HAWAII LEGISLATIVE ACTION COMMITTEE
community ASSOCIATIONS INSTITUTE

February 14, 2023

VIA WEB TRANSMITTAL

Hearing Date: Wednesday, February 16, 2023
Time: 9:30 a.m.
Place: Conference Room 229

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: Hawaii Chapter, Community Associations Institute's
Testimony in *opposition* to SB 402

Dear Chair Keohokalole, Vice-Chair Fukunaga and Committee members:

I am the Chair of the Legislative Action Committee of the Community Associations Institute, Hawaii Chapter ("CAI-LAC"). We represent the condominium and community association industry and submit this testimony in opposition to SB 402 because the Bill does not comply with associations' existing covenants that run with the land and is against public policy.

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

CAI-LAC is concerned with the constitutionality of the proposed legislation as applicable to existing condominiums and planned community associations. Under the Contract Clause of the United States Constitution at Article I, Section 10, no state shall pass a law impairing the obligations of private contracts. The association must be permitted to enforce the governing documents.

Under proposed Bill 402, a "de minimis infraction" is defined as a "technical *violation* of

a bylaw, rule, or regulation [i.e., the governing documents] that results in not more than three complaints from separate units in the association within a calendar year, or does not result in a fine of more than $500 per violation pursuant to the bylaws, rules, or regulations of the association." [Emphases added.] The phrase "three complaints from separate units" is vague and ambiguous. Does it mean you need three (3) complaints from three (3) separate units or three (3) complaints among two (2) separate units?

In any event, if one owner who happens to live directly below a unit issues 30 noise complaints, under this Bill, the Board's hands are tied until one other owner issues a complaint. Or if an owner threatens another owner with bodily harm, then the board's hands are tied until that owner threatens at least one other owner. That, on its face, is absurd. Moreover, this Bill would have the effect of prompting boards to increase their fines to $501 on all violations in order to enforce them. That is clearly against public policy.

The Bill fails to consider all the owners who bought into these associations in reliance on the rules and regulations (covenants) specifically contained in the declarations and bylaws. These owners purchased their units based upon their desire to live in a community that met the standards that these declarations, bylaws, rules and regulations provide. By passing this Bill, you are impairing their right to contract for these covenants.

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

Based on the foregoing, we respectfully submit that SB 402 should be deferred. Thank you for your time and consideration.

Sincerely yours,

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

LAW OFFICES OF PHILIP S. NERNEY, LLLC
A LIMITED LIABILITY LAW COMPANY
335 MERCHANT STREET, #1534, HONOLULU, HAWAII 96806
PHONE: 808 537-1777

February 11, 2023

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

Re: **SB 402 OPPOSE**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

SB 402 should not pass. It reflects poor public policy based upon a misunderstanding of association governance.

Planned community associations are self-governing private entities. The members of the board of directors are elected by members and have the *fiduciary duty* to enforce the contractual obligations imposed by restrictive covenants that all owners accept by voluntarily becoming association members.[1]

Contract enforcement does not depend upon whether an infraction is "de minimis" or "technical," and owner complaints are not a necessary predicate to contract/covenant enforcement. Rather, the terms of association documents[2] guide governance.

Separately, reference to a "technical" violation lacks utility because it is ambiguous.[3] Its meaning would foment debate and would disserve effective association governance.

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[1] The Supreme Court has stated, with respect to *condominiums*:

> Generally, the declaration and bylaws of a condominium serve as a contract between the condominium owners and the association, establishing the rules governing the condominium.

Harrison v. Casa De Emdeko, Inc., 418 P.3d 559, 567 (Haw. 2018). This basic point about the contractual nature of association documents has equal force in the planned community association context.

[2] "'Association documents' means the articles of incorporation or other document creating the association, if any, the bylaws of the association, the declaration or similar organizational documents and any exhibits thereto, any rules related to use of common areas, architectural control, maintenance of units, restrictions on the use of units, or payment of money as a regular assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas, as well as any amendments made to the foregoing documents."

[3] "Put differently, a statute is ambiguous if it is capable of being understood by reasonably well-informed people in two or more different senses.''..." Gillan v. Government Employees Ins. Co., 194 P.3d 1071, 119 Haw. 109 (Haw. 2008); *cf.*, "'A contract is ambiguous when its terms are reasonably susceptible to more than one meaning.'..." Provident Funding Assocs., L.P. v. Gardner, 149 Hawai'i 288, 488 P.3d 1267 (Haw. 2021).

SB 402 would incentivize and facilitate breach of contract. That would be inappropriate and it would also lack reason. SB 402 would also result in higher fines being imposed.

The legislature should facilitate and support effective and efficient association self-governance. SB 402 is simply a poorly constructed attack on self-governance that does not deserve enactment.

Very truly yours,

/s/ Philip Nerney

Philip S. Nerney

SB-402
Submitted on: 2/14/2023 12:23:49 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Paul A. Ireland Koftinow	Individual	Oppose	Remotely Via Zoom

Comments:

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

I respectfully OPPOSE S.B. 402.

