

ACT 184

S.B. NO. 744

A Bill for an Act Relating to Business Registration.

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

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

“§425E- Personal liability and penalty. (a) Any general partner who neglects or fails to comply with any provision of this chapter shall severally forfeit to the State \$25 for each month the neglect or failure continues, to be recovered by action brought in the name of the State by the director; provided that as to the forfeiture penalty, the director, for good cause shown, may reduce or waive the penalty.

(b) Any person who signs or certifies as correct any statement or certificate filed pursuant to this chapter, knowing the same to be false in any material particular, shall be guilty of a class C felony.

(c) Any person who negligently, but without intent to defraud, signs or certifies as correct any statement or certificate, filed pursuant to this chapter, that is false in any material particular, shall be punished by a fine not exceeding \$500.”

SECTION 2. Section 414-3, Hawaii Revised Statutes, is amended by amending the definition of “individual” to read as follows:

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

SECTION 3. Section 414-64, Hawaii Revised Statutes, is amended by amending subsections (b) and (d)¹ to read as follows:

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

(c) Service using registered or certified mail is perfected at the earliest of:

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

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

SECTION 4. Section 414-314, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall be delivered to the department director for filing and shall set forth:

- (1) The name and jurisdiction of incorporation of the subsidiary corporation, and the name and jurisdiction of incorporation of the corporation owning at least ninety per cent of its shares, which is hereinafter designated as the surviving corporation;
- (2) A statement that the plan of merger has been approved by the board of directors of the surviving corporation;
- (3) The number of outstanding shares of each class of the subsidiary corporation and the number of shares of each class owned by the surviving corporation; [~~and~~]

- (4) The date a copy of the plan of merger [is] was mailed to shareholders of the subsidiary corporation entitled to receive the plan[-]; 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 that is to merge;
 - (B) An irrevocable appointment of a resident of this state as its agent to accept service of process in a proceeding under subparagraph (A), 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."

SECTION 5. Section 414-315, Hawaii Revised Statutes, is amended as follows:

“§414-315 Articles of merger or share exchange. (a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, articles of merger or share exchange shall be signed on behalf of each corporation and each other entity that is a party to the merger and shall be delivered to the department director for filing. The articles of merger or share exchange shall set forth:

- (1) For a merger, the name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity [~~with or into which they propose to merge, which is hereinafter designated as the surviving entity~~];
- (2) For a share exchange, the name, address, and jurisdiction of both the corporation whose shares will be acquired and [~~the name of~~] the acquiring corporation;
- (3) A statement that the plan of merger or share exchange has been approved by each entity involved in the merger or share exchange;
- (4) 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
- (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~~] that 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;~~] a proceeding under subparagraph (A), 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.
- (b) If the articles of merger provide for a future effective date, and:
 - (1) The plan of merger is amended to change the future effective date;
 - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or

(3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date; then the articles of merger shall be amended by filing with the department director articles of amendment that identify the articles of merger and set forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the department director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger operate as an amendment to the corporation's articles of incorporation.

~~[(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.]~~"

SECTION 6. Section 414-318, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Mergers under this section shall also be subject to sections 414-313(k) and 414-315(a)~~[-(b), and -(d)-]~~ and (b)."

SECTION 7. Section 414-402, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (e) to read:

"(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, claimants, and shareholders of the dissolved corporation with full powers to settle its affairs."

2. By amending subsection (g) to read:

"(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[;], and upon the amendment, the corporation may resume carrying on its business as if the dissolution had never occurred; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if ~~[such]~~ that 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]~~ the amendment provisions of this chapter."

SECTION 8. Section 414-436, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If the corporate name of a foreign corporation does not satisfy the requirements of section ~~[414-51,]~~ 414-51(b), (c), and (d), the foreign corporation to obtain or maintain a certificate of authority to transact business in this State may use a fictitious name to transact business in this State if its real name is unavailable and it delivers to the department director for filing a copy of a certificate of registration of a

trade name by the foreign corporation under which the foreign corporation will transact business in this State.”

