

JAN 19 2007

A BILL FOR AN ACT

RELATING TO DESTINATION CLUBS.

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

- 1 SECTION 1. The purposes of this Act are to:
- 2 (1) Provide consumer protections and ensure responsible
- 3 operations of destination clubs;
- 4 (2) Prohibit unregistered activity and require every
- 5 operator of a destination club that:
- 6 (A) Sells or offers for sale destination club
- 7 memberships to persons in this State; or
- 8 (B) Provides club services in this State for use by
- 9 destination club members, to register biennially
- 10 with the director of commerce and consumer
- 11 affairs and be subject to this chapter;
- 12 (3) Require full and fair disclosures to members and
- 13 prospective members of destination clubs; and
- 14 (4) Establish financial responsibility requirements
- 15 regarding club operators' financial obligations to
- 16 destination club members.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 DESTINATION CLUBS

6 § -1 **Applicability of this chapter.** This chapter shall
7 apply to all destination clubs that provide club services in
8 this State or that offer for sale destination club memberships
9 to persons in this State.

10 § -2 **Definitions.** Unless the context otherwise
11 requires, the following terms shall mean as follows:

12 "Accommodation" means any apartment, residence, condominium
13 or cooperative unit, cabin, lodge, hotel or motel room, boat, or
14 any private or commercial structure that is real or personal
15 property and suitable for overnight use by one or more
16 individuals.

17 "Additional fees" means any fees other than annual dues, a
18 membership deposit, and an initiation fee payable by a member to
19 a club operator in connection with a destination club
20 membership. Fees may include but are not limited to optional
21 services and amenities, consumables, daily accommodation, or
22 usage fees as outlined in the membership agreement.



1 "Advertising material" means any written, oral, or
2 electronic communication that is directed to or targeted at
3 persons within this State or relating to accommodations or other
4 club services located in this State and contains a promotion,
5 inducement, or offer to obtain a destination club membership.
6 Advertising material include but are not limited to brochures,
7 pamphlets, radio and television scripts, electronic media,
8 telephone, and direct mail solicitations, and other means of
9 promotion.

10 "Annual dues" means any fee paid on an annual or more
11 frequent basis to the club operator pursuant to the membership
12 agreement for the right to use club services during such year or
13 portion thereof.

14 "Club operator" means the person legally responsible for
15 providing club services to members and for performing all other
16 obligations pursuant to the destination club membership
17 agreement, including any refund of the membership deposit. Club
18 operator shall include any affiliate operations or third parties
19 that offer for sale destination club memberships.

20 "Club services" means the services provided by the club
21 operator to members, pursuant to the priorities, restrictions,
22 and limitations set forth in the membership agreement, and may



1 include but are not limited to accommodations, reservations for
2 temporary use of accommodations, and associated services.

3 "Conspicuous type" means a statement in boldface and
4 conspicuous type of at least ten points, such statements always
5 being larger than all other statements adjacent to or
6 surrounding it in the body of the document in which the
7 statement is contained.

8 "Destination club" means a program offered by a club
9 operator to its members where:

- 10 (1) Members pay a membership deposit and annual dues and
11 may be required to pay an initiation fee or additional
12 fees, or both;
- 13 (2) The member or the club operator, subject to the terms
14 and conditions of the membership agreement, may
15 terminate the membership at any time;
- 16 (3) Members have rights to temporary use of accommodations
17 and other club services provided by the club operator
18 pursuant to the terms and conditions of the membership
19 agreement, which may be on a first-come first-served,
20 random, priority, and/or other basis and need not be
21 the same for each member;



1 (4) Members receive no ownership interest in either the
2 club operator or the club operator's assets, including
3 any accommodations made available for temporary use to
4 members. A security interest to secure any
5 contractual obligations to members shall not be deemed
6 an ownership interest; and

7 (5) The membership deposit will be refunded upon
8 termination of membership in accordance with the terms
9 and conditions of the membership agreement.

10 "Destinations" means the geographic areas available from
11 time to time at which temporary use of accommodations are
12 offered.

13 "Director" means the director of commerce and consumer
14 affairs.

15 "Initiation fee" means a non-refundable fee assessed to a
16 member by a club operator at the commencement of membership in
17 the destination club. Any initiation fee payable by a member
18 to a club operator shall not exceed the membership deposit
19 amount paid by such member.

20 "Member" means a person who enters into a membership
21 agreement with a club operator for the non-commercial use and
22 enjoyment of club services.



1 "Membership" means that which represents a member's
2 participation in a destination club in accordance with the terms
3 and conditions of the membership agreement. Each membership
4 shall solely represent the right to receive club services and a
5 refund of the membership deposit from the club operator in
6 accordance with the terms and conditions of the membership
7 agreement.

8 "Membership agreement" means the agreement establishing the
9 legal relationship between a member and a club operator
10 regarding:

- 11 (1) The member's rights and obligations to receive club
12 services and a refund of the membership deposit from
13 the club operator;
- 14 (2) The club operator's obligations to provide the club
15 services and refund the membership deposit; and
- 16 (3) The terms and conditions by which the relationship may
17 be terminated by either the member or club operator.

