



GOV. MSG. NO. 1159

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 24, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

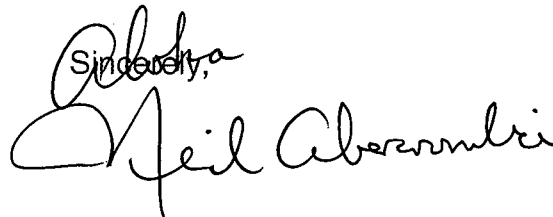
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 24, 2012, the following bill was signed into law:

SB2758 SD1

RELATING TO BUSINESS REGISTRATION.
Act 058 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO BUSINESS REGISTRATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

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

9 (1) The other entity or holder of a reserved or registered
10 name consents in writing to the use [~~in writing~~] and
11 registration of the name, and one or more words are
12 added by the applicant to make the name
13 distinguishable from the name [~~of the applying~~
14 ~~corporation;~~] on record; or

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



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

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

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

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

21 ""Approved by the members" or "approval by the members"
22 means an act approved or ratified by:



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

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

14 "(c) A corporation may apply to the department director
15 for authorization to use a name that, based upon the department
16 director's records, is substantially identical to one or more of
17 the names described in subsection (b). The department director
18 shall authorize the use of the name applied for if:

- 19 (1) The other entity or holder of a reserved or registered
20 name consents in writing to the use [~~in writing,~~] and
21 registration of the name, and one or more words are
22 added by the applicant to make the name



1 distinguishable [~~upon the records of the department~~
2 ~~director~~] from the name [~~of the applying corporation;~~
3 on record; or

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

8 SECTION 5. Section 414D-71, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§414D-71 Registered [~~office and registered~~] agent. Each
11 corporation shall continuously maintain in this State[+] a
12 registered agent, who shall have a business address in this
13 State and shall be:

14 (1) [~~A registered office that may be the same as any of~~
15 ~~its places of business; and~~] An individual who resides
16 in this State;

17 (2) [~~A registered agent, who may be:~~
18 ~~(A) An individual who resides in this State and whose~~
19 ~~business office is identical with the registered~~
20 ~~office;~~



1 ~~(B) A domestic entity authorized to transact business~~
2 ~~in this State whose business office is identical~~
3 ~~with the registered office; or~~

4 ~~(C) A foreign entity authorized to transact business~~
5 ~~in this State whose business office is identical~~
6 ~~with the registered office.] A domestic entity~~
7 authorized to transact business or conduct
8 affairs in this State; or

9 (3) A foreign entity authorized to transact business or
10 conduct affairs in this State."

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

13 "§414D-72 Designation or change of ~~[registered office or]~~
14 **registered agent.** (a) A corporation that does not already have
15 a registered ~~[office and registered]~~ agent shall designate its
16 registered ~~[office and registered]~~ agent by ~~[delivering to the~~
17 ~~department director for filing a statement of designation that~~
18 ~~sets forth:~~

- 19 ~~(1) The name of the corporation;~~
- 20 ~~(2) The street address of its initial registered office in~~
21 ~~this State and the name of its initial registered~~
22 ~~agent at its initial registered office; and~~



1 ~~(3) That the street addresses of its registered office and~~
2 ~~agent shall be identical.] complying with section~~
3 ~~425R-4.~~

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

7 ~~(1) The name of the corporation;~~

8 ~~(2) The street address of its current registered office,~~
9 ~~the name of its current registered agent at its~~
10 ~~registered office, and any changes required to keep~~
11 ~~the information current; and~~

12 ~~(3) That after the change or changes are made, the street~~
13 ~~addresses of its registered office and agent shall be~~
14 ~~identical.] complying with section 425R-7.~~

15 (c) [~~If the registered agent's street address changes, the~~
16 ~~corporation's registered agent may change the street address of~~
17 ~~the corporation's registered office by notifying the corporation~~
18 ~~in writing of the change and signing (either manually or in~~
19 ~~facsimile) and delivering to the department director for filing~~
20 ~~a statement that complies with the requirements of subsection~~
21 ~~(a) and recites that the corporation has been notified of the~~
22 ~~change.] If the registered agent changes its name, address, or~~



1 type or jurisdiction of organization, the agent shall comply
2 with the requirements of section 425R-8 or 425R-9, whichever is
3 applicable."

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

6 "[~~f~~]**\$414D-73**[~~+~~] **Resignation of registered agent.** [~~(a)~~] A
7 registered agent may resign [~~as registered agent by signing and~~
8 ~~delivering to the department director for filing a statement of~~
9 ~~resignation. The statement may include a statement that the~~
10 ~~registered office is also discontinued.~~

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

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

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

21 "(a) Except as otherwise [~~provided~~] restricted by the
22 articles of incorporation or bylaws of a corporation, any action



1 that may be taken at any annual, regular, or special meeting of
2 members may be taken without a meeting if the corporation
3 delivers a ballot to every member entitled to vote on the
4 matter. The corporation may deliver ballots by electronic
5 transmission."