SECTION 9. Section 414D-14, Hawaii Revised Statutes, is amended by amending the definition of “individual” to read as follows:

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

SECTION 10. Section 414D-74, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and [~~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~~] or 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~~].”

SECTION 11. Section 414D-203, Hawaii Revised Statutes, is amended as follows:

“**§414D-203 Articles of merger.** (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, articles of merger shall be signed on behalf of each corporation and each other entity that is a party to the merger and shall be delivered to the department director for filing. The articles of merger shall set forth:

- (1) The name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity;
 - (2) A statement that the plan of merger has been approved by each entity involved in 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; and
 - (4) 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~~] that 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~~], a proceeding under subparagraph (A), 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.
- (b) If the articles of merger provide for a future effective date, and:
- (1) The plan of merger is amended to change the future effective date;
 - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or

- (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the department director articles of amendment that identify the articles of merger and set forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the department director a certificate of termination that identifies the articles of merger and the plan of merger and states that the plan of merger has been terminated.

(c) Articles of merger operate as an amendment to the corporation's articles of incorporation.

~~[(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.]~~

SECTION 12. Section 414D-249, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) [Upon determining] If the department director determines 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.”

2. By amending subsection (e) to read:

“(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]~~, claimants, and members of the dissolved corporation with full powers to settle its affairs.”

3. By amending subsection (g) to read:

“(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] the~~ dissolution, may amend its articles of incorporation to extend its period of duration~~[.]~~ and, upon the amendment, the corporation may resume carrying on its business as if the dissolution had never occurred; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if ~~[such] that~~ 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] the~~ amendment provisions of this chapter.”

SECTION 13. Section 414D-250, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation administratively dissolved under section 414D-249 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) [State] Recite the name of the corporation and the effective date of its administrative dissolution;

- (2) [~~State that the ground or grounds for dissolution either did not exist or have been eliminated; and~~] Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees; and
- ~~[(3)]~~ (4) Contain a certificate from the department of taxation reciting that all taxes owed by the corporation have been paid."

SECTION 14. Section 421-1, Hawaii Revised Statutes, is amended by amending the definitions of "individual" and "person" to read:

""Individual" means a natural person~~[, or the estate of an incompetent or deceased individual].~~

"Person" includes individuals, partnerships, corporations, limited liability companies, and associations."

SECTION 15. Section 421-21.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The articles of merger shall be [filed with] delivered to the director of commerce and consumer affairs[-] for filing. The articles of merger shall set forth:

- (1) The name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity;
- (2) A statement that the plan of merger has been approved by each entity involved in the merger ~~[in accordance with the applicable laws of each entity];~~
- (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; and
- (4) 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] that 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.~~

~~[Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign entity that is not the surviving entity in the merger.]"~~

SECTION 16. Section 425-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director of commerce and consumer affairs upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$10;
- (3) Partnership dissolution statement, \$10;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$10;
- (6) Application for certificate of withdrawal, \$5;
- (7) Statement of correction, \$10;

- (8) Reservation of name, \$10;
- (9) Transfer of reservation of name, \$10;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$5;
- (12) Articles of conversion or merger, \$100;
- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$10;
- (14) Special handling fee for review of any general partnership document, \$25;
- (15) Special handling fee for certificates issued by the director, \$10 per certificate;
- (16) Special handling fee for certification of documents, \$10;
- (17) Special handling fee for review of articles of conversion or merger, \$75; and
- (18) Agent's statement of change of address, \$10 for each affected domestic or foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic or foreign general partnership."

SECTION 17. Section 425-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 ~~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~~ or 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~~."

SECTION 18. Section 425-101, Hawaii Revised Statutes, is amended by amending the definition of "individual" to read as follows:

"~~"Individual"~~ means a natural person~~, or the estate of an incompetent or deceased individual~~."

SECTION 19. Section 425-158, Hawaii Revised Statutes, is amended to read as follows:

"§425-158 Statement of foreign qualification. A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with:
 - (A) ~~The~~ the law of the state or other jurisdiction under which the foreign limited liability partnership is formed; ~~and~~
 - (B) ~~Section 425-151~~;
- (2) A statement that the partnership elects to be a foreign limited liability partnership; and
- (3) The mailing address of the partnership's initial principal office, the street address of the partnership's initial registered office in the State, and the name of its initial registered agent at its initial registered office in the State."