This bill is not in the best interests of planned community associations or condominium associations (collectively, “associations”). Association covenants are intended to preserve and protect property values by ensuring that structures and aesthetic standards are maintained. Covenants also ensure that homeowners may reasonably and peacefully enjoy their properties. When a covenant is violated, association members rightly expect that the covenant will be enforced by their associations. Indeed, they rely upon their associations to take action against violators. Most associations do not enforce their covenants without expending association funds because this work is performed by paid professionals (i.e., resident managers, property managers, and attorneys). Yet, this bill will prohibit associations from expending funds to enforce what the bill refers to as "de minimis infractions." This limitation will not only undermine the value of covenants and the ability of associations to enforce them, but it will lead to multiple lawsuits and disputes over what is a “de minimis infraction.”

Sections 1, 2, and 3 of this measure define a "de minimis infraction" as "a technical violation of a bylaw, rule, or regulation of the association that results in not more than three complaints from separate units in the association within a calendar year, or does not result in a fine of more than $500 per violation pursuant to the bylaws, rules, or regulations of the association." The definition of "de minimis infraction" is vague and ambiguous because there is no definition of the phrase "technical violation." If this bill becomes law, litigation is certain to ensue because of the vague and ambiguous wording of the law.

This measure will also require associations to receive complaints from more than three separate units in a calendar year, or to fine an owner more than $500 for each violation which might be "technical," before expending association funds to enforce the covenant. It is not reasonable to require an association to obtain complaints from more than three separate units or to impose a fine of more than $500 to avoid having to prove that the violation is not a “technical violation” as defined in the law. These requirements are not only unreasonable, but they appear arbitrary and selected at random.

In addition, if this bill is passed, owner complaints will not be anonymous because an owner who argues that a violation is a "technical violation" will likely demand copies of other owners' complaints and the association may be required to produce copies of the complaints or disclose the identities of the owners who lodged the complaints in order to prove that it did, indeed, receive more than three complaints before expending association funds in enforcing the covenant. This will likely lead to "neighbor-to-neighbor" disputes which will create animosity and disharmony in the community. This bill might also make owners afraid to lodge complaints about other owners for fear of retaliation. Given the state of violence escalating throughout the nation, this is not the time to require owners to complain about their neighbors in order to obtain the value of the covenants that govern their units.

The requirement that fines exceed $500 in order to fall outside the definition of a "de minimis infraction" could result in higher fines in order for associations to be able to expend funds to enforce their covenants. Higher fines will make it more difficult for owners to correct violations, lead to litigation, and create disharmony in the community.

If adopted, this bill will erode and diminish the effectiveness of covenants, which, in turn, may cause irreparable harm to associations and their members. This bill will serve no good purpose and will cause great harm if adopted. Laws should be adopted to assist associations and their members and encourage compliance with covenants. This bill will do the just opposite.

For these reasons, I strongly urge the Committee to permanently **DEFER S.B. 402.**

Respectfully submitted,

Paul A. Ireland Koftinow

Testimony in Support of SB402

Submitted for: Commerce and Consumer Protection Committee Hearing, scheduled to be heard on Thursday, 2/16/23 at 9:30 AM.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee,

I support SB402.

SB402 will help to reduce the abusive and improper practice of Boards using Association Attorneys or collection agencies to collect fines. Association Directors often do not use sound judgement when they impose and attempt to collect fines, especially those fines that may be improperly assessed or are contested. Often emotions or abuse of power result in Association Attorneys being directed by Boards to send letters to owners, or initiate collection activities for sums that are far less than the fees paid to the Attorney. My personal experience at my Association has seen numerous examples of this, including improper use of the Association Attorney to engage in unlawful retaliation (in violation of HRS 514B-191) and numerous improper collections activities.

All of these costs add up and take away from Association funds needed for operations, maintenance, and projects. Boards tend to think they have free legal counsel, as they are not paying out of their pocket, but every owner ultimately pays in increased maintenance fees. In cases where an abusive or unlawful collection practice is met with mediation, arbitration, or litigation, the costs to the Association can rise exponentially.

Directors on Association Boards need to know their responsibilities and duties to the Association, and that spending more money than would be collected if a fine were paid has a negative financial impact to the Association. Abuse of their positions also needs to result in oversight and enforcement by the Hawaii Attorney General's office, until an Ombudsman is in place.

I ask the Committee and all State Legislators to please support SB402. And I ask you to support and act on SB1201 and SB1202, which were introduced by the Kokua Council on behalf of our kupuna and all residents of Hawaii.

Mahalo,

Gregory Misakian

2nd Vice President, Kokua Council
Board Member, Waikiki Neighborhood Board

The Kokua Council is one of Hawaii's oldest elder advocacy groups. We advocate for issues, policies, and legislation that impact the well-being of seniors and our community.

SB-402
Submitted on: 2/11/2023 6:11:49 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Testifying for Palehua Townhouse Association	Oppose	Written Testimony Only

Comments:

Palehua Townhouse Association opposes SB402.

