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# A BILL FOR AN ACT

RELATING TO TIME SHARING.

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

1           SECTION 1. The legislature finds that many time share  
2 developers offer short-term products that allow prospective time  
3 share buyers to explore the time share experience on a trial  
4 basis. The legislature finds that some other states have  
5 adopted laws providing a seven-day right of cancellation to  
6 short-term product buyers.

7           The legislature further finds that existing time share law  
8 requires buyers' funds to be placed in escrow and permits  
9 buyer's funds to be disbursed from escrow to help the developer  
10 pay the costs of construction and development of time share  
11 projects. A buyer's funds may be disbursed for such purposes  
12 prior to the closing and deeding of the property to the buyer.

13           The legislature additionally finds that it is common to  
14 include a subordination clause in contracts for the sale of time  
15 share interests in a project that has yet to be constructed. In  
16 the subordination clause, the buyers subordinate their rights in  
17 the project to the lien of the construction lender. As a



1 result, if the developer defaults under the construction loan,  
2 the lender may foreclose and acquire title to the project free  
3 of any claims of the buyers. This would be true regardless of  
4 whether the buyers' funds were used to pay the costs of  
5 construction and development.

6 The legislature also finds that some other states have  
7 adopted laws permitting a timeshare developer to use buyers'  
8 deposits upon posting a bond, thus assuring that the buyers'  
9 deposits will be refunded if construction of the project is not  
10 completed or the buyers otherwise become entitled to a refund.  
11 Timeshare developers prefer this approach, and this approach  
12 also benefits buyers by providing buyers a remedy in the event  
13 that the developer fails to complete construction or defaults  
14 under its construction loan.

15 The purpose of this Act is to:

- 16 (1) Provide cancelation rights to persons who contract to  
17 buy a short-term product in Hawaii; and  
18 (2) Allow disbursement of purchasers' funds to a  
19 developer; provided that the developer first posts a  
20 bond or letter of credit.



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

4 "§514E-A Short-term product; right to cancel. (a) A  
5 person who has entered into a contract to purchase a short-term  
6 product shall have the right to cancel the contract until  
7 midnight of the seventh calendar day after the date that the  
8 short-term product buyer first signs the contract, or the  
9 expiration of any longer cancelation period expressly provided  
10 in the contract. A short-term product buyer who exercises the  
11 right to cancel under this section shall be entitled to a refund  
12 of one hundred per cent of the consideration paid under the  
13 contract, without deduction. Any provision in the contract that  
14 is intended to waive the short-term product buyer's right of  
15 cancelation shall be void and unenforceable.

16 (b) A short-term product seller shall disclose the  
17 following in conspicuous type, in the contract or otherwise, to  
18 all short-term product buyers:

19 (1) If the short-term product buyer is required to request  
20 a reservation in order to use the accommodations:



- 1           (A) That reservations for accommodations under the  
2           contract are subject to availability;
- 3           (B) That there is no guarantee that a short-term  
4           product buyer will be able to obtain specific  
5           accommodations during a specific time period; and
- 6           (C) That the earlier the short-term product buyer  
7           requests a reservation, the greater the  
8           opportunity to receive a confirmed reservation;  
9           and
- 10          (2) Specific blackout dates if the short-term product is  
11          subject to blackout dates; and
- 12          (3) That the short-term product buyer shall pay transient  
13          accommodations tax for the occupancy of accommodations  
14          in Hawaii. This subsection shall apply only if the  
15          short-term product buyer is required to pay transient  
16          accommodations tax in addition to the purchase price  
17          of the short-term product.
- 18          (c) The contract to purchase a short-term product under  
19          this section shall include the date of the contract and contain  
20          the following disclosure in conspicuous type on the same page as  
21          the short-term product buyer's signature:



1 "YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT AT ANY TIME  
2 PRIOR TO MIDNIGHT OF THE SEVENTH CALENDAR DAY AFTER THE  
3 DATE THAT YOU SIGN THIS CONTRACT. You may exercise your  
4 right to cancel by sending the seller a written notice that  
5 you are canceling your contract either by faxing it to  
6 (insert facsimile number) or by depositing it into the  
7 United States mail, first class postage prepaid, addressed  
8 as follows: (insert specific contact information). If you  
9 properly cancel this contract, you are entitled to receive  
10 a full refund of the amount paid by you pursuant to this  
11 contract.