SECTION 20. Section 425E-102, Hawaii Revised Statutes, is amended by amending the definition of "individual" to read as follows:

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

SECTION 21. Section 425E-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~[In order to]~~ To form a limited partnership, a certificate of limited partnership shall be executed and delivered to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The mailing address of the limited partnership’s initial principal office, the street address of the limited partnership’s initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (3) The name and the address of each general partner;
- ~~[(4) The name and address of each limited partner;~~
- ~~[(5) (4) Whether the limited partnership is a limited liability limited partnership;~~
- ~~[(6) (5) Any additional information required by article 11; and~~
- ~~[(7) (6) Any other matter the general partners determine to include therein.”~~

SECTION 22. Section 425E-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$50;
- (2) Any certificate of amendment, restatement, or correction, \$10;
- (3) ~~[Certificate of cancellation,]~~ Statement of termination, \$10;
- (4) Annual statement for domestic or foreign limited partnership, \$10;
- (5) Any other certificate or document of domestic or foreign limited partnership, \$10;
- (6) Application for ~~[registration as a foreign limited partnership,]~~ certificate of authority, \$100;
- (7) Any certificate of amendment or agent change for foreign limited partnership, \$10;
- (8) Application for certificate of withdrawal of foreign limited partnership, \$10;
- (9) Reservation of name, \$10;
- (10) Transfer of reservation of name, \$10;
- (11) Good standing certificate, \$5;
- (12) Articles of conversion or merger, \$100;
- (13) Special handling fee for review of articles of conversion or merger, \$75;
- (14) Special handling fee for review of any limited partnership document, \$25;
- (15) Special handling fee for certificates issued by the director, \$10 per certificate;
- (16) Special handling fee for certification of documents, \$10; and
- (17) Agent’s statement of change of address, \$10 for each affected domestic or foreign limited partnership; provided that if more than two hundred

simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic or foreign limited partnership.”

SECTION 23. Section 425E-801, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§425E-801**~~[H]~~ **Nonjudicial dissolution.** Except as otherwise provided in section 425E-802, a limited partnership shall be dissolved, and its activities shall be wound up, only upon the occurrence of any of the following:

- (1) The happening of an event specified in the partnership agreement;
- (2) The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;
- (3) After the dissociation of a person as a general partner:
 - (A) If the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership is given within ninety days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or
 - (B) If the limited partnership does not have a remaining general partner, the passage of ninety days after the dissociation, unless before the end of the period:
 - (i) Consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and
 - (ii) At least one person is admitted as a general partner in accordance with the consent;
- (4) The passage of ninety days after the dissociation of the limited partnership’s last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or
- (5) The signing and filing of a declaration of ~~[dissolution]~~ cancellation by the director under section 425E-809.”

SECTION 24. Section 425E-809, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§425E-809**~~[H]~~ **Administrative ~~[dissolution.]~~ cancellation.** (a) The director may 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 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.

Administrative ~~[dissolution]~~ cancellation 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) A limited partnership administratively ~~[dissolved]~~ canceled continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 425E-803 and 425E-812 and to notify claimants under sections 425E-806 and 425E-807.

(c) The administrative ~~[dissolution]~~ cancellation of a limited partnership shall not terminate the authority of its agent for service of process.”

SECTION 25. Section 425E-810, Hawaii Revised Statutes, is amended to read as follows:

“~~[(1)]~~ **§425E-810** ~~[H]~~ Reinstatement following administrative ~~[dissolution.]~~ cancellation. (a) A limited partnership that has been administratively ~~[dissolved]~~ canceled may apply to the director for reinstatement within two years after the effective date of ~~[dissolution.]~~ cancellation. The application shall ~~[be delivered to the director for filing and]~~:

- (1) ~~[State]~~ Recite the name of the limited partnership and the effective date of its administrative ~~[dissolution;]~~ cancellation;
- ~~[(2)]~~ ~~State that the grounds for dissolution either did not exist or have been eliminated;~~
- (2) Contain all reports due and unfiled;
- (3) ~~[State that the limited partnership’s name satisfies the requirements of section 425E-108;]~~ Contain the payment of all delinquent fees and penalties; and
- (4) ~~[Include]~~ Contain a certificate from the department of taxation reciting that all taxes owed by the limited partnership have been paid.

