

JAN 25 2017

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- 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 a 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;

S.B. NO. 893

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;

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

22 (3) A statement describing the organizational form of the
23 converted entity and the state or country under the

1 laws of which the converted entity is to be
2 incorporated.

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

7 (e) After the conversion of a domestic corporation is
8 approved, and at any time before the conversion becomes
9 effective, the plan of conversion may be abandoned by the
10 domestic corporation in accordance with the procedures set forth
11 in the plan of conversion or, if these procedures are not
12 provided in the plan, in the manner determined by the board of
13 directors. If articles of conversion have been filed with the
14 department director but the conversion has not become effective,
15 the conversion may be abandoned if a statement, executed on
16 behalf of the converting entity by an officer or other duly
17 authorized representative and stating that the plan of
18 conversion has been abandoned in accordance with applicable law,
19 is filed with the department director prior to the effective
20 date of the conversion. If the department director finds that
21 the statement satisfies the requirements provided by law, the
22 department director, after all fees have been paid, shall:

S.B. NO. 893

- 1 (1) Stamp the statement and include the date of the
2 filing;
- 3 (2) File the document in the department director's office;
4 and
- 5 (3) Issue a certificate of abandonment to the converting
6 entity or its authorized representatives.
- 7 (f) Once the statement provided in subsection (e) is filed
8 with the department director, the conversion shall be deemed
9 abandoned and shall not be effective."

10 SECTION 2. Chapter 414D, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§414D-___ Articles of conversion. (a) If a plan of
14 conversion has been approved in the manner prescribed by section
15 414D-202 and has not been abandoned, articles of conversion
16 shall be executed by an officer or other duly authorized
17 representative of the converting entity and shall set forth:

- 18 (1) A statement certifying the following:
- 19 (A) The name, form of entity, and state or country of
20 incorporation of the converting and converted
21 entities;
- 22 (B) That a plan of conversion has been approved;

S.B. NO. 893

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

4 (D) That a copy of the plan of conversion shall be
5 furnished by the converting entity prior to the
6 conversion or by the converted entity after the
7 conversion on written request and without cost,
8 to any member or director, as the case may be, of
9 the converting entity or the converted entity;
10 and;

11 (E) That the approval of the plan of conversion was
12 duly authorized and complied with the laws under
13 which it was incorporated, formed, or organized.

14 (b) The articles of conversion shall be delivered to the
15 department director. The converted entity, if a domestic
16 corporation, shall attach a copy of its articles of
17 incorporation with the articles of conversion.

18 (c) If the department director finds that the articles of
19 conversion satisfy the requirements provided by law, and that
20 all required documents are filed, the department director, after
21 all fees have been paid shall:

22 (1) Stamp the articles of conversion and include the date
23 of the filing;

1 (2) File the document in the department director's office;

2 and

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

5 SECTION 3. Chapter 414D, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "§414D-__ Effect of conversion. When a conversion becomes
9 effective:

10 (1) The converting entity shall continue to exist without
11 interruption, but in the organizational form of the
12 converted entity;

13 (2) All rights, title, and interest in all real estate and
14 other property owned by the converting entity shall
15 automatically be owned by the converted entity without
16 reversion or impairment, subject to any existing liens
17 or other encumbrances;

18 (3) All liabilities and obligations of the converting
19 entity shall automatically be liabilities and
20 obligations of the converted entity without impairment
21 or diminution due to the conversion;

S.B. NO. 893

1 (4) The rights of creditors of the converting entity shall
2 continue against the converted entity and shall not be
3 impaired or extinguished by the conversion;

4 (5) Any action or proceeding pending by or against the
5 converting entity may be continued by or against the
6 converted entity without any need for substitution of
7 parties;

8 (6) If the converted entity is a foreign corporation or
9 other business entity incorporated under a law other
10 than the law of this State, the converted entity shall
11 file with the director:

12 (A) An agreement that the converted entity may be
13 served with process in this State in any action
14 or proceeding for the enforcement of any
15 liability or obligation of the converting
16 domestic corporation; and

17 (B) An irrevocable appointment of a resident of this
18 State, including the street address, as its agent
19 to accept service of process in any such
20 proceeding."

21 SECTION 4. Section 414D-149, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:

1 "(a) A director shall discharge the director's duties as a
2 director, including the director's duties as a member of a
3 committee:

4 (1) In good faith;

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

7 ~~[(2)]~~ (3) With the care an ordinarily prudent person in a
8 like position would exercise under similar
9 circumstances; and

10 ~~[(3)]~~ (4) In a manner the director reasonably believes to
11 be in the best interests of the corporation."