Mike Golojuch, Sr., President

SB-402
Submitted on: 2/13/2023 1:53:09 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Idor Harris	Testifying for Honolulu Tower AOAO	Oppose	Written Testimony Only

Comments:

Honolulu Tower is a 396 unit condominium built in 1982 located at the corner of Maunakea and N. Beretania Streets. The Honolulu Tower Association of Apartment Owners board of directors (comprised of nine elected volunteer members, none of whom receive compensation) voted unanimously, at its Feb. 6, 2023 meeting, to oppose SB402.

The board believes the legislature should not be telling common interest communities that they cannot go after infractions.

Idor Harris,

Resident Manager, Honolulu Tower

SB-402
Submitted on: 2/14/2023 4:32:56 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Primrose Leong-Nakamoto	Testifying for AOUO POAMOHO CAMP	Oppose	Written Testimony Only

Comments:

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

I respectfully OPPOSE S.B. 402.

This bill is not in the best interests of planned community associations or condominium associations (collectively, “associations”). Association covenants are intended to preserve and protect property values by ensuring that structures and aesthetic standards are maintained. Covenants also ensure that homeowners may reasonably and peacefully enjoy their properties. When a covenant is violated, association members rightly expect that the covenant will be enforced by their associations. Indeed, they rely upon their associations to take action against violators. Most associations do not enforce their covenants without expending association funds because this work is performed by paid professionals (i.e., resident managers, property managers, and attorneys). Yet, this bill will prohibit associations from expending funds to enforce what the bill refers to as "de minimis infractions." This limitation will not only undermine the value of covenants and the ability of associations to enforce them, but it will lead to multiple lawsuits and disputes over what is a “de minimis infraction.”

Sections 1, 2, and 3 of this measure define a "de minimis infraction" as "a technical violation of a bylaw, rule, or regulation of the association that results in not more than three complaints from separate units in the association within a calendar year, or does not result in a fine of more than $500 per violation pursuant to the bylaws, rules, or regulations of the association." The definition of "de minimis infraction" is vague and ambiguous because there is no definition of the phrase "technical violation." If this bill becomes law, litigation is certain to ensue because of the vague and ambiguous wording of the law.

This measure will also require associations to receive complaints from more than three separate units in a calendar year or to fine an owner more than $500 for each violation which might be "technical," before expending association funds to enforce the covenant. It is not reasonable to require an association to obtain complaints from more than three separate units or to impose a fine of more than $500 to avoid having to prove that the violation is not a “technical violation” as defined in the law. These requirements are not only unreasonable, but they appear arbitrary and are selected at random.

1. addition, if this bill is passed, owner complaints will not be anonymous because an owner who argues that a violation is a "technical violation" will likely demand copies of other owners' complaints and the association may be required to produce copies of the complaints or disclose the identities of the owners who lodged the complaints in order to prove that it did, indeed, receive more than three complaints before expending association funds in enforcing the covenant. This will likely lead to “neighbor-to-neighbor” disputes which will create animosity and disharmony in the community. This bill might also make owners afraid to lodge complaints about other owners for fear of retaliation. Given the state of violence escalating throughout the nation, this is not the time to require owners to complain about their neighbors in order to obtain the value of the covenants that govern their units.

The requirement that fines exceed $500 in order to fall outside the definition of a “de minimis infraction” could result in higher fines in order for associations to be able to expend funds to enforce their covenants. Higher fines will make it more difficult for owners to correct violations, lead to litigation, and create disharmony in the community.

If adopted, this bill will erode and diminish the effectiveness of covenants, which, in turn, may cause irreparable harm to associations and their members. This bill will serve no good purpose and will cause great harm if adopted. Laws should be adopted to assist associations and their members and encourage compliance with covenants. This bill will do the just opposite.

For these reasons, I strongly urge the Committee to permanently DEFER S.B. 402.

Respectfully submitted,

Primrose K. Leong-Nakamoto (S)

SB-402
Submitted on: 2/14/2023 6:00:22 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

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

I respectfully OPPOSE S.B. 402.

This bill is not in the best interests of planned community associations or condominium associations (collectively, “associations”). Association covenants are intended to preserve and protect property values by ensuring that structures and aesthetic standards are maintained. Covenants also ensure that homeowners may reasonably and peacefully enjoy their properties. When a covenant is violated, association members rightly expect that the covenant will be enforced by their associations. Indeed, they rely upon their associations to take action against violators. Most associations do not enforce their covenants without expending association funds because this work is performed by paid professionals (i.e., resident managers, property managers, and attorneys). Yet, this bill will prohibit associations from expending funds to enforce what the bill refers to as "de minimis infractions." This limitation will not only undermine the value of covenants and the ability of associations to enforce them, but it will lead to multiple lawsuits and disputes over what is a “de minimis infraction.”

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In addition, if this bill is passed, owner complaints will not be anonymous because an owner who argues that a violation is a "technical violation" will likely demand copies of other owners' complaints and the association may be required to produce copies of the complaints or disclose the identities of the owners who lodged the complaints in order to prove that it did, indeed, receive more than three complaints before expending association funds in enforcing the covenant. This will likely lead to “neighbor-to-neighbor” disputes which will create animosity and disharmony in the community. This bill might also make owners afraid to lodge complaints about other owners for fear of retaliation. Given the state of violence escalating throughout the nation, this is not the time to require owners to complain about their neighbors in order to obtain the value of the covenants that govern their units.

