HAWAII LEGISLATIVE
ACTION COMMITTEE
community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 3, 2024

Honorable Jarrett Keohokalole
Honorable Carol Fukunaga
Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 2534 COMMENTS**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

CAI provides comments on SB 2534.

First, CAI wishes to emphasize that SB 2534 demonstrates awareness that owner misconduct occurs. Owner misconduct is a common and significant challenge to condominium governance. Bills like SB 2493, that seek to hamper the capacity of boards to manage misconduct and to enforce the governing documents of an association, should not pass.

Section 1 of SB 2534 provides as follows:

> SECTION 1. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to part VII to be appropriately designated and to read as follows:
>
> "**§514B- Harassment and interference prohibited.** (a) A unit owner, resident, tenant, or their guests, or any person acting on behalf of a unit owner, shall not harass or interfere with a board member, managing agent, resident manager, association employee, or vendor contracted by the association, in the performance of any duty or in the exercise of any right or power granted under this chapter or the governing documents of the association.
>
> (b) A board member, managing agent, resident manager, association employee, or vendor contracted by the association may bring a civil action in district court alleging a violation of this section. The court may issue an injunction or award damages, court costs, attorneys' fees, or any other relief the court deems appropriate.
>
> (c) Upon a report, observation, or complaint relating to any violation of subsection (a), the board shall promptly schedule a meeting to assess and review the alleged violation; provided that the board shall take any immediate action deemed necessary when the alleged violation involves the health, life, and safety of any person."

Harassment of, and interference with, association representatives and vendors does occur.

Harassment is a crime.

> **§711-1106 Harassment.** (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:
>
> (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;
>
> (b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;
>
> (c) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication as defined in section 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication;
>
> (d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;
>
> (e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or
>
> (f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.
>
> (2) Harassment is a petty misdemeanor.

Harassment can be enjoined through an existing and well-articulated mechanism which the judiciary is equipped to handle.[1]

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[1] **§604-10.5 Power to enjoin and temporarily restrain harassment.** (a) For the purposes of this section:
"Course of conduct" means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose.
"Harassment" means:
(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or
(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.
(b) The district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment.
(c) Any person who has been subjected to harassment may petition the district court for a temporary restraining order and an injunction from further harassment in the district in which:
(1) The petitioner resides or is temporarily located;
(2) The respondent resides; or
(3) The harassment occurred.
(d) A petition for relief from harassment shall be in writing and shall allege that a past act or acts of harassment may have occurred or that threats of harassment make it probable that acts of harassment may be imminent; and shall be accompanied by an affidavit made under oath or statement made under penalty of perjury stating the specific facts and circumstances for which relief is sought.
(e) Upon petition to a district court under this section, the court may allow a petition, complaint, motion, or other document to be filed identifying the petitioner as "jane doe" or "john doe"; provided that the court finds that the "jane doe" or "john doe" filing is reasonably necessary to protect the privacy of the petitioner and will not unduly prejudice the prosecution or the defense of the action.
In considering a petition requesting a "jane doe" or "john doe" filing, the court shall weigh the petitioner's interest in privacy against the public interest in disclosure.
The court, only after finding clear and convincing evidence that would make public inspection inconsistent with the purpose of this section, may seal from the public all documents or portions of documents, including all subsequently filed documents, that would identify the petitioner or contain sufficient information from which the petitioner's identity could be discerned or inferred. Access to identifying information may be permitted to law enforcement or other authorized authority, in the course of conducting official business, to effectuate service, enforcement, or prosecution, or as ordered by the courts.
(f) Upon petition to a district court under this section, the court may temporarily restrain the person or persons named in the petition from harassing the petitioner upon a determination that there is probable cause to believe that a past act or acts of harassment have occurred or that a threat or threats of harassment may be imminent. The court may issue an ex parte temporary restraining order either in writing or orally; provided that oral orders shall be reduced to writing by the close of the next court day following oral issuance.
(g) A temporary restraining order that is granted under this section shall remain in effect at the discretion of the court for a period not to exceed ninety days from the date the order is granted, including, in the case where a temporary restraining order restrains any party from harassing a minor, for a period extending to a date after the minor has reached eighteen years of age. A hearing on the petition to enjoin harassment shall be held within fifteen days after the temporary restraining order is granted. If service of the temporary restraining order has not been effected before the date of the hearing on

Interference is undefined in SB 2534. A concise and narrow definition should be supplied, to enable a clear and objective basis for determining if actionable interference has occurred.

Existing law provides for the enforcement of mutual obligations in a condominium community:

> **[§514B-112] Condominium community mutual obligations.** (a) All unit owners, tenants of owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to this chapter are subject to this chapter and to the declaration and bylaws of the association adopted pursuant to this chapter.
>
> (b) All agreements, decisions, and determinations lawfully made by the association in accordance with the voting percentages established in this chapter, the declaration, or the bylaws are binding on all unit owners.
>
> (c) Each unit owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the covenants, conditions, and restrictions set forth in the declaration, the bylaws, and the house rules adopted pursuant thereto. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the managing agent, resident manager, or board on behalf of the association or, in a proper case, by an aggrieved unit owner.

Being protective of that existing mechanism may be more important that adding a new section to Chapter 514B.

CAI Legislative Action Committee, by

Its Chair

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the petition to enjoin, the court may set a new date for the hearing; provided that the new date shall not exceed ninety days from the date the temporary restraining order was granted.

The parties named in the petition may file or give oral responses explaining, excusing, justifying, or denying the alleged act or acts of harassment. The court shall receive all evidence that is relevant at the hearing and may make independent inquiry.

If the court finds by clear and convincing evidence that harassment as defined in paragraph (1) of that definition exists, it may enjoin for no more than three years further harassment of the petitioner, or that harassment as defined in paragraph (2) of that definition exists, it shall enjoin for no more than three years further harassment of the petitioner, including, in the case where any party is enjoined from harassing a minor, for a period extending to a date after the minor has reached eighteen years of age; provided that this subsection shall not prohibit the court from issuing other injunctions against the named parties even if the time to which the injunction applies exceeds a total of three years.

Any order issued under this section shall be served upon the respondent. For the purposes of this section, "served" means actual personal service, service by certified mail, or proof that the respondent was present at the hearing at which the court orally issued the injunction.

Where service of a restraining order or injunction has been made or where the respondent is deemed to have received notice of a restraining order or injunction order, any knowing or intentional violation of the restraining order or injunction order shall subject the respondent to the provisions in subsection (i).

Any order issued shall be transmitted to the chief of police of the county in which the order is issued by way of regular mail, facsimile transmission, or other similar means of transmission.

(h) The court may grant the prevailing party in an action brought under this section costs and fees, including attorney's fees.

(i) A knowing or intentional violation of a restraining order or injunction issued pursuant to this section is a misdemeanor. The court shall sentence a violator to appropriate counseling and shall sentence a person convicted under this section as follows:

(1) For a violation of an injunction or restraining order that occurs after a conviction for a violation of the same injunction or restraining order, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours; and

(2) For any subsequent violation that occurs after a second conviction for violation of the same injunction or restraining order, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1) and (2), upon appropriate conditions, such as that the defendant remain alcohol- and drug-free, conviction-free, or complete court-ordered assessments or counseling. The court may suspend the mandatory sentences under paragraphs (1) and (2) where the violation of the injunction or restraining order does not involve violence or the threat of violence. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense.

(j) Nothing in this section shall be construed to prohibit constitutionally protected activity.

TESTIMONY in OPPOSITION of S.B. 2534 February 4, 2024

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

First, I support subsection (a) of the measure, which prohibits harassment or interference with the performance of any duty or the exercise of any right or power granted under Chapter 514B or the governing documents of an association.

Second, I object to subsection (b) of the measure as it conflicts with the jurisdictional limitations of district courts as defined in Chapter 604 of the Hawaii Revised Statutes. Under Section 604-10.5, district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment. "Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

The measure states that district courts may issue an injunction for harassment or “interference” in the “performance of any duty” or “power granted under this chapter or the governing documents.”

The term "interference" is not defined in the measure but presumably means something less than harassment, as defined above. To the extent that the measure gives the district court the authority to enjoin interference, the measure will conflict with HRS Section 604-10.5.

