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**PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE**

**TO THE HOUSE COMMITTEE  
ON  
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-NINTH STATE LEGISLATURE  
REGULAR SESSION, 2017**

**THURSDAY, MARCH 23, 2017  
2:05 P.M.**

**TESTIMONY ON SENATE BILL NO. 306 S.B.1  
RELATING TO REAL PROPERTY**

**TO THE HONORABLE ROY M. TAKUMI, CHAIR,  
AND TO THE HONORABLE LINDA ICHIYAMA, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 306 S.D.1, Relating to Real Property. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following enforcement-related comments on Section 2 of the bill.

Senate Bill No. 306 S.D.1, in Section 2, adds a new section to Chapter 514E, Hawaii Revised Statutes ("HRS") to require time share projects that contain

a combination of time share units, transient vacation rentals, and private residential units in the same project to provide any basic document an owner may require to sell the owner's time share unit. The bill also requires disclosure within forty-eight hours of any written or electronic request and gives time share owners the right to receive a list of and contact information for all time share owners.

Section 2 of the bill further amends the Time Share law by requiring the management company of a time share owners association or vacation club board of directors to send a list to all owners at least thirty days prior to any meeting at which a board of directors is elected.

Senate Bill No. 306 S.D.1 also establishes a per se violation of the fiduciary duty of a board's officers and members for violation of any mandatory provision of Chapter 514B, HRS. The bill allows a board member to avoid liability under certain circumstances.

As the agency tasked with enforcing the failure to disclose records within forty-eight hours as required in Section 2 at page three, lines 6-17, RICO has concerns that the timeframe provided in the bill is unrealistic and will result in significant noncompliance that will tax RICO's enforcement resources. Requests for records that will enable an owner to sell the owner's time share unit may encompass more than a few records and require more than forty-eight hours to locate, compile, and disclose.

RICO notes that this Committee heard the House companion measure, House Bill No. 650, and passed out a House Draft 1 version adopting a fifteen-calendar day timeframe suggested by RICO. The bill was not heard by the House

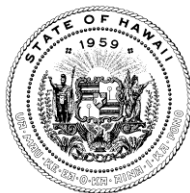
Testimony on Senate Bill No. 306 S.D.1

March 23, 2017

Page 3

Committee on Judiciary and did not cross over. If this Committee is inclined to specify a timeframe within which records are to be disclosed, RICO respectfully suggests that the Committee consider a disclosure timeframe of fifteen calendar days as a more realistic alternative to the timeframe contained in this bill.

Thank you for the opportunity to testify on Senate Bill No. 306 S.D.1. I will be happy to answer any questions the Committee may have.



DAVID Y. IGE  
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**PRESENTATION OF THE  
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Thursday, March 23, 2017  
2:05 p.m.

**TESTIMONY ON SENATE BILL NO. 306, S.D.1, RELATING TO REAL PROPERTY.**

TO THE HONORABLE ROY M. TAKUMI, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Lori Beth Van Cantfort, Time Share Administrator of the Professional and Vocational Licensing Division, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department has the following comments regarding Senate Bill No. 306, S.D.1.

SECTION 2 of the bill seeks to add a new section "514E-\_\_\_ Association documents to be provided." Subsection (a) provides that a time share project in a mixed use project shall provide owners the basic documents needed to sell an owner's "time share unit". "Time share unit" is defined under HRS §514E-1 as "the actual and promised accommodations, and related facilities, which are the subject of a time share plan." A time share unit consists of multiple "time share interests" which are



sold to multiple owners. Therefore, a time share owner owns a "time share interest" in a "time share unit", and would need the basic documents to sell its time share interest, not the entire time share unit. To avoid confusion, the term "time share unit" should be changed to "time share interest" throughout the bill.

Also, the new subsection should clearly state who within the time share project is responsible for providing the documents. If the responsibility is the plan manager's, the time share association's board, or both, the bill should clearly state so.

SECTION 2 of the bill also seeks to add a new section "514E-\_\_\_ Time share owners associations; vacation clubs; board of directors; elections." The new section requires the "management company" to provide time share owners with a list of all owners. The managing company of a time share plan is called a "plan manager", which is defined under HRS §514E-1. To avoid confusion and for consistency reasons, the term "management company" should be changed to "plan manager."

Thank you for this opportunity to provide testimony on Senate Bill No. 306, S.D.1.



March 23, 2017

TO: Representative Roy Takumi, Chair Consumer Protection and Commerce  
Representative Linda Ichiyama, Vice-Chair Consumer Protection and Commerce  
Members of the House Consumer Protection and Commerce Committee

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION (ARDA)-HAWAII  
Mitch Imanaka, Chair of the Executive Committee  
via Blake Oshiro, Executive Director

RE: SENATE BILL (SB) 306, SENATE DRAFT (SD)1 - RELATING TO REAL PROPERTY – **OPPOSE**

Dear Chair Takumi, Vice-Chair Ichiyama, and Members of the Committee:

The American Resort Development Association – Hawaii (ARDA-Hawaii) is the trade association representing the vacation ownership and resort development industries (timeshares) here in Hawaii. Thank you for the opportunity to testify on Senate Bill (SB306). The bill has various parts proposing different changes, summarized as:

1. clarifies that projects with a combination of time share units, transient vacation rentals, and private residential units located provide copies of the governing documents to enable an owner to sell the owner's time share unit – ***no objection if the current 48 hour period is changed to allow for at least 30 calendar days to respond***
2. clarifies that an owner of a time share unit has the right to receive a list of all time share owners, including contact information, for purposes directly related to the business of a time share owners association or vacation club - ***opposed***
3. specifies that a management company of a time share owners association or vacation club board of directors must provide specific information to owners regarding candidates for election to the board of directors within thirty days prior to the election and shall not have a controlling interest on the board of directors – ***no objection***
4. clarifies that any violation of a mandatory provision of the State's condominium law by a board or its officers and members is a per se violation of the board's fiduciary duty and provides safe harbor for a board member who votes for compliance during a board meeting - ***opposed***

ARDA Hawaii does not object to the part of the bill that proposes to enable owners to have documents needed to conduct a sale or transaction. Similarly, we do not oppose the requirement to provide owners for information on candidates for the board.

