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February 6, 2024
10:00 a.m.
State Capitol, Room

H.B. 2493
RELATING TO COMMERICAL DRIVER'S LICENSES

House Committee on Transportation

The Hawaii Department of Transportation (HDOT) **supports H.B. 2493**, which amends section 286-239, Hawaii Revised Statues, to create two new commercial driver's license (CDL) restrictions. The "R" restriction is for drivers who pass the skills test on Lanai or Molokai and are limited to operate commercial motor vehicles (CMV) on those islands only. The "Q" restriction is for CDL holders who pass the skills test with a CMV that is 18,000 pounds or less gross vehicle weight rating (GVWR).

The HDOT supports this bill to issue a restricted commercial driver's licenses for those who pass a limited skills test on Lanai or Molokai.

Due to limitation in equipment and roads, getting a standard CDL on Molokai and Lanai is impossible without traveling to another island for testing. This is causing issues due to high out of pocket travel costs for CDL applicants and a shortage of CDL licensed drivers. To address this, we have requested an exemption from the Federal Motor Carrier Safety Association to offer modified road tests on Molokai and Lanai.

The Federal Motor Carrier Safety Association has determined that the CDL road tests offered on Lanai and Molokai do not meet federal standards. Due to the lack of highway infrastructure, applicants cannot demonstrate specific on-road driving skills, including the ability to choose a safe gap for changing lanes, passing other vehicles, and crossing or entering traffic and the ability to signal appropriately when changing direction in traffic.

The Q restriction is needed as there are instances where CDL Class C applicants are completing the skills test in a CMV that is 18,000 pounds or less GVWR with a hazmat and/or passenger endorsements. This restriction will limit these drivers to operate a vehicle comparable to what they completed the skills test with and prohibit them from operating a CMV over 18,000 GVWR. The Driver Licensing offices are currently using the "I" restriction, limited other category, but want a separate designation for these license holders to avoid confusion.

Thank you for the opportunity to provide testimony.

HB-2493
Submitted on: 2/5/2024 7:33:12 AM
Testimony for TRN on 2/6/2024 10:00:00 AM

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

Comments:

Aloha,

I STRONGLY OPPOSE S.B. 2493 and urge you to defer/kill this bill.

This measure will require all owners to bear the burden of paying attorneys' fees incurred by an association as the result of a single owner's actions.

This bill will add a new statutory section related to the collection of attorneys' fees that conflicts with HRS Section 514B-157. HRS Section 514B-157(a) provides, in relevant part, that all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of an association for enforcing any provision of the declaration, bylaws, or house rules against an owner shall be promptly paid on demand to the association by such person or persons. The new subsection (a) of the new statutory section states that all costs for attorneys' fees incurred by or on behalf of the association shall be paid from association funds or reserves. Not only is this in conflict with HRS Section 514B-157(a), but it is unfair as it will require all owners to pay the fees incurred as the result of a single owner's breach.

The new subsection (a)(1) provides that the association shall not assess, demand, or seek reimbursement of the costs for attorneys' fees against a unit owner, unless the association prevailed in the matter and assesses, demands, or seeks reimbursement of the costs of attorneys' fees against all the units in accordance with the allocations under HRS Section 514B-41. This new subsection (a)(1) not only conflicts with HRS Section 514B-157(a), but it also conflicts with the new subsection (a) which does not require that the association prevail in a matter. The adoption of a law that conflicts with an existing law and itself is ill-advised.

The new subsection (a)(1) is vague and ambiguous. It is not clear what the word "prevailed" is intended to mean. For example, if an owner violates a covenant and then cures the violation after receiving a demand from the association, will the association have prevailed? Or, does the association have to actually file a lawsuit against the owner and obtain a judgment in its favor?

This bill also leaves open the question of who pays for the association's fees if the association does not prevail. This will undoubtedly lead to litigation.

Additionally, this bill leaves open the question of how it is to be interpreted with regard to fees incurred in normal business operations. For example, associations often hire attorneys to render

legal opinions, draft documents, and negotiate contracts with vendors. Those fees are generally assessed as a common expense, but the ambiguous language of the new subjection (a)(1) makes that unclear.

The new subsections (a) and (a)(1) are poorly drafted, short-sighted, and in direct conflict with HRS Section 514B-157(a) and for that reason should be rejected.

A twenty-five percent cap on attorneys' fees is not reasonable.

The new subsection (b) places an unreasonable cap on fees. The new subsection (b) states that an association shall not assess, demand, or seek reimbursement for its total and final legal fees in excess of twenty-five percent of the original debt amount sought by the association. This is unreasonable and problematic for a number of reasons.