In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

Finally, the measure gives the court the authority to "award damages, court costs, attorneys' fees, or any other relief the court deems appropriate," without stating that the claim must be substantiated or the party bringing the action must prevail in the action.

Third, subsection (c) imposes duties upon boards that many boards may not be equipped to discharge. Condominium board members are volunteers, some of whom reside in other states or countries. With the many projects and tasks assigned to boards, and logistical and other issues, most boards do not have the capability to promptly "schedule a meeting to assess and review the alleged violation" whenever an allegation is made of a violation of subsection (a).

Likewise, while boards should take immediate action when an alleged violation involves serious health, life, and safety concerns, imposing a statutory duty to do so will only expose associations to liability. Under the doctrine of negligence per se, the imposition of a statutory duty to take action may expose board members to liability without fault, e.g., even in the absence of negligence. This may further deter unit owners from serving on boards and it may drive up the cost of insurance.

Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

Finally, there are numerous existing laws that prohibit harassment. In addition to the general law on harassment, HRS Section 514B-191 prohibits retaliation by an association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner. "Retaliate" means "to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this

chapter or the association's governing documents." Similarly, under 24 C.F.R § 100.7(iii), an association can be held liable for a resident's harassment of another resident when the harassment is based on race, color, religion, sex, national origin, disability or familial status.

Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

Reyna C. Murakami

AOUO President of Mariner's Village 1

AOUO President of Waialae Place

AOUO Vice President of The Continental Apartments

SB-2534
Submitted on: 2/5/2024 7:39:48 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Rachel Glanstein	Testifying for AOAO Lakeview Sands	Oppose	Written Testimony Only

Comments:

Aloha,

I OPPOSE S.B. 2534 and urge you to defer/kill the bill.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

First, I support subsection (a) of the measure, which prohibits harassment or interference with the performance of any duty or the exercise of any right or power granted under Chapter 514B or the governing documents of an association.

Second, I object to subsection (b) of the measure as it conflicts with the jurisdictional limitations of district courts as defined in Chapter 604 of the Hawaii Revised Statutes. Under Section 604-10.5, district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment. "Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

The measure states that district courts may issue an injunction for harassment or “interference” in the “performance of any duty” or “power granted under this chapter or the governing documents.” The term “interference” is not defined in the measure but presumably means something less than harassment, as defined above. To the extent that the measure gives the district court the authority to enjoin interference, the measure will conflict with HRS Section 604-10.5.

In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

The measure would give the court the authority to "award damages, court costs, attorneys' fees, or any other relief the court deems appropriate," without stating that the claim must be substantiated or the party bringing the action must prevail in the action.

Third, subsection (c) imposes duties upon boards that many boards may not be equipped to discharge. Condominium board members are volunteers, some of whom reside in other states or countries. With the many projects and tasks assigned to boards, and logistical and other issues, most boards do not have the capability to promptly "schedule a meeting to assess and review the alleged violation" whenever an allegation is made of a violation of subsection (a).

Likewise, while boards should take immediate action when an alleged violation involves serious health, life, and safety concerns, imposing a statutory duty to do so will only expose associations to liability. Under the doctrine of negligence per se, the imposition of a statutory duty to take action may expose board members to liability without fault, e.g., even in the absence of negligence. This may further deter unit owners from serving on boards and it may drive up the cost of insurance.

Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

Finally, there are numerous existing laws that prohibit harassment. In addition to the general law on harassment, HRS Section 514B-191 prohibits retaliation by an association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner. "Retaliate" means "to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents." Similarly, under 24 C.F.R § 100.7(iii), an association can be held liable for a resident's harassment of another resident when the harassment is based on race, color, religion, sex, national origin, disability or familial status.

Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c). I recommend the measure be deferred.

Mahalo for your time,

Rachel Glanstein

SB-2534
Submitted on: 2/5/2024 8:59:03 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLLC	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

First, I support subsection (a) of the measure, which prohibits harassment or interference with the performance of any duty or the exercise of any right or power granted under Chapter 514B or the governing documents of an association.

Second, I object to subsection (b) of the measure as it conflicts with the jurisdictional limitations of district courts as defined in Chapter 604 of the Hawaii Revised Statutes. Under Section 604-10.5, district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment. "Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

The measure states that district courts may issue an injunction for harassment or “interference” in the “performance of any duty” or “power granted under this chapter or the governing documents.” The term “interference” is not defined in the measure but presumably means something less than harassment, as defined above. To the extent that the measure gives the district court the authority to enjoin interference, the measure will conflict with HRS Section 604-10.5.

In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

Finally, the measure gives the court the authority to "award damages, court costs, attorneys' fees, or any other relief the court deems appropriate," without stating that the claim must be substantiated or the party bringing the action must prevail in the action.

Third, subsection (c) imposes duties upon boards that many boards may not be equipped to discharge. Condominium board members are volunteers, some of whom reside in other states or countries. With the many projects and tasks assigned to boards, and logistical and other issues, most boards do not have the capability to promptly "schedule a meeting to assess and review the alleged violation" whenever an allegation is made of a violation of subsection (a).

Likewise, while boards should take immediate action when an alleged violation involves serious health, life, and safety concerns, imposing a statutory duty to do so will only expose associations to liability. Under the doctrine of negligence per se, the imposition of a statutory duty to take action may expose board members to liability without fault, e.g., even in the absence of negligence. This may further deter unit owners from serving on boards and it may drive up the cost of insurance.

Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

Finally, there are numerous existing laws that prohibit harassment. In addition to the general law on harassment, HRS Section 514B-191 prohibits retaliation by an association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner. "Retaliate" means "to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents." Similarly, under 24 C.F.R § 100.7(iii), an association can be held liable for a resident's harassment of another resident when the harassment is based on race, color, religion, sex, national origin, disability or familial status.

Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

Mark McKellar

SB-2534
Submitted on: 2/3/2024 3:22:44 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Testifying for Hawaii First Realty LLC	Comments	Written Testimony Only

Comments:

Not sure how thic can be enforced. There is little evidence that this is a common problem. It will only encourage and result in more legal fees and disputes.

SB-2534
Submitted on: 2/3/2024 10:03:09 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dale Head	Individual	Oppose	In Person

Comments:

Regarding SB2534 (Prohibits a condominium unit owner, resident, tenant, or their guests, or any person acting on behalf of the unit owner, from harassing or interfering with board members, managing agents, resident managers, association employees, or vendors contracted by the association, in the performance of any duty or in the exercise of any right or power granted under chapter 514B, HRS, or the governing documents of the association.)

Aloha CPN Chair Jarrett Keohokalole and Vice Chair Carol Fukunaga

I OPPOSE this particular Bill as it provides, quite simplly, another tool for rogues Boards of Directors and Managing Agents to harass and bully HOA members. Keep in mind that as the state does not enforce any parts of HRS514b, it functions in truth as a BULLY AUTHORIZATION ACT. The state is already complicit in malicious administration of HOAs as it is unwilling to investigate manipulated elections.

Sincerely, Dale Arthur Head. sunnymakaha@yahoo.com

SB-2534
Submitted on: 2/4/2024 3:29:21 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Greg Misakian	Individual	Oppose	Remotely Via Zoom

Comments:

I do not support SB2534.

It sounds like it was crafted by a Board President that wanted a way to silence owners with a law that could easily be manipulated, via false allegations and the misuse of the association attorney to retaliate.

This bill is flawed in that it does not apply to "all" residents of a condominium association (i.e., harassment against anyone).

Additionally, it may inadvertently provide a vehicle for dishonest Board members to falsely accuse owners or others of something they did not do, as a way to retaliate against them for raising concerns. My experience tells me this was not well thought out, while it may be well intentioned.

Association Boards and Management Companies also tell owners to call the police if there is any harassment against them (even from Board members). Will there be two different laws that apply?

I'm also a Director on my condominium association Board who should want this law, but to me it is not fair and will most likely result in unintended litigation in the future.

If you want condominium associations to be "self-governed," these types of laws need to be enacted by the owners via the association bylaws.

Please pass SB3205, which can also address issues such as these.