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For these reasons, I strongly urge the Committee to permanently DEFER S.B. 402.

Respectfully submitted,

Mark McKellar

SB-402
Submitted on: 2/15/2023 6:10:47 AM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
David Berg, President WVA BOD	Testifying for Waikoloa Village Association	Oppose	Written Testimony Only

Comments:

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

I respectfully OPPOSE S.B. 402.

This bill is not in the best interests of planned community associations or condominium associations (collectively, “associations”). Association covenants are intended to preserve and protect property values by ensuring that structures and aesthetic standards are maintained. Covenants also ensure that homeowners may reasonably and peacefully enjoy their properties. When a covenant is violated, association members rightly expect that the covenant will be enforced by their associations. Indeed, they rely upon their associations to take action against violators. Most associations do not enforce their covenants without expending association funds because this work is performed by paid professionals (i.e., resident managers, property managers, and attorneys). Yet, this bill will prohibit associations from expending funds to enforce what the bill refers to as "de minimis infractions." This limitation will not only undermine the value of covenants and the ability of associations to enforce them, but it will lead to multiple lawsuits and disputes over what is a “de minimis infraction.”

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In addition, if this bill is passed, owner complaints will not be anonymous because an owner who argues that a violation is a "technical violation" will likely demand copies of other owners' complaints and the association may be required to produce copies of the complaints or disclose the identities of the owners who lodged the complaints in order to prove that it did, indeed, receive more than three complaints before expending association funds in enforcing the covenant. This will likely lead to "neighbor-to-neighbor" disputes which will create animosity and disharmony in the community. This bill might also make owners afraid to lodge complaints about other owners for fear of retaliation. Given the state of violence escalating throughout the nation, this is not the time to require owners to complain about their neighbors in order to obtain the value of the covenants that govern their units.

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For these reasons, I strongly urge the Committee to permanently DEFER S.B. 402.

Respectfully submitted,

David Berg, President

Waikoloa Village Association Board of Directors

Dear Senators Keohokalole and Fukunaga,

My name is Laura Haase-Yamada and I am the president of the board of directors at Kulalani at Mauna Lani Association of Apartment Owners. We are a 125 unit condominium complex on the South Kohala coast of the island of Hawaii. Our address is 68-1118 N. Kaniku Dr., Kamuela, HI.

We **oppose** SB 402. When buying into a condo complex, owners agree to abide by the declaration, bylaws and house rules. Many complexes, such as ours, have limited common spaces and designated parking areas. When owners or guests do not abide by the rules they have agreed to, this disturbs other neighbors and that is the reason we have those rules in the first place. If this bill is passed it would seriously limit the ability to enforce the rules so that we can all live in harmony. Currently we have a really good process for dealing with complaints and violations and we've seen bad behavior corrected as a result of our process. This bill would prevent us from being able to follow our process and I fear many neighbors will start fighting with each other. Laws should be adopted to assist associations and their members and encourage compliance with covenants. This bill will do the just opposite. Please vote down this bill.

Thank you for your consideration of my testimony. Please call or email me if you would like to discuss this further.

Laura Haase-Yamada
Kulalani at Mauna Lani AOAO

Rachel M. Glanstein
1099 Ala Napunani St #901
Honolulu HI 96818
rglanstein@gmail.com

February 15, 2023

Senate Committee on Commerce and Consumer Protection (CPN)
Hawaii State Capitol, Room 229
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in Opposition to SB402

Aloha,

Thank you for the opportunity to provide testimony on this bill. This testimony is provided in opposition to SB402. Please defer or hold this bill.

I am a professional registered parliamentarian and I am often engaged to chair association meetings, and sometimes even board meetings. I also serve as secretary for my own condo board.

Any legislation that makes it more difficult to boards to enforce the governing documents and house rules is not a good idea. It's already hard for boards to collect late fees, fines, and legal fees due to the changes made to the law that require the board to first apply any owner payment to maintenance fees, and then to the other amounts.

This bill proposes to make it even more challenging for boards to enforce the rules and to collect penalties and fines when rules are not followed. The definition of a "de minimis infraction" is vague and so any choice to either enforce or ignore violations could easily subject the board to challenges.

The highest fine is my own condo house rules is for $100, and this bill would not permit us to collect anything until an owner has racked up at the very least more than five fines, to hit the "more than $500" minimum level. There aren't many owners in my building who receive more than one to two fines per year. Therefore this legislation would make it impossible for my board to enforce the rules.

Mahalo,

Rachel M. Glanstein

SB-402
Submitted on: 2/15/2023 8:08:51 AM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Glenn Toole	Testifying for Keala o Wailea AOUO	Oppose	Written Testimony Only

Comments:

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

I respectfully OPPOSE S.B. 402.

