

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Section 414-51, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

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

SECTION 2. Section 414-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation administratively dissolved under section 414-402 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) Contain all reports due and unfilled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 3. Section 414D-14, Hawaii Revised Statutes, is amended by amending the definition of “approved by the members” or “approval by the members” to read as follows:

““Approved by the members” or “approval by the members” means an act approved or ratified by:

- (1) The affirmative vote of a majority of the votes represented and cast at a duly held meeting at which a quorum is present; provided that the affirmative votes cast constitute a majority of the required quorum;
- (2) A ballot or written consent in conformity with this chapter; or
- (3) The affirmative vote, ballot, or written consent of the greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or this chapter for any specified member action.”

SECTION 4. Section 414D-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A corporation may apply to the department director for authorization to use a name that, based upon the department director’s records, 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 in writing to the use ~~[in writing;]~~ and registration of the name, and one or more words are added by the applicant to make the name

- distinguishable ~~[upon the records of the department director]~~ from the name ~~[of the applying corporation;]~~ on record; or
- (2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State."

SECTION 5. 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~~[-]~~ a registered agent, who shall have a business address in this State and shall be:

- (1) ~~[A registered office that may be the same as any of its places of business; and]~~ An individual who resides in this State;
- (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.]~~ A domestic entity authorized to transact business or conduct affairs in this State; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State."

SECTION 6. Section 414D-72, Hawaii Revised Statutes, is amended to read as follows:

"§414D-72 Designation or change of ~~[registered office or]~~ registered agent. (a) A corporation that does not already have a registered ~~[office and registered]~~ agent shall designate its registered ~~[office and registered]~~ agent by ~~[delivering to the department director for filing a statement of designation that sets forth:~~

- (1) ~~The name of the corporation;~~
- (2) ~~The street address of its initial registered office in this State and the name of its initial registered agent at its initial registered office; and~~
- (3) ~~That the street addresses of its registered office and agent shall be identical.]~~ complying with section 425R-4.

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

- (1) ~~The name of the corporation;~~
- (2) ~~The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and~~
- (3) ~~That after the change or changes are made, the street addresses of its registered office and agent shall be identical.]~~ complying with section 425R-7.

(c) [If the registered agent's street address changes, the corporation's registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a

~~statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.] If the registered agent changes its name, address, or type or jurisdiction of organization, the agent shall comply with the requirements of section 425R-8 or 425R-9, whichever is applicable.”~~

SECTION 7. Section 414D-73, Hawaii Revised Statutes, is amended to read as follows:

“[H]§414D-73[H] Resignation of registered agent. [(a)] A registered agent may resign ~~[as registered agent by signing and delivering to the department director for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.~~

~~(b) A registered agent shall mail one copy to the registered office (if not discontinued) and a second copy to the corporation at its principal office.~~

~~(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty first day after the date on which the statement is filed.] from the registered agent’s appointment by complying with the requirements of section 425R-10.”~~

SECTION 8. Chapter¹ 414D-104.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise ~~[provided]~~ restricted by the articles of incorporation or bylaws of a corporation, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a ballot to every member entitled to vote on the matter. The corporation may deliver ballots by electronic transmission.”

SECTION 9. Section 414D-182, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Amendments to the articles of incorporation shall be made in the following manner:

- (1) If any members are entitled to vote on an amendment, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at an annual, regular, or special meeting of the members. Notice setting forth the proposed amendment or a summary of the changes to be effected by the proposed amendments shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes that members present at the meeting or represented by proxy are entitled to cast; and
- (2) If there are no members or no members entitled to vote on an amendment, an amendment shall be adopted at a meeting of the board of directors upon its receiving the vote of a majority of the directors in office.”

SECTION 10. 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) Recite the name of the corporation and the effective date of its administrative dissolution;

- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation."