However, we strongly object to the providing of owner lists and their contact information as we are concerned about the following:

1. Owner Privacy- our owners seek and purchase their interests for a vacation experience. This provision would allow owners to be inundated with solicitations from various parties. Lists of personal owner information are highly valuable, subject to resale to unscrupulous parties and often used to fraudulently solicit timeshare owners. More importantly, timeshare developers are required under federal law to tell owners about their privacy policies. This bill would require developers to restate all of their privacy policies and such restatements would not be received favorably by most timeshare owners.
2. Consumer Protection from Fraud– owner information is highly desirable to timeshare relief companies. We are aware of several instances with open attorney general investigations in other jurisdictions, and even FBI investigations where companies or individuals have stolen owner lists and then called owners. There is a certain pattern for these types of fraudulent scams. The companies misrepresent themselves as being connected to the developer in an attempt to get the owners to share credit card and other personal information, or they make inaccurate and misleading attacks on the developer/industry and prompt the owner to pay them money to “get them out of their contract.” In addition, significant resources are spent ensuring Developer and Association systems are secured to protect owner personal information. This bill would allow any person to buy a week’s worth of timeshare on the resale market, and then as an owner, demand access to basically the data base of owners which could then be sold and used in the manner described above.
3. This approach in the bill is carries significant risk when there are other readily available effective methods that are already being used. Other jurisdictions, like Florida, have the board of directors mail board related information/solicitations to the owner base; not handing the list over to owners. Alternatively, some properties have set up a message board where the owners could interact with each other without having to give up personal data.
4. Finally, while there appear to be a handful of owners, at a single development, concerned with a single board, this bill will affect the entire industry. We believe that there are more effective and reasonable approaches that can be taken outside of legislation to at least give an opportunity to air, even if not resolve, the concerns.

Finally, we oppose the language that makes a violation a per se violation of fiduciary duty. There are a number of circumstances such as a missed deadline or even just incomplete or outdated information about a board candidate would constitute a per se, or automatic violation of a board member’s fiduciary duty, subjecting them to administrative and legal proceedings. This seems to be an overly harsh approach to penalizing what could in fact, turn out to be a de minimus or relatively minor infraction.

Thank you for the opportunity to testify.



**HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS  
LEGISLATIVE COMMITTEE  
P. O. Box 29213  
HONOLULU, HAWAII 96820-1613  
E-MAIL: [HSAP.LC@GMAIL.COM](mailto:HSAP.LC@GMAIL.COM)**

March 22, 2017

Honorable Rep. Roy M. Takumi, Chair  
Honorable Rep. Linda Ichiyama, Vice-Chair  
House Committee on Consumer Protection & Commerce  
Hawaii State Capitol, Room 329  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony in OPPOSITION to SB306 SD1; Hearing Date: March 23, 2017 at 2:00 p.m. in House conference room 329; sent via Internet**

Aloha Chair Takumi, Vice-Chair Ichiyama, and Committee members,

Thank you for the opportunity to provide testimony on this bill.

The Hawaii State Association of Parliamentarians ("HSAP") has been providing professional parliamentary expertise to Hawaii since 1964. I am the chair of the HSAP Legislative Committee. I'm also an experienced Professional Registered Parliamentarian who has worked with condominium and community associations every year since I began my practice in 1983 (over 1,500 meetings in 33 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

This testimony is provided as part of HSAP's effort to assist the community based upon our collective experiences with the bylaws and meetings of numerous condominiums, cooperatives, and Planned Community Associations.

**This testimony is presented in OPPOSITION to SB306 SD1.**

Section 3 of the bill contains a provision that proposes to amend Section 514B-106, Hawaii Revised Statutes, by adding the following sentence to subsection (a):

**"Any violation of any mandatory provision of this chapter by a board or its officers and members shall be deemed a per se violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by voting against a board action that is in violation of a mandatory provision of this chapter and having that board member's vote recorded in the minutes of a regular or special meeting of the board within forty-five days of the occurrence of the violation." [Emphasis added.]**

**We notice that the bill has no provision for a board member to avoid liability when a board's inaction is a violation of Chapter 514B or when the matter does not come up for a vote.** Additionally, the requirement that a director's "no" vote be recorded in minutes within 45 days may not always be possible.

Some boards only meet once a quarter and minutes are not always prepared in 45 days. Unapproved drafts are not required to be available until 60 days after a meeting. Accordingly, aside from the fact that this provision creates an unreasonable high level of exposure to liability for board members it also fails to adequately protect board members who vote against an action that is deemed to be in violation of the mandatory provisions of HRS Chapter 514B.

Since HRS §514B-121 mandates the parliamentary authority, Robert's Rules of Order Newly Revised (11<sup>th</sup> ed.), this provision could be construed to impose liability on a board that inadvertently violates a provision in Robert's Rules.

Since there is no "intent" defense, board members would be exposed to liability for a per se (which means "being such inherently, clearly, or as a matter of law")<sup>1</sup> violation, regardless of the underlying facts. This removes any defenses that the violation was inadvertent or there was no harm to others.

**This bill is a proverbial "gold mine" for association members with a history of suing boards and their prospective attorneys. They would simply hire experts to review years of minutes in order to find any possible violation of Chapter 514B or Robert's Rules.**

The imposition of this unprecedented level of fiduciary duty has other consequences. Insurance companies that regularly write D&O policies would have increased exposure to defend against such lawsuits. We are concerned that the adoption of this bill could cause insurance companies to reexamine and exclude defense coverage for lawsuits alleging "breach of fiduciary duty" under this statute.

This is bad for the community and will have an unreasonably onerous result, hopefully one that was not intended by the original drafter.

**We respectfully request that you defer or hold this bill.**

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<sup>1</sup> Definition from: <https://www.merriam-webster.com/dictionary/per%20se>

REP. ROY M. TAKUMI, CHAIRMAN; REP. LINDA ICHIYAMA, VICE-CHAIR  
HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE (CPC) – SB306 SD 1  
HEARING DATE: MARCH 23, 2017; HEARING TIME: 2:00 P.M.  
PAGE 3 OF 3 PAGES

If you require any additional information, your call is most welcome. I may be contacted via phone: 423-6766 or by e-mail: [hsap.lc@gmail.com](mailto:hsap.lc@gmail.com). Thank you for the opportunity to present this testimony.

Sincerely,

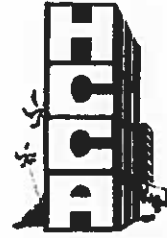
**Steve Glanstein**

Digitally signed by Steve Glanstein  
DN: cn=Steve Glanstein, o, ou, email=Steveghi@Gmail.com,  
c=US  
Location: Honolulu, HI  
Date: 2017.03.22 11:46:10 -10'00'

Steve Glanstein, Professional Registered Parliamentarian  
Chair, HSAP Legislative Committee  
SG:tbs/Attachment



**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
1050 Bishop Street, #366, Honolulu, Hawaii 96813



March 22, 2017

Rep. Roy Takumi, Chair  
Rep. Linda Ichiyama, Vice-Chair  
House Committee on Consumer Protection & Commerce

Re: Testimony in Support (with Comments) of  
SB306 SD1 RELATING TO REAL PROPERTY  
Hearing: Thursday, March 23, 2017, 2:05 p.m., Conf. Rm. #329

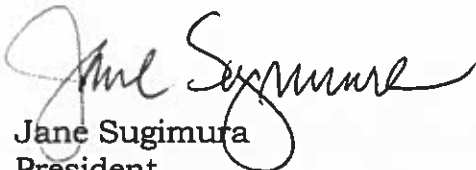
Chair Takumi, Vice-Chair Ichiyama and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCAAO agrees with the Section 2 of the bill and suggests the following amendments to Section 3 at page 5, lines 2-11, i.e., limit the sanction to mandatory provisions of HRS 514B-154, 161 and 162; allow the safe-harbor provision to apply to any board member who chooses to comply with those provisions within 45 days of the initial violation; and add an automatic 1-year sunset provision as follows:

“Any violation of mandatory provisions of HRS 514B-154 (production of documents requested by owners), HRS 514B-161 (mediation) and HRS 514B-162 (arbitration) shall be deemed to be a violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by voting against board action deemed to be violation or by choosing to comply with the mandatory provision within 45 days of the initial violation. This amendment will automatically sunset on June 30, 2018”.