This bill is not in the best interests of planned community associations or condominium associations (collectively, “associations”). Association covenants are intended to preserve and protect property values by ensuring that structures and aesthetic standards are maintained. Covenants also ensure that homeowners may reasonably and peacefully enjoy their properties. When a covenant is violated, association members rightly expect that the covenant will be enforced by their associations. Indeed, they rely upon their associations to take action against violators. Most associations do not enforce their covenants without expending association funds because this work is performed by paid professionals (i.e., resident managers, property managers, and attorneys). Yet, this bill will prohibit associations from expending funds to enforce what the bill refers to as "de minimis infractions." This limitation will not only undermine the value of covenants and the ability of associations to enforce them, but it will lead to multiple lawsuits and disputes over what is a “de minimis infraction.”

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In addition, if this bill is passed, owner complaints will not be anonymous because an owner who argues that a violation is a "technical violation" will likely demand copies of other owners' complaints and the association may be required to produce copies of the complaints or disclose the identities of the owners who lodged the complaints in order to prove that it did, indeed, receive more than three complaints before expending association funds in enforcing the covenant. This will likely lead to “neighbor-to-neighbor” disputes which will create animosity and disharmony in the community. This bill might also make owners afraid to lodge complaints about other owners for fear of retaliation. Given the state of violence escalating throughout the nation, this is not the time to require owners to complain about their neighbors in order to obtain the value of the covenants that govern their units.

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For these reasons, I strongly urge the Committee to permanently DEFER S.B. 402.

Respectfully submitted,

Glenn Toole

SB-402
Submitted on: 2/10/2023 11:36:48 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

I support this measure.

SB-402
Submitted on: 2/12/2023 7:28:02 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Jeff Sadino	Individual	Support	Written Testimony Only

Comments:

I SUPPORT SB 402.

This is a necessary Bill. It will prevent Board members from ruining the harmony of the Association when they act out on their power trips or target one individual for retaliation.

The necessity of this Bill reminds me of a case in Florida where the AOAO charged over $50,000 in expenses to an Owner because he left his shoes in the entryway to his Unit, while at the same time the Board members would also leave their shoes in their entryways. Or a recent case on Maui where the AOAO charged over $100,000 in expenses to an Owner because he installed wood flooring instead of the mandated carpet in his own Unit.

I think this Bill would reduce the retaliation that masquerades around as enforcement.

If any changes are made, I would add to the de minimus definition that the three complaints cannot come from Board members, that the complaints cannot be anonymous, that the record of the complaint must be shared with the owner and I would remove a dollar amount threshold. My worry is that the AOAO will increase the size of their fines as a way around this.

I'm sure the trade industry will Oppose this measure and claim that they will not be able to enforce the rules of the AOAO anymore. I concede that that is a risk, but the massively outsized financial harm that the industry attorneys have wrecked upon Owners in the past shows that the industry has abused their power far beyond what any ethical person would have done.

This is similar to cars parking within 3 feet of a driveway. Yes, it is breaking the law, but it is not the end of the world and life will go on. As long as the de minimus violation is corrected, then that is the most important thing. Lets not financially ruin peoples' lives over spilt milk.

Thank you for the opportunity to provide testimony,

Jeff Sadino

Committee on Commerce & Consumer Protection

SB-402
Submitted on: 2/12/2023 8:49:55 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

An association is an independent organization with rules established by its democratically elected board of directors. The proposed restrictions create problems for Boards in enforcing its rules. Please Defer.

SB-402
Submitted on: 2/13/2023 1:42:41 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

Please accept this as testimony in strong opposition. I am an owner/occupant of a high rise condo on the outskirts of Chinatown. This bill erodes and diminishes the effectivenessof restrictive covenants which may cause irreparable harm to associations and their members. Covenant enforcement should be left to associations and their members. Laws shoul dnot be adopted that will encourage violations and undermine the value of covenants.

Some people continue to flaunt the rules/regs etc. On my floor a pet owner frequently lets her cat and dog run free, in violation of the house rules. No leash. No control. She is a bad actor. Such is life and these poeple shoul dnot be allowed to act willy nilly.

Please defer this bill.

SB-402
Submitted on: 2/14/2023 3:13:42 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Joyce Baker	Individual	Oppose	Written Testimony Only

Comments:

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

I respectfully OPPOSE S.B. 402.

This bill is not in the best interests of planned community associations or condominium associations (collectively, “associations”). Association covenants are intended to preserve and protect property values by ensuring that structures and aesthetic standards are maintained. Covenants also ensure that homeowners may reasonably and peacefully enjoy their properties. When a covenant is violated, association members rightly expect that the covenant will be enforced by their associations. Indeed, they rely upon their associations to take action against violators. Most associations do not enforce their covenants without expending association funds because this work is performed by paid professionals (i.e., resident managers, property managers, and attorneys). Yet, this bill will prohibit associations from expending funds to enforce what the bill refers to as "de minimis infractions." This limitation will not only undermine the value of covenants and the ability of associations to enforce them, but it will lead to multiple lawsuits and disputes over what is a “de minimis infraction.”