18 "Membership deposit" means the refundable amount assessed
19 to the member by the club operator at the commencement of
20 membership in the destination club. All terms and conditions
21 related to the refund of the membership deposit shall be
22 contained in the membership agreement.



1 § -3 **Registration requirement.** (a) No person may sell
2 or offer for sale memberships to any person in this State, or
3 offer to provide or provide club services in this State to any
4 member, or otherwise hold oneself out as a club operator or
5 destination club without a valid registration previously
6 obtained under and in compliance with this chapter and its
7 rules. A valid registration obtained by a club operator under
8 this chapter shall also include the club operator's authorized
9 agents and employees.

10 (b) Notwithstanding subsection (a), a club operator that
11 provided club services in the State to members while holding a
12 valid registration from the director, and subsequently fails to
13 receive a valid renewal of registration from the director, may
14 continue to provide club services until all reservations made
15 for temporary use of accommodations in the State by members of
16 the destination club during the period when the club operator
17 held a valid registration are honored.

18 (c) Any person who violates this section, or who uses any
19 word, title, or representation to induce the false belief that
20 the person is validly registered under this chapter and its
21 rules, shall be subject to a fine of \$500 to \$25,000 per



1 violation, and each day's violation shall be deemed a separate
2 offense.

3 (d) In addition to any other remedies or sanctions
4 provided in this chapter, any person who violates this section
5 or who uses any word, title, or representation to induce the
6 false belief that the person is validly registered under this
7 chapter and its rules, shall be guilty of a misdemeanor.

8 § -4 **Registration process.** (a) The club operator shall
9 provide biennially a completed application as part of its
10 registration with the director. No application shall be deemed
11 complete, nor shall the same be accepted for registration,
12 unless the required information is provided separately tabbed
13 and numbered in the exact order as follows:

14 (1) An application for registration on a form prescribed
15 by the director. The information contained in the
16 application shall include but not be limited to the
17 following:

18 (A) The club operator's legal business or trade name,
19 mailing address, and business location;

20 (B) The name of the destination club;

21 (C) The full names, business addresses, and business
22 telephone numbers of the club operator's five



1 most senior executive officers responsible for
2 its management, and its registered agent for
3 service of process in this State;

4 (D) A statement whether the club operator is a
5 domestic or foreign person, its state and date of
6 creation, and if a foreign person, the date it
7 registered to do business in this State; and

8 (E) The date on which the destination club registered
9 any fictitious name, if the destination club is
10 operating under a fictitious or trade name;

11 (2) A description of club services available, including
12 identification of destinations and the number of
13 accommodations at each destination, and the location
14 of any accommodations opened and available for member
15 use that are included as part of the destination club;

16 (3) If membership in the destination club is limited to a
17 specified number of members, the number of memberships
18 available for sale at the time of registration;

19 (4) A copy of the disclosure statement as described in
20 section -9;

21 (5) A certification that the club operator has the
22 accommodations and nights available for temporary use



1 to meet the total number of nights committed to all
2 members that have yet to terminate their membership
3 and receive a refund, across all membership plans
4 during the year;

5 (6) A certification that the club operator complies with
6 section -10;

7 (7) A statement of the club operator's ownership, control,
8 or legal right to use each accommodation available for
9 member use;

10 (8) A certificate of good standing issued by the business
11 registration division of the State that shall be dated
12 not more than thirty days before the date of
13 submission of the application;

14 (9) A copy of the escrow agreement, if applicable, meeting
15 the requirements of section -7;

16 (10) A certification that the destination club is in
17 compliance with section -11 governing destination
18 club destinations;

19 (11) An irrevocable appointment of the director to receive
20 service of any lawful process as required by section
21 -22; and

22 (12) The registration fee.



1 (b) All applications for registration required by this
2 section shall be deemed accepted if the director has not acted
3 upon the applications within sixty days following receipt of the
4 same; except that this subsection shall not apply to any
5 application which is incomplete and does not contain all of the
6 information required to be submitted to the director under this
7 section.

8 (c) No person shall be granted a registration unless the
9 appropriate fees have been paid. Unless otherwise provided by
10 law, the director shall establish the amount for all fees and
11 expenses by rules adopted pursuant to chapter 91. The fees to
12 be established by the director may include but not be limited to
13 an application fee, filing fee, registration fee, renewal fee,
14 compliance resolution fund fee, and other reasonable and
15 necessary fees related to the director's administrative costs.
16 Unless otherwise provided by law, the fees shall be deposited
17 with the director to the credit of the compliance resolution
18 fund established pursuant to section 26-9(o).

19 (d) A registration under this chapter shall not be
20 assignable and the club operator shall not be permitted to
21 conduct business under more than one name except as registered,
22 or as otherwise disclosed as a fictitious or trade name in



1 accordance with this chapter. A club operator desiring to
2 change its name other than upon renewal of a registration shall
3 promptly notify the director of any such change.

4 (e) The club operator registration shall be subject to
5 renewal by the director by June 30 of the year immediately
6 following the end of the biennial registration period, provided
7 that this subsection shall not relieve the club operator from
8 the obligation to notify the director promptly upon the
9 discovery of any material errors or omissions in any information
10 submitted to the director as of the date the registration was
11 made, nor shall it relieve the club operator of its obligation
12 to promptly file material amendments as a result of the material
13 errors or omissions to the disclosure statement and to promptly
14 supply such material amendments to purchasers.