If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

  
Jane Sugimura  
President





March 21, 2017

Rep. Roy M. Takumi, Chair  
Rep. Linda Ichiyama, Vice Chair  
Members of the House Committee on  
Consumer Protection and Commerce  
The Twenty-Ninth Legislature  
Regular Session of 2017

**Rita Coviello**  
Group Vice President, Legal

rita.coviello@rci.com

**Re: Senate Bill 306, S.D. 1 - Relating to Real Property**

**Hearing Date: March 23, 2017 2:05 p.m.**

Dear Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

I am in-house counsel with RCI, LLC ("RCI"). As a representative of RCI, the world's largest timeshare exchange company, with over 4,000 affiliated resorts, and approximately 3.8 million members including members who reside in Hawaii, I am submitting RCI's testimony in opposition to Senate Bill 306, S.D. 1.

SB306, S.D. 1 would require, among other things, that documents necessary for the sale of a time share unit be provided to the requesting owner within forty-eight hours of such request. RCI believes that this requirement is onerous and unreasonable in that it may take several days, or longer, to compile requested information. RCI is also concerned that this requirement does not specify when the forty-eight hour time frame begins or what deems compliance with this requirement. For example what happens if the request is made over weekend or holidays when there is no mail delivery? What if many requests come in simultaneously and cannot be fulfilled in a timely manner due to resource issues? This could create undue hardship. It seems that the thirty day requirement that exists today is reasonable and need not be modified.

Additionally, there are other provisions that would create undue burden and restrictions, RCI, therefore respectfully opposes this bill and asks the committee to hold this measure. Thank you for the opportunity to testify regarding this bill.

Very truly yours,

Rita Coviello

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Imanaka Asato  
A LIMITED LIABILITY LAW COMPANY

March 23, 2017

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Members of the House Committee on Consumer  
Protection, and Commerce  
Twenty-Ninth Legislature  
Regular Session of 2017

**RE: SB 306, SD1 Relating to Real Property**  
**Hearing date: March 23, 2017 at 2:05 pm**

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

Thank you for allowing me to submit testimony on behalf of Soleil Management Hawaii, LLC (“Soleil”) in **OPPOSITION** of Senate Bill 306, SD1 Relating to Real Property. Soleil is a condominium association and vacation ownership resort management company providing a full spectrum of management services to customers in Hawaii. Soleil has 17 properties throughout Hawaii and has been doing business in the state for 18 years.

Senate Bill 306, SD1 seeks to, among other things, require timeshare associations to provide documents required for a sale of the timeshare unit to the unit owner within 48 hours; and enable a time share unit owner to obtain a list and contact information for all time share owners within the project, notwithstanding any association rules or documents which preclude dissemination of an owner’s information.

Currently, HRS § 514B provides all owners of a condominium unit, including all owners of those condominium units dedicated to a timeshare plan (a “Timeshare Unit”), with a mechanism for accessing the records maintained by the condominium association. The amendments proposed in Senate Bill 306 effectively restate/duplicate some of those rights as they relate to owners of Timeshare Units while, at the same time, making HRS § 514E more confusing.

For example, the requirement to provide “basic documents” that will enable a time share unit owner to sell is vague, especially considering an estoppel certificate is typically the only document needed by unit owner at the time of sale. Furthermore, the 48 hour response time is unrealistic and places a significant burden on association managers to provide documents under the threat of a breach of fiduciary duty.

Additionally, time share association bylaws and rules often prevent the dissemination of time share owners’ contact information - for good reason. Unlike condominium owners, time share units are occupied as vacation units where owners generally only spend one or two weeks

House Committee on Consumer  
Protection & Commerce  
March 23, 2017  
Page Two

per year and owners have less interest in the day to day management of the property. Time share unit owners also have a high expectation that their personal information will be kept private which would be exposed if the lists were made available. These lists are considered very valuable property to unscrupulous resale scam companies. These documents and lists would be in significant jeopardy and could be made widely available either accidentally or unethically with no real protections, despite the protection proposed in Senate Bill 306, SD 1.

For these reasons, Soleil opposes Senate Bill 306, SD1. Alternatively, we recommend adopting the provisions in HB 650, HD1 or omitting the proposed provisions in Section 2 of Senate Bill 306, SD1 labeled 514E- (b).

Sincerely,

IMANAKA ASATO LLLC

Michael L. Iosua

A handwritten signature in black ink, appearing to read "Michael L. Iosua", is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke at the end.

# SanHi Government Strategies

Gary M. Slovin  
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DATE: March 22, 2017

TO: Representative Roy Takumi  
Chair, Committee on Consumer Protection and Commerce  
*Submitted via Capitol Website*

RE: **S.B. 306, S.D.1 – Relating to Real Property**  
**Hearing Date: Thursday, March 23, 2017 at 2:05 p.m.**  
**Conference Room: 329**

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Dear Chair Takumi and Members of the Committee on Consumer Protection and Commerce:

We submit this testimony on behalf of Wyndham Vacation Ownership. Wyndham offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham Vacation Ownership has a substantial presence in Hawaii through its Wyndham Vacation Resorts, WorldMark by Wyndham and Shell Vacations brands.

Wyndham **opposes** S.B. 306, S.D.1. There are several provisions in this bill which could be overly burdensome to a timeshare project. For example, the 48-hour turnaround for an association to provide documents at the request of an owner is unreasonable given that requests for records can require several days to compile and process. Under the current law, association managers have 30 days to comply with a document request, which is more reasonable.

Thank you for the opportunity to submit testimony on this bill.

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Gary M. Slovin  
Mihoko E. Ito  
R. Brian Tsujimura  
C. Mike Kido  
Tiffany N. Yajima  
Matthew W. Tsujimura

THE HOUSE OF REPRESENTATIVES  
THE TWENTY- NINE LEGISLATURE  
REGULAR SESSION OF 2017  
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
SB 306, SD1  
Hearing Thursday, March 23, 2017 2:05PM Conference Room 329

Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "*per se* violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.



