

SB 2295 Proposed SD1

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RELATING TO CONDOMINIUMS.

Requires assessments for health care services or services relating to personal care that are offered or provided to unit owners at a condominium licensed as an assisted living facility to be assessed only against the units occupied by persons who utilize these services, and not included as part of the common expenses of a condominium. (Proposed SD1)

CPN



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GOVERNOR

BRIAN SCHATZ
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DIRECTOR

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

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Wednesday, February 29, 2012
10:30 a.m.

**TESTIMONY ON SENATE BILL NO. 2295, PROPOSED S.D. 1, RELATING TO
CONDOMINIUMS.**

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

My name is Celia Suzuki, Licensing Administrator of the Professional and Vocational Licensing Division ("PVLD") of the Department of Commerce and Consumer Affairs ("Department"). PVLD appreciates the opportunity to present comments limited to section 1 of the proposed Senate Bill No. 2295, S.D.1, Relating to Condominiums.

Proposed Senate Bill No. 2295, S.D.1, requires assessments for health care services or services relating to personal care that are offered or provided to unit owners at a condominium licensed as an assisted living facility to be assessed only against the

units occupied by persons who utilize these services, and not included as part of the common expenses of a condominium.

However, on page 1, line 8, a reference is made to “as limited common expenses” which appears inconsistent with the body of the legislation. For purposes of consistency, PVLD recommends that the reference be deleted and replaced with the following. The second paragraph of section 1 would then read as follows:

“The purpose of this Act is to mandate that the expenses related to the operation of an assisted living facility in a condominium project be assessed against the unit owner only when the unit owner elects to utilize such services.”

Thank you for the opportunity to provide comments on proposed Senate Bill No. 2295, S.D.1.

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February 28, 2012

Sen. Rosalyn H. Baker, Chair
Sen. Brian T. Taniguchi, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: Testimony in Support of SB 2295 SD1, Re Condominiums
Hearing: Wed., February 29, 2012, 10:30 a.m. Conf. Rm. #229

Chair Baker and Vice-Chair Taniguchi and Members of the Committee:

My name is Jane Sugimura and I am the President of Hawaii Council of Associations of Apartment Owners and a practicing attorney in Honolulu, Hawaii and am a partner in the firm of Bendet Fidell, AAL, ALC. I am writing this in my individual capacity. I have been active in getting legislation enacted in HRS 514A and 514B to support aging in place in condominiums.

Condominium owners are getting older and they want to age in place and in order to do that some condominiums are providing assistance to their seniors and there are non-profits and for-profit companies that are offering services to senior citizens who live in condominiums or apartment buildings so that they can age in place. Such services and programs benefit the State of Hawaii because it means that the State's scarce resources will not have to be used to build nursing homes to care for Hawaii residents as they age.

Many existing condominiums are considering providing such services or allowing vendors to provide such services to their residents and a case in point is One Kalakaua, which is a condominium that became licensed as an assisted living facility. Most if not all of the residents in the building are over 60 years of age and most if not all of the residents are retired and many are on fixed incomes. Although most if not all of the unit owners have substantial assets, they are on fixed incomes and are concerned about expenses like increased maintenance fees that may deplete their resources. At One Kalakaua, concern has been expressed because the health care and personal services provided by the assisted living facility is included in the maintenance fees, which are then allocated to all owners – and not just the ones who have contracted for those services.

As their resident population ages, more and more buildings are considering offering such services (i.e., "Naturally Occuring Residential Communities") and or inviting vendors to provide services to their aging residents.

In view of these changes, I believe that this bill is timely in that it attempts to codify an existing practice in the condominium industry where in a mixed-use project containing residential and commercial apartments, the costs and expenses related to the commercial use are allocated and assessed only to the owners of those units. Take for instance, the condo-hotel industry - the cost associated with the hotel rentals, e.g., housekeeping, front desk, valet services, etc., are allocated only to those unit owners who have placed their units in the rental pool. Any units that are owner occupied or used for residential purposes who do not use the "hotel" services are not charged for the "hotel" expenses and charges, including the administrative expenses of those operations and the compensation paid to employees engaged in providing those services.

I have suggested some further clarification for this bill and those proposed amendments are attached. In the preamble, I have added clarification that (i) it is unfair to charge all unit owners in a condominium for health care and personal services that are being provided on a contract basis to less than all of the residents, (ii) unit owners who do not use such services should not be charged for them by having them included in their condominium maintenance fees and (iii) costs that should be excluded from condominium maintenance fees should include administrative expenses incurred to operate an assisted living facility and compensation paid to employees or vendors to provide such services to the residents in the building. Also in sections 3, 5 and 6, where there is reference to providing services to "unit owners", I added "residents" since in many instances the people who are or will be contracting for and receiving services are not the unit owners, but their renters or family members who are not on title to the unit.

Thank you for the opportunity to testify in support of Senate Bill 2295 SD1 with the amendments I have suggested.


Jane Sugimura

SECTION 1. The legislature finds there is a need for viable, available, and affordable assisted living facilities for the State's aging population. The legislature also finds that where an assisted living facility operates in a condominium and the health care and personal care services that are offered by the assisted living facility are not utilized by all of the residents or unit owners in the condominium, that it is unfair to require all unit owners to pay a pro-rata share of such expenses by including the cost of such services in the condominium's maintenance fee, which is payable by and allocated among all of the unit owners. The legislature further finds that the operation and expenses of making these facilities affordable have increased over time, and that to the extent charges for such services are included as common expenses where an assisted living facility is part of a condominium project, clarification must be made as to how such expenses are assessed to the members of the association so that members who do not use such services are not charged for or are otherwise liable for the costs of such services offered by the assisted living facility.

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The purpose of this Act is to clarify that any and all expenses related to the operation of an assisted living facility in a condominium project, including but not

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limited to administrative expenses to operate the assisted living facility and compensation paid to employees and or vendors who provide assisted living services to residents in the condominium, shall be treated as limited common expenses to be assessed only to unit owners who contract for these services.

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(SECTION 3)

manner as set forth in the declaration[-]; provided further that any charges or assessments for health care services or services relating to personal care that may be offered or provided to unit owners or residents at a condominium licensed as an assisted living facility, shall be made against only the units occupied by persons who utilize such health care services and services relating to personal care, and shall not be included as part of the common expenses of the condominium.

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For purposes of this subsection, "personal care" means the following categories of activities:

- (1) Activities of daily living, such as ambulation, mobility, transfer and lifting, positioning and turning, bowel and bladder care, toileting, bathing, dressing,

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Section 5 at page 4:

"(g) This section shall not be applicable to any condominium that seeks to become licensed as an assisted living facility pursuant to title 11, Chapter 90, Hawaii Administrative Rules, as amended. In the event a condominium is licensed as an assisted living facility, any health care services or services relating to personal care that may be offered or provided to unit owners or residents at the condominium shall be assessed to only those unit owners who utilize such health care services or services relating to personal care, and shall not be included as part of the common expenses of the condominium.

Section 6 at page 6 (lines 8-14)

(f) Assessments for health care services or services relating to personal care that may be offered or provided to unit owners or residents at a condominium licensed as an assisted living facility, shall be made against only those units occupied by persons who utilize such health care services or services relating to personal care, and shall not be included as part of the common expenses of the condominium.