Gregory Misakian

Kokua Council, 2nd Vice President

Waikiki Neighborhood Board, Sub-District 2 Vice Chair

SB-2534
Submitted on: 2/3/2024 9:12:43 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Individual	Support	Written Testimony Only

Comments:

Our association strongly supports SB2534. Please pass this bill.

Mike Golojuch, Sr., President

Committee on Commerce & Consumer Protection

Tuesday, February 6, 2024 @ 9:30 AM

SB 2534: Harassment

My name is Jeff Sadino, I am a condo owner in Makiki, and I am providing **COMMENTS** to this Bill, although I am slightly against it.

While I generally agree that Board Members, Resident Managers, Property Managers, etc. should be able to do their jobs for the benefit of the Association without worrying about retaliation, I have concerns about its necessity, how it will be implemented, and potential for weaponizing it:

Most importantly, I think that this law is redundant to the existing laws that Hawai'i has on harassment, specifically 711-1106. I also assume that Hawai'i has existing laws against threatening another person, which I assume is the original motivation for this Bill.

I also think that the existing Retaliation Statute in 514B-191 probably already addresses many of the scenarios that this Bill is trying to address.

I think that it is necessary for the word "harass" to be defined.

I fear that this Harassment law will be used as another weapon for the AOAO to silence Owners who are critical of the AOAO. I think the history over the past several decades of the trade industry weaponizing laws in bad-faith against condo owners is clear.

I also have concerns against limiting a person's right to criticize their government. Being critical of the government without fear of reprisal is an incredibly foundational principal in the United States. While freedom of speech is not unlimited, I fear that this Bill in its current form will do more harm than good.

If this Bill is passed, I request that the Anti-Retaliation Statute in 514B-191 be strengthened so that Owners can be protected from retaliation just for criticizing their government. Specifically:

1) (a)(5): "…may bring a civil action in district or civil court alleging a violation…"
2) "Retaliate means to take any action…that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights…" This definition makes no sense to me. It needs to be more straightforward using everyday language that the average person can understand and rely upon.
3) The Retaliation Statute should include remedies, similar to this proposed Bill.

Thank you for the opportunity to testify,

Jeff Sadino

[PART VII. MISCELLANEOUS PROVISIONS]

Revision Note

Part designation added by reviser pursuant to §23G-15.

[§514B-191] Retaliation prohibited. (a) An association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner shall not retaliate against a unit owner, board member, managing agent, resident manager, or association employee who, through a lawful action done in an effort to address, prevent, or stop a violation of this chapter or governing documents of the association:

(1) Complains or otherwise reports an alleged violation;

(2) Causes a complaint or report of an alleged violation to be filed with the association, the commission, or other appropriate entity;

(3) Participates in or cooperates with an investigation of a complaint or report filed with the association, the commission, or other appropriate entity;

(4) Otherwise acts in furtherance of a complaint, report, or investigation concerning an alleged violation; or

(5) Exercises or attempts to exercise any right under this chapter or the governing documents of the association.

(b) A unit owner, board member, managing agent, resident manager, or association employee may bring a civil action in district court alleging a violation of this section. The court may issue an injunction or award damages, court costs, attorneys' fees, or any other relief the court deems appropriate.

(c) As used in this section:

"Governing documents" means an association's declaration, bylaws, or house rules; or any other document that sets forth the rights and responsibilities of the association, its board, its managing agent, or the unit owners.

"Retaliate" means to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents. [L 2017, c 190, §1]

Previous **Vol12_Ch0501-0588** Next

§711-1106 Harassment. (1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

(a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;

(b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;

(c) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication as defined in section 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication;

(d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;

(e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or

(f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

(2) Harassment is a petty misdemeanor. [L 1972, c 9, pt of §1; am L 1973, c 136, §9(b); am L 1992, c 292, §4; am L 1996, c 245, §2; am L 2009, c 90, §1]

Cross References

Power to enjoin and temporarily restrain harassment, see §604-10.5.

Surreptitious surveillance, see §707-733(1)(c).

COMMENTARY ON §711-1106

Harassment, a petty misdemeanor, is a form of disorderly conduct aimed at a single person, rather than at the public. The intent to harass, annoy, or alarm another person must be proved.

Subsection (1)(a) is a restatement of the common-law crime of battery, which was committed by any slight touching of another person in a manner which is known to be offensive to that person. Such contacts are prohibited, if done with requisite intent, in order to preserve the peace.

Subsection (1)(b) is likewise aimed at preserving peace. It prohibits insults, taunts, or challenges which are likely to provoke a violent or disorderly response. This is distinguished from disorderly conduct because it does not present a risk of public inconvenience or alarm.

Subsections (1)(c) and (1)(d) are aimed at abusive communications. The former prohibits any telephone call which is made with the specified intent and without any legitimate purpose. The latter prohibits any type of repeated communications which are anonymous, made at extremely inconvenient times, or in offensively coarse language. Again, the intent to harass, annoy, or alarm must be proved. Nearly all states have statutes prohibiting such conduct. Our aim is to make them broad enough to cover all types of potentially annoying communications.

Previous Hawaii law treated various forms of harassment as disorderly conduct.[1] In addition the law expressly prohibited the use of obscene or lascivious language over the telephone.[2]

SUPPLEMENTAL COMMENTARY ON §711-1106

Act 136, Session Laws 1973, deleted former subsection (1)(e) from this section. That subsection included as the offense of harassment the case where a person "engages in any other course of harmful or seriously distressing conduct serving no legitimate purpose of the defendant." The legislature felt that the subsection was overly vague. House Standing Committee Report No. 726.

Act 292, Session Laws 1992, amended this section to strengthen the laws against harassment by providing greater protection to victims of harassment while at the same time preserving the rights of citizens to engage in political expression and ordinary communication. Conference Committee Report No. 57.

Act 245, Session Laws 1996, amended subsection (1) by prohibiting a person from repeatedly making telephone calls, facsimile, or electronic mail transmissions without purpose of legitimate communication; deleting the requirement that various kinds of communications cause the recipient to reasonably believe that the actor intends to cause bodily injury or property damage; and making it a separate offense to make a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury or property damage. Conference Committee Report No. 34.

Act 90, Session Laws 2009, amended subsection (1) by including any form of electronic communication within the scope of the offense. The legislature found that harassing or insulting electronic communications are a form of harassment that can be just as severe or punishing as other verbal communications or offensive contacts. Senate Standing Committee Report No. 1242, Conference Committee Report No. 10.

Case Notes

Defendant police officer and defendant resident manager had probable cause to arrest plaintiff for harassment. 855 F. Supp. 1167 (1994).

Plaintiff firearm permit applicant's allegations that plaintiff was denied a permit and ordered to surrender plaintiff's weapons because of a conviction of harassment more than ten years before under this section and that the conviction was not a crime of violence under §134-7(b) or federal law for the purposes of prohibiting ownership or possession of firearms were sufficient to state a 42 U.S.C. §1983 claim for a violation of plaintiff's Second Amendment rights. 869 F. Supp. 2d 1203 (2012).

Subsection (1)(a) was not categorically a crime of violence; court declined to interpret subsection (1)(a) in a manner that shifted the focus to whether the conduct caused a "threat of injury" as opposed to deterring conduct that offended a person's "psyche and mental well-being" even if there was no "threat of injury". 976 F. Supp. 2d 1200 (2013).

Where defendants argued that plaintiff was prohibited from possessing firearms under federal law because of the federal Lautenberg

Amendment, which prohibits firearm ownership by any person who "has been convicted in any court of a misdemeanor crime of domestic violence", plaintiff's convictions for harassment did not qualify as a misdemeanor crime of domestic violence under federal law. 976 F. Supp. 2d 1200 (2013).

Plaintiff could receive a pardon for plaintiff's convictions under subsection (1)(a) and the pardon would qualify plaintiff to possess a firearm under federal law and restore plaintiff's Second Amendment rights. 49 F. Supp. 3d 727 (2014).

Plaintiff's harassment convictions under subsection (1)(a) qualified as misdemeanor crimes of domestic violence under federal law under the categorical and modified categorical approaches; therefore, plaintiff was prohibited under federal law from possessing firearms. 49 F. Supp. 3d 727 (2014).