Sections 1, 2, and 3 of this measure define a "de minimis infraction" as "a technical violation of a bylaw, rule, or regulation of the association that results in not more than three complaints from separate units in the association within a calendar year, or does not result in a fine of more than $500 per violation pursuant to the bylaws, rules, or regulations of the association." The definition of "de minimis infraction" is vague and ambiguous because there is no definition of the phrase "technical violation." If this bill becomes law, litigation is certain to ensue because of the vague and ambiguous wording of the law.

This measure will also require associations to receive complaints from more than three separate units in a calendar year, or to fine an owner more than $500 for each violation which might be "technical," before expending association funds to enforce the covenant. It is not reasonable to require an association to obtain complaints from more than three separate units or to impose a fine of more than $500 to avoid having to prove that the violation is not a “technical violation” as defined in the law. These requirements are not only unreasonable, but they appear arbitrary and selected at random.

In addition, if this bill is passed, owner complaints will not be anonymous because an owner who argues that a violation is a "technical violation" will likely demand copies of other owners' complaints and the association may be required to produce copies of the complaints or disclose the identities of the owners who lodged the complaints in order to prove that it did, indeed, receive more than three complaints before expending association funds in enforcing the covenant. This will likely lead to “neighbor-to-neighbor” disputes which will create animosity and disharmony in the community. This bill might also make owners afraid to lodge complaints about other owners for fear of retaliation. Given the state of violence escalating throughout the nation, this is not the time to require owners to complain about their neighbors in order to obtain the value of the covenants that govern their units.

The requirement that fines exceed $500 in order to fall outside the definition of a “de minimis infraction” could result in higher fines in order for associations to be able to expend funds to enforce their covenants. Higher fines will make it more difficult for owners to correct violations, lead to litigation, and create disharmony in the community.

If adopted, this bill will erode and diminish the effectiveness of covenants, which, in turn, may cause irreparable harm to associations and their members. This bill will serve no good purpose and will cause great harm if adopted. Laws should be adopted to assist associations and their members and encourage compliance with covenants. This bill will do the just opposite.

For these reasons, I strongly urge the Committee to permanently DEFER S.B. 402.

Respectfully submitted,

-Joyce Baker

SB-402
Submitted on: 2/14/2023 9:45:49 AM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Lila Mower	Individual	Support	Written Testimony Only

Comments:

support

SB-402
Submitted on: 2/14/2023 12:56:09 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

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

I respectfully OPPOSE S.B. 402.

This bill is not in the best interests of planned community associations or condominium associations (collectively, “associations”). Association covenants are intended to preserve and protect property values by ensuring that structures and aesthetic standards are maintained. Covenants also ensure that homeowners may reasonably and peacefully enjoy their properties. When a covenant is violated, association members rightly expect that the covenant will be enforced by their associations. Indeed, they rely upon their associations to take action against violators. Most associations do not enforce their covenants without expending association funds because this work is performed by paid professionals (i.e., resident managers, property managers, and attorneys). Yet, this bill will prohibit associations from expending funds to enforce what the bill refers to as "de minimis infractions." This limitation will not only undermine the value of covenants and the ability of associations to enforce them, but it will lead to multiple lawsuits and disputes over what is a “de minimis infraction.”

Sections 1, 2, and 3 of this measure define a "de minimis infraction" as "a technical violation of a bylaw, rule, or regulation of the association that results in not more than three complaints from separate units in the association within a calendar year, or does not result in a fine of more than $500 per violation pursuant to the bylaws, rules, or regulations of the association." The definition of "de minimis infraction" is vague and ambiguous because there is no definition of the phrase "technical violation." If this bill becomes law, litigation is certain to ensue because of the vague and ambiguous wording of the law.

This measure will also require associations to receive complaints from more than three separate units in a calendar year, or to fine an owner more than $500 for each violation which might be "technical," before expending association funds to enforce the covenant. It is not reasonable to require an association to obtain complaints from more than three separate units or to impose a fine of more than $500 to avoid having to prove that the violation is not a “technical violation” as defined in the law. These requirements are not only unreasonable, but they appear arbitrary and selected at random.

1. addition, if this bill is passed, owner complaints will not be anonymous because an owner who argues that a violation is a "technical violation" will likely demand copies of other owners' complaints and the association may be required to produce copies of the complaints or disclose the identities of the owners who lodged the complaints in order to prove that it did, indeed, receive more than three complaints before expending association funds in enforcing the covenant. This will likely lead to “neighbor-to-neighbor” disputes which will create animosity and disharmony in the community. This bill might also make owners afraid to lodge complaints about other owners for fear of retaliation. Given the state of violence escalating throughout the nation, this is not the time to require owners to complain about their neighbors in order to obtain the value of the covenants that govern their units.

The requirement that fines exceed $500 in order to fall outside the definition of a “de minimis infraction” could result in higher fines in order for associations to be able to expend funds to enforce their covenants. Higher fines will make it more difficult for owners to correct violations, lead to litigation, and create disharmony in the community.

If adopted, this bill will erode and diminish the effectiveness of covenants, which, in turn, may cause irreparable harm to associations and their members. This bill will serve no good purpose and will cause great harm if adopted. Laws should be adopted to assist associations and their members and encourage compliance with covenants. This bill will do the just opposite.