15 § -5 **Consultant review of filing.** The director may
16 contract with private consultants in connection with the review
17 of the filing required of a club operator pursuant to sections
18 -4 and -10. The cost of contracting private consultants
19 shall be borne by the club operator. The consultant shall
20 thoroughly review the filing for the purpose of examining its
21 compliance with the requirements of this chapter and any rule
22 adopted by the director, including the documentation and other



1 provided materials. Upon completing the review, the consultant
 2 shall provide a written analysis of the filing and an opinion of
 3 the nature and extent to which it complies with this chapter and
 4 adopted rules. The director may adopt rules pursuant to chapter
 5 91 to further delineate the duties of the consultant in
 6 undertaking the review and analysis required pursuant to this
 7 section.

8 § -6 Rescission. (a) A member may cancel a membership
 9 agreement before midnight of the seventh calendar day after the
 10 date the member signs the membership agreement or the date the
 11 member receives the required disclosure statement, whichever is
 12 later.

13 (b) The club operator shall furnish each member at the
 14 time the membership agreement is signed the following
 15 cancellation notice which may be used to cancel a member's
 16 membership:

17 NOTICE OF CANCELLATION OF
 18 DESTINATION CLUB MEMBERSHIP AGREEMENT

19 _____
 20 Date Membership Agreement
 21 Signed



1 _____
 2 Date Disclosure Statement
 3 Received

4 YOU MAY CANCEL THIS TRANSACTION WITHIN SEVEN (7) CALENDAR
 5 DAYS AFTER SIGNING THE MEMBERSHIP AGREEMENT OR AFTER YOUR
 6 RECEIPT OF THE DESTINATION CLUB DISCLOSURE STATEMENT, WHICHEVER
 7 OCCURS LATER. YOU SHALL BE ENTITLED TO A FULL REFUND OF ANY
 8 MONEY PAID BY YOU WITHIN FIFTEEN (15) BUSINESS DAYS AFTER THE
 9 DATE THE NOTICE OF CANCELLATION IS RECEIVED.

10 TO CANCEL THIS TRANSACTION, PLEASE SEND BY FACSIMILE,
 11 OVERNIGHT COMMERCIAL DELIVERY, U.S. MAIL, OR HAND-DELIVERY A
 12 SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER
 13 WRITTEN NOTICE TO:

14 _____

15 (Name of Club Operator)

16 at _____

17 (Address of Club Operator)

18 NO LATER THAN MIDNIGHT OF:

19 _____

20 I HEREBY CANCEL THIS TRANSACTION.

21 _____

22 Purchaser's signature

Date



1 (c) A member may not waive the right of cancellation under
2 this section. A membership agreement containing a waiver is
3 voidable by the member.

4 (d) If a member elects to cancel a membership agreement
5 before the end of the seven-day cancellation period, the notice
6 of cancellation is effective upon the date sent by facsimile,
7 overnight commercial delivery, United States mail, or hand-
8 delivered to the destination club at the address or facsimile
9 number provided in the membership agreement.

10 (e) Cancellation is without penalty, and all payments made
11 by the member before the seven-day cancellation period shall be
12 refunded in whole on or before the fifteenth business day after
13 the date on which the club operator receives a timely notice of
14 cancellation.

15 (f) The club operator shall not negotiate, transfer, sell,
16 or assign a member's note or other evidence of indebtedness to a
17 third party prior to midnight of the seventh calendar day
18 following the day the membership agreement was signed or the day
19 the member receives the required disclosure statement, whichever
20 is later.

21 (g) Upon cancellation by the member in accordance with
22 this section, the club operator shall cancel and return any



1 negotiable instrument executed by the member in connection with
2 the membership and take any action necessary or appropriate to
3 terminate promptly any security interest created in the
4 transaction.

5 § -7 **Escrow during rescission.** (a) Unless otherwise
6 provided in this chapter, the club operator shall establish an
7 escrow account with an independent escrow agent for the purpose
8 of protecting any payments made in connection with memberships
9 sold in Hawaii during the seven-day cancellation period in
10 connection with the obtaining of a membership. The escrow agent
11 shall be a bank, savings and loan association, or a trust
12 company authorized to do business in the State under an escrow
13 arrangement or a corporation licensed as an escrow depository
14 under chapter 449.

15 The club operator or escrow agent of the destination club
16 shall deposit in an escrow account in a federally insured
17 depository one hundred per cent of all funds received from the
18 member during the member's cancellation period.

19 The escrow agent and the club operator shall execute an
20 agreement outlining the responsibilities of each party regarding
21 the escrow of funds pursuant to this section.



1 (b) The funds or property constituting the escrow or trust
2 account may be released from escrow to:

3 (1) The member, if the member cancels in accordance with
4 section -6; or

5 (2) The club operator, upon the expiration of the
6 cancellation period in the event a cancellation notice
7 has not been submitted as provided in section -6.

