

JAN 24 2018

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

"(a) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated ~~representative~~."

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

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

(1) In good faith;

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

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

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

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

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

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

12 "(a) A corporation other than a public benefit corporation
13 may purchase its memberships if, after the purchase is
14 completed:

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

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

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:



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BY REQUEST

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S.B. NO. 2147

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

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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, 414D-155, and 414D-222, 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 amendments to chapter 414D, HRS, clarify ambiguities in the current law about whether a director may be a non-voting director and whether directors of membership corporations may be designated, 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

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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.

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