



February 11, 2022

Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice-Chair
Senate Committee on Commerce and Consumer Protection

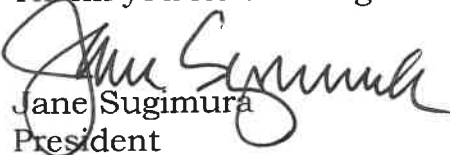
Re: SB2876 Relating to Common Interest Communities. Testimony in opposition.
Wednesday, February 16, 2022 at 9:30 a.m.

Chair Baker, Vice-Chair Chang and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCCA).

HCCA opposes this bill and asks that it be deferred. The definition of "de minimis" is subjective and vague and ambiguous and open to various interpretations. What may be considered to be "de minimis" may differ depending on the make-up of the board that is seeking to implement the association's rules and regulations and may result in uneven and inapplicable enforcement of those rules and regulations.

Thank you for allowing me to testify on this bill.


Jane Sugimura
President

SB-2876

Submitted on: 2/11/2022 5:42:25 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Richard Emery	Testifying for Associa	Oppose	No

Comments:

Owners agree to comply with the Rules of the Association when they purchase their Unit. Associations need to make their own decisions on Rules Enforcement. Boards routinely work with violating Owners to avoid unnecessary fees and costs. Strongly Oppose.

SB-2876

Submitted on: 2/14/2022 11:18:11 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Resident Manager	Testifying for Honolulu Tower AOA	Oppose	No

Comments:

Honolulu Tower is a 396 unit condominium built in 1982. Our residents span all ages, from infants to centenarians.

At its meeting on February 7, 2022, the Association of Apartment Owners of Honolulu Tower Board of Directors unanimously voted to oppose SB2876. The Board believes the legislature should not be telling common interest communities that they cannot go after infractions.

SB-2876

Submitted on: 2/14/2022 12:57:56 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gary Zanercik	Testifying for Sunset Kahili AOA	Oppose	No

Comments:

Even though it's a thankless job, I've been President of my AOA for almost 20 years so I know how these things work in the real world. This is a very bad bill that will generate lots of unnecessary litigation between unit owners and associations. There are no objective standards in the bill. Every violation by an owner will be deemed, by that owner, to be minor. Totally unworkable in the real world, every "minor" dispute will need to be litigated in court. When you buy into an association, certain individual rights are forfeited for the greater good of all the owners, including management by the association's board. The remedy for unhappy owners is to elect other board members (or stand for election yourself!) and follow the process to get the rules changed, not litigation over every rule or by-law violation.

SB-2876

Submitted on: 2/14/2022 3:37:52 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Chandra Kanemaru	Testifying for CCV2 Board	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2876.

This is a very bad bill. It will not only lead to multiple lawsuits, but it will diminish the value of covenants and undermine the administration and operation of planned community and condominium associations.

If adopted, owners who violate the covenants will argue that their violations are merely “de minimis infractions” for which there is no effective remedy because any legal action taken to enforce a covenant requires the expenditure of funds. Additionally, owners who are unhappy with their associations may use this bill to sue their associations for expending funds to enforce covenants against others.

The definition of “de minimis infraction” included in the bill is vague and ambiguous and will lead to conflict. For example, whether a violation “devalues the property” is vague and ambiguous. HRS Chapter 421J does not define property, so it is anyone’s guess as to what “property” is being referred to in the proposed change to HRS Section 421J-10. The term “property” as used in HRS Section 514B-3 would include the entire condominium project, which could be construed to mean that unless a violation devalues the entire condominium project, it is merely a “de minimis infraction.” Furthermore, proving the impact of a violation on the value of property may require expert testimony, adding to the expense of enforcement and requiring cases to go to trial.

This bill will lead to disputes as to whether a particular violation affects the health or safety of members or occupants. For example, enforcement of a bylaw provision prohibiting smoking in a building may be challenged by a smoker who argues that unless the Association can prove that the smoke from his cigarette has affected the health of other members or occupants, his smoking is merely a “de minimis infraction.”

