

HB271 HD2

Measure Title: RELATING TO TIME SHARING.

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)

Companion: [SB754](#)

Package: None

Current Referral: TSI, CPN

Introducer(s): MCKELVEY



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, April 1, 2015
9:30 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL NO. 271, H.D. 2, RELATING TO TIME SHARING.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lori Beth Van Cantfort, Time Share Administrator of the Professional and Vocational Licensing Division, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). For the reasons set forth below, the Department has strong concerns with aspects of this bill, but has been working with the proponent of the bill to ensure the measure contains adequate consumer protections.

House Bill No. 271, H.D. 2, seeks to (1) provide purchasers with a 7-day rescission right when purchasing "short-term products", and (2) allow time share

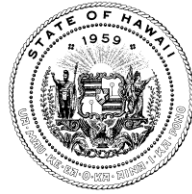
developers to take purchasers' funds out of escrow prior to closing and prior to completion of the time share project, as long as the developer posts a surety bond.

In practice, short-term products are sold to consumers who decide not to purchase a time share interest. These consumers are then offered to purchase a short stay at a time share property to be used sometime in the future. When they return to vacation at the property, they are solicited to purchase a time share interest again. If they decide to purchase a time share interest at that time, the price they paid for the short-term product is applied towards their time share purchase. Currently, Chapter 514E, Hawaii Revised Statutes ("HRS"), only provides a 7-day rescission right for the sale of a time share interest. The rescission right does not apply to sales of short-term products. However, many consumers assume the 7-day rescission right applies to their purchase of a short-term product because the short-term product is being sold to them to solicit a time share sale. Some developers already offer a rescission right for short-term products which further confuses consumers because they believe all developers offer a rescission right. Providing a statutory 7-day rescission right for short-term products will eliminate any confusion and provide better consumer protection.

Although the Department supports providing a 7-day rescission right for short-term products, it has concerns whether the consumer protection provisions provided under Chapter 514E, HRS, would be available to our enforcement agency, the Regulated Industries Complaints Office, because a short-term product would not be considered a time share interest.

The Department also has serious concerns about allowing developers to post a surety bond instead of requiring purchasers funds remain in escrow prior to closing. The Department questions the level of consumer protection provided by a surety bond and how difficult it will be for consumers to collect on a surety bond when they are entitled to a refund. Developers will be able to take consumers' funds without providing the Department with any proof that the project will be built (e.g., construction contract, performance/completion bond, proof of sufficient funds to complete the project). The Department is concerned that this provision would seriously disadvantage consumers by decreasing the availability/collectability of funds that would otherwise be held in escrow, now leaving consumers to try to recover from surety companies. For the Committee's information, the Senate companion measure, Senate Bill No. 754, was heard by this Committee on March 4, 2015. The primary differences between the House Bill No. 271, H.D. 2 and Senate Bill No. 754, S.D. 2 are: (1) the House bill allows developers to deposit a surety bond or letter of credit, while the Senate bill only allows for the deposit of surety bonds, and (2) the House bill requires that money taken from escrow be used for the development of time share projects in Hawaii, while the Senate bill allows the money to be used for any purpose. The Department prefers the language found in House Bill No. 271, H.D. 2 as this version would provide for stronger consumer protections.

Thank you for this opportunity to provide written testimony on House Bill No. 271, H.D. 2.



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**PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2015**

**WEDNESDAY, APRIL 1, 2015
9:30 A.M.**

**WRITTEN TESTIMONY ONLY
ON
HOUSE BILL NO.271 H.D.2
RELATING TO TIME SHARING**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 271 H.D.2, Relating to Time Sharing. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following written comments on the bill.

House Bill No. 271 H.D.2 grants cancellation rights to persons who contract to purchase short-term products in Hawaii. The bill also allows for disbursement of

purchasers' funds to a developer under certain conditions and has a defective effective date.

This Committee heard the companion measure, Senate Bill No. 754, and passed out a Senate Draft 2. House Bill No. 271 H.D.2 and Senate Bill No. 754 S.D.2 differ primarily in that the House version only permits disbursements for costs associated with time share development in Hawaii, while the Senate version allows a developer to use disbursements for any purpose. House Bill No. 271 H.D.2 also requires a developer to deposit either a surety bond or a letter of credit with the Director and escrow agent; Senate Bill No. 754 S.D.2 requires a developer to obtain a surety bond prior to disbursement.

RICO notes that the House Committee on Economic Development and Business heard Senate Bill No. 754 S.D.2 and passed out a House Draft 1 that is identical to House Bill No. 271 H.D.2.

RICO defers to the Department's Time Share Program on the issues of cancellation rights and disbursement of funds, but offers enforcement-related comments on the new section that gives cancellation rights to purchasers of short-term products in Hawaii.