For these reasons, I strongly urge the Committee to permanently DEFER S.B. 402.

Respectfully submitted,

Carol Walker

SB-402
Submitted on: 2/14/2023 1:07:19 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:
I respectfully OPPOSE S.B. 402.
This bill is not in the best interests of planned community associations or condominium associations (collectively, "associations"). Association covenants are intended to preserve and protect property values by ensuring that structures and aesthetic standards are maintained. Covenants also ensure that homeowners may reasonably and peacefully enjoy their properties. When a covenant is violated, association members rightly expect that the covenant will be enforced by their associations. Indeed, they rely upon their associations to take action against violators. Most associations do not enforce their covenants without expending association funds because this work is performed by paid professionals (i.e., resident managers, property managers, and attorneys). Yet, this bill will prohibit associations from expending funds to enforce what the bill refers to as "de minimis infractions." This limitation will not only undermine the value of covenants and the ability of associations to enforce them, but it will lead to multiple lawsuits and disputes over what is a "de minimis infraction."
Sections 1, 2, and 3 of this measure define a "de minimis infraction" as "a technical violation of a bylaw, rule, or regulation of the association that results in not more than three complaints from separate units in the association within a calendar year, or does not result in a fine of more than $500 per violation pursuant to the bylaws, rules, or regulations of the association." The definition of "de minimis infraction" is vague and ambiguous because there is no definition of the phrase "technical violation." If this bill becomes law, litigation is certain to ensue because of the vague and ambiguous wording of the law.
This measure will also require associations to receive complaints from more than three separate units in a calendar year, or to fine an owner more than $500 for each violation which might be "technical," before expending association funds to enforce the covenant. It is not reasonable to require an association to obtain complaints from more than three separate units or to impose a fine of more than $500 to avoid having to prove that the violation is not a "technical violation" as defined in the law. These requirements are not only unreasonable, but they appear arbitrary and selected at random.
In addition, if this bill is passed, owner complaints will not be anonymous because an owner who argues that a violation is a "technical violation" will likely demand copies of other owners' complaints and the association may be required to produce copies of the complaints or disclose the identities of the owners who lodged the complaints in order to prove that it did, indeed, receive more than three complaints before expending association funds in enforcing the covenant. This will likely lead to "neighbor-to-neighbor" disputes which will create animosity

and disharmony in the community. This bill might also make owners afraid to lodge complaints about other owners for fear of retaliation. Given the state of violence escalating throughout the nation, this is not the time to require owners to complain about their neighbors in order to obtain the value of the covenants that govern their units.

The requirement that fines exceed $500 in order to fall outside the definition of a "de minimis infraction" could result in higher fines in order for associations to be able to expend funds to enforce their covenants. Higher fines will make it more difficult for owners to correct violations, lead to litigation, and create disharmony in the community.

If adopted, this bill will erode and diminish the effectiveness of covenants, which, in turn, may cause irreparable harm to associations and their members. This bill will serve no good purpose and will cause great harm if adopted. Laws should be adopted to assist associations and their members and encourage compliance with covenants. This bill will do the just opposite.

For these reasons, I strongly urge the Committee to permanently DEFER S.B. 402.

Respectfully submitted,

Lance Fujisaki

SB-402
Submitted on: 2/14/2023 2:46:28 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Laurie Sokach	Individual	Oppose	Written Testimony Only

Comments:

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

I respectfully OPPOSE S.B. 402.

This bill is not in the best interests of planned community associations or condominium associations (collectively, “associations”). Association covenants are intended to preserve and protect property values by ensuring that structures and aesthetic standards are maintained. Covenants also ensure that homeowners may reasonably and peacefully enjoy their properties. When a covenant is violated, association members rightly expect that the covenant will be enforced by their associations. Indeed, they rely upon their associations to take action against violators. Most associations do not enforce their covenants without expending association funds because this work is performed by paid professionals (i.e., resident managers, property managers, and attorneys). Yet, this bill will prohibit associations from expending funds to enforce what the bill refers to as "de minimis infractions." This limitation will not only undermine the value of covenants and the ability of associations to enforce them, but it will lead to multiple lawsuits and disputes over what is a “de minimis infraction.”

Sections 1, 2, and 3 of this measure define a "de minimis infraction" as "a technical violation of a bylaw, rule, or regulation of the association that results in not more than three complaints from separate units in the association within a calendar year, or does not result in a fine of more than $500 per violation pursuant to the bylaws, rules, or regulations of the association." The definition of "de minimis infraction" is vague and ambiguous because there is no definition of the phrase "technical violation." If this bill becomes law, litigation is certain to ensue because of the vague and ambiguous wording of the law.

This measure will also require associations to receive complaints from more than three separate units in a calendar year, or to fine an owner more than $500 for each violation which might be "technical," before expending association funds to enforce the covenant. It is not reasonable to require an association to obtain complaints from more than three separate units or to impose a fine of more than $500 to avoid having to prove that the violation is not a “technical violation” as defined in the law. These requirements are not only unreasonable, but they appear arbitrary and selected at random.