There are many covenants that serve a good and proper purpose but are unrelated to “health and safety” and might not be found to be directly related to the value property. This bill would permit owners to violate these covenants. For example, owners who constantly create noise disturbances or nuisances or regularly park in areas where parking is prohibited would argue that the

association is powerless to take action against them because these violations do not affect the health or safety of others or devalue the property.

If adopted, this bill will erode and diminish the effectiveness of restrictive covenants, which, in turn, may cause irreparable harm to planned community and condominium associations and their members. Covenant enforcement should be left to associations and their members. Laws should not be adopted that will serve to encourage violations and undermine the value of covenants.

For these reasons, I strongly urge the Committee to permanently **DEFER** S.B. 2876.

Respectfully submitted,

Chandra R. Kanemaru

SB-2876

Submitted on: 2/14/2022 5:50:55 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLC	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2876.

1. is a very bad bill. It will not only lead to multiple lawsuits, but it will diminish the value of covenants and undermine the administration and operation of planned community and condominium associations.

If adopted, owners who violate the covenants will argue that their violations are merely “de minimis infractions” for which there is no effective remedy because any legal action taken to enforce a covenant requires the expenditure of funds. Additionally, owners who are unhappy with their associations may use this bill to sue their associations for expending funds to enforce covenants against others.

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1. are many covenants that serve a good and proper purpose, but are unrelated to “health and safety” and might not be found to be directly related to the value property. This bill would permit owners to violate these covenants. For example, owners who constantly create noise disturbances or nuisances or regularly park in areas where parking is prohibited would argue that the association is powerless to take action against them because these violations do not affect the health or safety of others or devalue the property.

If adopted, this bill will erode and diminish the effectiveness of restrictive covenants, which, in turn, may cause irreparable harm to planned community and condominium associations and their members. Covenant enforcement should be left to associations and their members. Laws should not be adopted that will serve to encourage violations and undermine the value of covenants.

For these reasons, I strongly urge the Committee to permanently **DEFER** S.B. 2876.

Respectfully submitted,

Mark McKellar



February 14, 2022

VIA WEB TRANSMITTAL

Hearing Date: Wednesday, February 16, 2022

Time: 9:30 a.m.

Place: Conference Room 229

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice-Chair

Senate Committee on Commerce and Consumer Affairs

Re: Hawaii Chapter, Community Associations Institute's
Testimony in opposition to SB 2876

Dear Chair Baker, Vice-Chair Chang and Committee members:

I am the Chair of the Legislative Action Committee of the Community Associations Institute, Hawaii Chapter ("CAI-LAC"). We represent the condominium and community association industry and submit this testimony in opposition to SB 2876 to the extent that the Bill does not comply with associations' existing covenants that run with the land.

Both condominiums and planned community associations are created by a recorded declaration that effectively places restrictions and obligations on the owners of the real properties within these communities. These restrictions and obligations are legal agreements (i.e., covenants) that are binding upon all current and future owners of the properties and therefore, run with the land. They are recorded as encumbrances on the titles to said properties. Both condominiums and planned community associations are obligated to enforce said covenants and all unit owners within these associations have legal standing to compel the enforcement of these restrictive covenants.

CAI-LAC is concerned with the constitutionality of the proposed legislation as applicable to existing condominiums and planned community associations. Under the Contract Clause of the United States Constitution at Article I, Section 10, no state shall pass a law impairing the obligations of private contracts. Under proposed Bill 2876, a "de minimis infraction" is defined as a "technical violation of a bylaw, rule, or regulation that does not affect the health and safety of other members or occupants and does not devalue the property." [Emphases added.] As such, it appears from the plain language that any violation that does not affect health and safety and does not "devalue" the

property is a “technical violation” and thus, under this Bill may not be enforced by the association. The Bill fails to consider all of the owners who bought into these associations in reliance on the rules and regulations (covenants) specifically contained in the declarations and bylaws. These owners purchased their units based upon their desire to live in a community that met the standards that these declarations, bylaws, rules and regulations provide. By passing this Bill, you are impairing their right to contract for these covenants.

