
A BILL FOR AN ACT

RELATING TO NONPROFIT CORPORATIONS.

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

1 SECTION 1. Chapter 414D, Hawaii Revised Statutes, is
2 amended by adding three new sections to be appropriately
3 designated and to read as follows:

4 "§414D- Conversions into and from corporations. (a) A
5 domestic corporation may adopt a plan of conversion and convert
6 to a foreign corporation if:

7 (1) The board of directors and members, if any, of the
8 domestic corporation approve the plan of conversion in
9 the manner prescribed by section 414D-202 if the
10 conversion were treated as a merger to which the
11 converting entity is a party and not the surviving
12 entity;

13 (2) The conversion is permitted by and complies with the
14 laws of the state or country in which the converted
15 entity is to be incorporated, formed, or organized;
16 and the incorporation, formation, or organization of
17 the converted entity complies with those laws;



1 (3) At the time the conversion becomes effective, any
2 member of the converting entity, unless otherwise
3 agreed to by the member, shall become a member of the
4 converted entity;

5 (4) The members of the domestic corporation, as a result
6 of the conversion, shall not become personally liable
7 without the members' consent, for the liabilities or
8 obligations of the converted entity; and

9 (5) The converted entity is incorporated, formed, or
10 organized as part of or pursuant to the plan of
11 conversion.

12 (b) Any foreign corporation may adopt a plan of conversion
13 and convert to a domestic corporation if the conversion is
14 permitted by and complies with the laws of the state or country
15 in which the foreign corporation is incorporated.

16 (c) A plan of conversion shall set forth:

17 (1) The name of the converting entity and the converted
18 entity;



1 (2) A statement that the converting entity is continuing
2 its existence in the organizational form of the
3 converted entity; and

4 (3) A statement describing the organizational form of the
5 converted entity and the state or country under the
6 laws of which the converted entity is to be
7 incorporated.

8 (d) A plan of conversion may set forth any other
9 provisions relating to the conversion that are not prohibited by
10 law, including without limitation the initial bylaws and
11 officers of the converted entity.

12 (e) After the conversion of a domestic corporation is
13 approved, and at any time before the conversion becomes
14 effective, the plan of conversion may be abandoned by the
15 domestic corporation in accordance with the procedures set forth
16 in the plan of conversion or, if these procedures are not
17 provided in the plan, in the manner determined by the board of
18 directors. If articles of conversion have been filed with the
19 department director but the conversion has not become effective,
20 the conversion may be abandoned if a statement, executed on



1 behalf of the converting entity by an officer or other duly
2 authorized representative and stating that the plan of
3 conversion has been abandoned in accordance with applicable law,
4 is filed with the department director prior to the effective
5 date of the conversion. If the department director finds that
6 the statement satisfies the requirements provided by law, the
7 department director, after all fees have been paid, shall:

- 8 (1) Stamp the statement and include the date of the
9 filing;
- 10 (2) File the document in the department director's office;
11 and
- 12 (3) Issue a certificate of abandonment to the converting
13 entity or its authorized representatives.

14 (f) Once the statement provided in subsection (e) is filed
15 with the department director, the conversion shall be deemed
16 abandoned and shall not be effective.

17 §414D- Articles of conversion. (a) If a plan of
18 conversion has been approved in the manner prescribed by section
19 414D-202 and has not been abandoned, articles of conversion
20 shall be executed by an officer or other duly authorized



1 representative of the converting entity and shall set forth a
2 statement certifying the following:

3 (1) The name, form of entity, and state or country of
4 incorporation of the converting and converted
5 entities;

6 (2) That a plan of conversion has been approved;

7 (3) That an executed plan of conversion is on file at the
8 principal place of business of the converting entity
9 and stating the address thereof;

10 (4) That a copy of the plan of conversion shall be
11 furnished by the converting entity prior to the
12 conversion or by the converted entity after the
13 conversion on written request and without cost, to any
14 member or director, as the case may be, of the
15 converting entity or the converted entity; and

16 (5) That the approval of the plan of conversion was duly
17 authorized and complied with the laws under which it
18 was incorporated, formed, or organized.