RICO's role in enforcing the new section relating to the sale of short-term products is unclear. House Bill No. 271 H.D.2 specifies that a short-term product shall not constitute a time share interest. As such, none of the consumer protection provisions currently available in Chapter 514E, Hawaii Revised Statutes ("HRS"), would apply or be available to RICO as the enforcing agency.

Written Testimony on House Bill No. 271 H.D.2

April 1, 2015

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House Bill No. 271 H.D.2 also exempts the offer or sale of short-term products by a developer or affiliate of the developer from the provisions of the travel agency law, Chapter 468L, HRS. RICO believes "affiliate" could encompass an independent third party contracting with the developer, and as such, would be functioning as an intermediary subject to Chapter 468L, HRS.

Thank you for the opportunity to submit written testimony on House Bill No. 271 H.D.2. I will be happy to answer any questions the members of the Committee may have.



April 1, 2015

TO: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn Baker, Chair
Senator Brian Taniguchi, Vice Chair

FR: Henry Perez, President ARDA Hawaii (via its Executive Director, Blake Oshiro)

RE: H.B. 271 HD2 Relating to Time Sharing.
Position: Support with Some Concerns

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, supports HB271 HD2, although we do have some concerns with the specific language in the HD2. It is our understanding that this language was recommended by the Department of Commerce and Consumer Affairs (DCCA). ARDA-Hawaii defers to its attorney, Charlie Pear, on the particulars of the concerns and comments. But, we would like to respectfully request that the Committee pass this bill so that we can continue our discussions with DCCA.

The first part of the bill establishes cancellation rights for purchasers of short-term timeshare products. Based on discussions with the DCCA Timeshare Administrator, the sale of these products raised some concerns. Thus, in an effort to improve our industry, ARDA agreed to support legislation that regulates the purchase of short-term products and we support this effort to increase consumer confidence.

The remainder of the bill amends current law to allow for the use of escrow bonds. Under current law, when a buyer purchases a timeshare that is in the development stage, the purchase funds may be placed in escrow and disbursed to the developer to cover construction costs. If the developer defaults, because of the use of subordination clauses in the purchase contract, the buyer's rights are subordinated to the rights of the construction lender. The lender may foreclose and acquire title to the project free of any claims of the buyers. This leaves the buyers without recourse to recover their purchase funds.

This law was first enacted in 1985 and since that time, the law has not changed despite changes to the industry, changes to the operations and financing of times shares, and the fact that several publicly traded hospitality brands that are now associated with time shares. Thus, ARDA supports amending the law similar to 15 other states' laws that permit a timeshare developer to use buyer's deposits upon posting a bond or other financial assurance. This provides buyers with a remedy in the event a developer fails to complete construction or defaults on the construction loan. We believe similar protections in Hawaii will serve the consumers well.

ARDA is engaged in discussions with DCCA and remain hopeful that we will be able to come up with agreeable language very soon. Thank you for the opportunity to submit testimony in support of HB271 HD2.

c/o Alston Hunt Floyd & Ing * 1001 Bishop Street, 18th Floor * Honolulu, Hawai'i 96813

**Testimony of
Gary M. Slovin / Mihoko Ito
on behalf of
Wyndham Vacation Ownership**

DATE: March 31, 2015

TO: Senator Roz Baker
Chair, Committee on Commerce and Consumer Protection
Submitted Via CPNtestimony@capitol.hawaii.gov

RE: **H.B. 271, H.D.2 - Relating to Taxation**
Hearing Date: Wednesday, April 1, 2015 at 9:30 a.m.
Conference Room 229

Dear Chair Baker and Members of the Committee on Commerce and Consumer Protection,

We submit this testimony on behalf of Wyndham Vacation Ownership. Wyndham offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham Vacation Ownership has a substantial presence in Hawaii through its Wyndham Vacation Resorts, WorldMark by Wyndham and Shell Vacations Club brands.

Wyndham **strongly supports** H.B. 271, H.D.2, which provides a seven day right of cancellation to purchasers of short-term time share products, and allows disbursement of purchasers' funds from escrow to a developer, provided that the developer first posts a bond, letter of credit or other financial assurance to an unaffiliated third party.

Under current Hawaii law, a developer that constructs a time share project must hold a time share buyer's funds in escrow after the seven-day cancellation period has passed, the project is completed, and closing has occurred. There is only one limited circumstance when the developer may remove funds from escrow, and that process is labor and time intensive for both the developer and the DCCA. This means that a significant amount of money – potentially tens of millions of dollars – could remain in escrow for months at a time. H.B. 271, H.D.2 would protect these funds with a third party assurance, give the consumer ample protection if the project was not completed, and would grant the developer access to funds to apply to construction costs.