Ann E. Collins

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Of Counsel:  
Joyce Y. Neeley

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M. Anne Anderson  
Philip L. Lahne  
Lance S. Fujisaki

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Pamela J. Schell  
Paul A. Ireland Koftinow  
Glenn S. Horio

March 21, 2017

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Representative Chris Todd, Acting Vice Chair  
House Committee on Consumer Protection and Commerce  
Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, Hawai'i 96813

RE: Testimony Related to S.B. No. 306, S.D.1  
Hearing Date: March 23, 2017, at 2:05 p.m., Conference Room 329  
The Twenty-Ninth Legislature; Regular Session of 2017

Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

Thank you for the opportunity to submit testimony related to S.B. No. 306, S.D.1.

I am a partner in the law firm of Anderson Lahne & Fujisaki LLP A Limited Liability Law Partnership. I have represented condominium associations in Hawai'i for over thirty years.

**A. Section 2 of the Bill.**

This section will require time share associations to provide certain documents within 48 hours of a written or electronic request made to the resident manager or property manager, as appropriate. Forty-eight hours is too short and does not account for Saturdays, Sundays and holidays. In essence, if a request is made on a Friday afternoon, it will require the managing agent or resident manager to work on Saturday and Sunday to gather the requested documents to be able to send them to the person making the request on a Sunday afternoon. Worse yet, an owner might request documents on December 23, requiring the resident manager or property manager to leave their families on Christmas Eve and Christmas Day to gather documents to meet the 48 hour deadline. The 48 hours should be extended to at least 7 days or, at the very least, it should exclude Saturdays, Sundays, and Hawaii state holidays.

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Representative Chris Todd, Acting Vice Chair  
House Committee on Consumer Protection and Commerce  
March 21, 2017  
Page 2

**B. Section 3 of the Bill.**

Section 3 of the bill provides that “any violation of any mandatory provision” of Chapter 514B by a “board or its officers and members” shall be deemed a “*per se*” violation of the fiduciary duty owed under HRS Section 514B-106(a). This is an extremely bad provision for several reasons.

First, Section 3 fails to identify the provisions in HRS Chapter 514B that the legislature considers to be “mandatory” provisions. For a bill that greatly increases the exposure of directors and officers to liability, this lack of clarity is unreasonable. The lack of clarity will also undoubtedly be the cause of much litigation.

Second, not only is Section 3 lacking in specificity, but it provides for a “*per se*” violation of the fiduciary duty owed under HRS § 514B-106(a). This change represents a drastic shift from the current standard of care applicable to actions of directors and officers of condominium associations. Currently, HRS § 514B-106(a) provides that in the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under HRS Chapter 414D. HRS § 414D-149(a) provides:

§ 414D-149. General standards for directors

(a) A director shall discharge the director’s duties as a director, including the director’s duties as a member of a committee:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director reasonably believes to be in the best interests of the corporation.

A very similar standard of conduct for officers is found in HRS § 414D-155(a).<sup>1</sup>

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<sup>1</sup> HRS § 414D-155(a) provides:

(a) An officer with discretionary authority shall discharge the officer’s duties under that authority:

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Representative Chris Todd, Acting Vice Chair  
House Committee on Consumer Protection and Commerce  
March 21, 2017  
Page 3

HRS § 414D-149(d) provides:

(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

Under HRS § 414D-149(d), a director will not be held liable if he/she acts in good faith, with the same care an ordinarily prudent person in like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the association. HRS § 414D-155(d) includes an almost identical provision for officers. These sections are very similar to the business judgment test.<sup>2</sup>

The new language added to HRS § 514B-106(a) provides that any violation of a mandatory provision of HRS Chapter 514B is a “*per se*” violation of fiduciary duty. “*Per se*” can mean “of, in, or by itself; standing alone, without reference to additional facts;” or “as a matter of law.”<sup>3</sup> Owners who become involved in disputes with their associations will undoubtedly argue that the “*per se*” language means that a violation of a (yet to be identified) mandatory provision of HRS Chapter 514B is an automatic breach of fiduciary duty without regard to any other factors, such as whether the director was acting in good faith, in a manner that he/she believed to be in the association’s best interest, or in the same manner that a reasonably prudent person would act in like circumstances. Furthermore, HRS § 414D-149(b)<sup>4</sup> expressly provides that directors are entitled to rely upon the

- 
- (1) In good faith;
  - (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - (3) In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

<sup>2</sup> See *Fujimoto v. Au*, 95 Hawai‘i 116, 148-149, 19 P.3d 699, 731-732 (Hawai‘i 2001) (“[t]he directors’ conduct meets the ‘business judgment’ test when, in making a business decision, the directors have acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company.”).

<sup>3</sup> See “Per Se,” Black’s Law Dictionary, Tenth Edition (2014)

<sup>4</sup> HRS § 414D-149(b) provides:

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Representative Chris Todd, Acting Vice Chair  
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Page 4

advice of experts, such as lawyers and public accountants and HRS § 414D-155(b)<sup>5</sup> contains similar language related to officers. HRS §§ 414D-149(d) and 414D-155(d) provide protection to directors and officers who rely upon the advice of legal counsel and experts. However, the new “*per se* violation” language found in Section 3 contains no language affording protection to directors and officers who act in reliance upon legal or expert advice.

The proposed change to HRS Section 514B-106(a), if adopted, will undoubtedly make it difficult for condominium associations to find persons who are willing to serve on their boards of directors because it is not likely that very many people will be willing to serve if they can no longer rely upon the reasonable and long-standing protections afforded by HRS §§ 414D-149 and 414D-155 and the business judgment rule. While the proponents of the change to HRS § 514B-106(a) may argue that directors and officers carry insurance that should protect them from personal liability, the truth of the matter is that insurance companies are known for carving out exclusions from coverage in their policies. If Section 3 of this bill becomes law, it is highly foreseeable that insurance companies will quickly carve out exclusions for “*per se* violations” in their policies, leaving directors and officers without insurance protection.

---

(b) In discharging the director’s duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person’s professional or expert competence; or
- (3) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

<sup>5</sup> HRS § 414D-155(b) provides:

(b) In discharging an officer’s duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented; or
- (2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person’s professional or expert competence.



Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Representative Chris Todd, Acting Vice Chair  
House Committee on Consumer Protection and Commerce  
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Finally, the second sentence of HRS § 514B-106(a) provides that directors and officers, not the board as an entity, owe a fiduciary duty to the association. Yet, notwithstanding that the board, as an entity, does not owe a fiduciary duty, the new language found in Section 3 of the bill provides for a *per se* violation of fiduciary duty by a board. Because there can be no breach of duty where no duty exists, at the very least, the reference to the board must be deleted in the new language proposed in Section 3.

For the above reasons, I strongly urge the committee to strike Section 3 in its entirety.

Sincerely,

A handwritten signature in black ink, appearing to be 'M. Anne Anderson', written over the word 'Sincerely,'.