Note, the declarations and bylaws of both condominiums and planned community associations as well as Chapters 514B and 421J of the Hawaii Revised Statutes provide options that allow the members of said associations to amend their declarations and bylaws (i.e., their restrictive covenants) with the approval of a certain percentage of the membership. If their governing documents are to be changed to remove certain infractions, then the manner in which to accomplish this is by a proper vote of the owners of those associations as they have a vested interest in the enforcement of their governing documents and the rules and regulations contained therein.

Based on the foregoing, we respectfully submit that SB 2876 should be deferred.
Thank you for your time and consideration.

Sincerely yours,

/s/ R. Laree McGuire
R Laree McGuire
CAI LAC Hawaii

SB-2876

Submitted on: 2/15/2022 6:51:49 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Grant Oka	Testifying for Kipuka at Hoakalei AOUO	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2876.

This is a very bad bill. It will not only lead to multiple lawsuits, but it will diminish the value of covenants and undermine the administration and operation of planned community and condominium associations.

If adopted, owners who violate the covenants will argue that their violations are merely “de minimis infractions” for which there is no effective remedy because any legal action taken to enforce a covenant requires the expenditure of funds. Additionally, owners who are unhappy with their associations may use this bill to sue their associations for expending funds to enforce covenants against others.

The definition of “de minimis infraction” included in the bill is vague and ambiguous and will lead to conflict. For example, whether a violation “devalues the property” is vague and ambiguous. HRS Chapter 421J does not define property, so it is anyone’s guess as to what “property” is being referred to in the proposed change to HRS Section 421J-10. The term “property” as used in HRS Section 514B-3 would include the entire condominium project, which could be construed to mean that unless a violation devalues the entire condominium project, it is merely a “de minimis infraction.” Furthermore, proving the impact of a violation on the value of property may require expert testimony, adding to the expense of enforcement and requiring cases to go to trial.

This bill will lead to disputes as to whether a particular violation affects the health or safety of members or occupants. For example, enforcement of a bylaw provision prohibiting smoking in a building may be challenged by a smoker who argues that unless the Association can prove that the smoke from his cigarette has actually affected the health of other members or occupants, his smoking is merely a “de minimis infraction.”

There are many covenants that serve a good and proper purpose, but are unrelated to “health and safety” and might not be found to be directly related to the value property. This bill would permit owners to violate these covenants. For example, owners who constantly create noise disturbances or nuisances or regularly park in areas where parking is prohibited would argue that

the association is powerless to take action against them because these violations do not affect the health or safety of others or devalue the property.

If adopted, this bill will erode and diminish the effectiveness of restrictive covenants, which, in turn, may cause irreparable harm to planned community and condominium associations and their members. Covenant enforcement should be left to associations and their members. Laws should not be adopted that will serve to encourage violations and undermine the value of covenants.

For these reasons, I strongly urge the Committee to permanently **DEFER** S.B. 2876.

Respectfully submitted,

Grant Oka

President, Kipuka at Hoakalei AOOU

LATE

**Senate
Committee on Commerce and Consumer Protection
Wednesday, February 16, 2022
9:30 a.m.**

To: Chair Rosalyn Baker
Re: SB2876, Relating to Common Interest Communities

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

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups. We focus on policies and practices which can impact the well-being of seniors and our community.

I am also the leader of Hui 'Oia'i'o, informally known as "COCO," a coalition of over three hundred property owners--mostly seniors--from over 150 common-interest associations throughout Hawaii and served as an officer on three condominium associations' boards.

I support SB2876 for the following reasons:

As a former director on three condominium association boards and a condominium owner and resident for over four decades, I realize that condominium owners have difficulty accessing justice because their association boards can use various remedies such as fines, liens, and foreclosures, even if these enforcements may be without true cause.

I have witnessed condominium owners saddled with unreasonable legal fees foisted upon them by their associations to stifle inquiry and dissent, and to intimidate those who are merely seeking to enforce their statutory rights and protections.

In 2014, upon learning that a harmful "priority of payment" scheme was used by some associations to foreclose on owners for delinquent payment of fees that were not essential to the operation of these associations such as House Rule Violations penalties and fines, late fees and interest charges, and legal fees, and that associations could enforce a "pay first, dispute later" process, Hui 'Oia'i'o initiated efforts to educate legislators and other government officials of that harmful payment scheme and to eliminate the "pay first, dispute later" process for non-essential fees so that owners could fairly dispute non-essential fees before payment was required.