Gary M. Slovin
Mihoko E. Ito
C. Mike Kido
Tiffany N. Yajima

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This approach has been implemented in Florida and many other jurisdictions around the United States, and has been demonstrated to benefit both time share developers and time share purchasers. If the developer fails to complete a construction project, the consumer is entitled to a refund of funds where the developer is no longer able to provide one.

In addition, the seven day right of cancellation provided to purchasers of short-term time share products provides consumers the opportunity to explore the time share experience on a trial basis, with the benefit of cancellation after a reasonable amount of time.

Wyndham notes that there are concerns regarding the H.D.2 version of the bill that are still being discussed by stakeholders, and respectfully requests this Committee keep the measure moving to allow stakeholders time to facilitate discussions. Thank you for the opportunity to submit testimony on this measure.



March 31, 2015

T: 808.521.9500
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Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Commerce
And Consumer Protection
Twenty-Eighth Legislature
Regular Session of 2015

RE: HB 271, HD2 Relating to Time Sharing
Hearing date: Wednesday, April 1, 2015
9:30 am, Conference Room 229

Aloha Chair, Vice-Chair and Members of the Committee,

Thank you for allowing me to submit testimony on behalf of Marriott Vacations Worldwide Corporation (“MVWC”) in **SUPPORT OF HOUSE BILL 271, HD2 RELATING TO TIME SHARING**. MVWC is a global leader in the timeshare industry, with five resort properties in Hawaii. Timeshare units are a significant and stabilizing part of the tourism industry, and resort development provides thousands of construction jobs in the islands year after year.

This bill addresses an important concern in resort development. Currently under Hawaii law, after a new timeshare unit is sold, the purchasers’ funds are placed in escrow and disbursed to developers to help pay for the costs of construction and development. The disbursement often occurs prior to the closing and deeding of the property. If the developer defaults and the purchaser’s lien is subordinate to the construction lender’s rights, the purchaser may be in jeopardy of losing both his property and deposit.

HB 271, HD 2 would remedy this concern by requiring the developer to first post a surety bond issued by a bonding company authorized to do business in Hawaii before the purchasers’ funds are released. Additionally, the developer would be required to show that the sum of the bond and the purchaser’s funds remaining in escrow is at least equal to the amount of funds that would have remained in escrow without the bond and that there is no lien payment trust or similar device employed by the developer.



IMANAKA ASATO

A LIMITED LIABILITY LAW COMPANY

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Commerce
And Consumer Protection
March 31, 2015
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Discussions with the DCCA regarding the specific language of the bill are ongoing, but MVWC supports HB 271, HD2 as a mechanism for resort developers to access purchasers' funds needed to complete construction, while still protecting the purchaser from loss of his/her deposit if the project is not completed.

For these reasons, MVWC **supports** HB 271, HD2.

Mahalo for your consideration,

IMANAKA ASATO LLLC

Michael L. Iosua

MLI:tmoh



9002 San Marco Court
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(407) 418-7271

April 1, 2015

To: Senator Rosalyn Baker, Chair
Senator Brian Taniguchi, Vice Chair
Senate Committee on Commerce and Consumer Protection

RE: **HB 271 HD2 – Relating to Time Sharing – In Support**
Conference Room 229; 9:30 AM

Chair Baker, Vice Chair Taniguchi and members of the committee:

Starwood Vacation Ownership (“Starwood”) appreciates the opportunity to offer testimony in support of HB 271 HD2. This measure permits the use of purchaser funds upon the posting of a letter of credit, bond or other financial assurance and provides enhanced consumer protection by regulating the sale and offer of timeshare short-term products. This measure ensures proper disclosure, and a recession period is given to the consumer purchasing a short term product and continues the modernization of Hawaii’s timeshare act.

Permitting funds to be withdrawn from escrow upon the posting of a letter of credit, bond or other financial assurance is beneficial to developers by assisting with cash flow in large resort construction projects, which often take two to three years to complete. It is beneficial to consumers because it guarantees them a refund of all purchase funds if the project is not timely completed. Currently, purchaser funds may be released to reimburse a developer for construction expenditures. This procedure could result in an incomplete project and insufficient funds remaining to complete the project.

For over two years, the industry has worked with the Department of Commerce and Consumer Affairs (DCCA) on this measure. There have been numerous meetings where industry leaders have travelled to Hawaii to meet staff members in person to discuss the merits of this valuable bill. Several modifications have been made as a result of working with DCCA. While there is currently language in the bill that needs to be updated, we are optimistic that these issues can be addressed successfully. We strongly ask for your support of HB 271 HD2 as it enhances consumer protection while encouraging the development of new accommodations in Hawaii.

Thank you for the opportunity to provide testimony in support of HB 271 HD2.

Robin Suarez
Vice President/General Counsel
Starwood Vacation Ownership