

ACT 41

S.B. NO. 2312

A Bill for an Act Relating to Condominium Hotel Operators.

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

SECTION 1. The legislature finds that insurance companies are hesitant to issue fidelity bonds to condominium hotel operators, due primarily to conflicting language in the Hawaii Revised Statutes. Hence, out of forty-nine registered condominium hotel operators, only nine have submitted proof of fidelity bond coverage as provided by law. The purpose of this Act is to strengthen the law relating to condominium hotel operators by (1) clarifying fidelity bond requirements and coverage, and (2) requiring payment of an application fee to defray administrative and review costs.

SECTION 2. Section 467-30, Hawaii Revised Statutes, is amended to read as follows:

“§467-30 Registration, licenses and bonding required to operate condominium hotel. (a) As used in this section, “condominium hotel” includes those apartments in a project as defined in section 514A-3 and subject to chapter 514A, which are used to provide transient lodging for periods of less than thirty days.

(b) Any sole proprietor, partnership, corporation, or other business entity operating a condominium hotel who is not a custodian or caretaker as defined in section 467-1 shall:

- (1) Obtain a license as a real estate broker in compliance with this chapter and the rules of the commission;
- (2) Register on an annual basis as a condominium hotel operator. Registration information shall include but not be limited to the number of apartment units managed for others as well as the number of apartment units owned by the condominium hotel operator. Any operator failing to register with the commission shall be subject to a fine not exceeding an amount equal to \$25 multiplied by the aggregate number of units being utilized as a condominium hotel. Each month or fraction of a month of noncompliance shall be deemed a new and separate violation;
- (3) Provide evidence of fidelity bonding to the commission in an amount equal to \$500 multiplied by the aggregate number of apart-

ment units in the condominium hotel operation; provided that the minimum of the bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of units excludes the number of units owned by the condominium hotel operator either as a sole proprietor, partnership, or corporation or those units included in a registered time share plan managed by a registered time share plan manager. The bond shall [protect the apartment owners against fraudulent or dishonest acts by the condominium hotel operator and by persons acting on behalf of the condominium hotel operator having custody and control of either the condominium hotel operator's or the apartment owner's funds, or both; and] cover all of the condominium hotel operator's employees handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds, or both; and

- (4) Pay an application fee and upon approval an initial and an annual registration fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, which fees shall be deposited with the director of finance to the credit of the general fund.

(c) In the course of operating a condominium hotel, neither a real estate broker license nor a salesperson license shall be required of those employees of any sole proprietor, partnership, corporation, or other business entity performing or facilitating the delivery of customary hotel services.

(d) All [persons] employees handling or having custody or control of the funds received by the condominium hotel operator shall be covered by a fidelity bond. The fidelity bond shall protect the condominium hotel operator against fraudulent or dishonest acts by the employees of the condominium hotel operator.

(e) As used in this section "operating a condominium hotel" includes the management of the apartment units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartment units directly or indirectly from the apartment owners for purposes of providing transient lodging.

(f) Condominium hotel operators operating exclusively in condominium projects specifically authorized as hotels by county zoning and regulations and specifically permitted by the condominium project's declaration and bylaws shall be exempt from [the provisions of] subsection (b)(1); provided that they shall apply to the commission for [such] the exemption or exclusion on a form provided by the commission.

(g) Any [apartment owner] condominium hotel operator aggrieved by the fraudulent or dishonest acts of [a condominium hotel operator or by the fraudulent or dishonest acts of any person acting on behalf of a condominium hotel operator] an employee shall [seek recovery first] act promptly and diligently to recover from the fidelity bond required by this section [and second, where the condominium hotel operator or the person acting on behalf of the condominium hotel operator is a real estate licensee, from the real estate recovery fund pursuant to section 467-18]. The condominium hotel operator shall apply all proceeds received from the fidelity bond against all losses incurred by apartment owners due to fraudulent or dishonest acts by employees. If more than one apartment owner suffers a loss, the condominium hotel operator shall divide the proceeds among the apartment owners in proportion to each apartment owner's loss.

(h) All persons handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds shall be either employees of the condominium hotel operator or principals of the condominium hotel operator."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 1990.)