(b) ~~[If the director determines that an application contains the information required by subsection (a) and that the information is correct, the director shall issue an order of reinstatement.]~~ 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 the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the limited partnership pursuant to the amendment provisions of this chapter.

(c) When the reinstatement ~~[becomes]~~ is effective, it relates back to and takes effect as of the effective date of the administrative ~~[dissolution]~~ cancellation, and the limited partnership may resume carrying on its ~~[activities]~~ business as if the administrative ~~[dissolution]~~ cancellation had never occurred.”

SECTION 26. Section 425E-811, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If the director denies a limited partnership’s application for reinstatement following administrative ~~[dissolution,]~~ cancellation, the director shall notify the limited partnership of the reason or reasons for the denial.

(b) The limited partnership may appeal the denial of reinstatement to the circuit court within thirty days after the mailing of the notice of denial. The limited partnership may appeal by petitioning the court to set aside the ~~[dissolution]~~ cancellation and attaching to the petition copies of the director’s declaration of ~~[dissolution,]~~ cancellation the limited partnership’s application for reinstatement, and the director’s notice of denial.”

SECTION 27. Section 425E-901, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Subject to the constitution of this State:

- (1) The laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its ~~[limited]~~ partners; and

- (2) A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.”

SECTION 28. Section 425E-902, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign limited partnership 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 state:

- (1) The name of the foreign limited partnership and, if the name does not comply with ~~[section 425E-108,]~~ sections 425E-108(d) and (e), an alternate name adopted pursuant to section 425E-905(a);
- (2) The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;
- (3) The mailing address of the foreign limited partnership’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;
- (4) The name and address of each general partner;
- (5) Whether the foreign limited partnership is a foreign limited liability limited partnership; and
- (6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this State is canceled or withdrawn.”

SECTION 29. Section 425E-905, Hawaii Revised Statutes, is amended to read as follows:

“**§425E-905 Name.** (a) A foreign limited partnership whose name does not comply with ~~[section 425E-108]~~ sections 425E-108(d) and (e) may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this State, an alternate name that complies with section 425E-108, by filing a copy of a certificate of registration of a trade name with the director. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this State under that name unless the foreign limited partnership is authorized to transact business in this State under another name.

(b) If a foreign limited partnership authorized to transact business in this State changes its name to one that does not comply with ~~[section 425E-108,]~~ sections 425E-108(d) and (e), it shall not thereafter transact business in this State until it complies with subsection (a).”

SECTION 30. Section 425E-1107, Hawaii Revised Statutes, is amended to read as follows:

“**§425E-1107 Articles of merger.** (a) After ~~[approval of the]~~ a plan of merger~~[, unless the merger is terminated,]~~ is approved, articles of merger shall be signed on behalf of each limited partnership~~[,]~~ and each other entity that is a party to the merger, and shall be delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction ~~[of formation or organization]~~ of each entity that is a party to the merger, and the name, address, and jurisdiction of ~~[organization of the entity with or into which they propose to merge, which is hereinafter designated as]~~ the surviving entity;

- (2) A statement that the plan of merger ~~[was]~~ has been 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]~~ that 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, and]~~ a proceeding under subparagraph (A), 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.
- (b) If the articles of merger provide for a future effective date, and:
 - (1) The plan of merger is amended to change the future effective date;
 - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
 - (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger shall operate as an amendment to the limited partnership's organizing articles.

