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# A BILL FOR AN ACT

RELATING TO TIME SHARE PLANS.

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

1           SECTION 1. Chapter 514E, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§514E- Existing owner purchase exemptions. (a)

5 Notwithstanding any other provision of this chapter, the offer  
6 or sale, in this State, of an additional interest in a time  
7 share plan to an existing purchaser in the same time share plan  
8 shall not be subject to this chapter if:

9           (1) The contract for purchase signed by the purchaser  
10           includes a notice that is the same as or similar to  
11           the rescission notice required pursuant to section  
12           514E-9(a)(7), and the rescission period shall be at  
13           least seven days;

14           (2) In satisfaction of the disclosure requirements of  
15           section 514E-9, the purchaser is provided the time  
16           share disclosure documents that the purchaser would  
17           have received if the purchase had occurred in the



1           state or jurisdiction where the purchaser initially  
2           purchased the time share interest;

3           (3) All funds and any negotiable instruments received  
4           during the seven day rescission period shall be placed  
5           in an escrow account in Hawaii. The escrow agent  
6           shall be a bank, savings and loan association, or  
7           trust company authorized to do business in the State  
8           under an escrow arrangement or a corporation licensed  
9           as an escrow depository under chapter 449. The funds  
10           or negotiable instruments may be released from escrow  
11           in accordance with section 514E-17 or 514E-18. Any  
12           escrow account established for any out-of-state time  
13           share plan offered under this subsection may be  
14           maintained in the state where the time share plan is  
15           located; provided that the escrow agent submits to  
16           personal jurisdiction in this State;

17           (4) The contract for purchase shall contain the following  
18           statement in conspicuous type:

19                   "This time share plan has not been reviewed or  
20                   approved by the State of Hawaii.";

21           (5) The offer complies with sections 514E-11(2) to  
22           514E-11(9), 514E-11(11) to 514E-11(13), and 514E-11.1;



1       (6) The developer or an affiliated entity of the developer  
2       has a time share plan currently registered with the  
3       director; provided that the registration was  
4       originally approved or amended within seven years from  
5       the date of the offer or disposition, and the  
6       registration has been neither terminated or withdrawn;  
7       and

8       (7) The developer has not, during the two year period  
9       preceding the time of the offer, had a time share  
10       registration suspended, restricted, or revoked in any  
11       state or been convicted of an offense involving fraud  
12       or dishonesty. If the developer satisfies the  
13       requirement under paragraph (6) through an affiliated  
14       entity, the developer has not, during the twenty year  
15       period preceding the time of the offer, had a time  
16       share registration suspended, restricted, or revoked  
17       in any state or been convicted of an offense involving  
18       fraud or dishonesty.

19       (b) Notwithstanding any other provision of this chapter,  
20       the offer or sale by a developer, in this State, of a time share  
21       interest in a time share plan located outside of this State, but  
22       within the United States, to an individual who currently owns a



1 time share interest that was purchased from that developer, or  
2 from an affiliated entity of that developer, will be exempt from  
3 the requirements under sections 514E-3, 514E-4, 514E-5, 514E-6,  
4 514E-7, 514E-10.5 and 514E-14, the disclosure statement  
5 requirements under sections 514E-9 and 514E-11(1), and the  
6 registration requirements under section 514E-10; provided that:

7 (1) The developer shall provide the purchaser with all  
8 time share disclosure documents required to be  
9 provided to purchasers as if the offer occurred in the  
10 state where the time share plan is located;

11 (2) The contract for purchase shall include a notice that  
12 is the same as or similar to the rescission notice  
13 required pursuant to section 514E-9(a)(7), and the  
14 rescission period shall be at least seven days;

15 (3) In satisfaction of section 514E-16, all funds and any  
16 negotiable instruments received during the seven day  
17 rescission period shall be placed in an escrow account  
18 in this State. The escrow agent shall be a bank,  
19 savings and loan association, or trust company  
20 authorized to do business in the State under an escrow  
21 arrangement or a corporation licensed as an escrow  
22 depository under chapter 449. The funds or negotiable



1 instruments may be released from escrow in accordance  
2 with section 514E-17 or 514E-18. Any escrow account  
3 established for any out-of-state time share plan  
4 offered under this subsection may be maintained in the  
5 state where the time share plan is located; provided  
6 that the escrow agent submits to personal jurisdiction  
7 in this State;