In 2018, Act 195 was passed which assured owners that--aside from common expense assessments that are essential to the operations of the association and must be paid--they are entitled to dispute those non-essential fees before payment may be due.

However, even with the enactment of that law, owners' rights are essentially useless, often involving costly legal fees that most cannot afford and processes that most cannot understand.

Despite the usual reticence of the local population to "create waves," complaints from HOA owners and residents to the local Boards of Realtors, neighborhood boards, county offices, legislators, DCCA Condo Specialists, and RICO have been so numerous that, in 2020 alone, the DCCA received nearly 50,000 requests for assistance from "condo owners and interested parties," suggesting that many consumers may be experiencing harm.

Rather than ascribe these statements to dismissible anecdotal evidence, HOA owners' vulnerability to abusive practices is supported by repeated assertions by Hawaii insurance industry expert, Surita "Sue" Savio, that Hawaii had more D&O insurance claims than any other state in the nation, reflecting a disproportionate degree of malfeasance and less fidelity to fiduciary duties despite our state's comparatively minute size and population.

Prohibiting associations from using association funds to pursue owners for de minimus technical infractions of the governing documents (e.g., leaving a wet umbrella on the doorstep, parking a few minutes longer than allowed in a loading zone) that do not affect the health, safety, or value of the property or association, should be coupled with mandating associations, by their boards, to handle these de minimus technical infractions internally and fairly.

Mahalo for the opportunity to submit this testimony on behalf of Hui 'Oia'i'o in support of SB2876.

SB-2876

Submitted on: 2/11/2022 9:10:06 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Marcia Kimura	Individual	Support	Yes

Comments:

I am in support of this measure; finally, the subject of condominium association budgeting is being given long overdue attention. The more frivolous, minor or non critical spending is avoided, the greater the path to financially sound associations.

SB-2876

Submitted on: 2/14/2022 9:26:52 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Steve Glanstein	Individual	Oppose	No

Comments:

The bill appears to create more problems than it could possibly solve. For example, what is a "technical violation" vs. a "non-technical violation?" This becomes an argument between lawyers.

1. The reference to "health and safety of other members or occupants" excludes individuals who are not in that group, e.g. somebody walking by outside of a condominium complex.
2. The reference to "property" doesn't indicate whose type of property, i.e. an owner's property, association's property, or even property fronting a condominium which the association may have to keep in good condition.
3. The reference to "devalue" becomes an argument between appraisers.

Example: An owner who lives on the 10th floor of the condominium throws the bible at the owner's spouse. The spouse moves out of the way, the bible goes out of the window, and hits a random pedestrian walking on city property. The owner's name is in the bible and the owner is fined by the association. This violation could have had disastrous consequences. The imposition of the fine is one way to ensure it doesn't happen again. (FYI ... a similar action actually happened and the tenant's behavior improved.) This violation affected the health and safety of somebody other than anticipated by the statute and it is difficult to argue it devalued the property.

Summarizing, this bill may be looking to address a problem that exists on a very limited basis throughout the state and related to a small group's problems with their association.

If owners believe a board acts in an irresponsible manner with unrealistic fines and penalties, the owners have several methods available for removing board members from office. Suggest the bill be deferred.

SB-2876

Submitted on: 2/14/2022 11:16:32 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Anne Anderson	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2876.

This is a very bad bill. It will not only lead to multiple lawsuits, but it will diminish the value of covenants and undermine the administration and operation of planned community and condominium associations.

If adopted, owners who violate the covenants will argue that their violations are merely “de minimis infractions” for which there is no effective remedy because any legal action taken to enforce a covenant requires the expenditure of funds. Additionally, owners who are unhappy with their associations may use this bill to sue their associations for expending funds to enforce covenants against others.

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There are many covenants that serve a good and proper purpose, but are unrelated to “health and safety” and might not be found to be directly related to the value property. This bill would permit owners to violate these covenants. For example, owners who constantly create noise disturbances or nuisances or regularly park in areas where parking is prohibited would argue that

the association is powerless to take action against them because these violations do not affect the health or safety of others or devalue the property.