Elements of harassment construed. 60 H. 540, 592 P.2d 810 (1979).

Threatening and offensive remarks directed against police afforded police probable cause to arrest for harassment. 61 H. 291, 602 P.2d 933 (1979).

Harassment is not a lesser included offense of assault in the third degree in violation of §707-712. 63 H. 1, 620 P.2d 250 (1980).

Harassment not a lesser included offense of disorderly conduct. 63 H. 548, 632 P.2d 654 (1981).

Person charged with petty misdemeanor carrying maximum penalty of thirty days confinement, a fine, or both, is not entitled to jury trial. 64 H. 374, 641 P.2d 978 (1982).

Where minor's challenge to officer was not uttered in a manner likely to provoke a violent response on officer's part, there was insufficient evidence to support district family court's conclusion that minor committed offense of harassment in violation of subsection (1)(b). 76 H. 85, 869 P.2d 1304 (1994).

Because the broad language of §708-810 does not evidence an intent to confine crimes "against a person" to those enumerated in chapter 707, and harassment is a crime against a person, a conviction for

burglary under §708-810 may be predicated on the offense of harassment. 89 H. 284, 972 P.2d 287 (1998).

An "illegitimate purpose" is not an element of the offense of harassment, as defined by subsection (1)(a); where substantial evidence that, after becoming angry and "yelling" at son, defendant slapped son in the face, trial court could reasonably have inferred that defendant intended defendant's conduct to "annoy" or "alarm" son. 90 H. 85, 976 P.2d 399 (1999).

Appellate court correctly held that there was sufficient evidence to sustain defendant's harassment conviction under subsection (1)(a) where defendant chose to slap minor in the face and strike minor with a bamboo stick at least five times with enough force to leave red welts visible the next day; based on the totality of circumstances in the case, substantial evidence existed to support the conclusion that the State proved beyond a reasonable doubt that the force defendant employed against minor was without due regard for minor's age and size, thus disproving defendant's parental justification defense under §703-309. 126 H. 494, 273 P.3d 1180 (2012).

Where appellate record referred to multiple cases in which a stay had been denied to petty misdemeanants pending appeal, indicating that the denial of a request for a stay of sentence appeared to be an issue that could potentially affect many petty misdemeanor defendants, was likely to recur in the future, and because there was no definitive case law on when the issuance of a stay after a petty misdemeanor conviction was appropriate, appellate court erred in not addressing the family court's failure to stay defendant's sentence pending appeal based on the mootness doctrine because the public interest exception applied. 126 H. 494, 273 P.3d 1180 (2012).

Where defendant charged with harassment in violation of subsection (1)(a) claimed that the disjunctively worded complaint left defendant unsure of how to prepare a defense: (1) because defendant was charged with violating only one subsection of the statute, codifying a single category of harassing behavior, the complaint did not violate the Jendrusch rule; and (2) when charging a defendant under a single

subsection of a statute, the charge may be worded disjunctively in the language of the statute as long as the acts charged are reasonably related so that the charge provides sufficient notice to the defendant. 131 H. 220, 317 P.3d 664 (2013).

Conviction reversed where defendant merely drove his automobile along narrow street in opposite direction from automobile of former girlfriend and did not insult, taunt, or challenge. 7 H. App. 582, 788 P.2d 173 (1990).

Record did not support a finding that defendant either insulted, taunted, or challenged dog owner, or that defendant did so in a manner likely to provoke a violent response. 77 H. 196 (App.), 881 P.2d 1264 (1994).

Where defendant came up behind victim unexpectedly and threatened victim, screamed a 10-minute tirade at victim, and were actions taken without significant provocation or cognizable justification, facts sufficient to enable a reasonable person to conclude defendant violated subsection (1)(b). 93 H. 513 (App.), 6 P.3d 385 (2000).

Defendant's conviction under this section vacated where trial court's ruling that defendant engaged in "reckless" conduct did not satisfy the specific intent requirement of this section. 95 H. 290 (App.), 22 P.3d 86 (2001).

Under the plain meaning of subsection (1)(a), "offensive physical contact" encompassed the conduct of defendant knocking off police officer's hat--offensive contact that, while separate and apart from the various forms of actual bodily touching, nevertheless involved contact with an item physically appurtenant to the body. 95 H. 290 (App.), 22 P.3d 86 (2001).

Sufficient evidence supported trial court's finding that defendant committed offense of harassment. 98 H. 459 (App.), 50 P.3d 428 (2002).

Defendant's conviction of harassment under this section reversed where trial court erroneously concluded that father's actions could not be seen as reasonably necessary to protect the welfare of the recipient, and the State failed its burden of disproving beyond a reasonable doubt the justification evidence that was adduced, or proving beyond a

reasonable doubt facts negativing the justification defense under §703-309. 106 H. 252 (App.), 103 P.3d 412 (2004).

Because there was no provision in §706-605 for the imposition of anger management or other treatment programs, but §706-624(2)(j) authorized the imposition of, inter alia, mental health treatment as a discretionary term of probation, district court erred by sentencing defendant to both the thirty-day term of imprisonment (the maximum term of imprisonment for a petty misdemeanor) and anger management classes for defendant's harassment conviction (a petty misdemeanor). Defendant could have been sentenced to a thirty-day term of incarceration or a six-month term of probation, but not both, and thus defendant's sentence was illegal. 130 H. 332 (App.), 310 P.3d 1033 (2013).

There was sufficient evidence to support the district court's finding that defendant was not acting to protect defendant's girlfriend where defendant's girlfriend was already the aggressor when defendant dragged victim by the hair to support defendant's conviction of harassment under subsection (1)(a). Further, defendant's girlfriend's ex-husband testified that defendant's girlfriend "went for" victim before defendant pulled victim by victim's hair, thus negating defendant's defense-of-others justification defense pursuant to §703-305. 130 H. 332 (App.), 310 P.3d 1033 (2013).

Mentioned: 9 H. App. 315, 837 P.2d 1313 (1992); 79 H. 538 (App.), 904 P.2d 552 (1995).

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§711-1106 Commentary:

1. E.g., H.R.S. §772-2(5) and (10).

2. H.R.S. §759-2.

SB-2534
Submitted on: 2/4/2024 12:42:52 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marcia Kimura	Individual	Oppose	Written Testimony Only

Comments:

I am opposed to SB2534 because in my view it does not clearly define what "harass or interfere" specifically refers to. That is, what actions - verbal threats, physical combative confrontation, repeated telephone or written contacts, simple notifications of association operatonal or structural problems, expressions of disagreement with board or management policies or other actions constitute the harassment or interference the initiator considers unacceptable? The truth is, a good number of owners simply and sincerely want to maintain satisfactory living standards in their condominiums, and strive to do so in a reasonable, fair, non aggressive, but assertive manner which is their right.

Therefore, too broad an interpretation of harassment or interference in this context, could result in unwarranted and devastating court actions against owners who already face and have faced, abuse and fraud by governing and managing agents themselves.

Please consider the grave consequences of an inadequately framed proposal on Hawaii condominium owners, and do not allow SB2534 to advance as written.

Respectfully,

Marcia Kimura

Hawaii Condominium Unit Owner

SB-2534
Submitted on: 2/4/2024 1:22:56 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Jacob Wiencek	Individual	Oppose	Written Testimony Only

Comments:

Aloha Senators,

My name is Jacob Wiencek and I am a condo owner in Hawaii. I write today strongly opposed to this bill. Simply put, this proposal is way too vague and threatens to inundate associations with costly litigation. No one, including board members should be subject to harassment. Full stop.

But this legislation goes further to include interference and worryingly, it also vaguely defines the official duties and basis of those duties for board members. I worry that potential misunderstandings coupled with the vagueness of this bill could lead to ruinous litigation. Additionally, I believe existing statue (HRS514B-191) already provides sufficient protection. I strongly urge this committee to OPPOSE this bill.

SB-2534
Submitted on: 2/4/2024 11:14:03 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Edwina Spallone	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

My name is Edwina Spallone, and I am an owner at the Pearl One Condo in Aiea.