M. Anne Anderson

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 2:02 AM  
**To:** CPCtestimony  
**Cc:** bonnielau1668@gmail.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bonnie Lau	Individual	Oppose	No

Comments: I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 12:02 PM  
**To:** CPCtestimony  
**Cc:** bradhair8888@gmail.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Bradford Lee Hair	Individual	Oppose	No

Comments: Representative Roy M. Takumi, Chair Representative Linda Ichiyama, Vice Chair Representative Chris Todd, Acting Vice Chair House Committee on Consumer Protection and Commerce Hawai'i State Capitol 415 South Beretania Street Honolulu, Hawai'i 96813 RE: Testimony Related to S.B. No. 306, S.D.1 Hearing Date: March 23, 2017, at 2:05 p.m., Conference Room 329 The Twenty-Ninth Legislature; Regular Session of 2017 Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: Thank you for the opportunity to submit testimony related to S.B. No. 306, S.D.1. I oppose Section 3 of the bill and share in the testimony of Anne Anderson as follows: Section 3 of the bill provides that "any violation of any mandatory provision" of Chapter 514B by a "board or its officers and members" shall be deemed a "per se" violation of the fiduciary duty owed under HRS Section 514B-106(a). This is an extremely bad provision for several reasons. First, Section 3 fails to identify the provisions in HRS Chapter 514B that the legislature considers to be "mandatory" provisions. For a bill that greatly increases the exposure of directors and officers to liability, this lack of clarity is unreasonable. The lack of clarity will also undoubtedly be the cause of much litigation. Second, not only is Section 3 lacking in specificity, but it provides for a "per se" violation of the fiduciary duty owed under HRS § 514B-106(a). This change represents a drastic shift from the current standard of care applicable to actions of directors and officers of condominium associations. Currently, HRS § 514B-106(a) provides that in the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under HRS Chapter 414D. HRS § 414D-149(a) provides: § 414D-149. General standards for directors (a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee: (1) In good faith; (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) In a manner the director reasonably believes to be in the best interests of the corporation. A very similar standard of conduct for officers is found in HRS § 414D-155(a). HRS § 414D-149(d) provides: (d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section. Under HRS § 414D-149(d), a director will not be held

liable if he/she acts in good faith, with the same care an ordinarily prudent person in like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the association. HRS § 414D-155(d) includes an almost identical provision for officers. These sections are very similar to the business judgment test. The new language added to HRS § 514B-106(a) provides that any violation of a mandatory provision of HRS Chapter 514B is a “per se” violation of fiduciary duty. Per Black’s Law Dictionary, 10th Edition (2014), “per se” can mean “of, in, or by itself; standing alone, without reference to additional facts;” or “as a matter of law.” Owners who become involved in disputes with their associations will undoubtedly argue that the “per se” language means that a violation of a (yet to be identified) mandatory provision of HRS Chapter 514B is an automatic breach of fiduciary duty without regard to any other factors, such as whether the director was acting in good faith, in a manner that he/she believed to be in the association’s best interest, or in the same manner that a reasonably prudent person would act in like circumstances. Furthermore, HRS § 414D-149(b) expressly provides that directors are entitled to rely upon the advice of experts, such as lawyers and public accountants and HRS § 414D-155(b) contains similar language related to officers. HRS §§ 414D-149(d) and 414D-155(d) provide protection to directors and officers who rely upon the advice of legal counsel and experts. However, the new “per se violation” language found in Section 3 contains no language affording protection to directors and officers who act in reliance upon legal or expert advice. The proposed change to HRS Section 514B-106(a), if adopted, will undoubtedly make it difficult for condominium associations to find persons who are willing to serve on their boards of directors because it is not likely that very many people will be willing to serve if they can no longer rely upon the reasonable and long-standing protections afforded by HRS §§ 414D-149 and 414D-155 and the business judgment rule. While the proponents of the change to HRS § 514B-106(a) may argue that directors and officers carry insurance that should protect them from personal liability, the truth of the matter is that insurance companies are known for carving out exclusions from coverage in their policies. If Section 3 of this bill becomes law, it is highly foreseeable that insurance companies will quickly carve out exclusions for “per se violations” in their policies, leaving directors and officers without insurance protection. Finally, the second sentence of HRS § 514B-106(a) provides that directors and officers, not the board as an entity, owe a fiduciary duty to the association. Yet, notwithstanding that the board, as an entity, does not owe a fiduciary duty, the new language found in Section 3 of the bill provides for a per se violation of fiduciary duty by a board. Because there can be no breach of duty where no duty exists, at the very least, the reference to the board must be deleted in the new language proposed in Section 3. For the above reasons, I strongly urge the committee to strike Section 3 in its entirety. Sincerely,  
Bradford Lee Hair

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From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, March 22, 2017 10:44 AM  
To: CPCtestimony  
Cc: ckanemaru@yahoo.com  
Subject: Submitted testimony for SB306 on Mar 23, 2017 14:05PM  
Attachments: Testimony.docx

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Chandra Kanemaru	Individual	Oppose	No

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

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Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "*per se* violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

Dana Newberry

Dante K. Carpenter

3054 Ala Poha Place, #401 Honolulu, HI 96818

(808) 358 – 7104 Cellular

Thursday, March 23, 201

CR 329 - 2:05 PM

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Subject: SB 306, SD 1 - RELATING TO REAL PROPERTY

Dear Representatives Chair, Roy Takumi; Vice-Chair Linda Ichiyama, and Committee Members:

Good Afternoon. My name is Dante K. Carpenter. I am an elected member of the Board of Directors of the AOA Country Club Village, Phase 2, located in the Moanalua-Salt Lake Area of O'ahu. I have previously served as its President for over 20 years. This condominium complex is comprised of 2 - 21 Story Buildings with a total of 469, 2 & 3-Bedroom Apartments.

**I am strongly opposed to Section 3 of SB 306, SD 1 for the following reasons:**

- 1.) To my knowledge, In most associations, board members serve their association in a voluntary capacity and they exert every effort to comply with applicable laws and their association's project documents. Hawaii's existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations.
- 2.) Section 3 of this measure seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "*per se* violation" of the fiduciary duty clearly articulated under HRS Section 514B-106(a). Therefore, board members and associations will be needlessly exposed to liability!
- 3.) Also, parties who may sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Practically speaking, Section 3 will also make current and future board members reluctant to serve, and it will become more difficult for associations to find individuals willing to serve as board members.
- 4.) In summary, Section 3 of this measure will adversely affect almost every condominium association in Hawai'i, and will complicate and impede the ability of homeowners to properly manage their associations.

**Finally, Section 3 should therefore be stricken and removed or deleted from this measure!**

**Thank you for your attention to this urgent matter!**

/s/ Dante K. Carpenter

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 11:41 AM  
**To:** CPCtestimony  
**Cc:** ghorio@alf-hawaii.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Glenn S. Horio	Individual	Oppose	No

Comments: Dear Chair Roy M. Takumi, Vice Chair Linda Ichiyama, Acting Vice Chair Chris Todd, and members of the House Committee on Consumer Protection and Commerce: My name is Glenn S. Horio, and I am an attorney with the law firm of Anderson Lahne & Fujisaki. I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure. Thank you for the opportunity to submit the foregoing testimony.