First, the 25% cap on fees, without regard to the magnitude or importance of the issue or the impact that the cap will have on an association, is arbitrary. It is a random percentage rather than one based on a legitimate reason.

Second, although the new subsection (a)(2) allows the recovery of attorneys' fees incurred for the purpose of collecting delinquent assessments, the new subsection (b) would cap those fees at 25% of the original debt about sought. This has the effect of undermining the intent of subsection (a)(2), because it will substantially reduce the amount of fees to be paid by delinquent owners.

The new subsection (b) offers no definition of the "original debt amount" which leaves that term open to debate. Generally, associations send demand letters to owners the month after an owner fails to pay assessments. If this is considered the "original debt amount sought," then it would have the effect of capping the fees that an association may recover to 25% of a single month of maintenance fees even though the owner may be several years delinquent by the time a court judgment is obtained. This would have the effect of letting a delinquent owner off the hook for fees and requiring all other owners to foot the bill.

This measure would prohibit the association's attorney from communicating with others, which would effectively deprive associations of their right to effective legal counsel.

Without good reason, the new subsection (c) would prohibit condominium association attorneys from communicating with anyone other than the board of directors, except under limited circumstances. It provides that "attorneys retained by associations may communicate with unit owners for purposes of requests and responses for essential requirements of each matter; provided further that attorneys retained by the association shall not bill or demand payment of attorneys' fee directly from a unit owner." The words "for essential requirements of each matter" are vague and ambiguous and will leave everyone guessing at their meaning.

In effect, this measure would require that an association's attorney communicate only with the board of directors, even if a communication does not involve owners or a matter which is in dispute. For example, the association's attorney would be prohibited from communicating with

the association's property manager, managing agent, resident manager, insurance agent, and CPA. The association's attorney would be prohibited from negotiating contracts on behalf of the association because the attorney would be prohibited from speaking with the other party to the contract. In cases where there is a serious threat of bodily injury or death to others, this measure would have the alarming effect of prohibiting an association's attorney from communicating with parties who could assist with safety concerns, such as the police department, fire department, security personnel, or safety contractors. This measure would even go so far as preventing an association's attorney from filing or defending lawsuits because the attorney would be prohibited from communicating with the adverse party and other attorneys in the case. The attorney would also be prohibited from filing legal briefs and making arguments in open court because those would be considered communications with the court.

It would also prevent association attorneys from demanding that owners reimburse the association for its attorneys' fees as allowed by law. This would effectively prevent lawyers from doing their job.

In essence, this bill will deprive associations of their right to effective legal representation, which is unwarranted, unreasonable, and likely unconstitutional. This bill offends the sense of reasonableness and fairness.

This measure also includes a wrong factual finding.

This measure states that the legislature finds that "it is the board, not the individual unit owners, who are the clients of the attorneys." Generally, attorneys who represent an association do not represent the "board" or "individual directors." Attorneys who represent an association generally represent the association, as an entity, which acts through its board. Association attorneys communicate with board members, because, in most instances, it is the board that is vested with decision making authority and the party to whom the attorney-client privilege runs.

Finally, it should be noted that this committee considered and deferred a very similar bill in 2022. See 2022 S.B. 2730. It should defer this bill for the same reasons.

In conclusion, this is an extremely bad bill. Not only is it poorly drafted, but it conflicts with existing law, contradicts itself, and serves no good purpose. It is already difficult to collect past due maintenance fees and attorney's costs and this will make it close to impossible. It shouldn't be every owner's responsiblility to pay for those that break the rules and refuse to fulfill their obligations to the association.

For the foregoing reasons, I respectfully OPPOSE S.B. 2493 and strongly urge the Committee to defer this measure.

Mahalo for your time.

Rachel Glanstein

HB-2493
Submitted on: 2/4/2024 9:55:59 AM
Testimony for TRN on 2/6/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Hoapili	Individual	Oppose	Written Testimony Only

Comments:

This bill is full on discrimination against the people of Molokai and Lanai. They are already limited on getting jobs On these two islands, so what if they move to Oahu will they have to retake the entire CDL test all over again just to be able to work on Oahu because their CDL test was done on Molokai or Lanai Last I thought they were included in the state of Hawaii, so why are the rules different for them? They should be treated equal same as the rest of us. But what if people from the mainland Move to any of our islands will they have to retake their CDL test also because they didn't take it here. Please help me make that make sense.?