8 (c) If there is a dispute relating to the funds in the
9 escrow account, the escrow agent shall maintain the funds in the
10 escrow account until:

11 (1) The escrow agent receives written directions that have
12 been agreed to and signed by all parties; or

13 (2) A civil action relating to the disputed funds is
14 filed.

15 (d) If a civil action is filed under subsection (c), the
16 escrow or trust account agent shall deposit the funds with the
17 court in which the action is filed.

18 (e) A club operator is not required to comply with the
19 requirements of this section if it does not require and receive
20 payment of the membership deposit and any other required fees
21 until after the expiration of the seven-day cancellation period.



1 § -8 **Availability of accommodations.** A club operator
2 shall not sell or offer for sale a membership unless it has the
3 accommodations and nights available for temporary use to meet
4 the total number of nights committed to all members that have
5 yet to terminate their membership, across all membership plans,
6 for use during the year.

7 § -9 **Required destination club disclosures.** (a) A club
8 operator shall file with its registration or renewal with the
9 director a disclosure statement. The disclosure statement shall
10 consist of the membership agreement and any other documents
11 necessary to provide a prospective member with the disclosures
12 required by this section.

13 (b) Prior to the execution of a membership agreement, the
14 club operator shall:

15 (1) Provide the prospective member with the disclosure
16 statement; and

17 (2) Give the prospective member an opportunity to read the
18 disclosure statement.

19 (c) Each prospective member shall certify in writing to
20 the receipt of the disclosure statement on a form prescribed by
21 the director.



1 (d) The disclosure statement shall include the following
2 information:

3 (1) The legal name and address of the club operator;

4 (2) A description of the destination club, including the
5 following:

6 (A) Type of memberships being offered in the
7 destination club and, if membership in the
8 destination club is limited to a specified number
9 of members, the number of memberships available
10 for sale at the time of registration;

11 (B) The rights to club services associated with each
12 type of membership offered as part of the
13 destination club, including the number of nights
14 of use of accommodations associated with each
15 type of membership;

16 (C) The destinations, number of accommodations
17 available for temporary use, and other club
18 services offered by the destination club. If the
19 destinations, number of accommodations, or other
20 club services is subject to change, a description
21 of how and when such changes may occur and any



- 1 rights a member has as a result of any such
- 2 changes;
- 3 (D) The latest estimated availability dates (by
- 4 quarter) for any accommodations at destinations
- 5 that are under construction, in development, or
- 6 otherwise not available to members at the time of
- 7 registration or renewal but are advertised to
- 8 become available to members at some point in the
- 9 future;
- 10 (E) The procedure and rules for reservation and use
- 11 of accommodations and other club services;
- 12 (F) The procedure to cancel a reservation for
- 13 accommodations or other club services and any
- 14 penalties associated with cancellations;
- 15 (G) The ratio, as of December 31 of the year prior to
- 16 registration or renewal of registration, of the
- 17 actual number of accommodation nights promised to
- 18 members across all membership plans to the number
- 19 of accommodation nights available to members; and
- 20 (H) The rules or standard of conduct requirements
- 21 related to a member's use of club services,



1 including any restrictions on such use, and the
2 consequences of a breach of such rules;

3 (3) Description of all payments due from members to the
4 club operator, including:

5 (A) Pricing for the membership plans offered by the
6 club including the amount of the membership
7 deposit and, if applicable, the initiation fee;

8 (B) The amount of annual dues associated with each
9 membership plan and how any increases to such
10 annual dues are determined; and

11 (C) An explanation of additional fees that may be
12 charged to the member;

13 (4) A description of the member's and the club operator's
14 membership termination rights;

15 (5) The process and requirements for a member to obtain a
16 refund of the member's membership deposit pursuant to
17 the membership agreement and a description of the club
18 operator's refund obligation. This disclosure shall
19 also include:

20 (A) The number of members, if any, that have
21 terminated their memberships and have yet to
22 receive a refund of their membership deposit,



1 pursuant to the terms and conditions of the
2 membership agreement, as of December 31 of the
3 year prior to registration or renewal of
4 registration, and the maximum length of time the
5 members have been waiting to receive the
6 membership deposit refund;

7 (B) The maximum time during the past three years that
8 a member, upon termination of the member's
9 membership, has waited or is currently waiting
10 for the club operator to perform on its
11 membership deposit obligations;

12 (C) Effect of bankruptcy of the club operator on the
13 member's ability to receive a refund of the
14 member's membership deposit; and

15 (D) A statement containing the following: "Refund of
16 your Membership Deposit is subject to the terms
17 and conditions of the Membership Agreement. As a
18 result, you are advised to read carefully your
19 Membership Agreement as the refund of the
20 Membership Deposit may be conditioned upon a
21 certain number of new members joining the



1 Destination Club or otherwise may not be refunded
2 in full";

3 (6) A description of any rights to assign, transfer, sell,
4 or convey membership rights to any other persons or if
5 none, a clear explanation that membership is not
6 transferable;

7 (7) A description of the club operator's use of membership
8 deposit funds;

9 (8) A statement of whether the club operator leases
10 accommodations for member use and, if so, the
11 percentage of leased versus owned accommodations;