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March 22, 2017

TO: Committee On Consumer Protection, And Commerce  
Senator Roy M. Takumi, Chair  
Senator Linda Ichiyama, Vice Chair

FROM: Glenn T. Stockton II  
Past and Present Board Member  
Various Hawaii Condominium Associations and Timeshare Associations

DATE: Thursday, March 23, 2017  
Conference Room 329  
2:05 p.m.

**RE: SB 306 Relating To Real Property.**

Aloha Chair, Vice-Chair and Members of the Committee:

This testimony is submitted **IN OPPOSITION** to Senate Bill 306 for the following reasons:

The amendments proposed in Senate Bill 306 effectively restate/duplicate some access rights to condominium association records that owners of condominium units dedicated to a timeshare plan already have under HRS 514B while, at the same time, making HRS § 514E more confusing. I say this because HRS § 514B already provides all owners of a condominium unit, which includes all owners of a condominium unit dedicated to a timeshare plan, with a mechanism for accessing the condominium association's records. For these reasons, Senate Bill 306 is unnecessary.

Additionally, SB 306 SD1 would allow any timeshare owner of a resort in Hawaii to obtain a copy of the timeshare association's highly confidential list of thousands of timeshare owners at the project, including owner names, home addresses and email address (in most cases), all by the simple act of submitting a signed form to the plan manager. Granting such a right would have serious negative repercussions. For example, it would jeopardize the privacy rights and expectations of all timeshare owners in the project. In addition, it would effectively ring a bell that cannot be "un-rung" by releasing the timeshare owners' lists to any individual willing to sign the requisite form, regardless of their true motives for requesting the list; which will undoubtedly include unscrupulous out-of-state timeshare resale agents.

In today's society, timeshare owners have a well-founded fear of spam and/or scams that result when their personal contact information is released. For example, timeshare owners continually complain about being contacted by mail by timeshare resale marketing firms with fraudulent sales pitches. Such marketing firms will certainly take advantage of the language contained in SB 306 SD1 and purchase or illegally acquire owners' lists. Owners also complain about solicitations from travel clubs that also contact them by mail. These solicitations are especially confusing to owners because they contain intimate knowledge about the owner's existing ownership coupled with false or misleading statements in an attempt to generate business (or even a false claim of affiliation with the resort).

Lastly, the companion bill to Senate Bill 306, i.e., House Bill 650, was amended by the House Committee On Consumer Protection & Commerce to (i) remove the amendment to HRS 514E in its entirety, and (ii) address the majority of other concerns raised regarding the proposed amendments to HRS 514B-154.5.

For the foregoing reasons I ask that Senate Bill 306 be **DEFERRED**.

Thank you for your consideration.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 3:27 PM  
**To:** CPCtestimony  
**Cc:** hjmagee@msn.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Henry J. Magee	Individual	Oppose	No

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 12:47 PM  
**To:** CPCtestimony  
**Cc:** twoditts@hawaiiantel.net  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Dittmar	Individual	Oppose	Yes

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: My name is James Dittmar and I am a condominium board member. I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations to find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 12:15 PM  
**To:** CPCtestimony  
**Cc:** office@makahavalleytowers.org  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joanna L. Miranda	Individual	Oppose	No

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations to find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

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March 22, 2017

Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

I am insurance agent specializing in insurance for condominium associations in Hawaii. I am also a past president of the Community Association Institute – Hawaii Chapter.

I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations.

I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "*per se* violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). This would inevitably create a crisis in the Director's and Officers liability insurance market in our state as existing companies would either pull out of the state or raise premiums to unsustainable levels.

Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

Thank you.

João Santos

2669 Haili Road

Honolulu, HI 96813

My name is John Morris and I am an attorney who practices in the area of condominium and homeowner association law. I am testifying against section 3 of SB 306, which proposes that any director who fails to comply with a "mandatory provision" of chapter 514B will be automatically deemed to have committed a "per se" violation of his or her fiduciary duty.

A fiduciary duty is a heavy burden imposed by the law on someone who acts for others. As a result, violations of fiduciary duty are considered serious offences. Passing a law that would create automatic, "per se" breaches of fiduciary duty for failure to comply with mandatory provisions of chapter 514B would be far out of proportion to the harm it proposes to prevent.

First, the bill includes no findings or information as to why such a drastic remedy should be necessary. There are over 150,000 condominium units in the state, so if each unit has at least two occupants, there are 300,000 people living in condominiums in Hawaii, and probably far more. Thus, if the legislature receives 100 complaints, or even 300 complaints from owners each session, the percentage of complaints is so small in proportion to the overall number of potential complainers, that it is difficult to understand how it could justify section 3 of this bill.

Second, continuous amendments to chapter 514B have made it extremely complex, with many, many provisions that could arguably be deemed mandatory. Unfortunately, many of those provisions are also open to interpretation as to exactly what they deem to be mandatory. Even an attorney who practices in the area of condominium law would be hard pressed to make a list of all the mandatory provisions of the chapter.

Nevertheless, section 3 of this bill would put volunteer condominium directors, most of whom have no legal training whatsoever, in the position of having to determine what the law deems mandatory and to comply with that law. It is difficult to understand what a volunteer condominium director could do that would justify such a punishment.

Third, the supposed remedy the bill provides for a director to avoid this problem would be to vote against the supposedly mandatory action within 45 days. Of course, if the director was not even aware of the violation until after 45 days had passed, the fact that the director did nothing would only add weight to the claim that the director was in violation of his or her fiduciary duty. Any owner wishing to hang a director by his or her thumbs would only have to wait 46 days to take advantage of this enhanced violation argument.

Fourth, while section 514B-106 (a) of the condominium law provides that a director owes a fiduciary duty, that fiduciary duty is owed to all members of the association, not individual members of the association. Otherwise, if the fiduciary duty was owed to individual members of an association, directors could not proceed with delinquency collection or rule enforcement against that individual association member without violating a fiduciary duty. In other words, directors could not take any action against individual members of the association for violations if the directors owed a fiduciary duty

to each member of the association. Nevertheless, section 3 of this bill completely ignores that principle and indicates that the director may be held liable to individuals.

Fifth, insurance companies that provide directors and officers insurance could use this provision to argue that a per se violation of the directors fiduciary duty should not be covered by insurance. Similarly, owners could argue that the association should not be obligated to indemnify directors if they commit a per se violation of their fiduciary duty. This, in turn, would expose the volunteer directors to the possibility of liability for which they would receive no insurance coverage and no indemnification from the association.

In summary, section 3 of this bill is a really bad idea and completely unjustified.