12 If you buy a time share interest, you will have any right  
13 to cancel your contract to purchase a time share interest  
14 provided by the law governing the sale of the time share  
15 interest. However, if you cancel your contract to purchase  
16 a time share interest, you will not be entitled to a refund  
17 of any amounts paid by you pursuant to this contract or the  
18 seller may specify an alternate refund policy under these  
19 circumstances."

20 The preceding disclosure shall not be required to be repeated on  
21 any addendum to the contract.



1        (d) A short-term product buyer may exercise the right to  
2 cancel by giving written notice to the short-term product seller  
3 in the manner described in subsection (c). A short-term product  
4 seller shall cause any deposit given by a short-term product  
5 buyer who has exercised the right to cancel pursuant to  
6 subsection (a) to be mailed or otherwise delivered to the short-  
7 term product buyer not later than the last to occur of:

8        (1) Fifteen business days following receipt of the short-  
9 term product buyer's written notice of cancelation; or

10       (2) Fifteen business days following the date upon which  
11 any deposit becomes good and immediately available  
12 funds.

13       (e) If a short-term product buyer enters into a contract  
14 to purchase a time share interest and all or any portion of the  
15 amount paid by the short-term product buyer for a short-term  
16 product shall be applied to or credited against the price of a  
17 time share interest then neither the developer nor any other  
18 party, including but not limited to the short-term product  
19 seller, shall be required to deposit in an escrow account,  
20 pursuant to section 514E-16, any amounts received by the short-



1 term product seller under the contract to purchase the short-  
2 term product.

3 (f) Short-term products offered by the developer or an  
4 affiliate of the developer of a time share plan registered  
5 pursuant to this chapter shall not constitute travel services  
6 for purposes of chapter 468L.

7 **§514E-B Release of purchaser's funds pursuant to bond or**  
8 **letter of credit.** (a) Notwithstanding the requirements of  
9 sections 514E-16 and 514E-17 or chapters 514A and 514B, the  
10 developer of a time share plan may be entitled to the release,  
11 prior to closing, and after the expiration of the purchaser's  
12 seven-day cancelation period under section 514E-8, of ninety per  
13 cent of a time share purchaser's funds from escrow to be used  
14 for costs associated with time share development in this State;  
15 provided that the following conditions have been met:

- 16 (1) The developer has deposited with the director and the  
17 escrow agent either a surety bond or letter of credit;  
18 (2) The developer has not chosen to protect the purchaser  
19 from blanket liens using a lien payment trust or  
20 alternative arrangements that require the purchaser's



1           funds to be disbursed from escrow directly to someone  
2           other than the developer upon closing; and  
3        (3) After the purchaser's funds are released to the  
4           developer, the amount of the bond or letter of credit,  
5           when added to the amount of the purchaser's funds  
6           remaining in escrow, will in the aggregate equal or  
7           exceed the amount of purchaser's funds that would  
8           otherwise be held in escrow.

9        (b) A surety bond filed with the director pursuant to  
10       subsection (a) shall be issued by a bonding company that is  
11       authorized to do business in the State and is not affiliated  
12       with the developer.

13       (c) A surety bond filed with the director pursuant to  
14       subsection (a) shall provide that where the developer has failed  
15       to refund deposits as required by chapter 514E or agreements  
16       with purchasers or has failed to transfer deposits into the  
17       escrow agent's escrow account when required under the escrow  
18       agreement, either the director or the escrow agent may declare  
19       the bond in default and the surety is required to refund  
20       deposits that are due and payable to purchasers of time share  
21       interests, or transfer deposits that are to be transferred into





1 the escrow account as required, within thirty days by the surety  
2 as a debt to the director or escrow agent.

3 (d) If a developer fails to refund a purchaser's funds  
4 pursuant to this chapter, including a refund due pursuant to  
5 sections 514E-8, 514E-11, 514E-11.1, 514E-11.3, or 514E-17, then  
6 within thirty days after receipt of a demand by the State or the  
7 escrow agent, the surety shall deposit with the escrow agent  
8 funds sufficient to pay any refunds due and payable to  
9 purchasers that the developer has failed to pay. If the surety  
10 disputes:

11 (1) Whether the developer has failed to refund a  
12 purchaser's funds as required by this chapter;

13 (2) The amount of the refunds due and payable to  
14 purchasers; or

15 (3) Whether the surety is otherwise obligated to make  
16 payment under the bond or the extent to which a  
17 payment under the bond shall be made;

18 the surety may, concurrently with the deposit of the funds with  
19 the escrow agent, demand that the escrow agent commence an  
20 action for interpleader and deposit the disputed bond proceeds  
21 with the circuit court. In the event that the surety demands an



1 interpleader action, the disputed proceeds of the bond shall not  
2 be disbursed to any person other than the court or as directed  
3 by order of the court.