If adopted, this bill will erode and diminish the effectiveness of restrictive covenants, which, in turn, may cause irreparable harm to planned community and condominium associations and their members. Covenant enforcement should be left to associations and their members. Laws should not be adopted that will serve to encourage violations and undermine the value of covenants.

For these reasons, I strongly urge the Committee to permanently DEFER S.B. 2876.

Respectfully submitted,

M. Anne Anderson

SB-2876

Submitted on: 2/14/2022 11:50:54 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
mary freeman	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

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There are many covenants that serve a good and proper purpose, but are unrelated to “health and safety” and might not be found to be directly related to the value property. This bill would permit owners to violate these covenants. For example, owners who constantly create noise disturbances or nuisances or regularly park in areas where parking is prohibited would argue that the association is powerless to take action against them because these violations do not affect the health or safety of others or devalue the property.

If adopted, this bill will erode and diminish the effectiveness of restrictive covenants, which, in turn, may cause irreparable harm to planned community and condominium associations and their members. Covenant enforcement should be left to associations and their members. Laws should not be adopted that will serve to encourage violations and undermine the value of covenants.

For these reasons, I strongly urge the Committee to permanently **DEFER** S.B. 2876.

Respectfully submitted,

Mary Freeman

Ewa Beach

SB-2876

Submitted on: 2/14/2022 12:29:17 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
lynne matusow	Individual	Oppose	No

Comments:

I am a condominium owner, resident and board member. This bill is pure, unadulterated gobbledygook. Definition: language that is meaningless or is made unintelligible by excessive use of abstruse technical terms; nonsense. I strongly oppose this very bad bill and urge you to permanently defer it. You can also call this bill, "color me gray," because of its gray areas.

What is a technical violation? If a car is parked beyond the boundaries of the parking stall is that a technical violation, even if it hinders entry and exit from the neighboring stall, or is it now a health and safety violation? If a pet defecates on common property, is that a technical violation or a health and safety violation, as the doo doo attracts insects, odiferous, is slippery and someone falls? Does the doo doo devalue the property? If a unit door is propped open, is that a technical violation or not as it is a violation of the fire code and HFD can fine the association? If a car is parked in a no parking zone and impeding traffic, is that a technical violation or a health and safety issue? If someone is smoking on a non smoking property, is that a technical violation or a health and safety violation? Does the smoking devalue the property? If someone hangs a garment over their high rise lanai railing is that a technical violation or a health and safety issue? Who decides? The judges? Do you get the point of all this gray gobbledygook?

Any legal action taken to enforce a covenant requires the expenditure of funds. Owners who are unhappy with their associations may sue their associations for expending funds to enforce covenants against others. That then leads to fewer dollars for maintenance and reserve funds.

This bill will lead to habitual violators of violations unrelated to health and safety to argue that the association is powerless to take action against them because these violations do not affect the health or safety of others or devalue the property.

This bill will erode and diminish the effectiveness of restrictive covenants. Covenant enforcement should be left to associations and their members.

Kill it now.

SB-2876

Submitted on: 2/14/2022 5:23:36 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carol Walker	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

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For these reasons, I strongly urge the Committee to permanently **DEFER** S.B. 2876.

Respectfully submitted,

Carol Walker

SB-2876

Submitted on: 2/14/2022 6:01:50 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Paul A. Ireland Koftinow	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

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This is a very bad bill. It will not only lead to multiple lawsuits, but it will diminish the value of covenants and undermine the administration and operation of planned community and condominium associations.

If adopted, owners who violate the covenants will argue that their violations are merely “de minimis infractions” for which there is no effective remedy because any legal action taken to enforce a covenant requires the expenditure of funds. Additionally, owners who are unhappy with their associations may use this bill to sue their associations for expending funds to enforce covenants against others.