SECTION 11. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

"§415A-8 Corporate name. The name of a professional corporation:

- (1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule of the licensing authority of the profession; and
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the applicant files with the director either of the following:
 - (A) The written consent from the entity or holder of a reserved or registered name to use and register the same or substantially identical name, and one or more words are added by the applicant to make the name distinguishable from the [other] name[s] on record; or
 - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 12. Section 415A-14.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 415A-8;
- (2) The profession or professions that the corporation shall be authorized to practice and any other purpose allowed by the licensing laws and rules of this State;
- (3) The mailing address of [~~its initial principal office, the street address of its initial registered office, and the name of its initial registered agent at its initial registered office;~~] the corporation's initial principal office and the information required by section 425R-4(a);
- (4) The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified;
- (5) The name, title, and address of each officer; and
- (6) The number of shares the corporation is authorized to issue, and if the shares are to be divided into classes, the number of shares of each class."

SECTION 13. Section 425-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No statement or certificate of any partnership shall be recorded by the director unless the name is not the same as, or substantially identical to the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the partnership files with the director any one of the following:

- (1) The written consent from the entity or holder of a reserved or registered name to use and register the same or substantially identical name, and one or more words are added by the partnership to make the name distinguishable from the ~~[other]~~ name~~;~~ on record; or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the partnership to the use of the name in this State.”

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

“(b) Within two years after the administrative cancellation of a domestic general partnership under this section, the registration statement of the domestic general partnership may be reinstated by the director upon written application executed by any partner of the domestic general partnership. The application shall:

- (1) Recite the name of the domestic general partnership and the effective date of its administrative cancellation;
- (2) Contain all statements due and unfilled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the domestic general partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 15. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

- (1) Recite the name of the partnership and the effective date of the revocation;
- (2) Contain all reports due and unfilled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 16. Section 425E-108, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Unless authorized by subsection (e), the name of a domestic limited partnership or limited liability limited partnership or foreign limited partnership or limited liability limited partnership as set forth in the certificate of limited partnership or certificate of authority shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability partnership, limited partnership, limited liability limited partnership, or limited liability company existing or registered under the laws of this State, any foreign corporation, partnership, limited liability partnership, limited partnership, limited liability limited partnership, or ~~[foreign]~~ limited liability company authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter; except that this provision shall not apply if the applicant filed with the director either of the following:

- (1) The written consent of the other ~~[partnership]~~ entity or holder of a reserved or registered name to use and register the same or substantially identical name, and one or more words are added by the applicant to make the name distinguishable from the ~~[other]~~ name[s] on record; or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.”

SECTION 17. 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) 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 certificate of authority, \$100;
- (7) ~~[Any certificate of amendment or agent change for foreign limited partnership, \$10;]~~ Application for certificate of withdrawal of foreign limited partnership, \$10;
- (8) ~~[Application for certificate of withdrawal of foreign limited partnership, \$10;]~~ For filings relating to registered agents, the fees established by section 425R-2;
- (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; and
- (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 18. Section 425E-810, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A limited partnership that has been administratively canceled may apply to the director for reinstatement within two years after the effective date of cancellation. The application shall:

- (1) Recite the name of the limited partnership and the effective date of its administrative cancellation;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the limited partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 19. Section 428-105, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A limited liability company may apply to the director for authorization to use a name that, upon the records of the department, is the same as, or is substantially identical to, one or more of the names described in subsection (b). The director may authorize use of a substantially identical name applied for if:

- (1) The present user, registrant, or owner of a reserved or registered name consents in writing to the use and registration of the name, and one or more words are added by the applicant to make the name distinguishable ~~[upon the records of the director from the name applied for;] from the name on record;~~ or
- (2) The applicant delivers to the director a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this State.”

SECTION 20. Section 428-205, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided in this chapter, a record to be filed by or on behalf of a limited liability company in the office of the director shall be certified and signed by a:

- (1) Manager of a manager-managed company[;] or, in the case of a foreign limited liability company, a person who is authorized or required to sign a record under the laws of its jurisdiction of organization;
- (2) Member of a member-managed company[;] or, in the case of a foreign limited liability company, a person who is authorized or required to sign a record under the laws of its jurisdiction of organization;
- (3) Person organizing the company, if the company has not been formed; or
- (4) Fiduciary, if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary.”

SECTION 21. Section 428-811, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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:

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- (1) Recite the name of the limited liability company and the effective date of its administrative termination;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the director of taxation reciting that all taxes owed by the company have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect on July 1, 2012.

(Approved April 24, 2012.)

Note

1. So in original.