

STAND. COM. REP. NO.

1143

Honolulu, Hawaii

March 27, 2015

RE: S.B. No. 754
S.D. 2
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Sir:

Your Committee on Economic Development & Business, to which was referred S.B. No. 754, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TIME SHARING,"

begs leave to report as follows:

The purpose of this measure is to assist time share purchasers and time share developers by, among other things:

- (1) Providing cancellation rights to persons who contract to buy short-term products that grant a time-limited right to time share accommodations in Hawaii under Hawaii's time share law; and
- (2) Allowing for the disbursement prior to closing of purchasers' funds to a developer provided that the developer first posts a bond.

The American Resort Development Association, Wyndham Vacation Ownership, Marriott Vacations Worldwide Corporation, Starwood Vacation Ownership, and a concerned individual testified in support of this measure. The Department of Commerce and Consumer Affairs and the Regulated Industries Complaints Office (RICO) of the Department of Commerce and Consumer Affairs provided comments.

In Hawaii, and across the nation, many time share developers offer short-term products that allow prospective time share buyers

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to explore the time share experience on a trial basis. Some other states have adopted laws providing a seven-day right of cancellation to short-term product buyers. Your Committee finds that this right of cancellation provides the consumer with an opportunity to explore the time share experience while providing them protections should the buyer determine to cancel the purchase within a reasonable amount of time.

Your Committee finds that under current law, a developer who constructs a time share project must hold a time share buyer's funds in escrow after the seven-day cancellation period has passed until the project is completed and closing has occurred. While the developer may remove the funds from escrow, this option is only available under very limited circumstances. This requirement places significant amounts of money, potentially tens of millions of dollars, in escrow for months at a time. This measure addresses this issue by allowing a developer to use time share buyers' funds to develop a project; provided that the developer first posts a bond.

However, your Committee understands that concerns regarding consumer protections remain, particularly with regard to regulations enforced by RICO and the amount of protection afforded through a surety bond alone. Nevertheless, your Committee notes that this measure is a work in progress and that the interested parties are presently in ongoing discussions regarding the concerns raised.

Accordingly, to encourage further discussion, your Committee has amended this measure by deleting its contents and replacing them with the contents of H.B. No. 271, H.D. 2, a substantially similar measure. As amended, this measure continues to assist time share purchasers and time share developers by providing cancellation rights and providing for the disbursement of developers' funds, but includes additional consumer protections. Among other things, the amended measure:

- (1) Allows for the disbursement, prior to closing, of purchasers' funds to a developer if the developer deposits a letter of credit with the Director of Commerce and Consumer Affairs and the escrow agent;
- (2) Requires a short-term product seller to disclose in the contract to all short-term buyers that the short-term product buyer will be required to pay transient



accommodations tax for the occupancy of accommodations in Hawaii;

- (3) Specifies that a developer of a time share plan may be entitled to the release of 90 percent of a time share purchaser's funds from escrow to be used for costs associated with time share development in this State if certain conditions are met;
- (4) Specifies that if a purchaser is entitled to receive a refund of the purchaser's deposits, then the amount of the refund shall not be reduced to pay the cost of any surety bond or letter of credit;
- (5) Specifies disclosure requirements if an escrow agreement permits the release of a purchaser's funds;
- (6) Establishes a five-year sunset for the provisions of this measure relating to the release of a purchaser's funds pursuant to a surety bond or letter of credit and the closing deadline; and
- (7) Makes the Act effective on July 1, 2112.

As affirmed by the record of votes of the members of your Committee on Economic Development & Business that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 754, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 754, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection & Commerce.

Respectfully submitted on
behalf of the members of the
Committee on Economic
Development & Business,



DEREK S.K. KAWAKAMI, Chair



State of Hawaii
House of Representatives
The Twenty-eighth Legislature

HSCR 1143

Record of Votes of the Committee on Economic Development & Business

Bill/Resolution No.: SB 754 SD2	Committee Referral: EDB, CPC	Date: 24 MAR 15		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
EDB Members	Ayes	Ayes (WR)	Nays	Excused
1. KAWAKAMI, Derek S.K. (C)	/			
2. KONG, Sam Satoru (VC)	✓			
3. BROWER, Tom	✓			
4. CACHOLA, Romy M.				✓
5. CHOY, Isaac W.	✓			
6. DECOITE, Lynn	✓			
7. ITO, Ken	✓			
8. OHNO, Takashi	✓			
9. ONISHI, Richard H.K.	✓			
10. TOKIOKA, James Kunane	✓			
11. TSUJI, Clift	✓			
12. WOODSON, Justin H.				✓
13. MATSUMOTO, Lauren Kealohilani	✓			
14. WARD, Gene	✓			
TOTAL (14)	12			2
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; font-size: 10pt;">committee acronym(s)</div>				
Vice Chair's or designee's signature: <u>Samuel S. King</u>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				