I oppose SB2534 As it is owners money that pay for any and all services. When Association Boards do not provide contracts and documentation on projects that cost hundreds of thousands of Condo Owners money, and the root problem still exists,
incompleted projects paid in full, paid project manager who has not supervised to the satisfactory completion of costly projects (which the president wants to use the same project manager who worked for our property management company for another project), and the board does not provide the contracts to see among other costly and safety issues.

Owners have a constitutional right to call and ask questions concerning their money, when the Board can not or refuses to answer.

I have been threatened with cease and desist emails from my board president, who uses the law firms email that she works for. Received a cease and desist letter, because I send too many emails asking questions with little to no response. Called vendors that my money is being used for as my due diligence to get answers to my questions.

Most vendors that our site management uses have been conveniently left out of our monthly minutes, and amounts to cost have not been accurately recorded.

They are State and Federal laws already in place for harassment and threatening persons. I humbly ask that SB2534 be opposed to protect Condo Owners money.

Mahalo for hearing and your consideration to my testimony that I oppose,

Edwina Spallone

(808) 255-5203

SB-2534
Submitted on: 2/4/2024 11:58:14 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Julie Wassel	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

First, I support subsection (a) of the measure, which prohibits harassment or interference with the performance of any duty or the exercise of any right or power granted under Chapter 514B or the governing documents of an association.

Second, I object to subsection (b) of the measure as it conflicts with the jurisdictional limitations of district courts as defined in Chapter 604 of the Hawaii Revised Statutes. Under Section 604-10.5, district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment. "Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

The measure states that district courts may issue an injunction for harassment or “interference” in the “performance of any duty” or “power granted under this chapter or the governing documents.” The term “interference” is not defined in the measure but presumably means something less than harassment, as defined above. To the extent that the measure gives the district court the authority to enjoin interference, the measure will conflict with HRS Section 604-10.5.

In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

Finally, the measure gives the court the authority to "award damages, court costs, attorneys' fees, or any other relief the court deems appropriate," without stating that the claim must be substantiated or the party bringing the action must prevail in the action.

Third, subsection (c) imposes duties upon boards that many boards may not be equipped to discharge. Condominium board members are volunteers, some of whom reside in other states or countries. With the many projects and tasks assigned to boards, and logistical and other issues, most boards do not have the capability to promptly "schedule a meeting to assess and review the alleged violation" whenever an allegation is made of a violation of subsection (a).

Likewise, while boards should take immediate action when an alleged violation involves serious health, life, and safety concerns, imposing a statutory duty to do so will only expose associations to liability. Under the doctrine of negligence per se, the imposition of a statutory duty to take action may expose board members to liability without fault, e.g., even in the absence of negligence. This may further deter unit owners from serving on boards and it may drive up the cost of insurance.

Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

Finally, there are numerous existing laws that prohibit harassment. In addition to the general law on harassment, HRS Section 514B-191 prohibits retaliation by an association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner. "Retaliate" means "to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents." Similarly, under 24 C.F.R § 100.7(iii), an association can be held liable for a resident's harassment of another resident when the harassment is based on race, color, religion, sex, national origin, disability or familial status.

Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

Julie Wassel

SB-2534
Submitted on: 2/4/2024 12:40:21 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

I am an owner occupant of a large condominium in Honolulu. In recent years we have noticed an increase in people harassing or interfering with the work of condo association board members, employees, managing agents, resident managers and vendors. The issue has caught the attention of those presenting seminars/webinars to associations, some of which, including mine, now have a house rule dealing with the subject. Among other things our rule prohibits defamation, using profanity, sexist, racist or otherwise defamatory language, yelling, sending threatening emails, threats of violence in person or by phone, stalking, etc. In connection with violations police reports may be filed and Temporary Restraining Orders sought. A law covering this would be welcome. However, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

As worded, I can only support subsection (a) of the measure, which prohibits harassment or interference with the performance of any duty or the exercise of any right or power granted under Chapter 514B or the governing documents of an association.

Second, I object to subsection (b) of the measure as it conflicts with the jurisdictional limitations of district courts as defined in Chapter 604 of the Hawaii Revised Statutes. Under Section 604-10.5, district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment. "Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

The measure states that district courts may issue an injunction for harassment or “interference” in the “performance of any duty” or “power granted under this chapter or the governing documents.” The term “interference” is not defined in the measure but presumably means something less than harassment, as defined above. To the extent that the measure gives the district court the authority to enjoin interference, the measure will conflict with HRS Section 604-10.5.

In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

Finally, the measure gives the court the authority to "award damages, court costs, attorneys' fees, or any other relief the court deems appropriate," without stating that the claim must be substantiated or the party bringing the action must prevail in the action.

Third, subsection (c) imposes duties upon boards that many boards may not be equipped to discharge. Condominium board members are volunteers, some of whom reside in other states or countries. With the many projects and tasks assigned to boards, and logistical and other issues, most boards do not have the capability to promptly "schedule a meeting to assess and review the alleged violation" whenever an allegation is made of a violation of subsection (a).

Likewise, while boards should take immediate action when an alleged violation involves serious health, life, and safety concerns, imposing a statutory duty to do so will only expose associations to liability. Under the doctrine of negligence per se, the imposition of a statutory duty to take action may expose board members to liability without fault, e.g., even in the absence of negligence. This may further deter unit owners from serving on boards and it may drive up the cost of insurance.

Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

Finally, there are numerous existing laws that prohibit harassment. In addition to the general law on harassment, HRS Section 514B-191 prohibits retaliation by an association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner. "Retaliate" means "to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents." Similarly, under 24 C.F.R § 100.7(iii), an association can be held liable for a resident's harassment of another resident when the harassment is based on race, color, religion, sex, national origin, disability or familial status.

Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

SB-2534
Submitted on: 2/4/2024 1:49:01 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard S. Ekimoto	Individual	Oppose	Written Testimony Only

Comments:

I oppose SB2534. HRS Section 514B-0191 already includes a right to bring many of the claims. The legislature should allow the Legislative Reference Bureau to study the laws in other states and allow the task force it created to make recommendations.

Lourdes Scheibert
920 Ward Ave
Honolulu, Hawaii. 96814

February 4, 2024

To: CPN Committee Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga and members of the committee

I oppose SB2534:

> Prohibits a condominium unit owner, resident, tenant, or their guests, or any person acting on behalf of the unit owner, from harassing or interfering with board members, managing agents, resident managers, association employees, or vendors contracted by the association, in the performance of any duty or in the exercise of any right or power granted under chapter 514B, HRS, or the governing documents of the association.

Referring to the New Section: 514B- Harassment and interference prohibited.
(b) A board member, managing agent, resident manager, association employee, or vendor contracted by the association may bring a civil action in district court alleging a violation of this section. The court may issue an injunction or award damages, court costs, attorneys' fees, or any other relief the court deems appropriate.

I have concerns about the language used in the statement. It is important to note that the wording suggesting potential court awards, such as damages, court costs, attorneys' fees, or any other appropriate relief, should not be included in condominium law. Instead, it is the judge's role to determine the appropriate punishment based on the facts presented during the trial.

514B-191 Retaliation prohibited does not include the same language for awarding damages. This is discrimination and inequality to award one and not the other.

§514B-191 Retaliation prohibited. (a) An association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner shall not retaliate against a unit owner, board member, managing agent, resident manager, or association employee who, through a lawful action done in an effort to address, prevent, or stop a violation of this chapter or governing documents of the association:

Thank-you,
Lourdes Scheibert
Condominium Owner

The Senate
The Thirty-Second Legislature
Committee on Commerce and Consumer Protection
Tuesday, February 6, 2024
9:30 a.m.

To: Senator Jarrett Keohokalole, Chair
Re: SB 2534, Relating to Condominiums

Aloha Chair Jarrett Keohokalole, Vice-Chair Carol Fukunaga, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups with over 800 members and affiliates in Hawaii and I serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 retirees.

I also serve as the leader of a coalition of hundreds of property owners, mostly seniors, who own and/or reside in associations throughout Hawaii and I have served as an officer on three condominium associations' boards.

Mahalo for the opportunity to testify in **opposition to SB 2534**.

The association governance structure under HRS 514B melds all three branches of government—the executive, the legislative, and the judiciary—in a monolithic association board.