~~[(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited or limited liability limited partnership that is not the surviving entity in the merger.]'~~

SECTION 31. Section 425E-1204, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) With respect to a limited partnership formed before July 1, 2004, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

- (1) Section 425E-104(c) shall not apply and the limited partnership has whatever duration it had under the law applicable immediately before July 1, 2004;
- ~~[(2) The limited partnership shall not be required to amend its certificate of limited partnership to comply with section 425E-201(a)(4);~~

- (3) (2) Sections 425E-601 and 425E-602 shall not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before July 1, 2004;
- ~~[(4)]~~ (3) Section 425E-603(4) shall not apply;
- ~~[(5)]~~ (4) Section 425E-603(5) shall not apply and a court has the same power to expel a general partner as the court had immediately before July 1, 2004; and
- ~~[(6)]~~ (5) Section 425E-801(3) shall not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before July 1, 2004."

SECTION 32. Section 428-101, Hawaii Revised Statutes, is amended by amending the definition of "individual" to read as follows:

"'Individual' means a natural person~~, or the estate of an incompetent or deceased individual~~."

SECTION 33. Section 428-110, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If no manager, member, or other person in charge of the property, business, or office of the limited liability company can be found within the State, and ~~if~~ the limited liability 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] or~~ the person named is not found within the State, service 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 principal office ~~[shown in its application for a certificate of authority or its most recent annual report]~~."

SECTION 34. Section 428-811, Hawaii Revised Statutes, is amended to read as follows:

"§428-811 Reinstatement following administrative termination. (a) A limited liability company administratively terminated under section 428-810 may apply to the director for reinstatement within two years after the effective date of termination. The application shall:

- (1) Recite the name of the limited liability company and the effective date of its administrative termination;
 - ~~[(2) State that all delinquent annual reports have been filed and that all delinquent fees, penalties, assessments, and costs have been paid; and]~~
 - (2) Contain all reports due and unfiled;
 - (3) Contain the payment of all delinquent fees and penalties; and
 - ~~[(3)]~~ (4) Contain a certificate from the director of taxation reciting that all taxes owed by the company have been paid.
- ~~[(b) The director shall issue an order of reinstatement if:~~
- (1) The application for reinstatement meets the requirements of subsection (a);
 - (2) ~~The name of the limited liability company satisfies the requirements of section 428-105;~~

- (3) ~~Articles of amendment to change the name of the limited liability company are filed if the name of the company does not satisfy the requirements of section 428-105; and~~
- (4) ~~The delinquent annual reports have been filed and the appropriate fees and penalties have been paid.]~~

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

(c) When [granted, the reinstatement] the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative termination and the limited liability company [may resume] resumes carrying on its business as if the administrative termination had never occurred.”

SECTION 35. Section 428-905, Hawaii Revised Statutes, is amended to read as follows:

“§428-905 Articles of merger. (a) After [approval of the] a plan of merger [under] is approved in accordance with 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 shall be 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] entity that [are parties] is a party to the merger, and the name, address, and jurisdiction of [organization of the 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] has been 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] that 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,] a proceeding under subparagraph (A), 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.
- (b) If the articles of merger provide for a future effective date, and:
 - (1) The plan of merger is amended to change the future effective date;

- (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
- (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if a plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger operate as an amendment to the limited liability company's organizing articles.

~~[(d) Articles of merger shall act as articles of termination or an application for cancellation for the respective domestic or foreign limited liability company that is not the surviving entity in the merger.]~~

SECTION 36. Section 428-1005, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsection (a) to read:

“(a) If the name of a foreign limited liability company does not satisfy the requirements of section ~~[428-105;]~~ 428-105(b), (c), and (d), the company, to obtain or maintain a certificate of authority to transact business in this State, shall use a fictitious name to transact business in this State if its real name is unavailable.”

2. By amending subsection (e) to read:

“(e) If a foreign limited liability company authorized to transact business in this State changes its name to one that does not satisfy the requirements of section ~~[428-105;]~~ 428-105(b), (c), and (d), it shall not transact business in this State under the name as changed until it adopts a name satisfying the requirements of section 428-105 and obtains an amended certificate of authority.”

SECTION 37. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 38. This Act shall take effect on July 1, 2006.

(Approved June 13, 2006.)

Notes

1. Should be “(c)”.
2. Edited pursuant to HRS §23G-16.5.