

JAN 24 2019

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 a new section to be appropriately designated
3 and to read as follows:

4 "§414D- Purchase of memberships. (a) A public benefit
5 corporation may not purchase any of its memberships or any right
6 arising therefrom.

7 (b) A corporation other than a public benefit corporation
8 may purchase its memberships only to the extent provided in
9 section 414D-232."

10 SECTION 2. Section 414D-14, Hawaii Revised Statutes, is
11 amended by amending the definition of "directors" to read as
12 follows:

13 ""Directors" means individuals, designated in the articles
14 or bylaws or elected by the incorporators, and their successors
15 and individuals elected or appointed by any other name or title,
16 to act as members of the board. Any person who does not have
17 authority to vote as a member of the board is not a director as
18 that term is used in this chapter, regardless of title."

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1 SECTION 3. Section 414D-134, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) If the corporation has members, all the directors
4 (except the initial directors) shall be elected at the first
5 annual meeting of members, and at each annual meeting
6 thereafter, unless the articles or bylaws provide some other
7 time or method of election, or provide that some of the
8 directors are [appointed]:

9 (1) Appointed by some other person; or [designated
10 representative.]

11 (2) Designated."

12 SECTION 4. Section 414D-155, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

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

16 (1) In good faith;

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

19 (3) With the care an ordinarily prudent person in a like
20 position would exercise under similar circumstances;

21 and

1 (4) In a manner the officer reasonably believes to be in
2 the best interests of the corporation[-] and its
3 members, if any."

4 SECTION 5. Section 414D-222, Hawaii Revised Statutes, is
5 amended by amending subsection (i) to read as follows:

6 "(i) A public benefit corporation shall give written
7 notice to the attorney general twenty business days before it
8 sells, leases, exchanges, or otherwise disposes of all, or
9 substantially all, of its property if the transaction is not in
10 the regular course of its activities, unless the attorney
11 general has given the corporation a written waiver of this
12 subsection."

13 SECTION 6. Section 414D-232, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) A corporation other than a public benefit corporation
16 may purchase its memberships if, after the purchase is
17 completed:

18 (1) The corporation would be able to pay its debts as they
19 become due in the usual course of its activities; and

20 (2) The corporation's total assets would be equal to at
21 least the sum of its total liabilities."

22 SECTION 7. Statutory material to be repealed is bracketed
23 and stricken. New statutory material is underscored.

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1 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY: *Wm. D. M.*

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BY REQUEST

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S.B. NO. 1171

Report Title:

Nonprofit Corporations

Description:

Amends chapter 414D, Hawaii Revised Statutes, to clarify that public benefit corporations may not purchase its memberships, to clarify that a person who does not have authority to vote as a member of the board is not a director, to clarify that a corporation with members may designate its directors, to add previous wording that was inadvertently removed through Act 87, Session Laws of Hawaii 2017, and to increase the length of time that the Attorney General has to review proposed sale of substantially all of the assets of public benefit corporations other than in the regular course of its activities.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO NONPROFIT CORPORATIONS.

PURPOSE: The purpose of this bill is to amend chapter 414D, Hawaii Revised Statutes (HRS), to (1) clarify that public benefit corporations may not purchase its memberships, (2) clarify that a person who does not have authority to vote as a member of the board is not a director, (3) clarify that a corporation with members may designate its directors, (4) add previous wording that was inadvertently removed through Act 87, Session Laws of Hawaii 2017, and (5) increase the length of time that the Attorney General has to review proposed sale of substantially all of the assets of public benefit corporations other than in the regular course of its activities.

MEANS: Add a new section to chapter 414D, HRS, and amend sections 414D-14, 414D-134(a), 414D-155(a), 414D-222(i), and 414D-232(a), HRS.

JUSTIFICATION: The bill creates a new section derived from the Model Nonprofit Corporation Act, upon which the Hawaii Nonprofit Corporations Act is based, to clarify that the assets of a public benefit corporation may not be distributed to its members by allowing the corporation to purchase memberships. The bill also removes the term "representative" that had been inadvertently included in the originally drafted section 414D-134(a) and that had changed the intended meaning of the law. Without the term "representative", section 414D-134(a) allows membership corporations to designate its directors, consistent with the intent of the Model Nonprofit Corporation Act. Other amendments

to chapter 414D, HRS, clarify ambiguities in the current law about whether a director may be a non-voting director, insert missing wording that had been inadvertently removed though Act 87, Session Laws of Hawaii 2017, and allow the Attorney General a few more days to review a proposed sale of substantially all of the assets of public benefit corporations other than in the regular course of its activities.

Impact on the public: The amendments will help the public by addressing some of the most frequently asked questions to the Attorney General.

Impact on the department and other agencies: The amendments will allow the Attorney General more time to take action to protect charitable assets when the sale of substantially all of a public benefit corporation's assets may be in violation of other state laws.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: ATG 100.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.