The only check to a board's authority is the members of the association.

The proposed measure is an attempt to intimidate members of condominium associations from asking questions that may affect owners and residents' physical and fiscal health and safety under the guise that these inquiries are "harassment" and "interference." The proposed measure will discourage whistleblowers without whom the corruption that exists in many condominium associations cannot be exposed nor overcome.

In 2022, the owners and residents of the Hammocks Association in Miami-Dade were notified that five directors were arrested for the theft of millions of dollars. The charges included racketeering, grand theft, organized fraud, and money laundering. Allegedly, directors wrote checks to vendors for work that was never done, with kickbacks to the five directors.

The first hint of their criminal enterprise was that owners were denied access to documents while fees kept rising.

> "It was a reign of terror. People here were hostages," said Ana Danton, a resident of The Hammocks."[1]

[1] https://www.nbcmiami.com/news/local/miami-dade-mayor-state-attorney-announce-new-measures-to-protect-hoa-residents/2985897/

> "If they did something like against association or if they posted in Facebook or in any of the public media anything bad about the association, they were sued for defamation."[2]
>
> "They have friends; they have power. The board in power, they lien your property, they fine your house."[3]
>
> "Miami-Dade State Attorney Katherine Fernandez Rundle said more needs to be done. New proposed legislation aims to criminalize much of the corruption that Florida residents are reporting in their communities.
>
> 'Shockingly, fraudulent activity in association elections, even blatant fraud, are not crimes in Florida,' Fernandez Rundle said. 'They're not crimes.'"[4]
>
> "Incidents of alleged criminal activity have shown how vulnerable homeowners and condominium owners can be under the present legal structure."[5]
>
> "The effort strengthened after residents in Miami-Dade County's The Hammocks, a planned community of over 60,000, stood up to their association and submitted evidence of corruption."[6]

Leon Benzer's a $58 million scheme started to crumble when one of his hired managers could not "keep the two honest [board] members at bay,"[7] and turned against him when he replaced her with another Benzer-manager.

> "[Benzer seized] control of local homeowner associations and involved dozens of co-conspirators including lawyers, retired police officers, and others… Benzer's ambitious scheme involved devious plots to take over the management of nearly a dozen homeowner associations…Elections were rigged, thugs were hired to intimidate residents, and once an HOA was under Benzer's control, lucrative construction defects lawsuits were filed, but millions of dollars in settlements went to Benzer's criminal organization, which included several well-known attorneys, at least four former police officers, and dozens of others, some of whom had strong political connections."[8]
>
> "'Leon Benzer recruited and paid off puppets to serve on homeowners' boards so that they would steer lucrative contracts to his company and cronies,' said Assistant Attorney General Caldwell."[9]

---

[2] ibid

[3] https://www.local10.com/news/local/2023/03/03/miami-dade-state-attorney-wants-legislators-to-pass-laws-going-after-corrupt-associations/

[4] ibid

[5] https://www.nbcmiami.com/news/local/miami-dade-mayor-state-attorney-announce-new-measures-to-protect-hoa-residents/2985897/?fbclid=IwAR2CjqmffaY0eoHvDGvImNH9661rc4EIBs7jru8zkFqlC2d77oHVfXySzkI

[6] ibid

[7] https://www.reviewjournal.com/local/local-las-vegas/new-details-revealed-in-hoa-fraud-case/

[8] https://www.8newsnow.com/news/local-news/i-team-mastermind-behind-las-vegas-hoa-defraud-scheme-sentenced/

[9] https://www.fbi.gov/contact-us/field-offices/lasvegas/news/press-releases/former-construction-boss-sentenced-to-

> "…this gangster's damage has ripples that will go on forever. Home values in Las Vegas crashed, people lost their homes and all their retirement savings. Foreclosures spiked because so much money was bled out of HOAs. Investigators have said Benzer & Company actually stole somewhere between 60 and 100 million dollars from homeowners."[10]

Since September 11, 2001, Americans have been instructed to be vigilant: "If you see something, say something."[11] Yet, the proposed measure restrains owners and residents from "seeing" or "saying" under the penalty of law if their actions can be twisted into "harassment" or "interference." If this presumes nefarious intent, a condominium association attorney in another jurisdiction wrote:

> "The problem lies with the association attorneys…They advise their clients the likelihood of someone litigating against the association is slim and even if they do chances are they will drop the case when they realize the money it will take, which is between $100,000 and $150,000 on average to get a case to court.
>
> "In fact one association law firm gave a sales presentation that I sat in on and stated that 95% of the homeowners cannot afford to litigate against you. Their motto was "do now, defend later." The board members, once educated on this fact, then start to abuse the power they have to suppress the property rights of the owners.
>
> "Tactics include censorship of those outspoken owners and litigation against them if possible. Associations will foreclose on an owner who is past due a few hundred dollars and is outspoken rather than foreclose on someone who owes more but doesn't make trouble.
>
> "Attorneys' fees are the biggest problem with association abuse. The statutes actually provide for the owner to reimburse the association the attorneys' fees without a court action!"[12]

Condo owners should have the right to ask questions that may affect their physical and fiscal health and safety without the fear of violating some vague and malicious "harassment" and "interference" law.

Please defer this measure or replace it with a measure to that will protect condominium owners from corrupt boards and management and to protect the whistleblowers who serve as the "check" against a board's otherwise unilateral authority.

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more-than-15-years-for-role-in-58-million-scheme-to-fraudulently-control-homeowners-associations

[10] http://neighborsatwar.com/2015/08/nevada-judge-finally-shows-some-guts/

[11] New York Metropolitan Transportation Authority, September 11, 2001.

[12] https://condohoalaw.blogspot.com/2014/04/abuse-of-power-living-miserably-in.html

SB-2534
Submitted on: 2/4/2024 5:19:29 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Tamara Paltin	Individual	Support	Written Testimony Only

Comments:

Support SB2534

Mahalo,

Tamara Paltin

SB-2534
Submitted on: 2/4/2024 6:16:33 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Anne Anderson	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

First, I support subsection (a) of the measure, which prohibits harassment or interference with the performance of any duty or the exercise of any right or power granted under Chapter 514B or the governing documents of an association.

Second, I object to subsection (b) of the measure as it conflicts with the jurisdictional limitations of district courts as defined in Chapter 604 of the Hawaii Revised Statutes. Under Section 604-10.5, district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment. "Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

The measure states that district courts may issue an injunction for harassment or “interference” in the “performance of any duty” or “power granted under this chapter or the governing documents.” The term “interference” is not defined in the measure but presumably means something less than harassment, as defined above. To the extent that the measure gives the district court the authority to enjoin interference, the measure will conflict with HRS Section 604-10.5.

In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

Finally, the measure gives the court the authority to "award damages, court costs, attorneys' fees, or any other relief the court deems appropriate," without stating that the claim must be substantiated or the party bringing the action must prevail in the action.

Third, subsection (c) imposes duties upon boards that many boards may not be equipped to discharge. Condominium board members are volunteers, some of whom reside in other states or countries. With the many projects and tasks assigned to boards, and logistical and other issues, most boards do not have the capability to promptly "schedule a meeting to assess and review the alleged violation" whenever an allegation is made of a violation of subsection (a).

Likewise, while boards should take immediate action when an alleged violation involves serious health, life, and safety concerns, imposing a statutory duty to do so will only expose associations to liability. Under the doctrine of negligence per se, the imposition of a statutory duty to take action may expose board members to liability without fault, e.g., even in the absence of negligence. This may further deter unit owners from serving on boards and it may drive up the cost of insurance.

Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

Finally, there are numerous existing laws that prohibit harassment. In addition to the general law on harassment, HRS Section 514B-191 prohibits retaliation by an association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner. "Retaliate" means "to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents." Similarly, under 24 C.F.R § 100.7(iii), an association can be held liable for a resident's harassment of another resident when the harassment is based on race, color, religion, sex, national origin, disability or familial status.

Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

M. Anne Anderson

SB-2534
Submitted on: 2/4/2024 7:12:46 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sharon Heritage	Individual	Oppose	Written Testimony Only

Comments:

This Bill restates other Bills that are already in place.