4 (e) A letter of credit filed with the director pursuant to  
5 subsection (a) shall be:

6 (1) Irrevocable; provided that the letter of credit may be  
7 amended or canceled with the approval of the director;  
8 provided further that the director shall not  
9 unreasonably withhold or delay approval;

10 (2) Payable at sight upon presentation by the State or the  
11 escrow agent; and

12 (3) Issued by a financial institution acceptable to the  
13 director or by a federally insured bank or savings and  
14 loan association.

15 (f) The developer shall deposit with the escrow agent a  
16 copy of each purchaser's purchase agreement at the time when the  
17 developer is required by section 514E-16 to deposit the  
18 purchaser's funds, negotiable instruments, and purchase money  
19 contracts into escrow.

20 (g) Upon the closing of the escrow for the sale of a time  
21 share interest, the remainder of the purchaser's funds held in



1 escrow pursuant to subsection (a), if any, shall be disbursed in  
2 accordance with section 514E-18.

3 (h) If a purchaser is entitled to receive a refund of the  
4 purchaser's deposits pursuant to this chapter, the amount of  
5 such refund shall not be reduced to pay the cost of any surety  
6 bond or letter of credit that the developer has deposited with  
7 the director and the escrow agent pursuant to subsection (a).

8 (i) If the escrow agreement permits the release of  
9 purchasers' funds pursuant to subsection (a), the disclosure  
10 statement required by section 514E-9 shall contain the following  
11 disclosure:

12 **"Important Notice Regarding Your Deposits: Deposits that**  
13 you make under your sales contract for the purchase of a  
14 time share interest may be disbursed before closing of your  
15 purchase and may be used for any costs associated with time  
16 share development in this State. Disbursed funds are not  
17 required to be used to pay for costs of construction and  
18 development of your time share units or your time share  
19 plan. The escrow agent cannot disburse your deposits  
20 unless the developer has deposited with the escrow agent  
21 either a surety bond or letter of credit. These provide



1       for the deposit of funds into the escrow account if the  
2       developer fails to deposit any funds required to pay any  
3       refund that the developer is required to make to you under  
4       the Hawaii Time Share Act pursuant to Chapter 514E, Hawaii  
5       Revised Statutes. IF THE SURETY BOND OR LETTER OF CREDIT  
6       IS NOT HONORED, THERE IS A RISK THAT YOUR DEPOSITS WILL NOT  
7       BE REFUNDED TO YOU. You should carefully consider this  
8       risk in deciding whether to proceed with your purchase."

9       **§514E-C Closing deadline.** A sales contract for the sale  
10      of a time share interest shall specify a deadline by which the  
11      closing of the sale must occur. The closing deadline may be a  
12      specific date, or the expiration of a period of time after the  
13      sales contract is signed or becomes binding. The closing  
14      deadline shall not exceed twenty-four months from the date that  
15      the sales contract is signed unless a longer period is approved  
16      by the director. The purchaser may cancel the sales contract at  
17      any time after the specified closing deadline, if the closing  
18      does not occur on or before the closing deadline. A purchaser  
19      may exercise the right to cancel pursuant to this section by  
20      mailing or delivering a written notice to the developer that the  
21      purchaser is canceling the contract. The written notice shall



1 be sent to the developer at the address specified on the  
2 contract, or at such other address as the developer may  
3 designate by written notice to the purchaser in accordance with  
4 the notice provisions of the sales contract. The developer may  
5 designate by written notice to the purchaser in accordance with  
6 the notice provisions of the sales contract. The developer  
7 shall send written notice to the purchaser of any change in the  
8 developer's address, and the purchaser shall send written notice  
9 to the developer of any change in the purchaser's address, each  
10 in accordance with the notice provisions of the sales contract."