Thank you for this opportunity to testify.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 11:56 AM  
**To:** CPCtestimony  
**Cc:** jtoa@hawaii.rr.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John Toalson	Individual	Oppose	No

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations to find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

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Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "*per se* violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

Julie Wassel

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 7:47 AM  
**To:** CPCtestimony  
**Cc:** sdscepe@yahoo.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Katherine Stringham	Individual	Oppose	No

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Section 3 of SB 306, SD 1. I voluntarily serve on my board, and we have an extremely difficult task of finding owners agreeable to serve as board members. Section 3 will make it more difficult for associations to find individuals willing to serve as board members. In most associations, board members serve their association in an unpaid capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

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From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, March 22, 2017 10:38 AM  
To: CPCtestimony  
Cc: LOFVENHOLML@AOL.COM  
Subject: Submitted testimony for SB306 on Mar 23, 2017 14:05PM  
Attachments: Testimony.docx

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
LISBETH LOFVENHOLM	Individual	Comments Only	No

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure. Lisbeth Lofvenholm 469 Ena Rd, #2511 Honolulu, HI 96815

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Lourdes Scheibert  
Royal Court Condominium  
920 Ward Ave  
Honolulu, Hawaii 96841

March 22, 2017

Hearing Date: Tuesday, March 23, 2017  
Time: 2:05 PM  
Place: Conference Room 329

Committee on Consumer Protection & Health  
House of Representative, the 29th Legislature  
Regular Session of 2017

RE: Testimony supporting SB 306, SD1, Relating to Real Property; Condominiums;  
Time Share Projects; Association Documents; Board of Directors; Fiduciary Duty

Clarifies that projects that contain a combination of time share units, transient vacation rentals, and private residential units located in the same project are required to provide basic documents that will enable an owner to sell the owner's time share unit. Clarifies that an owner of a time share unit has the right to receive a list of all time share owners, including contact information, for purposes directly related to the business of a time share owners association or vacation club. Specifies that a management company of a time share owners association or vacation club board of directors must provide specific information to owners regarding candidates for election to the board of directors within thirty days prior to the election and shall not have a controlling interest on the board of directors. [Clarifies that any violation of a mandatory provision of the State's condominium law by a board or its officers and members is a per se violation of the board's fiduciary duty. Provides safe harbor for a board member who votes for compliance during a board meeting. \(SD1\)](#)

Dear Chair Roy Takuma and Vice Chair Linda Ichiyama  
Representatives Henry Aquino, Ken Ito, Calvin Say, Gregg Takayama, Chris  
Todd, Ryan Yamane, and Beth Fukumoto

I am a condominium owner supporting SB306, SD1. In particular, I strongly support providing safe harbor for a board member who votes for compliance during a board meeting. This is a start to helping the minority directors who question the authority of the veteran majority directors.

However, during my service as a director from 2011-2013, the minutes many times did not reflect what I experienced at the meeting. As an example, my vote was used without my knowledge on an insurance issue that I did not understand and wanted clarification. I understood that this matter was to be discussed at the next meeting to satisfy any questions. At the next board meeting, the minutes were ratified with my vote as "abstain". Eight directors voted to approve the motion. I wrote to the board and management in a certified letter protesting the use of my vote without my knowledge.

All directors should be vigilant in scrutinizing the minutes making sure it is being recorded fairly. If not, immediately notify the board and management in writing of the discrepancy and send your letter certified return receipt to the management company, the President and the Secretary. This provision providing safe harbor does not provide a minority director of being misrepresented.

The management company was assigned the duty as recording secretary. Our secretary did not take notes and signed the ratified minutes.

I believe that property managers assigned to a property should be individually license by the Real Estate Commission.

I believe that the State of Hawaii should establish an office of condominium complaints and enforcement. The Condominium Ombudsman. The purpose is to have a central enforcement body to address the problems faced by many condominium owners and minority directors who sometimes fear retribution from certain board members and management when challenging their governance.

There should be a venue to enforce compliance to the Declaration, By-laws, House Rules and State of Hawaii Condominium Law 514B. It is unfair for an individual association member or director spending personal money to defend these documents in mediation or arbitration. Our purpose is not to rewrite the condominium project documents or 514B but to enforce the established rules & laws making sure that it applies evenly and fairly with all members of the Association including the board of directors.

Lourdes Scheibert  
Condominium Owner

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 9:36 AM  
**To:** CPCtestimony  
**Cc:** lynnehi@aol.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow	Individual	Oppose	No

Comments: I am a condo owner and board member. I was ambivalent about Section 3 until I read Anne Anderson's testimony. It is through an insightful and I ask you to strike Section 3 from the bill. Board members and officers are volunteers. We rely on the advice of professionals, including property management firms and our attorneys. This provision would result in higher insurance premiums, if we can find companies willing to underwrite directors and officers liability coverage, the resignation of board members, and a shrinking pool of owners willing to serve on the board. All boards (condos and other boards) have problem members, but this is not a solution, it is a tsunami. Every organization has rogues. But there are ways to counter their impulses which do not entail the horrors of Section 3. Please strike Section 3. lynne matusow, 60 n. beretania, #1804, honolulu, hi 96817 531-4260

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 12:32 PM  
**To:** CPCtestimony  
**Cc:** mark@mckellar-law.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mark McKellar	Individual	Oppose	No

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Section 3 of SB 306, SD 1 ("Section 3"). Typically, owners serve as board members voluntarily, and do their very best to perform their duties pursuant to the law and their association's governing documents. The law as it currently exists, sufficiently protects associations against boards that breach their fiduciary duty. Making any violation of any mandatory provision of Chapter 514B of the Hawaii Revised Statutes, a per se violation of the fiduciary duty owed by a board member, as Section 3 proposes to do, is entirely unnecessary, and will not substantially benefit associations. To the contrary, enacting Section 3 will likely scare many prospective board members and make it extremely difficult for associations to fill vacancies on their boards. Without an effective board of directors, associations will be unable to manage their projects. This is the likely consequence for many Hawaii associations if Section 3 is enacted, and therefore, I respectfully submit that Section 3 should be stricken from SB 306, SD 1.

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SB306

I strongly oppose Section 3 of SB306 SD 1. I serve on my board in a voluntary capacity, doing my utmost to comply with all governing laws and my association's documents. The present law pertaining to the fiduciary duty responsibility of board members is sufficient in its intent to protect the associations. Section 3 seeks to make "any violation of mandatory provisions" of HRS chapter 514B by a board member a "per se violation" of fiduciary duty per HRS Section 514B-106 (a). Under this measure board members and associations would be needlessly subjected to liability no matter how responsible and careful members of the boards and the associations have acted as Section 3 does not address the issue. In addition Section 3 will make it very difficult for associations to find owners willing to serve on their boards. Section 3 should be removed from this measure.