12 (9) A statement regarding whether the club operator
13 reserves the right, in its sole discretion, to alter
14 destinations and add, sell, lease, substitute, or
15 otherwise dispose of the accommodations and other club
16 services. The disclosure shall clearly state whether
17 the members have any right to force, limit, modify,
18 curtail, or halt any such actions;

19 (10) A statement with the following disclaimers set out in
20 conspicuous type:

21 (A) Membership in the destination club is being
22 offered exclusively for the purpose of permitting



1 persons acquiring membership to obtain temporary
2 use at identified destinations, subject to the
3 destination club's reservation policies, of
4 available destination club accommodations and
5 other club services;

6 (B) Membership in the destination club should not be
7 viewed or acquired as an investment;

8 (C) Membership in the destination club does not
9 provide the member with nor does a membership
10 constitute any ownership interest in real
11 property or in the club operator, the destination
12 club, or the accommodations or other club
13 services; and

14 (D) The club operator has certified that in
15 accordance with Hawaii law, it has available
16 financial resources necessary to meet at least
17 two-thirds of all membership deposits received
18 and not refunded. These financial resources are
19 not insured or bonded. In addition, the value of
20 the club operator's financial resources may be
21 subject to fluctuations in the value of real
22 estate. The club operator has an obligation to



1 inform promptly each member should it not be able
 2 to provide the State with the annual
 3 certification that its financial resources are
 4 equal to at least two-thirds of all its
 5 membership deposit refund obligations. A club
 6 operator is not required to make this disclosure
 7 if the club operator complies with section
 8 -10(a)(2);

9 (11) A statement set out in conspicuous type and placed
 10 immediately above the member's signature line in the
 11 membership agreement that discloses substantially the
 12 following:

13 "Purchaser's Right to Cancel During Rescission Period:

14 BY SIGNING THIS MEMBERSHIP AGREEMENT YOU ARE
 15 INCURRING AN OBLIGATION TO PURCHASE A MEMBERSHIP FROM
 16 [NAME OF DESTINATION CLUB]. YOU MAY, HOWEVER, CANCEL
 17 THIS AGREEMENT WITHOUT PENALTY OR OBLIGATION BEFORE
 18 MIDNIGHT OF THE SEVENTH (7TH) CALENDAR DAY AFTER THE
 19 DATE YOU SIGN THE MEMBERSHIP AGREEMENT OR THE DATE YOU
 20 RECEIVE THE REQUIRED DISCLOSURE STATEMENT, WHICHEVER
 21 IS LATER. IF YOU ELECT TO CANCEL THIS AGREEMENT
 22 DURING SUCH PERIOD, ANY MONEY PAID BY YOU TO [NAME OF



1 DESTINATION CLUB] DURING THIS TIME WILL BE FULLY
2 REFUNDED TO YOU.

3 IF YOU DECIDE TO CANCEL YOUR MEMBERSHIP DURING
4 THIS PERIOD, YOUR NOTICE OF CANCELLATION IS EFFECTIVE
5 UPON THE DATE SENT BY FACSIMILE, OVERNIGHT COMMERCIAL
6 DELIVERY, U.S. MAIL, OR HAND-DELIVERED TO [NAME OF THE
7 DESTINATION CLUB] AT THE ADDRESS OR FACSIMILE NUMBER
8 PROVIDED IN THE MEMBERSHIP AGREEMENT";

9 (12) A disclosure of any bankruptcy filings involving the
10 club operator, any pending or, to the club operator's
11 actual knowledge, threatened lawsuits against the club
12 operator that are material to the destination club or
13 accommodations, any judgment entered against the club
14 operator in any action brought by the director
15 pursuant to applicable state law, any material
16 litigation affecting club operations or services, or
17 any prior material violation of the financial
18 responsibility requirements under section -10;

19 (13) A statement that there is a seven-calendar-day
20 cancellation period; and

21 (14) Other disclosures required by the director, as
22 provided by rules adopted pursuant to chapter 91.



1 (e) A club operator shall amend the disclosure statement
2 to report any material errors or omissions in the information
3 submitted at the time of registration. In the event material
4 errors or omissions are discovered by the club operator, the
5 club operator shall submit to the director an amended disclosure
6 statement within twenty days after the material errors or
7 omissions become known to the club which shall specify, in
8 detail, the material change or changes that have occurred as a
9 result of the material errors or omissions.

10 § -10 **Financial responsibility.** (a) No later than June
11 30 of each year, a club operator shall include with its biennial
12 registration or renewal or, in a year when a registration or a
13 renewal is not due, as a separate submission to the director a
14 certification by the club operator's chief executive officer or
15 chief financial officer that the club operator has, as of
16 December 31 of the prior year, the appropriate financial
17 resources to pay, when due, a refund of not less than two-thirds
18 of all membership deposits received and not refunded. The chief
19 executive officer or chief financial officer shall demonstrate
20 its compliance with this section by indicating in its
21 certification adherence to one of the following:



1 (1) Net asset test. The club operator certifies that it
 2 has net assets in excess of its aggregate membership
 3 deposit refund obligations, as determined by the
 4 following net asset test calculation;

