

JAN 25 2012

A BILL FOR AN ACT

RELATING TO CONVERSIONS BY NONPROFIT CORPORATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 414D-207, Hawaii Revised Statutes, is
2 repealed.

3 [~~"§414D-207—Conversions into and from corporations.—(a)—~~
4 ~~A domestic corporation may adopt a plan of conversion and~~
5 ~~convert to a foreign corporation or any other business entity~~
6 ~~if:~~

7 ~~(1) The board of directors and members of the domestic~~
8 ~~corporation approve a plan of conversion in the manner~~
9 ~~prescribed by section 414D-202 and if the conversion~~
10 ~~is treated as a merger to which the converting entity~~
11 ~~is a party and not the surviving entity;~~

12 ~~(2) The conversion is permitted by and complies with the~~
13 ~~laws of the state or country in which the converted~~
14 ~~entity is to be incorporated, formed, or organized;~~
15 ~~and the incorporation, formation, or organization of~~
16 ~~the converted entity complies with those laws;~~

17 ~~(3) At the time the conversion becomes effective, each~~
18 ~~member of the converting entity, unless otherwise~~

1 ~~agreed to by the member or directors, owns an equity~~
2 ~~interest or other ownership interest in, and is a~~
3 ~~shareholder, partner, member, or other owner 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 or other business entity may~~
13 ~~adopt a plan of conversion and convert to a domestic corporation~~
14 ~~if the conversion is permitted by and complies with the laws of~~
15 ~~the state or country in which the foreign corporation or other~~
16 ~~business entity is incorporated, formed, or organized.~~

17 ~~(c) A plan of conversion shall set forth:~~

18 ~~(1) The name of the converting entity and the converted~~
19 ~~entity;~~

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

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, formed, or organized; and~~

5 ~~(4) The manner and basis of converting the shares or other~~
6 ~~forms of ownership, of the converting entity into~~
7 ~~shares or other forms of ownership, of the converted~~
8 ~~entity, or any combination thereof.~~

9 ~~(d) A plan of conversion may set forth any other~~
10 ~~provisions relating to the conversion that are not prohibited by~~
11 ~~law, including without limitation the initial bylaws and~~
12 ~~officers of the converted entity.~~

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

1 ~~authorized representative and stating that the plan of~~
2 ~~conversion has been abandoned in accordance with applicable law,~~
3 ~~is filed with the department director prior to the effective~~
4 ~~date of the conversion. If the department director finds that~~
5 ~~the statement satisfies the requirements provided by law, the~~
6 ~~department director, after all fees have been paid, shall:~~

7 ~~(1) Stamp the statement and include the date of the~~
8 ~~filing,~~

9 ~~(2) File the document in the department director's office,~~
10 ~~and~~

11 ~~(3) Issue a certificate of abandonment to the converting~~
12 ~~entity or its authorized representatives.~~

13 ~~(f) Once the statement provided in subsection (e) is filed~~
14 ~~with the department director, the conversion shall be deemed~~
15 ~~abandoned and shall not be effective."]~~

16 SECTION 2. Section 414D-208, Hawaii Revised Statutes, is
17 repealed.

18 [~~§414D-208 Articles of conversion. (a) If a plan of~~
19 ~~conversion has been approved in accordance with section 414D-202~~
20 ~~and has not been abandoned, articles of conversion shall be~~
21 ~~executed by an officer or other duly authorized representative~~
22 ~~of the converting entity and shall set forth:~~

- 1 ~~(1) A statement certifying the following:~~
- 2 ~~(A) The name, form of entity, and state or country of~~
- 3 ~~incorporation, formation, or organization of the~~
- 4 ~~converting and converted entities;~~
- 5 ~~(B) That a plan of conversion has been approved;~~
- 6 ~~(C) That an executed plan of conversion is on file at~~
- 7 ~~the principal place of business of the~~
- 8 ~~converting entity and stating the address~~
- 9 ~~thereof; and~~
- 10 ~~(D) That a copy of the plan of conversion shall be~~
- 11 ~~furnished by the converting entity prior to the~~
- 12 ~~conversion or by the converted entity after the~~
- 13 ~~conversion on written request and without cost,~~
- 14 ~~to any member or director, as the case may be, of~~
- 15 ~~the converting entity or the converted entity;~~
- 16 ~~and~~
- 17 ~~(2) If the converting entity is a domestic or foreign~~
- 18 ~~corporation or other entity, a statement that the~~
- 19 ~~approval of the plan of conversion was duly authorized~~
- 20 ~~and complied with the laws under which it was~~
- 21 ~~incorporated, formed, or organized.~~

1 ~~(b) The articles of conversion shall be delivered to the~~
2 ~~department director. The converted entity, if a domestic~~
3 ~~corporation, domestic professional corporation, domestic~~
4 ~~nonprofit corporation, domestic general partnership, domestic~~
5 ~~limited partnership, or domestic limited liability company shall~~
6 ~~attach a copy of its respective registration documents with the~~
7 ~~articles of conversion.~~

8 ~~(c) If the department director finds that the articles of~~
9 ~~conversion satisfy the requirements provided by law, and that~~
10 ~~all required documents are filed, the department director, after~~
11 ~~all fees have been paid shall:~~

