the other person, to cause confusion, to cause mistake, or to deceive.”

2. By amending subsection (d) to read:

“(d) The application shall be signed and verified by the applicant, a member of the firm, or an officer of the corporation or association applying. The application shall be accompanied by [~~two specimens~~] one specimen per class of goods or services showing the mark as actually used on or in connection with such goods or services and the application fee payable to the director.”

SECTION 94. Section 482-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The applicant shall provide any additional pertinent information requested by the director including a description of a design mark and may make, or authorize the director to make, such amendments to the application as may be reasonably requested by the director or deemed by [H]the[H] applicant to be advisable to respond to any rejection or objection.”

SECTION 95. Section 482-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon compliance by the applicant with the requirements of this part, the director shall issue a certificate of registration to the applicant. [~~The certificate of registration shall be issued with the signature of the director and the seal of the State, and shall show:~~

- (1) ~~The name and business address of the person claiming ownership of the mark;~~
- (2) ~~If a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, or if a limited liability company, the names of the members or managers, as specified by the director;~~
- (3) ~~The date the mark was first used anywhere;~~
- (4) ~~The date the mark was first used in this State;~~

- (5) ~~The class of goods or services and a description of the goods or services, on or in which the mark is used;~~
- (6) ~~A reproduction of the mark; and~~
- (7) ~~The registration date and the term of the registration.]”~~

SECTION 96. Section 482-25, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) A registration may be renewed for successive periods of five years by filing a renewal application within six months prior to the expiration of the current term, complying with the renewal requirements prescribed by ~~[the director,]~~ this chapter, and paying the appropriate renewal fee.”

2. By amending subsection (d) to read:

“(d) All applications for renewal under this part shall include a verified statement that the mark has been and is still in use, and include a specimen showing actual use of the mark on or in connection with the goods or services~~[-]~~ for each class of goods and services.”

SECTION 97. Section 482-28, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§482-28**~~]]~~ **Cancellation.** ~~[(a)]~~ The director shall cancel the registration of a mark if the director receives a request for cancellation from the registrant or assignee of record~~], a registration is not timely renewed in accordance with the provisions of this part, or a court of competent jurisdiction finds that:~~

- (1) ~~The registered mark has been abandoned;~~
- (2) ~~The registrant is not the owner of the mark;~~
- (3) ~~The registration was granted improperly;~~
- (4) ~~The registration was obtained fraudulently;~~
- (5) ~~The mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered; or~~
- (6) ~~The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States patent and trademark office prior to the date of filing the application for registration under this part; provided that if a registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States patent and trademark office which covers an area including this State, the registration shall not be canceled for such an area.~~

~~(b) The director shall cancel a registration]~~ or when a court of competent jurisdiction orders cancellation of a registration.”

SECTION 98. Section 482-29, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§482-29**~~]]~~ **Classification.** The director ~~[may by rule]~~ to the extent practical shall establish a classification of goods and services corresponding to the classification adopted by the United States Patent and Trademark Office for convenience of administration of this part, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark [may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the director may require payment of a fee for each class. To the extent practical, the classification

of goods and services should conform to the classification adopted by the United States patent and trademark office.] shall be submitted for each appropriate class and such goods upon which or each service with which the mark is actually being used, together with the application fee.”

SECTION 99. Section 482-36, Hawaii Revised Statutes, is amended to read as follows:

“~~[§482-36]~~ **Fees.** The application fee to register a mark shall be \$50~~[-]~~ for each class of goods or services. A special handling fee of \$20 for expediting the registration of a mark shall be assessed by the director~~[-]~~ for each class of goods or services. All special handling fees shall be credited to the compliance resolution fund established under section 26-9(o). Unless otherwise specified by the director, these fees shall not be refundable.”

SECTION 100. Section 414-273, Hawaii Revised Statutes, is repealed.

SECTION 101. Section 414D-63, Hawaii Revised Statutes, is repealed.

SECTION 102. Section 414D-209, Hawaii Revised Statutes, is repealed.

SECTION 103. Section 415A-16.7, Hawaii Revised Statutes, is repealed.

SECTION 104. Section 425-194, Hawaii Revised Statutes, is repealed.

SECTION 105. Section 425D-1112, Hawaii Revised Statutes, is repealed.

SECTION 106. Section 428-1010, Hawaii Revised Statutes, is repealed.

SECTION 107. Section 482-10, Hawaii Revised Statutes, is repealed.

SECTION 108. Section 482-11, Hawaii Revised Statutes, is repealed.

SECTION 109. Section 482-12, Hawaii Revised Statutes, is repealed.

SECTION 110. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 111. This Act shall take effect on July 1, 2003.

(Approved June 2, 2003.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.