

ACT 249

S.B. NO. 152

A Bill for an Act Relating to Time Sharing.

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

SECTION 1. Time share activity has increased dramatically in our State over the past decade. With its growth and the financial incentives relative to time share sales and resales, complaints regarding overly aggressive marketing tactics have risen in intensity at an alarming rate, raising issues of compelling concern to the State regarding its adverse impact on tourism.

Tourism is our main source of income, yet tourists are especially vulnerable to unscrupulous time share sales practices as they are the primary target for marketing purposes. In order to protect the State’s main source of revenue and effectively enforce existing time share licensing laws, the State must become more proactive and creative in its enforcement efforts.

The purpose of this Act is to provide the necessary tools for that enforcement to occur.

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

“§514E- Identification badges. (a) Each person registered under this chapter as an acquisition agent, sales agent, or resale agent shall wear an identification badge while engaged in off-premises acquisition agent sales agent, or resale agent activity, as such activity is defined in section 514E-1. “Off-premises” shall be deemed to be acquisition agent, sales agent, or resale agent activity which occurs in a place other than in the office of a sales agent, on a project site, or within a

developer's principal place of business. Badges shall be worn in plain view, at chest level, and be unobstructed by any clothing or other matter.

(b) Identification badges shall be at least three and one-half by two and one-fourth inches and include the words "TIME SHARE AGENT" printed in capital letters of at least twenty-four point bold type.

(c) Identification badges shall be used only by the person whom they identify and may not under any circumstances be used by another person.

No other words, logos, or pictures shall appear on the badges.

§514E- Private right of action. Nothing in this chapter shall be construed to preclude a person aggrieved by a violation of this chapter from filing an action in court for civil damages. A violation of this chapter shall be deemed a cause of action for the purpose of the court action."

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 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 rules and county ordinances.], or fail to display at all times a conspicuous, clear, and unobstructed sign of a permanent nature:

(A) Containing no artwork or text except:

(i) The name of the time share plan or plans with which the booth is affiliated, which must be printed in capital, block-style letters at least one inch tall using bold black lettering against a white background; and

(ii) At least one inch beneath the name of the time share plan or plans;

the words "TIME SHARE", which must be printed in capital, block-style letters at least three and one-half inches tall using bold black lettering against a white background;

(B) With minimum dimensions of nine inches by twenty-four inches, excluding any frame;

(C) Permanently affixed to each side of the booth facing the public, in an upright position, perpendicular to the ground, and easily visible to passersby; and

(D) Consistent with such rules as the director may adopt pursuant to this chapter and consistent also with 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[.]; provided that in addition violations of section 514E- or of paragraph (11) shall result in a fine of not less than \$50 for each separate offense for a maximum aggregate amount of \$500."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 1997.

(Approved June 17, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.