

JAN 20 2017

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 appropriately
3 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 "Financial interest" means an interest held by an
11 individual, or the individual's spouse or dependent children,
12 that is:

13 (1) An ownership interest in a business;

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

15 (3) An employment, or prospective employment for which
16 negotiations have begun;

17 (4) An ownership interest in real or personal property;



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

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

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

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

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

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



1 "§514B-A Conflicts of interest. (a) No board member
2 shall take any action directly affecting the association and a
3 third-party provider in which the board member has a substantial
4 financial interest, unless the board member provides prior
5 written disclosure to the unit owners.

6 (b) For the purposes of this section:

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

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

- 13 (1) An ownership interest in a business;
- 14 (2) A creditor interest in an insolvent business;
- 15 (3) An employment, or prospective employment for which
16 negotiations have begun;
- 17 (4) An ownership interest in real or personal property;
- 18 (5) A loan or other debtor interest; or
- 19 (6) A directorship or officership in a business.

20 §514B-B Gifts. (a) No board member shall solicit,
21 accept, or receive, directly or indirectly, any gift, whether in



1 the form of money, service, loan, travel, entertainment,
2 hospitality, a thing, or a promise, or in any other form, by a
3 third-party provider under circumstances in which it can
4 reasonably be inferred that the gift is intended to influence
5 the board member in the performance of the board member's duties
6 or is intended as a reward for any action on the board member's
7 part.

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

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

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



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

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

10 "**§514A-47 Cease and desist orders.** In addition to its
11 authority under section 514A-48, whenever 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, 514A-A, 514A-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, it shall issue and serve upon the person a complaint
18 stating its charges in that respect and containing a notice of a
19 hearing at a stated place and upon a day at least thirty days
20 after the service of the complaint. The person served has the
21 right to appear at the place and time specified and show cause



1 why an order should not be entered by the commission requiring
2 the person to cease and desist from the violation of the law or
3 the rules of the commission charged in the complaint. If, upon
4 the hearing, the commission is of the opinion that this chapter
5 or the rules of the commission have been or are being violated,
6 it shall make a report in writing stating its findings as to the
7 facts and shall issue and cause to be served on the person an
8 order requiring the person to cease and desist from the
9 violations. The person, within thirty days after service upon
10 the person of the report or order, may obtain a review thereof
11 in the appropriate circuit court."

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

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



1 competent jurisdiction against the person to enjoin the person
2 from continuing the violation or engaging therein or doing any
3 act or acts in furtherance thereof."

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

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

20 SECTION 7. Section 514B-61, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



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

12 SECTION 8. Section 514B-65, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§514B-65 Investigative powers.** If the commission has
15 reason to believe that any person is violating or has violated
16 this part, part V, section 514B-103, 514B-A, 514B-B, 514B-132,
17 514B-134, 514B-149, sections 514B-152 to 514B-154, section
18 514B-154.5, or the rules of the commission adopted pursuant
19 thereto, the commission may conduct an investigation of the
20 matter and examine the books, accounts, contracts, records, and
21 files of all relevant parties. For purposes of this



1 examination, the developer and the real estate broker shall keep
2 and maintain records of all sales transactions and of the funds
3 received by the developer and the real estate broker in
4 accordance with chapter 467 and the rules of the commission, and
5 shall make the records accessible to the commission upon
6 reasonable notice and demand."

7 SECTION 9. Section 514B-66, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§514B-66 Cease and desist orders. In addition to its
10 authority under sections 514B-67 and 514B-68, whenever the
11 commission has reason to believe that any person is violating or
12 has violated this part, part V, section 514B-103, 514B-A, 514B-
13 B, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154,
14 section 514B-154.5, or the rules of the commission adopted
15 pursuant thereto, it may issue and serve upon the person a
16 complaint stating its charges in that respect and containing a
17 notice of a hearing at a stated place and upon a day at least
18 thirty days after the service of the complaint. The person
19 served has the right to appear at the place and time specified
20 and show cause why an order should not be entered by the
21 commission requiring the person to cease and desist from the



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

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, part
17 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."



1 SECTION 12. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 13. In codifying the new sections added by
5 sections 1 and 2 of this Act, the revisor of statutes shall
6 substitute appropriate section numbers for the letters used in
7 designating the new sections in this Act.

8 SECTION 14. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 15. This Act shall take effect upon its approval.

11

INTRODUCED BY:

[Signature]

[Signature]

Reynolds H. Baker

John M

Paul E. [Signature]

Mike [Signature]

Will [Signature]

Nichelle D. [Signature]

AC. [Signature]

Clarence K. [Signature]



S.B. NO. 639

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.