Mary Freeman



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 12:42 PM  
**To:** CPCtestimony  
**Cc:** miketnmaxc@msn.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Targgart	Individual	Oppose	No

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations to find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 10:02 AM  
**To:** CPCtestimony  
**Cc:** pirelandkoftinow@alf-hawaii.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow	Individual	Oppose	Yes

Comments: My name is Paul A. Ireland Koftinow. Thank you for this opportunity to provide written testimony in opposition to SB 306, SD 1. As an attorney, my practice is focused on the representation of condominium associations and planned community associations in Hawaii. I have also been a speaker at seminars for association board members and other stakeholders on the topics of fiduciary duties and defenses to covenant enforcement. I have the following concerns regarding SB 306, SD1, and I join in the testimony of Anne Anderson. With respect to Section 2 of this measure, 48 hours is not enough time for representatives of a time share association to gather and provide documents to a requesting party. Also, with respect to Section 3 of this measure, I respectfully suggest that this entire section be stricken. Section 3 will impose extreme burdens on all condominium association board members in Hawaii. Most association board members in Hawaii serve their association in a voluntary capacity without compensation. Lawmakers traditionally recognize that association board members who serve without compensation are protected from personal liability except in cases of gross negligence. (See, e.g., HRS Section 414D-149(f)). Also, existing laws governing duties and obligations of association board members are sufficient to protect associations' interests (as set forth in Chapter 414D, many associations' governing documents, and as further discussed by Anne Anderson in her testimony). Section 3, however, will impose an unprecedented burden on all association board members and it will be bad policy because it will likely cause many board members to resign or will create an atmosphere where board members are afraid to make any decisions for fear of "per se" liability. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to efficiently manage their associations. For these reasons, Section 3 should therefore be stricken from this measure.

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Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "*per se* violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations to find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

Respectfully submitted,

Michael Wheeler

[sailinalong@gmail.com](mailto:sailinalong@gmail.com)

910-603-6273

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 21, 2017 8:06 PM  
**To:** CPCtestimony  
**Cc:** mickibob@hawaiiantel.net  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/21/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Micki Stash	AOAO The Punahala	Oppose	No

Comments: I am a board member and officer of a condominium association and I oppose the new language to be added to Section 514B-106(a), as proposed in Section 3 of the bill. This language has serious adverse consequences to condominium associations. 1. The proposed added language offers no definition or guidance whatsoever on what provisions in HRS Chapter 514B are considered “mandatory” provisions. 2, The new language provides for a “per se” violation of the fiduciary duty owed under HRS § 514B-106. This represents a drastic shift from the current standard of care applicable to actions of directors and officers of condominium associations and conflicts with the business judgment rule and the standard of care established by Chapter 414D. 3. In addition directors currently are entitled to rely upon the advice of experts, such as lawyers and public accountants. The new “per se violation” language contains no language affording protection to directors and officers who act in reliance upon legal or expert advice. This shift is not in the best interest of condominium associations. 4. The proposed change to HRS Section 514B-106(a), if adopted, will undoubtedly make it difficult for condominium associations to find persons who are willing to serve on their boards of directors because it is not likely that very many people will be willing to serve if they can no longer rely upon the protections which they currently have. There is also the real possibility that insurance companies would revise their policies which could leave directors without protection. For these reasons, I strongly urge the committee to strike Section 3 in its entirety.

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Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

My name is Pamela Schell. I am an attorney who represents condominium owners associations and I oppose Section 3 of SB 306, SD 1. Board members serve their association in a voluntary capacity and many associations already have difficulty filling seats on their Board of Directors. Owners who do serve on a Board understand their duty to serve the association and its members and do their very best to comply with applicable law and their association's project documents. Fiduciary duty is one of the first concepts new Board members learn and existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. Section 3 of SB 306, SD 1 makes "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "*per se* violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). The vast majority of Board members do their very best to not violate Condominium Property Law. The danger of applying an absolute, *per se*, liability standard for failure to comply with *any mandatory* violation will seriously discourage members from serving on Boards of Directors because "mandatory" is not defined by the measure and could be construed overly broadly. Additionally, the *per se* liability fails to consider attendant circumstances, such as the efforts the Board members undertake to become fully informed as they seek and rely on the opinions or guidance of professionals and/or experts to act in the most reasonable manner they can to benefit the association. Under this measure, board members and associations will be needlessly exposed to liability. It will make current and potential future board members reluctant to serve, so it will be harder for associations to comply with the administration requirements of their governing documents if no one wants to take the time and effort, or incur the risk, to govern. Section 3 of this measure will adversely affect most condominium associations in Hawaii. It therefore should be stricken from this measure.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 8:57 AM  
**To:** CPCtestimony  
**Cc:** plahne@alf-hawaii.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Philip L. Lahne	Individual	Oppose	No

Comments: I strongly oppose Section 3 of SB 306, SD 1. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

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Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

I strongly oppose Section 3 of SB 306, SD 1. As a board member and board president I serve as an unpaid volunteer. I strive to do the very best job and comply with applicable law and the association's project documents while representing the 435 owners in a fair and equitable manner. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. We are by no means experts in building management, construction, roofing, accounting, hvac systems, legal issues etc. and that is why we rely on professionals to give expert advice in these areas. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "*per se* violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. As a board member for approximately ten (10) years, I know how difficult it is to recruit owners willing to participate in the operation of the association. Section 3 will also make current and future board members reluctant to serve as board members, and it will be more difficult for associations find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

Raymond Tremblay, Pres. AOA Waikiki Sunset

229 Paoakalani Ave, Hono., HI 96815-3764

e-mail: [rayhonolulu@yahoo.com](mailto:rayhonolulu@yahoo.com)

Wednesday, 22 March 2017



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 21, 2017 7:24 AM  
**To:** CPCtestimony  
**Cc:** dbates8170@aol.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/21/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sandra Bates	Individual	Support	No

Comments: We have been owners at Sands of Kahana since 2003. During that time it has become apparent that the BOD has a desire to keep owners off the board and to keep them from organizing and communicating with each other. This bill will allow an equal footing to the owners who have repeatedly run up against a brick wall trying to have more say in the process.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 5:02 PM  
**To:** CPCtestimony  
**Cc:** ssimmons@awlaw.com  
**Subject:** Submitted testimony for SB306 on Mar 23, 2017 14:05PM

**SB306**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Sarah Simmons	Individual	Oppose	No

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Section 3 of SB 306, SD 1. I am currently a board member of the AOA of Waiiau Gardens Kai in Pearl City. If this bill is passed, I will immediately resign as the bill will expose myself to great liability. The benefits of serving my AOA community will be outweighed by the risks of suit. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 3 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board member a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members and associations will be needlessly exposed to liability. Also, parties who sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 3 do not account for this. Section 3 will also make it more difficult for associations to find individuals willing to serve as board members. Section 3 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to manage their associations. Section 3 should therefore be stricken from this measure.

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