- 5 (A) Club Assets plus
- 6 (B) Cash and Marketable Securities minus
- 7 (C) Debt Secured by Club Assets must be greater than
- 8 66.66% of
- 9 (D) Membership Deposits

10 The components of the net asset test calculation are
 11 defined as follows:

12 Club assets: Fair value of all real estate,
 13 investment in real estate ventures, other related
 14 assets (including but not limited to furniture,
 15 fixtures, equipment, and other personal property) and
 16 deposits or other instruments for the acquisition of
 17 real estate, owned or controlled by the club operator
 18 as of December 31 of the year prior to when the
 19 certification is made. The fair value shall be the
 20 appraised value of such assets (with appraisals for
 21 real property conducted by unrelated licensed
 22 appraisers in accordance with Uniform Standards of



1 Professional Appraisal Practice issued by the
2 Appraisal Standards Board or, for those appraisals
3 conducted outside the United States, in accordance
4 with a similarly recognized uniform appraisal
5 standard) that were conducted not more than twenty-
6 four months before the date of the certification, with
7 appraisals for other assets based on generally
8 recognized standards, or, if appraisals have not been
9 performed for certain assets, the cost for such assets
10 excluding depreciation.

11 Cash and marketable securities. As reflected on
12 the audited consolidated financial statements of the
13 club operator as of December 31 of the year prior to
14 when the certification is made.

15 Debt secured by club assets. As reflected on the
16 audited consolidated financial statements of the club
17 operator as of December 31 of the year prior to when
18 the certification is made.

19 Membership deposits. As reflected on the audited
20 consolidated financial statements of the club operator
21 as of December 31 of the year prior to when the
22 certification is made.



1 In calculating the value of club assets, the club
2 operator may include commitments by third parties to
3 honor the club operator's membership deposit refund
4 obligations (or a portion thereof), including but not
5 limited to commercial guarantees and similar financial
6 obligations, in a form and amount acceptable to the
7 director.

8 (2) Third party commitments. The club operator has
9 commitments from third parties to meet the
10 requirements of this section. These resources may
11 include but are not limited to a commercial guarantee,
12 insurance, letter of credit, or other irrevocable
13 commitments by third parties to pay membership deposit
14 refund obligations. The adequacy of the commitments
15 is subject to the approval of the director. A
16 determination by the director shall be made within
17 sixty days of submission by the destination club and
18 approval shall not be unreasonably withheld.

19 (3) Other. Any other form of financial assurance
20 acceptable to the director that provides reasonable
21 commercial assurances that the club operator will be
22 able to meet the requirements of this section.



1 (4) Combination of (1), (2), and (3). At the discretion
2 of the director, any combination of paragraphs (1),
3 (2), and (3) that in the aggregate meet the
4 requirements of this section.

5 (b) The certification required in subsection (a) must
6 specify all of the following:

7 (1) If the club operator has not been in compliance with
8 this section since its initial registration in this
9 State, the club operator shall provide a statement
10 indicating the period of noncompliance and an
11 explanation of the circumstances.

12 (2) On the date of the certification, the club operator
13 demonstrates its compliance with one or more of the
14 provisions in subsection (a).

15 (c) In the event the club operator is unable to provide
16 certification in accordance with this section, it shall notify
17 the director no later than the deadline to submit the
18 certification. The notification shall explain why the club
19 operator is unable to make the certification and provide
20 detailed actions the club operator shall take to come into
21 compliance with this section and provide certification. The
22 director may determine whether the club operator has proposed an



1 acceptable plan to comply with this section, and if so, may
2 provide the club operator an additional period of time to
3 provide certification. If the director makes such a
4 determination, the club operator will not be deemed to be in
5 violation of this section during this period. If the director
6 does not make such a determination, the club operator shall not
7 be registered as of the date the director notifies the club
8 operator that its plans are not acceptable and the club operator
9 shall be prohibited from engaging in club business activities in
10 accordance with section -3 until the registration is again
11 declared effective.

12 (d) In the event the club operator is unable to provide
13 the certification for any reason, regardless of whether its
14 registration is deemed effective pursuant to subsection (c), the
15 club operator shall notify its members, and if the registration
16 remains effective, its prospective members, that the club
17 operator is not currently meeting the financial responsibility
18 requirements of this section and the details regarding the
19 circumstances. Upon notifying the director that it is not in
20 compliance with the requirements of this section, the club
21 operator must include the proposed form of notice that is to be
22 sent to members or prospective members. The director shall



1 determine whether the form of notice is acceptable, and once
 2 approved, the notice shall be issued no later than fifteen days
 3 after the director approves the form of notice.

4 § **-11 Destination club destinations.** A destination club
 5 shall not operate in any community, resort, or project in
 6 violation of any public or private land use or zoning
 7 restrictions that expressly prohibit destination clubs or
 8 transient or short term use of accommodations for periods of
 9 less than thirty consecutive days.