11 SECTION 3. Section 514E-1, Hawaii Revised Statutes, is  
12 amended as follows:

13 1. By adding five new definitions to be appropriately  
14 inserted and to read:

15 "Accommodation" means any apartment, condominium or  
16 cooperative unit, cabin, lodge, hotel or motel room, or other  
17 real or personal property suitable and intended to provide  
18 overnight lodgings for one or more individuals.

19 "Conspicuous type" means type in upper and lower case  
20 letters, two point sizes larger than the nearest nonconspicuous



1 type, exclusive of headings, on the page on which it appears and  
2 in no less than ten-point type.

3 "Short-term product" means a contract that provides the  
4 buyer a one-time allotment of use nights or points that in  
5 either case shall be used within a period not to exceed three  
6 years and that includes an agreement that all or a portion of  
7 the consideration paid by a person for the short-term product  
8 shall be applied to or credited against the price of a future  
9 purchase of a time share interest or that the cost of a future  
10 purchase of a time share interest shall be fixed or locked in at  
11 a specified price. A short-term product shall not constitute a  
12 time share interest.

13 "Short-term product buyer" means an individual who has  
14 entered into a contract to purchase a short-term product.

15 "Short-term product seller" means the developer of a short-  
16 term product."

17 2. By amending the definition of "notice of time share  
18 plan" to read:

19 "Notice of time share plan" means an instrument executed  
20 by the holder of the legal and equitable title to the fee or  
21 long-term leasehold interest in a time share unit, and which



1 provides notice of the existence of the time share plan and of  
2 rights of owners. [~~The notice of time share plan must identify~~  
3 ~~the use period for each time share interest and the name of the~~  
4 ~~initial purchaser thereof.] If the time share unit is located  
5 outside the State, the notice shall be contained in a  
6 declaration of covenants, conditions, and restrictions which  
7 provide that the notice shall, as a matter of covenant, have the  
8 effects described in section 514E-21. The declaration of  
9 covenants, conditions, and restrictions must be prepared so as  
10 to (i) constitute a covenant running with and an equitable  
11 servitude upon the time share units for the duration of the time  
12 share plan, and (ii) have the effects described in section 514E-  
13 21."~~

14 SECTION 4. Section 514E-10.2, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) Notwithstanding any other provision of this chapter,  
17 the director may issue a limited permit to a developer  
18 permitting the offer or sale, in this State, of an additional  
19 interest in a time share plan to an existing purchaser in the  
20 same time share plan; provided that:



- 1           (1) 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 not been terminated or withdrawn;
- 7           (2) The developer has not, during the two-year period  
8           preceding the time of the offer, had a time share  
9           registration suspended, restricted, or revoked in any  
10          state or been convicted of an offense involving fraud  
11          or dishonesty. In the event the developer satisfies  
12          the requirement of paragraph (1) above through an  
13          affiliated entity, the developer has not, during the  
14          twenty-year period preceding the time of the offer,  
15          had a time share registration suspended, restricted,  
16          or revoked in any state or been convicted of an  
17          offense involving fraud or dishonesty;
- 18          (3) In satisfaction of the disclosure requirements of  
19          section 514E-9, the purchaser is provided the time  
20          share disclosure documents the purchaser would have  
21          received if the purchase had occurred in the state or





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

3 (4) The contract for purchase signed by the purchaser  
4 includes a notice that is the same as or similar to  
5 the rescission notice required pursuant to section  
6 514E-9(a)(7); provided that the rescission period  
7 shall be at least seven days;

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



1 expired; provided that the escrow agent submits to  
2 personal jurisdiction in this State;

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

5 "THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR  
6 APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY  
7 OWN AN INTEREST IN THIS TIME SHARE PLAN AND BECAUSE  
8 \_\_\_\_\_ (DEVELOPER OR AFFILIATE'S  
9 NAME) HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH  
10 THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF  
11 APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE  
12 SELLER AS THE TERM IS DEFINED IN CHAPTER 514E, HAWAII  
13 REVISED STATUTES."; and

14 (7) The offer complies with the provisions of sections  
15 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13),  
16 and 514E-11.1."

17 SECTION 5. Section 514E-16, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"§514E-16 Deposit of purchaser's funds, notes, and**  
20 **contracts into escrow.** (a) All funds and any negotiable  
21 instruments and purchase money contracts received before closing



1 from or on behalf of purchasers or prospective purchasers in  
2 connection with the purchase or reservation, in the State, of  
3 time share interests must be placed in an escrow account.