12 SECTION 5. Section 414D-150, Hawaii Revised Statutes, is
13 amended as follows:

14 (1) By amending subsection (b) to read as follows:

15 "(b) A transaction in which a director has a conflict of
16 interest may be approved if~~[-]~~ the director does not vote on any
17 matter in which the director has the conflict and:

18 (1) In the case of a public benefit corporation, the
19 transaction is approved by the attorney general,
20 before or after the transaction is consummated;

21 (2) The material facts of the transaction and the
22 director's interest were disclosed or known to the
23 board of directors or a committee of the board and the

1 transaction was authorized, approved, or ratified by
2 the board or committee of the board; or

3 (3) The material facts of the transaction and the
4 director's interest were disclosed or known to the
5 members and they authorized, approved, or ratified the
6 transaction."

7 (2) By amending subsections (d) and (e) to read as
8 follows:

9 "(d) For purposes of subsection (b), a conflict of interest
10 transaction is authorized, approved, or ratified if it receives
11 the affirmative vote of a majority of the directors either on
12 the board or on the committee, who have no direct or indirect
13 interest in the transaction; provided that a transaction may not
14 be authorized, approved, or ratified under this section by a
15 single director. If a majority of the directors on the board
16 who have no direct or indirect interest in the transaction vote
17 to authorize, approve, or ratify the transaction, a quorum is
18 present for the purpose of taking action under this section.
19 The presence of [~~or a vote cast by~~] a director with a direct or
20 indirect interest in the transaction does not affect the
21 validity of any action taken under subsection [†](b)(2)[†];
22 provided the transaction is otherwise approved as provided in
23 subsection (b).

S.B. NO. 893

1 (e) For purposes of subsection [†](b)(3)[†], a conflict of
2 interest transaction is authorized, approved, or ratified by the
3 members if it receives a majority of the votes entitled to be
4 counted under this subsection. Votes [~~cast by or~~] voted under
5 the control of a director who has a direct or indirect interest
6 in the transaction, and votes cast by or voted under the control
7 of an entity described in subsection (c)(1), may not be counted
8 in a vote of members to determine whether to authorize, approve,
9 or ratify a conflict of interest transaction under subsection
10 [†](b)(3)[†]. The vote of these members, however, is counted in
11 determining whether the transaction is approved under other
12 sections of this chapter. A majority of the voting power,
13 whether or not present, that [~~are~~] is entitled to be counted in
14 a vote on the transaction under this subsection constitutes a
15 quorum for the purpose of taking action under this section."

16 SECTION 6. Section 414D-155, Hawaii Revised Statutes, is
17 amended by amending by amending subsection (a) to read as
18 follows:

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

21 (1) In good faith;

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

S.B. NO. 893

Report Title:

Nonprofit Corporations

Description:

Amend chapter 414D, Hawaii Revised Statutes, to impose a duty of loyalty on directors and officers of nonprofit corporations, to prohibit directors from voting on matters where they have a conflict of interest, to recodify provisions that would allow nonprofit corporations to convert into and out of domestic nonprofit corporations, and to increase the length of time that the Attorney General has to review proposed dissolutions of public benefit corporations.

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 purposes of this bill are to amend chapter 414D, Hawaii Revised Statutes, to recodify provisions that would allow nonprofit corporations to convert into and out of domestic nonprofit corporations, to add a duty of loyalty for directors and officers of nonprofit corporations and to prohibit a director from voting where the director has a conflict of interest, and to increase the length of time that the Attorney General has to review proposed dissolutions of public benefit corporations.

MEANS: Add three new sections to chapter 414D and amend sections 414D-149(a), 414D-150(b), (d), and (e), 414D-155(a), and 414D-233(b), Hawaii Revised Statutes.

JUSTIFICATION: Act 37, Session Laws of Hawaii 2012, repealed sections of chapter 414D, Hawaii Revised Statutes, that would allow a nonprofit corporation to convert to a foreign nonprofit corporation, or any other "business entity." The purpose of the Act was to preclude nonprofit corporations from converting to for-profit entities, but the Act also repealed provisions that would allow domestic and foreign nonprofit corporations to convert into each other. This bill will restore provisions that allow foreign nonprofit corporations to convert into domestic nonprofit corporations and visa versa.

In addition to other duties owed to nonprofit corporations, directors and officers should be explicitly held to the duty of loyalty to the corporation. This bill codifies that requirement into the statutes governing nonprofit corporations. Under existing law, directors can vote on matters where they have a conflict of interest as long as certain other conditions are met. This bill would

explicitly prohibit a director from voting where there is a conflict of interest. These provisions taken together will help to ensure that nonprofit corporations are governed with the interest of their intended beneficiaries and the public at large and the decisions of the officers and directors of the corporation are not influenced by other competing interests or loyalties.

The bill will also provide more time for the Attorney General to review proposed dissolutions by giving the Attorney General 20 business days to conduct these reviews.

Impact on the public: None other than as described above.

Impact on the department and other agencies: None.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	ATG 100.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.