

JAN 23 2020

A BILL FOR AN ACT

RELATING TO PENAL LIABILITY FOR BUSINESS ENTITIES.

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

1 SECTION 1. The legislature finds that corporations and
2 other business entities are a powerful part of contemporary
3 society and their conduct, like that of individuals, should be
4 subject to penal sanctions when it injures substantial societal
5 values and can be morally condemned. The heightened finding the
6 law currently requires of the court to impose the remedy of
7 corporate dissolution or revocation of the authority to conduct
8 business in the State is ineffective as either a deterrent or
9 punishment for corporate crimes.

10 The purpose of this Act is to disallow business entities
11 convicted of felonies or misdemeanors, including felonies or
12 misdemeanors affecting public safety, health, and well-being,
13 from continuing to do business in Hawaii.

14 SECTION 2. Section 706-608, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§706-608 Penalties against corporations and
17 unincorporated associations; forfeiture of corporate charter or



1 revocation of certificate authorizing foreign corporation to do
2 business in the State ~~[;]~~; cancellation or revocation of
3 authorizing instrument of partnership entity and limited
4 liability company; dissolution. (1) The court may sentence a
5 corporation or an unincorporated association which has been
6 convicted of an offense to be placed on probation as authorized
7 by part II of this chapter or to be fined as authorized by part
8 III of this chapter.

9 (2) When a corporation is convicted of a ~~[crime]~~ felony or
10 misdemeanor or a high managerial agent of a corporation ~~[, as~~
11 ~~defined in section [702-229],]~~ is convicted of a ~~[crime]~~ felony
12 or misdemeanor committed in the conduct of the affairs of the
13 corporation, the court, in sentencing the corporation or the
14 agent, ~~[may]~~ shall order the charter of a corporation organized
15 under the laws of this State forfeited or the certificate of a
16 foreign corporation authorizing it to do business in this State
17 revoked ~~[-upon finding:]~~

18 ~~(a) That the board of directors or a high managerial agent~~
19 ~~acting in behalf of the corporation has, in conducting~~
20 ~~the corporation's affairs, intentionally engaged in a~~
21 ~~persistent course of criminal conduct [;] and~~



1 ~~(b) That for the prevention of future criminal conduct of~~
2 ~~the same character, the public interest requires the~~
3 ~~charter of the corporation to be forfeited and the~~
4 ~~corporation to be dissolved or the certificate to be~~
5 ~~revoked].~~

6 (3) The proceedings authorized by subsection (2) shall be
7 conducted in accordance with the procedures authorized by law
8 for the involuntary dissolution of a corporation or the
9 revocation of the certificate authorizing a foreign corporation
10 to conduct business in this State. Such proceedings shall be
11 deemed additional to any other proceedings authorized by law for
12 the purpose of forfeiting the charter of a corporation or
13 revoking the certificate of a foreign corporation.

14 (4) When a general partnership, limited liability
15 partnership, limited partnership, or limited liability company
16 is convicted of a felony or misdemeanor, or a high managerial
17 agent of a general partnership, limited liability partnership,
18 limited partnership, or limited liability company is convicted
19 of a felony or misdemeanor committed in the conduct of the
20 affairs of the entity, the court, in sentencing the entity or
21 agent, shall order the registration cancelled or the statement



1 of qualification revoked, as applicable to an entity organized
2 under the laws of this State, and the partnership dissolved, or
3 the statement of foreign qualification revoked or the
4 certificate of authority cancelled, as applicable to a foreign
5 entity authorized to do business in this State.

6 (5) The proceedings authorized by subsection (4) shall be
7 conducted in accordance with the procedures authorized by law
8 for the involuntary dissolution of the applicable domestic
9 entity or the revocation or cancellation of the statement or
10 certificate authorizing the applicable foreign entity to conduct
11 business in this State. Such proceedings shall be deemed
12 additional to any other proceedings authorized by law for the
13 purpose of dissolving the domestic entity or revoking or
14 canceling the statement or certificate authorizing the foreign
15 entity to conduct business in this State.

16 (6) Upon ordering dissolution of a corporation or entity
17 pursuant to subsections (2) or (4), the court may enter a decree
18 dissolving the corporation or entity and specifying the
19 effective date of the dissolution, and the clerk of the court
20 shall deliver a certified copy of the decree to the director of
21 commerce and consumer affairs, who shall file it. After



1 entering the decree of dissolution, the court shall direct the
2 winding up and liquidation of the corporation's or entity's
3 business and affairs.

4 (7) For purposes of this section, "corporation" and "high
5 managerial agent" shall have the same meaning as in section 702-
6 229."

7 SECTION 3. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

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

12 SECTION 5. This Act shall take effect upon its approval.

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S.B. NO. 3046

Report Title:

Corporations; Business Entities; High Managerial Agent; Felony; Misdemeanor; Dissolution; Cancellation; Revocation

Description:

Requires a court to order the charter of a corporation forfeited and the certificate authorizing a foreign corporation to do business in the State revoked upon a felony or misdemeanor conviction of the corporation or its high managerial agent that is related to its business affairs. Repeals the requirement for findings for a court to order forfeiture of a charter or revocation of a certificate. Requires similar penalties for various partnership entities and limited liability companies and their foreign counterparts convicted of a felony or misdemeanor. Permits the winding up of the business.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