4 However, the developer or a sales agent may hold, until the  
5 expiration of the seven-day-~~[cancellation]~~ cancelation period  
6 provided by section 514E-8 or any longer purchaser

7 ~~[cancellation]~~ cancelation period provided in the sales  
8 contract, a negotiable instrument, or purchase money contract  
9 made by a purchaser:

10 (1) For which subsequent holders cannot claim holder in  
11 due course status within the meaning of article 3 of  
12 chapter 490; or

13 (2) Where the payee is:

14 (A) The escrow agent; or

15 (B) The trustee of a lien payment trust.

16 (b) The escrow agent must be a bank, savings and loan  
17 association, or a trust company authorized to do business in the  
18 State under an escrow arrangement or a corporation licensed as  
19 an escrow depository under chapter 449. ~~[However, in connection~~  
20 ~~with sales made out of the State for the use of time share units~~  
21 ~~located in the State, the escrow agent may be located in and the~~



1 ~~purchasers' funds, negotiable instruments, and purchase money~~  
2 ~~contracts may be impounded in the jurisdiction where the sale is~~  
3 ~~made, if the law of such jurisdiction requires it. In such~~  
4 ~~event, the out of state escrow agent shall be subject to the~~  
5 ~~approval of the director.]~~

6 (c) The establishment of such an escrow account shall be  
7 evidenced by a written escrow agreement between the developer  
8 and the [~~in state or out of state~~] escrow agent. The escrow  
9 agreement must provide for the handling of purchaser's funds,  
10 negotiable instruments, and purchase money contracts as required  
11 by this chapter and must contain any provisions required by  
12 rules adopted by the director pursuant to chapter 91.

13 (d) A developer or an affiliate of a developer who  
14 provides purchase money financing to a time share purchaser  
15 shall deposit into the escrow account established under  
16 subsection (a) all loan payments made by the purchaser prior to  
17 closing. Such deposit shall be made no later than the last to  
18 occur of:

19 (1) Seven business days after receipt of the payment by  
20 the developer, an affiliate of the developer, or the  
21 developer's or affiliate's servicing agent; or



1       (2) Seven business days following the date upon which any  
2       payment made prior to closing becomes good and  
3       immediately available funds.

4       Thereafter, the payments may be released from escrow; provided  
5       that the release is in accordance with section 514E-17, 514E-18,  
6       or 514E-B."

7       SECTION 6. Section 514E-30, Hawaii Revised Statutes, is  
8       amended to read as follows:

9       "**§514E-30 Scope of chapter.** (a) This chapter applies to  
10      the offer and sale in Hawaii of time share interests in time  
11      share units located in Hawaii. If time share units are located  
12      outside of Hawaii, but any offer or sale is made within the  
13      State, this chapter, except for sections 514E-3, 514E-4, 514E-5,  
14      514E-6, 514E-7, 514E-10(c), and 514E-14, shall apply. As to the  
15      offer and sale outside of Hawaii of time share interest in a  
16      time share plan which includes time share units located in  
17      Hawaii, this chapter, except for sections 514E-2.5, 514E-8,  
18      514E-9, 514E-10(b), 514E-11, and 514E-11.1 shall apply.

19      (b) This chapter applies to the offer and sale in Hawaii  
20      of short-term products. This chapter does not apply to the  
21      offer or sale of short-term products outside of Hawaii,



1 regardless of whether the short-term product buyer shall have  
2 the right to use accommodations in Hawaii."

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

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

9 SECTION 9. This Act shall take effect on July 1, 2112;  
10 provided that:

11 (1) Sections 514E-B and 514E-C of Section 2 of this Act  
12 shall be repealed on July 1, 2020; and

13 (2) Sections 4 and 5 of this Act shall be repealed on July  
14 1, 2020, and Sections 514E-10.2 and 514E-16, Hawaii  
15 Revised Statutes, shall be reenacted in the form in  
16 which they read on the day prior to the effective date  
17 of this Act.



**Report Title:**

Time Sharing; Time Share; Short-term Product; Right to Cancel;  
Purchasers; Developers; Bond; Letter of Credit

**Description:**

Provides cancellation rights to persons who contract to buy a short-term product in Hawaii. Allows disbursement of purchasers' funds to a developer; provided that the developer first posts a bond or letter of credit. (HB271 HD2)

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