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

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

10 (1) If any members are entitled to vote on an amendment,
11 the board of directors shall adopt a resolution
12 setting forth the proposed amendment and directing
13 that it be submitted to a vote at an annual, regular,
14 or special meeting of the members. Notice setting
15 forth the proposed amendment or a summary of the
16 changes to be effected by the proposed amendments
17 shall be given to each member entitled to vote at the
18 meeting within the time and in the manner provided in
19 this chapter for the giving of notice of meetings to
20 members. The proposed amendment shall be adopted upon
21 receiving at least two-thirds of the votes that



1 members present at the meeting or represented by proxy
2 are entitled to cast; and

3 (2) If there are no members or no members entitled to vote
4 on an amendment, an amendment shall be adopted at a
5 meeting of the board of directors upon its receiving
6 the vote of a majority of the directors in office."

7 SECTION 10. Section 414D-250, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

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

- 13 (1) Recite the name of the corporation and the effective
14 date of its administrative dissolution;
- 15 (2) Contain all reports due and unfiled;
- 16 (3) Contain the payment of all delinquent fees; and
- 17 (4) Contain a certificate or other writing from the
18 department of taxation indicating that all taxes owed
19 by the corporation have been paid, a payment
20 arrangement has been entered into, or the unpaid tax
21 liabilities are being contested in an administrative
22 or judicial appeal with the department of taxation."



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

3 "§415A-8 **Corporate name.** The name of a professional
4 corporation:

5 (1) May be any name permitted by law expressly applicable
6 to the profession in which the corporation is engaged
7 or by a rule of the licensing authority of the
8 profession; and

9 (2) Shall not be the same as, or substantially identical
10 to, the name of any domestic corporation, partnership,
11 limited partnership, limited liability company, or
12 limited liability partnership existing or registered
13 under the laws of this State, or any foreign
14 corporation, partnership, limited partnership, limited
15 liability company, or limited liability partnership
16 authorized to transact business in this State, or any
17 trade name, trademark, or service mark registered in
18 this State, or a name the exclusive right to which is,
19 at the time, reserved in this State, except that this
20 provision shall not apply if the applicant files with
21 the director either of the following:



1 (A) The written consent from the entity or holder of
2 a reserved or registered name to use and register
3 the same or substantially identical name, and one
4 or more words are added by the applicant to make
5 the name distinguishable from the [~~other~~] name[~~+~~]
6 on record; or

7 (B) A certified copy of a final decree of a court of
8 competent jurisdiction establishing the prior
9 right of the applicant to the use of the name in
10 this State."

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

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

- 14 (1) A corporate name for the corporation that satisfies
15 the requirements of section 415A-8;
- 16 (2) The profession or professions that the corporation
17 shall be authorized to practice and any other purpose
18 allowed by the licensing laws and rules of this State;
- 19 (3) The mailing address of [~~its initial principal office,~~
20 ~~the street address of its initial registered office,~~
21 ~~and the name of its initial registered agent at its~~
22 ~~initial registered office;~~] the corporation's initial



1 principal office and the information required by
2 section 425R-4(a);

3 (4) The number of directors constituting the initial board
4 of directors and the names and addresses of the
5 individuals who are to serve as directors until the
6 first annual meeting of shareholders or until their
7 successors are elected and qualified;

8 (5) The name, title, and address of each officer; and

9 (6) The number of shares the corporation is authorized to
10 issue, and if the shares are to be divided into
11 classes, the number of shares of each class."

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

14 "(a) No statement or certificate of any partnership shall
15 be recorded by the director unless the name is not the same as,
16 or substantially identical to the name of any domestic
17 corporation, partnership, limited partnership, limited liability
18 company, or limited liability partnership existing or registered
19 under the laws of this State, or any foreign corporation,
20 partnership, limited partnership, limited liability company, or
21 limited liability partnership authorized to transact business in
22 this State, or any trade name, trademark, or service mark



1 registered in this State, or a name the exclusive right to which
2 is, at the time, reserved in this State, except that this
3 provision shall not apply if the partnership files with the
4 director any one of the following:

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

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

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



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

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

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

- 20 (1) Recite the name of the partnership and the effective
21 date of the revocation;
- 22 (2) Contain all reports due and unfiled;



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

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

11 "(d) Unless authorized by subsection (e), the name of a
12 domestic limited partnership or limited liability limited
13 partnership or foreign limited partnership or limited liability
14 limited partnership as set forth in the certificate of limited
15 partnership or certificate of authority shall not be the same
16 as, or substantially identical to, the name of any domestic
17 corporation, partnership, limited liability partnership, limited
18 partnership, limited liability limited partnership, or limited
19 liability company existing or registered under the laws of this
20 State, any foreign corporation, partnership, limited liability
21 partnership, limited partnership, limited liability limited
22 partnership, or [~~foreign~~] limited liability company authorized