12 ~~(1) Stamp the articles of conversion and include the date~~
13 ~~of the filing,~~

14 ~~(2) File the document in the department director's office,~~
15 ~~and~~

16 ~~(3) Issue a certificate of conversion to the converted~~
17 ~~entity or its authorized representatives."]~~

18 SECTION 3. Section 414D-210, Hawaii Revised Statutes, is
19 repealed.

20 ~~["§414D-210 Effect of conversion. When a conversion~~
21 ~~becomes effective:~~

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- 1 ~~(1) The converting entity shall continue to exist without~~
2 ~~interruption, but in the organizational form of the~~
3 ~~converted entity;~~
- 4 ~~(2) All rights, title, and interest in all real estate and~~
5 ~~other property owned by the converting entity shall~~
6 ~~automatically be owned by the converted entity without~~
7 ~~reversion or impairment, subject to any existing liens~~
8 ~~or other encumbrances;~~
- 9 ~~(3) All liabilities and obligations of the converting~~
10 ~~entity shall automatically be liabilities and~~
11 ~~obligations of the converted entity without impairment~~
12 ~~or diminution due to the conversion;~~
- 13 ~~(4) The rights of creditors of the converting entity shall~~
14 ~~continue against the converted entity and shall not be~~
15 ~~impaired or extinguished by the conversion;~~
- 16 ~~(5) Any action or proceeding pending by or against the~~
17 ~~converting entity may be continued by or against the~~
18 ~~converted entity without any need for substitution of~~
19 ~~parties;~~
- 20 ~~(6) The shares and other forms of ownership in the~~
21 ~~converting entity that are to be converted into~~
22 ~~shares, or other forms of ownership, in the converted~~

1 ~~entity as provided in the plan of conversion shall be~~
2 ~~converted;~~

3 ~~(7) A shareholder, partner, member, or other owner of the~~
4 ~~converted entity shall be liable for the debts and~~
5 ~~obligations of the converting entity that existed~~
6 ~~before the conversion takes effect; provided that the~~
7 ~~shareholder, partner, member, or other owner:~~

8 ~~(A) Agreed in writing to be liable for the debts or~~
9 ~~obligations;~~

10 ~~(B) Was liable under applicable law prior to the~~
11 ~~effective date of the conversion for the debts or~~
12 ~~obligations; or~~

13 ~~(C) Becomes liable under applicable law for existing~~
14 ~~debts and obligations of the converted entity by~~
15 ~~becoming a shareholder, partner, member, or other~~
16 ~~owner of the converted entity.~~

17 ~~(8) If the converted entity is a foreign corporation or~~
18 ~~other business entity incorporated, formed, or~~
19 ~~organized under a law other than the law of this~~
20 ~~State, the converted entity shall file with the~~
21 ~~director:~~


1 ~~(A) An agreement that the converted entity may be~~
2 ~~served with process in this State in any action~~
3 ~~or proceeding for the enforcement of any~~
4 ~~liability or obligation of the converting~~
5 ~~domestic corporation;~~

6 ~~(B) An irrevocable appointment of a resident of this~~
7 ~~State, including the street address, as its agent~~
8 ~~to accept service of process in any such~~
9 ~~proceeding; and~~

10 ~~(C) An agreement for the enforcement, as provided in~~
11 ~~this chapter, of the right of any dissenting~~
12 ~~shareholder, partner, member, or other owner to~~
13 ~~receive payment for their interest against the~~
14 ~~converted entity."]~~

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken.

17 SECTION 5. This Act shall take effect upon its approval.

18
19 INTRODUCED BY: 

20 BY REQUEST

Report Title:

Nonprofit Corporations; Conversions

Description:

Repeals provisions regarding conversions by nonprofit 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 CONVERSIONS BY
NONPROFIT CORPORATIONS.

PURPOSE: The purposes of this bill are to amend
chapter 414D, Hawaii Revised Statutes, to
repeal provisions that authorize nonprofit
corporations to convert to other legal
entities.

MEANS: Repeal sections 414D-207, 414D-208, and 414D-
210, Hawaii Revised Statutes (HRS).

JUSTIFICATION: These provisions are not consistent with the
Revised Model Nonprofit Corporations Act upon
which chapter 414D, HRS, is based, and allow
for the conversion of the assets of
charitable corporations to non-charitable
purposes. The existing conversion provisions
are inconsistent with the "nondistribution
constraint" imposed on nonprofit
corporations. For example, section 414D-19
provides, "no part of the income or profit of
a corporation shall be distributed to its
members, directors, or officers." The
existing provisions also allow charitable
corporations to do an "end run" on provisions
that require notice to and consent by the
Attorney General for mergers, dissolutions,
and the sale of substantially all of the
assets of such corporations. The conversion
of charitable corporations to non-charitable
entities would allow for the diversion of
donor restricted gifts and endowments held by
such corporations, in a manner inconsistent
with section 517E-6, HRS. To the extent that
a nonprofit corporation is exempt from
federal tax under section 501(c)(3) of the
Internal Revenue Code, such a conversion
would not be permissible.

Impact on the public: None.

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.