
A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

1 SECTION 1. Chapter 514A, Hawaii Revised Statutes, is
2 amended by adding two new sections to part V, to be
3 appropriately designated and to read as follows:

4 "§514A-A Conflicts of interest. (a) No board member
5 shall take any action directly affecting the association and a
6 third-party provider in which the board member has a substantial
7 financial interest, unless the board member provides prior
8 written disclosure to the unit owners.

9 (b) For the purposes of this section:

10 "Third-party provider" means a developer, management
11 agency, or other private sector business that performs services
12 for an association.

13 "Financial interest" means an interest held by an
14 individual, the individual's spouse, or dependent children that
15 is:

16 (1) An ownership interest in a business;

17 (2) A creditor interest in an insolvent business;



1 (3) An employment, or prospective employment for which
2 negotiations have begun;

3 (4) An ownership interest in real or personal property.

4 (5) A loan or other debtor interest; or

5 (6) A directorship or officership in a business.

6 §514A-B Gifts. No board member shall solicit, accept, or
7 receive, directly or indirectly, any gift, whether in the form
8 of money, service, loan, travel, entertainment, hospitality,
9 thing, or promise, or in any other form, by a third-party
10 provider under circumstances in which it can reasonably be
11 inferred that the gift is intended to influence the board member
12 in the performance of the board member's duties or is intended
13 as a reward for any action on the board member's part.

14 (b) For the purposes of this section, "third-party
15 provider" has the same meaning as provided under section 514A-
16 A."

17 SECTION 2. Chapter 514B, Hawaii Revised Statutes, is
18 amended by adding two new sections to part VI, subpart A, to be
19 appropriately designated and to read as follows:

20 "§514B-A Conflicts of interest. (a) No board member
21 shall take any action directly affecting the association and a



1 third-party provider in which the board member has a substantial
2 financial interest, unless the board member provides prior
3 written disclosure to the unit owners.

4 (b) For the purposes of this section:

5 "Third-party provider" means a developer, management
6 agency, or other private sector business that performs services
7 for an association.

8 "Financial interest" means an interest held by an
9 individual, the individual's spouse, or dependent children that
10 is:

11 (1) An ownership interest in a business;

12 (2) A creditor interest in an insolvent business;

13 (3) An employment, or prospective employment for which
14 negotiations have begun;

15 (4) An ownership interest in real or personal property.

16 (5) A loan or other debtor interest; or

17 (6) A directorship or officership in a business.

18 §514B-B Gifts. (a) No board member shall solicit,
19 accept, or receive, directly or indirectly, any gift, whether in
20 the form of money, service, loan, travel, entertainment,
21 hospitality, thing, or promise, or in any other form, by a



1 third-party provider under circumstances in which it can
2 reasonably be inferred that the gift is intended to influence
3 the board member in the performance of the board member's duties
4 or is intended as a reward for any action on the board member's
5 part.

6 (b) For the purposes of this section, "third-party
7 provider" has the same meaning as provided under section 514B-
8 A."

9 SECTION 3. Section 514A-46, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§514A-46 Investigatory powers. If the commission has
12 reason to believe that any person is violating or has violated
13 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
14 514A-67, 514A-68, 514A-70, 514B-A, 514B-B, 514A-83.5, 514A-84,
15 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-134, or
16 514B-72, or the rules of the commission adopted pursuant
17 thereto, the commission may conduct an investigation of the
18 matter and examine the books, accounts, contracts, records, and
19 files of the association of apartment owners, the board of
20 directors, the managing agent, the real estate broker, the real
21 estate salesperson, the purchaser, or the developer. For the



1 purposes of this examination, the developer and the real estate
2 broker shall keep and maintain records of all sales transactions
3 and of the funds received by the developer and the real estate
4 broker pursuant thereto, and shall make the records accessible
5 to the commission upon reasonable notice and demand."

6 SECTION 4. Section 514A-47, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§514A-47 Cease and desist orders. In addition to its
9 authority under section 514A-48, whenever the commission has
10 reason to believe that any person is violating or has violated
11 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
12 514A-67, 514A-68, 514A-70, 514B-A, 514B-B, 514A-83.5, 514A-84,
13 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-134, or
14 514B-72, or the rules of the commission adopted pursuant
15 thereto, it shall issue and serve upon the person a complaint
16 stating its charges in that respect and containing a notice of a
17 hearing at a stated place and upon a day at least thirty days
18 after the service of the complaint. The person served has the
19 right to appear at the place and time specified and show cause
20 why an order should not be entered by the commission requiring
21 the person to cease and desist from the violation of the law or



1 the rules of the commission charged in the complaint. If, upon
2 the hearing, the commission is of the opinion that this chapter
3 or the rules of the commission have been or are being violated,
4 it shall make a report in writing stating its findings as to the
5 facts and shall issue and cause to be served on the person an
6 order requiring the person to cease and desist from the
7 violations. The person, within thirty days after service upon
8 the person of the report or order, may obtain a review thereof
9 in the appropriate circuit court."

10 SECTION 5. Section 514A-48, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§514A-48 Power to enjoin. Whenever the commission
13 believes from satisfactory evidence that any person has violated
14 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
15 514A-67, 514A-68, 514A-70, 514B-A, 514B-B, 514A-83.5, 514A-84,
16 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-134, or
17 514B-72, or the rules of the commission adopted pursuant
18 thereto, it may conduct an investigation on the matter and bring
19 an action in the name of the people of the State in any court of
20 competent jurisdiction against the person to enjoin the person



1 from continuing the violation or engaging therein or doing any
2 act or acts in furtherance thereof."