10 § **-12 Prohibited acts.** A registrant shall not:

- 11 (1) Provide club services, including accommodations,
 12 within this State or offer for sale memberships to
 13 persons within this State without registering with the
 14 director in accordance with section -4;
- 15 (2) Violate this chapter or any rule or order of the
 16 director;
- 17 (3) Fail to perform its membership deposit refund
 18 obligation in accordance with the terms and conditions
 19 of the membership agreement and this chapter;
- 20 (4) Sell or offer for sale destination club memberships
 21 unless the club operator has the accommodations and
 22 nights available to meet the total number of nights



- 1 committed to all current members, across all
2 membership plans, for use during the year;
- 3 (5) Misrepresent a material fact or create a false or
4 misleading impression regarding the destination club
5 or promotion thereof;
- 6 (6) Promote in advertising materials any destination,
7 accommodation, or other club service as being
8 available to members in the future but currently
9 unavailable for member use unless the future
10 accommodation or other club service is labeled
11 "PROPOSED", "FUTURE", "PLANNED", "IN DEVELOPMENT", or
12 other term of similar meaning as approved by the
13 director and an estimated time for when the
14 accommodation or other club service shall be available
15 for member use;
- 16 (7) Make any misleading or deceptive representation or
17 material omission with respect to the club operator's
18 refund obligations, including the amount thereof or
19 any conditions thereto;
- 20 (8) Include in advertising materials any club services,
21 including accommodations, over which the club operator



1 does not have ownership or other rights to provide to
2 its members;

3 (9) Misrepresent the size, nature, extent, qualities, or
4 characteristics of the offered accommodations or other
5 club services;

6 (10) Misrepresent the amount or period of time during which
7 the accommodations or other club services at any
8 destination will be available to any member or
9 prospective member;

10 (11) Misrepresent a material fact with respect to the
11 contents of the membership agreement or the rights,
12 privileges, benefits, or obligations of the member or
13 prospective member under the membership agreement or
14 this chapter;

15 (12) Misrepresent the conditions under which a member or
16 prospective member may reserve or otherwise use the
17 club services, including accommodations;

18 (13) Misrepresent the availability of the membership
19 deposit refund offered by or on behalf of the club
20 operator;

21 (14) Misrepresent the term or duration of membership in the
22 destination club;



1 (15) Make an offer or inducement in advertising materials
2 to acquire a membership which purports to be limited
3 as to quantity or restricted as to time unless the
4 numerical quantity or time limit applicable to the
5 offer or inducement is clearly stated;

6 (16) Imply that an accommodation or other club service is
7 available for the exclusive use of members if the
8 accommodation or other club service will actually be
9 used by non-members unless otherwise appropriately
10 disclosed;

11 (17) Misrepresent the value of any prize, gift, or other
12 item to be awarded in connection with any prize or
13 gift promotional offer. The term "prize or gift
14 promotional offer" means any advertising material
15 wherein a prospective member may receive goods or
16 services other than membership in the destination club
17 itself, either free or at a discount, including but
18 not limited to the use of any prize, gift, award,
19 premium, or lodging or vacation certificate;

20 (18) Use membership deposit funds in a manner that does not
21 comport with the disclosure made by the club operator
22 in section -9(d);



1 (19) Fail to meet or maintain the requirements for
2 registration as provided by this chapter or its rules;
3 or

4 (20) Fail to satisfy a civil fine or penalty arising out of
5 any administrative or enforcement action brought by
6 any governmental agency or private person based upon
7 conduct involving fraud, dishonest dealings, or any
8 violation of this chapter.

9 § -13 **Authority of the director.** (a) The director may
10 adopt, amend, or repeal rules and forms as necessary to
11 effectuate this chapter. All rules shall be adopted pursuant to
12 chapter 91 and shall have the force and effect of law.

13 (b) In addition to any other acts or conditions provided
14 by law, the director may refuse to renew, reinstate, or restore,
15 or may deny, revoke, suspend, fine, reprimand, or condition in
16 any manner, a registration issued under this chapter, for any
17 cause authorized by law, including but not limited to one or
18 more violations of this chapter.

19 (c) The director may refuse to renew, reinstate, or
20 restore or may deny, revoke, suspend, fine, reprimand, or
21 condition in any manner, a registration issued under this
22 chapter based upon a determination that the club operator's



1 executive officers or owners with greater than twenty per cent
2 ownership interest failed to satisfy a civil fine or penalty
3 arising out of any administrative or enforcement action brought
4 by any governmental agency or private person based upon conduct
5 involving fraud, dishonest dealings, or any violation of this
6 chapter; or, in any criminal, administrative, or enforcement
7 proceeding in any jurisdiction, had been convicted or found in
8 violation of any rule or law involving fraud, dishonest
9 dealings, or any other act of moral turpitude.

10 § -14 **Club operator liability.** Notwithstanding
11 obligations placed upon any other person by this chapter, it is
12 the duty of the club operator to comply with all aspects of this
13 chapter, including to supervise, manage, and to control all
14 aspects of the offering of memberships for the destination club
15 and the delivery of club services and performance of all
16 obligations under the membership agreement. This shall include
17 but not be limited to all written promotion, advertising,
18 contracting, and closing of the sale of destination club
19 memberships. Any violation of this chapter that occurs during
20 those offering activities shall be deemed to be a violation by
21 the club operator as well as by the person actually committing
22 those violations.



