

TESTIMONY OF MICHAEL TANOUE

HOUSE COMMITTEE ON JUDICIARY
Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice Chair

Tuesday, January 29, 2013
2:00 p.m.

HB 37

Chair Rhoads, Vice Chair Har, and members of the Committee, my name is Michael Tanoue, counsel for the Hawaii Insurers Council, a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 40% of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council **opposes** HB 37.

Even without HB 37, a person alleging the existence of a private nuisance due to excessive noise may file a petition for injunction, a civil complaint for damages, or both. Because that right already exists, HB 37 is unnecessary.

The establishment of a two-year statute of limitations in subsection (a) of HB 37 is inconsistent with the remedy of an injunction in the context of excessive noise. If the noise is so excessive, a two-year period by which to seek an injunction diminishes the seriousness of the claimed nuisance.

The definitions of the key terms “excessive noise” and “nuisance” in HB 37 are unclear and subjective, which would lead to more costly and protracted court proceedings. The definition of the term “damages” mentions “vibrations,” a term nowhere else discussed or even mentioned in HB 37.

The term “damages” also includes “reasonable attorney fees.” Such “reasonable attorney fees” would be recoverable only by the plaintiff, i.e., the person who alleges the existence of a private nuisance, in the event the plaintiff prevails. HB 37 does not provide the defendant with the same right to seek recovery of “reasonable attorney fees” in the event the defendant prevails. This omission could encourage harassing lawsuits by one neighbor against the other, with no consequence to the plaintiff. Leaving the defendant with no reciprocal right to seek “reasonable attorney fees” if the defendant prevails against a baseless claim is inequitable and could incentivize plaintiffs to pursue frivolous claims

Based on the foregoing, Hawaii Insurers Council respectfully requests that HB 37 be held. Thank you for the opportunity to testify.

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 27, 2013 9:16 PM
To: JUDtestimony
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Subject: *Submitted testimony for HB37 on Jan 29, 2013 14:00PM*

HB37

Submitted on: 1/27/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

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