8 (4) The developer shall provide the purchaser, in writing,  
9 either in the disclosure documents or otherwise, all  
10 of the following:

11 (A) A description of the type of time share plan  
12 offered, including the duration and operation of  
13 the time share plan;

14 (B) A description of the existing or proposed  
15 accommodations and amenities in the time share  
16 plan;

17 (C) A description of the method and timing for  
18 performing maintenance on the accommodations;

19 (D) If applicable, copies of the declaration,  
20 association articles of incorporation,  
21 association bylaws, and association rules and  
22 regulations; and



- 1           (E) The current annual budget for the time share  
2           plan;
- 3           (5) The developer or an affiliated entity has a time share  
4           plan currently registered with the director; provided  
5           that the registration was originally approved or  
6           amended within seven years from the date of the offer  
7           or disposition, and the registration has not been  
8           terminated or withdrawn;
- 9           (6) The time share plan being offered is registered in the  
10           state where the time share plan is located; or in the  
11           event registration of the time share plan is not  
12           required in the state where the time share plan is  
13           located, the time share plan being offered is in  
14           compliance with the applicable laws of that state;
- 15           (7) The contract for purchase shall contain the following  
16           statements in conspicuous type:
- 17                   "This time share plan has not been reviewed or  
18                   approved by the State of Hawaii. The time share  
19                   interest you are purchasing requires certain  
20                   procedures to be followed in order for you to use  
21                   your interest. These procedures may be different  
22                   from those followed in other time share plans.



1           You should read and understand these procedures  
2           prior to purchasing."; and

3       (8) The developer has not, during the two year period  
4       preceding the time of the offer, had a time share  
5       registration suspended, restricted, or revoked in any  
6       state, or been convicted of an offense involving fraud  
7       or dishonesty. If the developer satisfies the  
8       requirement under paragraph (5) through an affiliated  
9       entity, the developer has not, during the twenty year  
10       period preceding the time of the offer, had a time  
11       share registration suspended, restricted, or revoked  
12       in any state, or been convicted of an offense  
13       involving fraud or dishonesty.

14       (c) The developer of an out-of-state time share plan  
15       offered pursuant to subsection (b) shall be required to provide  
16       notice of the plan to the director on a form as set forth in  
17       subsection (e), along with payment of a one-time fee of \$1,000  
18       per time share plan. Upon receipt by the director of the notice  
19       and fee, the filing shall be deemed accepted, and the offering  
20       of the time share plan will be permitted in accordance with the  
21       terms of this section.



1        (d) If at any time the director determines that any  
2 requirement of this section has not been complied with, the  
3 developer shall be subject to any remedies set forth in section  
4 514E-12.

5        (e) The notice as described under subsection (c) shall be  
6 signed by an officer or principal of the developer, and shall  
7 contain the following information:

8        (1) The name and principal address of the developer;

9        (2) The name and address of the time share plan being  
10 offered;

11       (3) The name and address of the managing entity of the  
12 time share plan;

13       (4) The form of business entity of the developer; and

14       (5) The name, address, and telephone number of the officer  
15 or principal signing the notice on behalf of the  
16 developer.

17       (f) For purposes of this section:

18       "Affiliated entity" means a person or other entity that,  
19 directly or indirectly through one or more intermediaries, is  
20 controlled by or under common control with the developer.

21       "Control", "controlled by", or "under common control with"  
22 means the possession of the power to direct or cause the





1 direction of the management and policies of another person or  
2 entity, other than by commercial contract for goods or services.  
3 Control shall be presumed to exist if the developer has an  
4 ownership interest of at least fifty per cent in the other  
5 person or entity, or the developer has the same parent  
6 corporation as the other entity."

7 SECTION 2. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun, before its effective date.

10 SECTION 3. New statutory material is underscored.

11 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Time Share Plans; Exemptions

**Description:**

Exempts from the time share law the offer or sale of an additional interest in a time share plan to an existing purchaser in the same time share plan, provided that certain conditions are met. Exempts from the time share law the offer or sale by a developer, in Hawaii, of a time share interest in a time share plan located outside of Hawaii to an individual who currently owns a time share interest that was purchased from the developer; provided that certain requirements are met.

(HB2372 SD2)