1 § -15 **Member liability.** A member, acting in the
2 capacity of a destination club member, shall have no personal
3 liability for any act or omission taken or not taken by or on
4 behalf of the destination club or club operator.

5 § -16 **Administrative remedies.** (a) In addition to any
6 other actions authorized by law, and for any cause authorized by
7 law, including but not limited to a determination by the
8 director that any person has violated any provision of this
9 chapter or any rules adopted by the director pursuant to this
10 chapter, the director may fine any person a sum of not less than
11 \$500 nor more than \$25,000 for each separate offense; provided
12 that each day of violation shall constitute a separate offense.

13 (b) If the director makes a finding of fact in writing
14 that the public interest will be irreparably harmed by delay in
15 issuing an order, the director may issue a temporary cease and
16 desist order. Prior to issuing the temporary cease and desist
17 order, the director whenever possible by telephone or otherwise
18 shall give notice to the person of the proposal to issue a
19 temporary cease and desist order. Every temporary cease and
20 desist order shall be effective for a period of ten days and
21 shall include in its terms a provision that a hearing will be
22 held promptly to determine whether or not it shall remain



1 permanently in effect following the expiration of the ten-day
2 period. If the person subject to the temporary cease and desist
3 order is granted a continuance of the hearing, the temporary
4 cease and desist order shall remain in effect throughout the
5 period of the continuance. If the director determines that any
6 person has failed to comply with a temporary cease and desist
7 order issued by the director, then the director may subject the
8 person to the penalties set forth in subsection (a).

9 (c) The director may inspect and audit the books and
10 records of any destination club operating under this chapter.
11 The club operator shall immediately make available to the
12 director such books and records as may be requested by the
13 director at the club operator's place of business or at a
14 location designated by the director. For that purpose, the
15 director shall have full and free access to the club operator's
16 office and places of business. The director may contract with a
17 consultant to inspect and audit the books and records of the
18 club operator, the cost of which shall be borne by the club
19 operator if a violation of this chapter is established.

20 § -17 **Private right of action.** (a) A person has a
21 right of action against a club operator for damages caused by a
22 violation of this chapter. In an action under this section, the



1 court may award to the prevailing party costs and reasonable
2 attorney's fees.

3 (b) This chapter shall not restrict any statutory or
4 common law rights, remedies, or defenses of any person under law
5 or equity, including but not limited to section 480-2.

6 § -18 **Criminal penalties.** It shall be unlawful for any
7 person or the person's agent to testify before or file with the
8 director any notice, statement, or other document required under
9 this chapter that is false or untrue or contains any material
10 omission or material misstatement of fact, or contains forgery.
11 In addition to any sanctions or remedies provided in this
12 chapter, any violation of this section shall constitute a
13 misdemeanor.

14 § -19 **Injunctive relief.** (a) Whenever it shall appear
15 to the director, upon complaint or otherwise, that any person
16 has engaged in, or is about to engage in any act, practice, or
17 transaction in violation of this chapter or the rules of the
18 director adopted pursuant thereto, the director may conduct an
19 investigation of the matter. Whenever the director finds that
20 the person has engaged in, is engaged in, or is about to engage
21 in any act, practice, or transaction in violation of this
22 chapter or the rules of the director adopted pursuant thereto,



1 the director may, in addition to any other remedies, bring suit
 2 on behalf of the State against such person and any other person
 3 or persons concerned in, or in any way participating in, or
 4 about to participate in, such act, practice, or transaction in
 5 violation of this chapter or rules adopted pursuant thereto, to
 6 enjoin such person and such other person or persons from
 7 continuing such act, practice, or transaction, or engaging
 8 therein, or doing any act or acts in furtherance thereof or in
 9 violation of this chapter or rules adopted pursuant thereto.

10 (b) The court shall give priority to the expeditious
 11 processing of suits under this section.

12 (c) The remedies under this section are in addition to any
 13 other remedy provided by this chapter or by law.

14 § -20 Remedies cumulative. Unless otherwise expressly
 15 provided, the remedies and penalties provided by this chapter
 16 are cumulative to each other and to the remedies or penalties
 17 available under all other laws of this State.

18 § -21 Application of other laws. The sale or marketing
 19 of memberships or the provision of club services in accordance
 20 with this chapter shall not require registration under or
 21 compliance with chapter 514E.



1 § -22 **Consent to service of process.** Upon application
 2 for registration under this chapter, the club operator shall
 3 file with the application an irrevocable written consent that in
 4 suits, administrative proceedings, and actions growing out of
 5 the violation of any provision of this chapter, the service upon
 6 the director of a notice, process, or pleading therein,
 7 authorized by the laws of this State, shall be as valid and
 8 binding as if due service had been made upon the registrant."

9 SECTION 3. If any provision of this Act, or the
 10 application thereof to any person or circumstance is held
 11 invalid, the invalidity does not affect other provisions or
 12 applications of the Act, which can be given effect without the
 13 invalid provision or application, and to this end the provisions
 14 of this Act are severable.

15 SECTION 4. This Act shall take effect one year after its
 16 approval.

17
 INTRODUCED BY: *Namon Sakomaf*



Report Title:

Destination Clubs

Description:

Requires destination clubs to register with the department of commerce and consumer affairs.