The definition of “de minimis infraction” included in the bill is vague and ambiguous and will lead to conflict. For example, whether a violation “devalues the property” is vague and ambiguous. HRS Chapter 421J does not define property, so it is anyone’s guess as to what “property” is being referred to in the proposed change to HRS Section 421J-10. The term “property” as used in HRS Section 514B-3 would include the entire condominium project, which could be construed to mean that unless a violation devalues the entire condominium project, it is merely a “de minimis infraction.” Furthermore, proving the impact of a violation on the value of property may require expert testimony, adding to the expense of enforcement and requiring cases to go to trial.

This bill will lead to disputes as to whether a particular violation affects the health or safety of members or occupants. For example, enforcement of a bylaw provision prohibiting smoking in a building may be challenged by a smoker who argues that unless the Association can prove that the smoke from his cigarette has actually affected the health of other members or occupants, his smoking is merely a “de minimis infraction.”

are many covenants that serve a good and proper purpose, but are unrelated to “health and safety” and might not be found to be directly related to the value property. This bill would permit owners to violate these covenants. For example, owners who constantly create noise disturbances or nuisances or regularly park in areas where parking is prohibited would argue that the

association is powerless to take action against them because these violations do not affect the health or safety of others or devalue the property.

If adopted, this bill will erode and diminish the effectiveness of restrictive covenants, which, in turn, may cause irreparable harm to planned community and condominium associations and their members. Covenant enforcement should be left to associations and their members. Laws should not be adopted that will serve to encourage violations and undermine the value of covenants.

For these reasons, I strongly urge the Committee to permanently DEFER S.B. 2876.

Respectfully submitted,

Paul A. Ireland Koftinow

Dale A. Head
1637 Ala Mahina Place
Honolulu, HI 96819
[dale.head@aol.com]

Aloha Hawaii Senate Committee on Commerce and Consumer Protection

SB2876 Relating to common interest communities

1. I am writing in **Support** of Senate Bill 2876 as it will ameliorate the problem of bullying sometimes perpetrated by power hungry members on Boards of Directors.
2. The language in this key clause is perfect:

"For purposes of this subsection, a "de minimis infraction" means a technical violation of a bylaw, rule, or regulation that does not affect the health and safety of other members or occupants and does not devalue the property."
3. When the state promulgated Hawaii Revised Statute 514b, and the very many changes to it over the past few decades, normally input to wording is provided by management companies, their lobbyists, collection attorneys, even perhaps Parliamentarians. The true 'stake holders' are HOA members, property owners, who are never asked via a state survey what needs to be done to improve quality of life in Home Owners Associations.
4. Please pass this Bill, SB2786.

Respectfully, **Dale A. Head**



SB-2876

Submitted on: 2/14/2022 9:05:41 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jeff Sadino	Individual	Support	Yes

Comments:

I STRONGLY SUPPORT SB2876.

The over-reliance on attorneys by Planned Communities has produced far more damage than the benefits it has produced.

As an example, my Condo Association charged \$150 in attorney fees to my account in order to discuss whether or not they should waive a \$50 fine.

As another example, they also charged me \$145 in attorney fees in order to correct a \$68 mistake that their attorneys (as debt collectors) posted to my account.

As another example, my Association wanted me to send them the receipts for the contractors who did the work to replace my kitchen cabinets. I was never provided with a reason why they wanted this information. It is a completely trivial request, not supported by the Governing Documents at all. It is a request that my Association has not placed on any other Owner, but they have targeted me for it. To date, about **\$30,000** in attorney fees have been incurred as a result of this completely trivial/de-minimus/unsubstantiated/pointless request. As part of my Association's motivation to target me, they have weaponized their attorney fees against me using the flimsiest of justifications.

There are many more examples, too many to list here.

There is a culture of complete over-reliance on attorneys in Planned Communities. Please protect the Owners. Please get attorneys out of the day-to-day squabbles of life. Please pass this Bill.

Thank you for the opportunity to testify,

Jeff Sadino

RE: Committee on Commerce and Consumer Protection

February 16, 2022

SB-2876

Submitted on: 2/15/2022 7:03:35 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Marilyn Joyce Oka	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2876.

This is a very bad bill. It will not only lead to multiple lawsuits, but it will diminish the value of covenants and undermine the administration and operation of planned community and condominium associations.

