

ACT 91

S.B. NO. 2722

A Bill for an Act Relating to Time Shares.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514E-10, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Any plan manager or developer registration required in this section shall be renewed [on] by December 31 of each [odd-numbered year;] even-numbered year, and any acquisition agent, sales agent, or exchange agent registration required in this section shall be renewed on December 31 of each odd-numbered year; provided that this subsection shall not relieve the person required to register from the obligation to notify the director promptly of any material change in any information submitted to the director, nor shall it relieve the developer of its obligation [promptly] to promptly file amendments or supplements to the disclosure statement, and to promptly supply the [same] amendments or supplements to purchasers of time share interests.”

SECTION 2. Section 514E-10.5, Hawaii Revised Statutes, is amended to read as follows:

“**[[§514E-10.5]] Consultant review of developer filing.** The director may contract with private consultants in connection with the review of the filing required of time share developers pursuant to section 514E-10(a)[, the] and (f). The cost of [which] contracting private consultants shall be borne by the developer; provided that the consultant review required under this section shall not affect the scope of the review under section 514E-27 [which] that the director may request for filings [which] that encompass alternative arrangements for purchaser protection. The consultant shall be asked to thoroughly review the filing for the purpose of examining its compliance with the requirements of this chapter and any rule adopted by the director, including the documentation and other provided materials [provided in connection therewith]. Upon completing the review, the consultant shall provide a written analysis of the filing and an opinion of the nature and extent to which it complies with this chapter and [the] adopted rules [adopted pursuant thereto]. The director may adopt rules pursuant to chapter 91 to further delineate the duties of the consultant in undertaking the review and analysis required [under] pursuant to this section.”

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

“**§514E-11 Prohibited practices.** It is a violation of this chapter for any

sales agent or acquisition agent of time share units or plans to:

- (1) Fail to comply with the disclosure requirements set forth in section 514E-9 or any rule adopted pursuant thereto;
- (2) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, transportation, luaus, ocean recreational activities, land recreational activities, aerial recreational activities, or tours, or other inducements, or make any offer thereof, without fully disclosing orally and as provided in paragraph (3) that the device is being used or offered for the purpose of soliciting sales of time share units or interests;
- (3) Offer a prospective purchaser a prize or gift as part of any time share advertising or sales promotion plan, if in order to claim the prize, the prospective purchaser must attend and complete a sales presentation, unless written disclosure is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; provided that the written disclosure is written or printed in a size equal to at least ten-point bold type and contains all of the following:
 - (A) A full description of the exact prize or gift won by the prospective purchaser including its cash value;
 - (B) All terms and conditions attached to the prize or gift;
 - (C) A statement that the consumer must attend and complete a sales presentation; and
 - (D) An identification of the time share project to be offered for sale including type of ownership, exchange privileges, limitations, and price ranges of the time share interests in that project;
- (4) Misrepresent or deceptively represent any material fact concerning the time share plan or time share unit;
- (5) Make any representation that a time share interest is an investment, including but not limited to the value of the interest at resale;
- (6) Fail to honor and comply with all provisions of a contract or reservation agreement with the purchaser;
- (7) Include, in any contract or reservation agreement, provisions purporting to waive any right or benefit provided for purchasers pursuant to this chapter;
- (8) Receive from any prospective purchaser any money, property (including but not limited to a credit card), or other valuable consideration prior to signing a contract or reservation agreement for the purchase of a time share plan or unit;
- (9) Make any agreement or contract with a purchaser before delivering, furnishing, or tendering to that prospective purchaser any promised promotional device or other instrument;
- (10) Distribute any promotional or disclosure material separately if the material was filed in a consolidated form;
- (11) Use any unregistered time share booth or fail to have displayed at least one conspicuous, clear, and unobstructed sign [posted on or in a time share booth in a location reasonably calculated to bring the sign to the attention of customers outside of such time share booth that states, at minimum, "TIME SHARE", and] of a permanent nature which is upright and perpendicular to the ground, easily

visible to passersby at eye-level, five feet from the floor of the booth, and of minimum dimensions of twelve inches by eighteen inches, stating in capital, block-style letters of at least one inch tall the name of the resort with which the booth is affiliated and for which the offer is intended, and prominently displaying the words "TIME SHARE," in a manner consistent with department[, city] rules and county ordinances[;]. As used in this paragraph, "sign of a permanent nature" specifically excludes banners, grease boards, marker boards, handwritten signs, or signs constructed of temporary materials such as paper, poster board, or cardboard;

- (12) Misrepresent the amount of fees to be charged, including management fees, or the structure for future fee increase; or
- (13) Sell, offer for sale, or advertise for sale, by any person, partnership, firm, corporation, joint stock company, or other association engaged in marketing time share plans within the State, any tourist activity, including, but not limited to land, aerial, or water recreational activities, at less than the cost thereof to such vendor or give, offer to give, or advertise with the intent to give away any such tourist activity with the purpose or effect of inducing the vendee to purchase a time share plan or to attend a time share marketing event.

Any violation of this section shall also constitute an unlawful or deceptive practice within the meaning of section 480-2."

SECTION 4. Section 514E-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For any cause authorized by law, including but not limited to a determination by the director that any person has violated any provision of this chapter or any rule adopted by the director pursuant to this chapter, or that a person has authorized, directed, ordered, or personally participated in any violation of this chapter or any rule adopted by the director pursuant to this chapter, in addition to any other actions authorized by law, the director:

- (1) May fine the person a sum of not less than \$500 nor more than [\$10,000] \$25,000 for each separate offense; provided that each date of violation shall constitute a separate offense; and
- (2) May issue an order suspending or revoking the registration of the person and the right of the person to offer or sell time share interests or otherwise engage in time share activities."

SECTION 5. No renewal of plan manager or developer registrations shall be required in 1994. The registration or renewal of authorizing a plan manager or developer to conduct time share business during the period beginning on January 1, 1994, and ending on December 31, 1995, shall be extended to December 31, 1996.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 7, 1994.)