19 (b) The articles of conversion shall be delivered to the
20 department director. The converted entity, if a domestic



1 corporation, shall attach a copy of its articles of
2 incorporation with the articles of conversion.

3 (c) If the department director finds that the articles of
4 conversion satisfy the requirements provided by law, and that
5 all required documents are filed, the department director, after
6 all fees have been paid, shall:

7 (1) Stamp the articles of conversion and include the date
8 of the filing;

9 (2) File the document in the department director's office;
10 and

11 (3) Issue a certificate of conversion to the converted
12 entity or its authorized representatives.

13 §414D- Effect of conversion. When a conversion becomes
14 effective:

15 (1) The converting entity shall continue to exist without
16 interruption, but in the organizational form of the
17 converted entity;

18 (2) All rights, title, and interest in all real estate and
19 other property owned by the converting entity shall
20 automatically be owned by the converted entity without



1 reversion or impairment, subject to any existing liens
2 or other encumbrances;

3 (3) All liabilities and obligations of the converting
4 entity shall automatically be liabilities and
5 obligations of the converted entity without impairment
6 or diminution due to the conversion;

7 (4) The rights of creditors of the converting entity shall
8 continue against the converted entity and shall not be
9 impaired or extinguished by the conversion;

10 (5) Any action or proceeding pending by or against the
11 converting entity may be continued by or against the
12 converted entity without any need for substitution of
13 parties; and

14 (6) If the converted entity is a foreign corporation or
15 other business entity incorporated under a law other
16 than the law of this State, the converted entity shall
17 file with the director:

18 (A) An agreement that the converted entity may be
19 served with process in this State in any action
20 or proceeding for the enforcement of any



1 liability or obligation of the converting
2 domestic corporation; and
3 (B) An irrevocable appointment of a resident of this
4 State, including the street address, as its agent
5 to accept service of process in any such
6 proceeding."

7 SECTION 2. Section 414D-149, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) A director shall discharge the director's duties as a
10 director, including the director's duties as a member of a
11 committee:

- 12 (1) In good faith;
- 13 (2) In a manner that is consistent with the director's
14 duty of loyalty to the corporation;

15 [~~+2~~] (3) With the care an ordinarily prudent person in a
16 like position would exercise under similar
17 circumstances; and

18 [~~+3~~] (4) In a manner the director reasonably believes to
19 be in the best interests of the corporation."



1 SECTION 3. Section 414D-155, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) An officer with discretionary authority shall
4 discharge the officer's duties under that authority:

5 (1) In good faith;

6 (2) In a manner that is consistent with the officer's duty
7 of loyalty to the corporation;

8 [~~2~~] (3) With the care an ordinarily prudent person in a
9 like position would exercise under similar
10 circumstances; and

11 [~~3~~] (4) In a manner the officer reasonably believes to be
12 in the best interests of the corporation."

13 SECTION 4. Section 414D-233, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) No assets shall be transferred or conveyed by a
16 public benefit corporation as part of the dissolution process
17 until twenty business days after it has given the written notice
18 required by subsection (a) to the attorney general or until the
19 attorney general has consented in writing to the dissolution, or
20 indicated in writing that the attorney general will take no



1 action in respect to, the transfer or conveyance, whichever is
2 earlier."

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect upon its approval.



Report Title:

Nonprofit Corporations; Conversion; Duty of Loyalty; Directors;
Officers

Description:

Amends the nonprofit corporations law to: restore procedures that allow nonprofit corporations to convert into and out of domestic nonprofit corporations; impose a duty of loyalty on directors and officers of nonprofit corporations; and increase the length of time the attorney general has to review proposed dissolutions of public benefit corporations. (SD1)

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