1 to transact business in this State, or any trade name,
2 trademark, or service mark registered in this State, or a name
3 the exclusive right to which is, at the time, reserved, or the
4 name of a partnership which has in effect a registration of its
5 partnership name as provided in this chapter; except that this
6 provision shall not apply if the applicant filed with the
7 director either of the following:

8 (1) The written consent of the other [~~partnership~~] entity
9 or holder of a reserved or registered name to use and
10 register the same or substantially identical name, and
11 one or more words are added by the applicant to make
12 the name distinguishable from the [~~other~~] name[+] on
13 record; or

14 (2) A certified copy of a final decree of a court of
15 competent jurisdiction establishing the prior right of
16 the applicant to the use of the name in this State."

17 SECTION 17. Section 425E-211, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

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

21 (1) Certificate of limited partnership, \$50;



- 1 (2) Any certificate of amendment, restatement, or
- 2 correction, \$10;
- 3 (3) Statement of termination, \$10;
- 4 (4) Annual statement for domestic or foreign limited
- 5 partnership, \$10;
- 6 (5) Any other certificate or document of domestic or
- 7 foreign limited partnership, \$10;
- 8 (6) Application for certificate of authority, \$100;
- 9 (7) ~~[Any certificate of amendment or agent change for~~
- 10 ~~foreign limited partnership, \$10;]~~ Application for
- 11 certificate of withdrawal of foreign limited
- 12 partnership, \$10;
- 13 (8) ~~[Application for certificate of withdrawal of foreign~~
- 14 ~~limited partnership, \$10;]~~ For filings relating to
- 15 registered agents, the fees established by section
- 16 425R-2;
- 17 (9) Reservation of name, \$10;
- 18 (10) Transfer of reservation of name, \$10;
- 19 (11) Good standing certificate, \$5;
- 20 (12) Articles of conversion or merger, \$100;
- 21 (13) Special handling fee for review of articles of
- 22 conversion or merger, \$75;



- 1 (14) Special handling fee for review of any limited
2 partnership document, \$25;
- 3 (15) Special handling fee for certificates issued by the
4 director, \$10 per certificate; and
- 5 (16) Special handling fee for certification of documents,
6 \$10 [~~+~~ and
- 7 ~~(17) Agent's statement of change of address, \$10 for each~~
8 ~~affected domestic or foreign limited partnership;~~
9 ~~provided that if more than two hundred simultaneous~~
10 ~~filings are made, the fee shall be reduced to \$1 for~~
11 ~~each affected domestic or foreign limited~~
12 ~~partnership]."~~

13 SECTION 18. Section 425E-810, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

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

- 19 (1) Recite the name of the limited partnership and the
20 effective date of its administrative cancellation;
- 21 (2) Contain all reports due and unfiled;



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

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

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

- 17 (1) The present user, registrant, or owner of a reserved
18 or registered name consents in writing to the use and
19 registration of the name, and one or more words are
20 added by the applicant to make the name
21 distinguishable [~~upon the records of the director from~~
22 ~~the name applied for;~~] from the name on record; or



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

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

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

11 (1) Manager of a manager-managed company[+] or, in the
12 case of a foreign limited liability company, a person
13 who is authorized or required to sign a record under
14 the laws of its jurisdiction of organization;

15 (2) Member of a member-managed company[+] or, in the case
16 of a foreign limited liability company, a person who
17 is authorized or required to sign a record under the
18 laws of its jurisdiction of organization;

19 (3) Person organizing the company, if the company has not
20 been formed; or

1 (4) Fiduciary, if the company is in the hands of a
2 receiver, trustee, or other court-appointed
3 fiduciary."

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

6 "(a) A limited liability company administratively
7 terminated under section 428-810 may apply to the director for
8 reinstatement within two years after the effective date of
9 termination. The application shall:

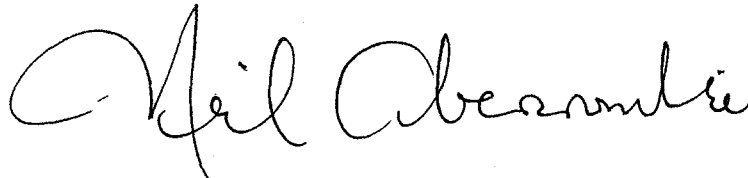
- 10 (1) Recite the name of the limited liability company and
11 the effective date of its administrative termination;
- 12 (2) Contain all reports due and unfiled;
- 13 (3) Contain the payment of all delinquent fees and
14 penalties; and
- 15 (4) Contain a certificate or other writing from the
16 director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

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



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

APPROVED this 24 day of APR, 2012

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII