

A Bill for an Act Relating to Distributions by Nonprofit Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Nonprofit Corporations Act currently prohibits any distributions from nonprofit corporations except upon dissolution. For example, this prohibition bars public benefit corporations organized and operated as supporting organizations from making current distributions to their supported organizations. The adoption of the Hawaii Nonprofit Corporations Act was not intended to prohibit such current distributions. Federal law already permits such distributions.

Therefore, the purpose of this Act is to permit current distributions by public benefit corporations to their public benefit corporation members and affiliates; provided that the distributions are in accordance with the distributing public benefit corporations' purposes and will not jeopardize their liquidity.

SECTION 2. Section 414D-14, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Affiliate” means an entity that directly or indirectly controls, is controlled by, or is under common control with the public benefit corporation. Control includes the power to select the public benefit corporation’s board of directors.”

SECTION 3. Section 414D-232, Hawaii Revised Statutes, is amended to read as follows:

“§414D-232 Authorized distributions. (a) A corporation may purchase its memberships if, after the purchase is completed:

- (1) The corporation would be able to pay its debts as they become due in the usual course of its activities; and
- (2) The corporation’s total assets would [~~at least~~] be equal to at least the sum of its total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with part XIII.

(c) The public benefit corporation, in conformity with its purposes, may make distributions to and confer benefits on a member or an affiliate that is another public benefit corporation if, after any distribution is completed:

- (1) The public benefit corporation would be able to pay its debts as they become due in the usual course of its activities; and
- (2) The public benefit corporation’s total assets would be equal to at least the sum of its total liabilities.”

SECTION 4. Section 414D-245, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A dissolved corporation continues its corporate existence but ~~may~~ shall not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (1) Preserving and protecting its assets and minimizing its liabilities;
- (2) Discharging or making provision for discharging its liabilities and obligations;
- (3) Disposing of its properties that will not be distributed in kind;
- (4) Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which ~~condition~~ occurs by reason of the dissolution~~[,]~~ in accordance with ~~such~~ that condition;
- (5) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
- (6) If the corporation is a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, ~~or~~ transferring, subject to any contractual or legal requirement, its assets to one or more persons described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit corporations;
- (7) If the corporation is not a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefiting or serving; and
- (8) Doing every other act necessary to wind up and liquidate its assets and affairs.”

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

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

(Approved April 21, 2010.)