SB-2534
Submitted on: 2/4/2024 7:14:28 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Carol Walker	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

First, I support subsection (a) of the measure, which prohibits harassment or interference with the performance of any duty or the exercise of any right or power granted under Chapter 514B or the governing documents of an association.

Second, I object to subsection (b) of the measure as it conflicts with the jurisdictional limitations of district courts as defined in Chapter 604 of the Hawaii Revised Statutes. Under Section 604-10.5, district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment. "Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

The measure states that district courts may issue an injunction for harassment or "interference" in the "performance of any duty" or "power granted under this chapter or the governing documents." The term "interference" is not defined in the measure but presumably means something less than harassment, as defined above. To the extent that the measure gives the district court the authority to enjoin interference, the measure will conflict with HRS Section 604-10.5.

In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

Finally, the measure gives the court the authority to "award damages, court costs, attorneys' fees, or any other relief the court deems appropriate," without stating that the claim must be substantiated or the party bringing the action must prevail in the action.

Third, subsection (c) imposes duties upon boards that many boards may not be equipped to discharge. Condominium board members are volunteers, some of whom reside in other states or countries. With the many projects and tasks assigned to boards, and logistical and other issues, most boards do not have the capability to promptly "schedule a meeting to assess and review the alleged violation" whenever an allegation is made of a violation of subsection (a).

Likewise, while boards should take immediate action when an alleged violation involves serious health, life, and safety concerns, imposing a statutory duty to do so will only expose associations to liability. Under the doctrine of negligence per se, the imposition of a statutory duty to take action may expose board members to liability without fault, e.g., even in the absence of negligence. This may further deter unit owners from serving on boards and it may drive up the cost of insurance.

Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

Carol Walker

SB-2534
Submitted on: 2/4/2024 8:00:05 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Aaron Cavagnolo	Individual	Oppose	Written Testimony Only

Comments:

Dear Representatives,

I am writing to express my strong opposition to Bill SB2534, which proposes to prohibit condominium unit owners, residents, tenants, or their guests from harassing or interfering with board members, managing agents, resident managers, association employees, or vendors contracted by the association.

While I understand the importance of maintaining a respectful and harmonious living environment within condominium communities, I believe that this bill, as currently drafted, poses a significant threat to the rights of unit owners to address legitimate concerns and grievances with their respective boards and property management companies.

I would like to highlight a personal experience that exemplifies my concerns regarding this bill. As a concerned unit owner in the AOAO Diamond Head Surf Condominium, I have been facing critical issues related to structural damage, flooding, drainage, retaining wall problems, moisture, mold, and patio issues within and appurtenant to my unit. Despite numerous attempts to engage with the board and Dynamic Property Management (DPM) to address these issues, I have faced significant challenges in obtaining a satisfactory communication and resolution.

The bill, if passed, could potentially empower property management companies and boards to label legitimate communication and requests for necessary repairs as harassment. In my case, the difficulties I have encountered in getting the board to take action on serious safety concerns make me wary of the consequences this bill may have on unit owners who are genuinely trying to protect their homes and the well-being of their families. In addition from the testimony I've heard during the recent condo property regime task force meetings, there have been zero complaints by board members of abuse by owners but there have been numerous complaints of boards bullying owners. At this time we do not need to give boards and property management companies any more power.

The proposed legislation may create an environment where property management companies and boards can easily claim harassment when owners, like myself, attempt to seek compliance with existing statutes and the association's governing documents. The bill could exacerbate the existing power imbalance, making it even more challenging for unit owners to assert their rights and hold boards accountable for their responsibilities.

I believe that the bill, in its current form, lacks the necessary safeguards to prevent abuse and overreach by property management companies and boards. It is crucial to strike a balance between promoting respectful communication and allowing unit owners the ability to address legitimate concerns without fear of reprisal.

I urge you to reconsider and amend Bill SB2534 to ensure that it does not infringe upon the rights of unit owners to seek resolution for legitimate grievances and concerns. It is essential to protect the interests of homeowners and maintain a fair and equitable balance in the relationship between unit owners and condominium associations.

Thank you for considering my perspective on this matter. I hope that you will take into account the potential negative consequences of this bill and work towards a more balanced and fair approach to addressing the concerns of all parties involved.

Sincerely,

Aaron Cavagnolo

SB-2534
Submitted on: 2/4/2024 9:16:06 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kim Coco Iwamoto	Individual	Oppose	Written Testimony Only

Comments:

I cannot thank Senator Moriwaki enough for introducing this bill and convincing Speaker Saiki to introduce the House companion bill. This bill alone will garner me the 161 votes I need to make it through the next primary election. The condo owners in House District 25, representing over 50% of all registered voters in our district, will be disgusted to learn of this overly broad, mean-spirited bill, that is ripe for abuse.

Attorneys hired by management companies and condo boards are drooling for this bill; it may be the single biggest pay day you can give them. Whatever they paid in campaign contributions will pale in comparison to the return on their investment.

Instead of finding ways to bring peace through education and shared understanding of what the fiduciary duties of a condo director are and are not; this bill brings a shotgun to schoolyard tussle.

If a condo owner has a question or concern about whether their association directors followed rules or procedures properly - under this new law, the association can hit them with a harassment complaint and legal fees; it gives the association director or property manager a legal way to scream "how dare you" speak to me.

Imagine making small talk in an elevator, and you mention how difficult it will be for you to pay for rising maintenance fees on your limited retirement income. Two weeks later you get a letter from the condo association lawyer informing you that a complaint for harassment has been filed against you. Apparently the person you spoke to in the elevator was on the condo board, he had voted to support the recommendation to raise maintenance fees, and he felt harassed by you. Your attorneys fees could cost you $5K that you do not have, regardless of the outcome of the court proceedings. Then you get a $20K lien against your condo because you need to pay for the condo associations attorneys as well, even if the judge rules the complaint meritless.

Civil Beat will have a field day with this bill.

SB-2534
Submitted on: 2/4/2024 10:19:04 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Teresa Ahsing	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

First, I support subsection (a) of the measure, which prohibits harassment or interference with the performance of any duty or the exercise of any right or power granted under Chapter 514B or the governing documents of an association.

Second, I object to subsection (b) of the measure as it conflicts with the jurisdictional limitations of district courts as defined in Chapter 604 of the Hawaii Revised Statutes. Under Section 604-10.5, district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment. "Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

The measure states that district courts may issue an injunction for harassment or "interference" in the "performance of any duty" or "power granted under this chapter or the governing documents." The term "interference" is not defined in the measure but presumably means something less than harassment, as defined above. To the extent that the measure gives the district court the authority to enjoin interference, the measure will conflict with HRS Section 604-10.5.

In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

Finally, the measure gives the court the authority to "award damages, court costs, attorneys' fees, or any other relief the court deems appropriate," without stating that the claim must be substantiated or the party bringing the action must prevail in the action.

Third, subsection (c) imposes duties upon boards that many boards may not be equipped to discharge. Condominium board members are volunteers, some of whom reside in other states or countries. With the many projects and tasks assigned to boards, and logistical and other issues, most boards do not have the capability to promptly "schedule a meeting to assess and review the alleged violation" whenever an allegation is made of a violation of subsection (a).

Likewise, while boards should take immediate action when an alleged violation involves serious health, life, and safety concerns, imposing a statutory duty to do so will only expose associations to liability. Under the doctrine of negligence per se, the imposition of a statutory duty to take action may expose board members to liability without fault, e.g., even in the absence of negligence. This may further deter unit owners from serving on boards and it may drive up the cost of insurance.

Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

Finally, there are numerous existing laws that prohibit harassment. In addition to the general law on harassment, HRS Section 514B-191 prohibits retaliation by an association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner. “Retaliate” means “to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents.” Similarly, under 24 C.F.R § 100.7(iii), an association can be held liable for a resident’s harassment of another resident when the harassment is based on race, color, religion, sex, national origin, disability or familial status.

Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

Teresa Ahsing

SB-2534
Submitted on: 2/5/2024 5:43:14 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Paul A. Ireland Koftinow	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

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In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

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Likewise, while boards should take immediate action when an alleged violation involves serious health, life, and safety concerns, imposing a statutory duty to do so will only expose associations to liability. Under the doctrine of negligence per se, the imposition of a statutory duty to take action may expose board members to liability without fault, e.g., even in the absence of negligence. This may further deter unit owners from serving on boards and it may drive up the cost of insurance.

Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

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Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

Paul A. Ireland Koftinow

SB-2534
Submitted on: 2/5/2024 7:13:34 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Lance S. Fujisaki	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

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Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,
Lance Fujisaki

SB-2534
Submitted on: 2/5/2024 8:25:55 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Laura Bearden	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

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Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

Laura Bearden

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

I do not support the measure as drafted. I believe the measure requires modifications as explained below.

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(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

The measure states that district courts may issue an injunction for harassment or "interference" in the "performance of any duty" or "power granted under this chapter or the governing documents." The term "interference" is not defined in the measure but presumably means something less than harassment, as defined above. To the extent that the measure gives the district court the authority to enjoin interference, the measure will conflict with HRS Section 604-10.5.

In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

Finally, the measure gives the court the authority to "award damages, court costs, attorneys' fees, or any other relief the court deems appropriate," without stating that the claim must be substantiated or the party bringing the action must prevail in the action.

Third, subsection (c) imposes duties upon boards that many boards may not be equipped to discharge. Condominium board members are volunteers, some of whom reside in other states or countries. With the many projects and tasks assigned to boards, and logistical and other issues, most boards do not have the capability to promptly "schedule a meeting to assess and review the alleged violation" whenever an allegation is made of a violation of subsection (a).

Likewise, while boards should take immediate action when an alleged violation involves serious

health, life, and safety concerns, imposing a statutory duty to do so will only expose associations to liability. Under the doctrine of negligence per se, the imposition of a statutory duty to take action may expose board members to liability without fault, e.g., even in the absence of negligence. This may further deter unit owners from serving on boards and it may drive up the cost of insurance.

Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

LATE

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

First, I support subsection (a) of the measure, which prohibits harassment or interference with the performance of any duty or the exercise of any right or power granted under Chapter 514B or the governing documents of an association.

Second, I object to subsection (b) of the measure as it conflicts with the jurisdictional limitations of district courts as defined in Chapter 604 of the Hawaii Revised Statutes. Under Section 604-10.5, district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment. "Harassment" means:

(1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or

(2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

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Subsection (c) may expose associations to claims by disgruntled persons that an association failed to take appropriate action in response to interference. The vague language in this measure exposes associations to exaggerated or frivolous claims.

Finally, there are numerous existing laws that prohibit harassment. In addition to the general law on harassment, HRS Section 514B-191 prohibits retaliation by an association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner. "Retaliate" means "to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents." Similarly, under 24 C.F.R § 100.7(iii), an association can be held liable for a resident's harassment of another resident when the harassment is based on race, color, religion, sex, national origin, disability or familial status.

Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

Laurie Sokach AMS, PCAM

Senior Community Portfolio Manager

LATE

LATE

SB-2534
Submitted on: 2/5/2024 4:45:50 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Primrose	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

Although I agree with the intent of S.B. 2534 to prevent people from harassing or interfering with the work of condominium association board members, managing agents, resident managers, association employees, and vendors, I do not support the measure as drafted. I believe the measure requires modifications as explained below.

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Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

Primrose K. Leong-Nakamoto (S)

LATE

LATE

SB-2534
Submitted on: 2/5/2024 5:42:03 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Vince Costanzo	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 2534 for the reasons set forth below.

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Second, I object to subsection (b) of the measure as it conflicts with the jurisdictional limitations of district courts as defined in Chapter 604 of the Hawaii Revised Statutes. Under Section 604-10.5, district courts shall have the power to enjoin, prohibit, or temporarily restrain harassment. "Harassment" means:

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In addition, HRS Section 604-5 provides that the "district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed does not exceed $40,000 . . ." The measure does not address the limits on the civil jurisdiction of district courts.

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Finally, there are numerous existing laws that prohibit harassment. In addition to the general law on harassment, HRS Section 514B-191 prohibits retaliation by an association, board, managing agent, resident manager, unit owner, or any person acting on behalf of an association or a unit owner. “Retaliate” means “to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents.” Similarly, under 24 C.F.R § 100.7(iii), an association can be held liable for a resident’s harassment of another resident when the harassment is based on race, color, religion, sex, national origin, disability or familial status.

Therefore, subsection (c) raises a host of problems for associations and their board members and, on balance, is not necessary in light of other remedies available to address harassment.

In summary, I support subsection (a) of the measure but oppose subsections (b) and (c).

Respectfully submitted,

Vincent Costanzo

SB-2534
Submitted on: 2/5/2024 8:14:12 PM
Testimony for CPN on 2/6/2024 9:30:00 AM

LATE

LATE

Submitted By	Organization	Testifier Position	Testify
Kate Paine	Individual	Oppose	Written Testimony Only

Comments:

This bill needs balanced protection of owner from retaliatory action by board / member(s

LATE

LATE

SB-2534
Submitted on: 2/6/2024 6:04:28 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Leimomi Khan	Individual	Oppose	Written Testimony Only

Comments:

Strongly oppose this bill. I have personally witnessed unkind behavior to homeowners during Board meetings when a homeowner was expressing his/her opposition to some action being proposed by the Board. I believe if the legislature is going to propose this kind of bill, there should be balanced provisions that gives homeowners similar rights when they are harassed during or after a meeting. Further, the bill contains no definition of "harassment",or what constitutes harassment, so making a call on what constitutes harassment is subjective. Further, this kind of law would impede homeowner‘s expressions of concern about Board actions.

Please do not pass this bill out of committee. In my opinion, it sends the wrong message to condominium homeowners that the Legislature is more concerned about protecting condominium boards and their rights vs homeowner rights. Further, condominium boards can include provisions in their rules about homeower behavior and harassment of board members with penalty for infraction, as has been done in my condominium. Unfortunately, homeowners had no say about the rule because HRS 514B has no requirement for the Board to consult with homeowners about Rules and Regulations impacting upon their condominium homeowners.

LATE

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SB-2534
Submitted on: 2/6/2024 7:40:29 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Bo-Bae Kim	Individual	Oppose	Written Testimony Only

Comments:

Hello,

I am writing in opposition to this bill as an agent for an apartment unit in downtown-Kaka'ako. I do not understand the need for this bill as it seems to be a civil issue and I'm not sure how it pertains to HRS514B. If a managing agent/board member, etc. feel harassed by a person, we already have HRS-711-1106 and they should file a harassment case with HPD. Reading this proposal, it's not clear who defines "harassment." Does an owner who was charged 2x HOA fees, constantly following up with the Board/PM on when a refund will be issued constitute harassment? If a property management company is constantly issuing harassment and interference notices unfairly, who do the tenants and owners turn to for help?

I feel that this opens a can of worms for overly-aggressive property managers and board members, who use their positions to bully residents, to be able to tip the scales in what is already a major power imbalance. Given the slew of articles that have come out in Civil Beat the last 1-2 years about condos being improperly managed, tenant rights, and other housing-related issues, I don't believe that this bill would be a step in the right direction and would, in fact, cause people to further feel imprisoned in their homes. We need more rights and support for tenants, residents, and homeowners, not for terrible Board members and property managers.

Given my very public history with Locations PMD (of which Senator Moriwaki is very familiar), I can speak from personal experience that it is already very difficult to get justice for people who are living in unfair situations. Many legislators pretend to care but the little progress we make takes years of blood, sweat, and tears. Condo owners have no real cost-effective way to seek solutions when their building management and Board do not comply with HRS 514B, City and State entities do not care to listen to tenant/resident concerns even if the situation is life-threatening, and the state of property management in Hawaii is like the Wild West and people often just go with the lesser of all evils.

Please side with the tenants and owners, and stop siding with the playground bullies as the stakes are much higher when you are playing with peoples' homes.

LATE

LATE

SB-2534
Submitted on: 2/6/2024 7:43:57 AM
Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Diann Karin Lynn	Individual	Oppose	Written Testimony Only

Comments:

Protections are required on the side of owners, not boards. Boards already wield Powers which are sometimes misused.