
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 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;



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



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

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

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



1 date of the conversion. If the department director finds that
2 the statement satisfies the requirements provided by law, the
3 department director, after all fees have been paid, shall:

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

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

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 a
18 statement certifying the following:

- 19 (1) The name, form of entity, and state or country of
- 20 incorporation of the converting and converted
- 21 entities;



- 1 (2) That a plan of conversion has been approved;
- 2 (3) That an executed plan of conversion is on file at the
3 principal place of business of the converting entity
4 and stating the address thereof;
- 5 (4) That a copy of the plan of conversion shall be
6 furnished by the converting entity prior to the
7 conversion or by the converted entity after the
8 conversion on written request and without cost, to any
9 member or director, as applicable, of the converting
10 entity or the converted entity; and
- 11 (5) That the approval of the plan of conversion was duly
12 authorized and complied with the laws under which it
13 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 all
20 required documents are filed, the department director, after all
21 fees have been paid, shall:



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

3 (2) File the document in the department director's office;
4 and

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

7 §414D- **Effect of conversion.** When a conversion becomes
8 effective:

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

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

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



- 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; and
- 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."



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

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

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

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

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

14 SECTION 3. Section 414D-150, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsection (b) to read:

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



- 1 (1) In the case of a public benefit corporation, the
2 transaction is approved by the attorney general,
3 before or after the transaction is consummated;
- 4 (2) The material facts of the transaction and the
5 director's interest were disclosed or known to the
6 board of directors or a committee of the board and the
7 transaction was authorized, approved, or ratified by
8 the board or committee of the board; or
- 9 (3) The material facts of the transaction and the
10 director's interest were disclosed or known to the
11 members and they authorized, approved, or ratified the
12 transaction."

13 2. By amending subsections (d) and (e) to read:

14 "(d) For purposes of subsection (b), a conflict of
15 interest transaction is authorized, approved, or ratified if it
16 receives the affirmative vote of a majority of the directors
17 either on the board or on the committee, who have no direct or
18 indirect interest in the transaction; provided that a
19 transaction may not be authorized, approved, or ratified under
20 this section by a single director. If a majority of the
21 directors on the board who have no direct or indirect interest



1 in the transaction vote to authorize, approve, or ratify the
2 transaction, a quorum is present for the purpose of taking
3 action under this section. The presence of [~~or a vote cast by~~]
4 a director with a direct or indirect interest in the transaction
5 does not affect the validity of any action taken under
6 subsection [†] (b) (2) [†]; provided that the transaction is
7 otherwise approved as provided in subsection (b).

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



1 a vote on the transaction under this subsection constitutes a
2 quorum for the purpose of taking action under this section."

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

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

7 (1) In good faith;

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

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

13 [~~3~~] (4) In a manner the officer reasonably believes to be
14 in the best interests of the corporation."

15 SECTION 5. Section 414D-233, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

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



1 indicated in writing that the attorney general will take no
2 action in respect to, the transfer or conveyance, whichever is
3 earlier."

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2050.

7



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; prohibit a director from voting on any matter in which the director has a conflict; and increase the length of time the attorney general has to review proposed dissolutions of public benefit corporations. Effective 07/01/2050. (SD1)

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