3 SECTION 6. Section 514A-49, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Any person who violates or fails to comply with
6 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
7 514A-67, 514A-68, 514A-70, 514B-A, 514B-B, 514A-83.5, 514A-84,
8 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-
9 105, 514A-134, or 514B-72 is guilty of a misdemeanor and shall
10 be punished by a fine not exceeding \$10,000 or by imprisonment
11 for a term not exceeding one year, or both. Any person who
12 violates or fails, omits, or neglects to obey, observe, or
13 comply with any rule, order, decision, demand, or requirement of
14 the commission under section 514A-31 to 514A-49, 514A-61 to
15 514A-63, 514A-65, 514A-67, 514A-68, 514A-70, 514B-A, 514B-B,
16 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-
17 98, 514A-102 to [†]514A-105[‡], or 514B-72 shall be punished by
18 a fine not exceeding \$10,000."

19 SECTION 7. Section 514B-65, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§514B-65 Investigative powers. If the commission has
2 reason to believe that any person is violating or has violated
3 this part, part V, section 514B-103, 514B-A, 514B-B, 514B-132,
4 514B-134, 514B-149, sections 514B-152 to 514B-154, section
5 514B-154.5, or the rules of the commission adopted pursuant
6 thereto, the commission may conduct an investigation of the
7 matter and examine the books, accounts, contracts, records, and
8 files of all relevant parties. For purposes of this
9 examination, the developer and the real estate broker shall keep
10 and maintain records of all sales transactions and of the funds
11 received by the developer and the real estate broker in
12 accordance with chapter 467 and the rules of the commission, and
13 shall make the records accessible to the commission upon
14 reasonable notice and demand."

15 SECTION 8. Section 514B-66, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§514B-66 Cease and desist orders. In addition to its
18 authority under sections 514B-67 and 514B-68, whenever the
19 commission has reason to believe that any person is violating or
20 has violated this part, part V, section 514B-103, 514B-A, 514B-
21 B, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154,



1 section 514B-154.5, or the rules of the commission adopted
2 pursuant thereto, it may issue and serve upon the person a
3 complaint stating its charges in that respect and containing a
4 notice of a hearing at a stated place and upon a day at least
5 thirty days after the service of the complaint. The person
6 served has the right to appear at the place and time specified
7 and show cause why an order should not be entered by the
8 commission requiring the person to cease and desist from the
9 violation of the law or rules charged in the complaint. If the
10 commission finds that this chapter or the rules of the
11 commission have been or are being violated, it shall make a
12 report in writing stating its findings as to the facts and shall
13 issue and cause to be served on the person an order requiring
14 the person to cease and desist from the violations. The person,
15 within thirty days after service upon the person of the report
16 or order, may obtain a review thereof in the appropriate circuit
17 court."

18 SECTION 9. Section 514B-61, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) If it appears that any person has engaged, is
21 engaging, or is about to engage in any act or practice in



1 violation of this part, part V, section 514B-103, 514B-A, 514B-
2 B, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154,
3 section 514B-154.5, or any of the commission's related rules or
4 orders, the commission, without prior administrative
5 proceedings, may maintain an action in the appropriate court to
6 enjoin that act or practice or for other appropriate relief.
7 The commission shall not be required to post a bond or to prove
8 that no adequate remedy at law exists in order to maintain the
9 action."

10 SECTION 10. Section 514B-68, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§514B-68 Power to enjoin. Whenever the commission
13 believes from satisfactory evidence that any person has violated
14 this part, part V, section 514B-103, 514B-A, 514B-B, 514B-132,
15 514B-134, 514B-149, sections 514B-152 to 514B-154, section
16 514B-154.5, or the rules of the commission adopted pursuant
17 thereto, it may conduct an investigation of the matter and bring
18 an action against the person in any court of competent
19 jurisdiction on behalf of the State to enjoin the person from
20 continuing the violation or doing any acts in furtherance
21 thereof."



1 SECTION 11. Section 514B-69, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§514B-69 Penalties. (a) Any person who violates or fails
4 to comply with this part, part V, section 514B-103, 514B-A,
5 514B-B, 514B-132, 514B-134, 514B-149, sections 514B-152 to
6 514B-154, or section 514B-154.5, shall be guilty of a
7 misdemeanor and shall be punished by a fine not exceeding
8 \$10,000, or by imprisonment for a term not exceeding one year,
9 or both. Any person who violates or fails to comply with any
10 rule, order, decision, demand, or requirement of the commission
11 under this part, part V, section 514B-103, 514B-A, 514B-B,
12 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, or
13 section 514B-154.5, shall be punished by a fine not exceeding
14 \$10,000.

15 (b) In addition to any other actions authorized by law,
16 any person who violates or fails to comply with this part,
17 part V, section 514B-103, 514B-A, 514B-B, 514B-132, 514B-134,
18 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or
19 the rules of the commission adopted pursuant thereto, shall also
20 be subject to a civil penalty not exceeding \$10,000 for any
21 violation. Each violation shall constitute a separate offense."



H.B. NO. 2512

Report Title:

Condominiums; Board Members; Fiduciary Duties

Description:

Requires board members of condominium associations to disclose significant financial interests prior to taking action that affects both the association and a third-party provider. Prohibits board members from receiving gifts from those types of third party providers. Expands the powers of the real estate commission to enforce violations by board members of disclosure requirements and gift prohibitions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