If adopted, owners who violate the covenants will argue that their violations are merely “de minimis infractions” for which there is no effective remedy because any legal action taken to enforce a covenant requires the expenditure of funds. Additionally, owners who are unhappy with their associations may use this bill to sue their associations for expending funds to enforce covenants against others.

The definition of “de minimis infraction” included in the bill is vague and ambiguous and will lead to conflict. For example, whether a violation “devalues the property” is vague and ambiguous. HRS Chapter 421J does not define property, so it is anyone’s guess as to what “property” is being referred to in the proposed change to HRS Section 421J-10. The term “property” as used in HRS Section 514B-3 would include the entire condominium project, which could be construed to mean that unless a violation devalues the entire condominium project, it is merely a “de minis infraction.” Furthermore, proving the impact of a violation on the value of property may require expert testimony, adding to the expense of enforcement and requiring cases to go to trial.

This bill will lead to disputes as to whether a particular violation affects the health or safety of members or occupants. For example, enforcement of a bylaw provision prohibiting smoking in a building may be challenged by a smoker who argues that unless the Association can prove that the smoke from his cigarette has actually affected the health of other members or occupants, his smoking is merely a “de minis infraction.”

There are many covenants that serve a good and proper purpose, but are unrelated to “health and safety” and might not be found to be directly related to the value property. This bill would permit owners to violate these covenants. For example, owners who constantly create noise disturbances or nuisances or regularly park in areas where parking is prohibited would argue that

the association is powerless to take action against them because these violations do not affect the health or safety of others or devalue the property.

If adopted, this bill will erode and diminish the effectiveness of restrictive covenants, which, in turn, may cause irreparable harm to planned community and condominium associations and their members. Covenant enforcement should be left to associations and their members. Laws should not be adopted that will serve to encourage violations and undermine the value of covenants.

For these reasons, I strongly urge the Committee to permanently **DEFER** S.B. 2876.

Respectfully submitted,

Marilyn Oka

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I am an attorney who represents common ownership associations. I respectfully oppose SB 2876 and urge the committee to defer the Bill.

The proposed definition of ‘de minimus’ is ambiguous because its terms – ‘technical’ violation, ‘impact on health and safety’ and ‘devaluation of property’ invite highly subjective interpretations which will lead to more, not less, conflict among boards of directors of owners’ associations and their compliant and non-compliant members.

Declarations of Condominium Property Regimes and Declarations of Covenants, Conditions, and Restrictions and the rules and guidelines adopted to execute their provisions are the very basis of common interest associations. SB 2876 seriously undermines the documentation guiding the self-governance and operation of the associations.

The practical effect of this bill would be to increase litigation. The violations the bill seeks to protect are committed largely by owners who either do not realize their actions are violations (and who will obey the governing documents once they are aware of the error) or, more problematically, owners who disagree with the conditions or restrictions (but do not exert the effort to change the provisions) or think that the guidelines do not apply to them. The bill actually forces the associations to take no action because even to cite a violation means that an association is ‘expending funds’ to pay an employee to monitor the project and notify violators of the infraction(s).

Further, assuming that the association-paid employee does cite an owner for a ‘deminimus,’ ‘technical’ violation which does not fall precisely into the vague categories of ‘danger to health and safety’ or a ‘devaluation of property’ but the citation, and subsequent fining, is ignored, the associations will be forced to expend more funds attempting to perform its duty to protect its membership from violations considered ‘de minimus’ only by the offenders.

Many property owners have purchased their homes relying on the guidance of the governing documents which protect them from individual owners who may not respect their obligation to maintain and use their property in such a way as to not harm the broader neighborhood. Eliminating the rights of the associations to govern its membership and enforce the standards which are the very basis of their creation is wrong and this bill should be deferred.

SB 2876 is a bad Bill for owners who participate in the communities and comply with associations of owners’ governing documents and I respectfully urge the committee to defer this Bill.

/s/ Pamela J. Schell

LATE

SB-2876

Submitted on: 2/15/2022 12:00:24 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lourdes Scheibert	Individual	Support	No

Comments:

I support SB2876.