1. addition, if this bill is passed, owner complaints will not be anonymous because an owner who argues that a violation is a "technical violation" will likely demand copies of other owners' complaints and the association may be required to produce copies of the complaints or disclose the identities of the owners who lodged the complaints in order to prove that it did, indeed, receive more than three complaints before expending association funds in enforcing the covenant. This will likely lead to “neighbor-to-neighbor” disputes which will create animosity and disharmony in the community. This bill might also make owners afraid to lodge complaints about other owners for fear of retaliation. Given the state of violence escalating throughout the nation, this is not the time to require owners to complain about their neighbors in order to obtain the value of the covenants that govern their units.

The requirement that fines exceed $500 in order to fall outside the definition of a “de minimis infraction” could result in higher fines in order for associations to be able to expend funds to enforce their covenants. Higher fines will make it more difficult for owners to correct violations, lead to litigation, and create disharmony in the community.

If adopted, this bill will erode and diminish the effectiveness of covenants, which, in turn, may cause irreparable harm to associations and their members. This bill will serve no good purpose and will cause great harm if adopted. Laws should be adopted to assist associations and their members and encourage compliance with covenants. This bill will do the just opposite.

For these reasons, I strongly urge the Committee to permanently DEFER S.B. 402.

Respectfully submitted,

Laurie Sokach AMS, PCAM

Association Management Specialist

Professional Community Association Manager

SB-402
Submitted on: 2/14/2023 6:36:18 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Elaine Panlilio	Individual	Oppose	Written Testimony Only

Comments:

Dear Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga and Committee Members:

I respectfully oppose SB 402 since it hinders the association's right to stay as a self-governing private entity.

Sincerely,

Elaine Panlilio

SB-402
Submitted on: 2/14/2023 11:34:32 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Steve Glanstein	Individual	Oppose	Written Testimony Only

Comments:

SB402 appears to be a response to requests by a small group of people who have been fined for violating their governing documents or house rules. It can affect governance for tens of thousands of homes, **This bill will apply to everything from small condominiums and Planned Community Associations to larger associations such as Mililani Town Association, Ewa by Gentry, Villages at Kapolei, and Waikoloa Villages Association.**

The bill has several unintended consequences:

1. If an owner in one unit makes numerous noise complaints about loud parties in another unit, this is considered de minimus until there's at least another owner who issues a complaint (reference page 2, line 11 and page 3, line 21, referring to "separate units").
2. The bill promotes a simple workaround by the imposition of a minimum fine of $501 for all violations.

Perhaps we should experiment with a bill that made all State of Hawaii parking violations under $500 into a de minimus violation for one year. I'm sure there wouldn't be complaints from the violators. However, the law abiding general public and the municipal coffers would be adversely affected.

Please take a common sense approach and avoid micro management of condominium and Planned Community Association governance.

SB-402
Submitted on: 2/15/2023 5:57:28 AM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
David Berg	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association's governing documents, or (2) obtain a "leader course completion certificate from an instructor certified by the Community Associations Institute ("CAI"), or similar nationally recognized organization." I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burdens on condominium associations and planned community associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, S.B. 729 will do far more harm than good.

S.B. 729 is unnecessary because board members already have a statutory fiduciary duty to their associations. Section 514B-106 of the Hawaii Revised Statutes ("HRS") 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 chapter 414D."

Chapter 414D of the Hawaii Revised Statutes, the Hawaii Nonprofit Corporations Act, Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

It is extremely rare for a planned community associations not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making S.B. 729 unnecessary.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, S.B. 729 will raise numerous problems for community associations, CAI and property management companies.

First, S.B. 729 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to retain board members' written certificates or course completion certificates, in practice, imposing legal requirements for this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000.

Second, S.B. 729 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards, when disqualified members voted on measures before the boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended?

Third, like legislators, some board members remain in office for many years. S.B. 729 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, S.B. 729 will discourage many association members from serving on boards. Any director who fails to sign a written certificate or complete a board leader course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability. Furthermore, in light of S.B. 729, by having to read the governing documents, or complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under S.B. 729. Additionally, it is not likely that CAI or any other organization would be equipped to educate all of the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

Sixth, S.B. 729 does not specify details on the requirements of "board leader courses," and there are no procedures for issuing instructor certificates. Furthermore, although S.B. 729 refers to a "similar nationally recognized organization," CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if S.B. 729 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

In summary, while this bill may have good intentions, it has not been drafted with sufficient clarity to serve a useful purpose. Instead, it will prove to be overly burdensome on associations and will lead to confusion and conflicts. Additionally, the administrative burden will add to the cost of operating an association at a time when many associations are struggling to deal with inflation.

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

David Berg

SB-402
Submitted on: 2/15/2023 8:19:55 AM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
David H Levy	Individual	Oppose	Written Testimony Only

Comments:

The Board of Directors should not have its hands tied when it comes to resolving or enforcing its rules and governing documents.

LATE

SB-402
Submitted on: 2/15/2023 6:48:12 PM
Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Jane Sugimura	Testifying for Hawaii Council for Assoc. of Apt. Owners	Oppose	Written Testimony Only

Comments:

If this is enacted, it will be difficult to enforce