



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
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MEMORANDUM

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Governor

Theodore E. Liu
Director, DBEDT

Mark K. Anderson
Deputy Director

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Oahu

TO: Chair Brian T. Taniguchi, Vice Chair Clayton Hee, and
Committee Members on Judiciary & Labor

FROM: Lynne Woods, Chairperson *Lynne Woods*
Small Business Regulatory Review Board

DATE: March 25, 2008

SUBJECT: Testimony on HB 2253, HD2
Tuesday, March 25, 2007 – Hearing Time 9:30 a.m.

The Small Business Regulatory Review Board supports the intent of HB 2253, HD2. Please note that HRS 281, INTOXICATING LIQUOR for the “purpose of clarifying language, correcting errors, and deleting unnecessary and obsolete provisions,” all seemingly technical in nature, but becomes evident that there is one substantive change that will have an impact on all current and future liquor licensees.

Currently, the Statute provides that monies collected from fines may only be used for educating licensees and their employees. The proposed new language (see Section 4, 281-17-a-3) will expand the use of fine monies to include operational improvements, educational outreach, and further liquor license compliance. All these programs seem like worthwhile programs but to have the licensees finance them through fines is placing an unusual and onerous burden on those very licensees. Those programs should be financed by the traditional budgetary methods. To do otherwise, makes the fining and receipt of fine monies more important than educating the licensees and their employees.

The Honolulu Liquor Commission has promulgated new rules that go beyond current statute which gives it the authority to “waive rules, place restrictions or conditions on licensees at any time and to spend the fine monies for programs other than educating licensees and their employees.” In essence, an agency will be created that:

1. Makes the rules
2. Enforces the rules
3. Cites violators

4. Holds non judicial hearings
5. Adjudicates
6. Fines
7. Collects the fines
8. Spends the fine money for their benefit
9. Starts over when they need more money

The current statute provides reasonable checks and balances and a respect for separation of powers. The bulk of the changes do in fact reflect technical issues and we have no problem with them. We respectfully request that the original language be reinstated and we thank you for allowing this Board the opportunity to provide testimony.

testimony

From: bill@ejlounge.com
Sent: Monday, March 24, 2008 1:22 PM
To: testimony
Cc: bill@ejlounge.com
Subject: testimony opposing current liquor law changes HB2253

Dear Senators,

We oppose some specific changes proposed in HB2253.
Please accept the following testimony opposing proposed changes in Liquor Law in Hawaii.

Bill Comerford,
Spokesperson for the Hawaii Bar Owners Association
President,
E & J Lounge Operating Co., Inc.
307 Lewers St. #200
Honolulu, HI 96815
Phone 808-926-4711
Fax 808-924-5420
Cell 808-223-3997
bill@ejlounge.com
irishpubhawaii.com

Testimony regarding Legislative Bill HB2253

From:

Bill Comerford and the Hawaii Bar Owners Association
307 Lewers St #200
Honolulu, HI 96815
bill@ejlounge.com
808-926-4711

To: testimony@capitol.hawaii.gov
Regarding Proposed Rule 3-81-17.7
and corresponding Legislative Bill HB2253

Position: Opposed to existing bill sections below

Date 3/23/08

Though recognizing the good intent of this rule and its corresponding legislation we question the motives and means for this legislation. It is strictly anti-business if the only funding comes from the forced implementation of fines to fund the programs. It is short sighted to expect compliance which should reduce the incidences of fines yet relies upon those very fines to exist. Logic says if you allow the program it must be funded, if is funded only by fines there must be fines, if you reduce the incidence of violations there are less fines, leaving the question of how you continue to fund the programs since once instituted they tend to never go away. Hence all they can do is to continue to fine along finer lines creating antagonism between the Commission and the licensees.

It may be more appropriate for the legislature to recognize the need, write the legislation and fund it appropriately than put this added task and cost upon the Liquor Commission.

New Liquor Commission Rule

3-81-17.7 adds a new rule to authorize the administrator
to use fine monies for programs to promote
compliance with liquor laws

SB2311 / HB2253

"§281-17 **Jurisdiction and powers.** for violations thereof
as may be provided by law;

- (3) To control, supervise, and regulate the
manufacture, importation, and sale of liquors by
investigation, enforcement, and education;

~~provided that [any educational program shall be limited to licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees;]~~
moneys, which are not received from license fees, may be used for education, enforcement, and programs to promote compliance with liquor laws pursuant to the rules of the commission;

We question the intent and if they have insufficient funds now and can only use those funds they generate, then they will be fining businesses just to fund their education programs outside of the industry and in the general public.

Will we face increase fines to fund this program?

What budgets are they expecting for this program?

If the programs are set and there is no funding it forces the Liquor commission to fine business to continue these programs. Is there any plan for alternate funding or the removal of the programs?

Are they putting the carriage in front of the horse here if they are looking for approval before the legislature has passed/allowed for these changes?

Current law I believe requires all surplus fines to go to the City's General fund. Has this been addressed?

How will this fine money for alternate uses be tracked?

We also oppose this section to increase the amounts of the fines since it highly likely to be used as funding and not supervision.

SECTION 22. Section 281-91, Hawaii Revised Statutes, is amended to read as follows:

.....
Any order of revocation, suspension, fine, or reprimand imposed by the commission or board upon the licensee shall be in addition to any penalty that might be imposed upon the licensee upon the licensee's conviction [~~at~~] in a court of law for any violation of this chapter. The liquor commission or liquor control adjudication board may subject the licensee to both the fine assessed and suspension of the license. No licensee shall be subject to both the [~~penalty~~] fine assessed and collected by the commission or board and to revocation [~~or suspension~~] of license. The amount of [~~penalty~~] fine assessed and collected by the commission or board from any licensee for any particular offense shall not exceed the sum of [~~\$2,000.~~] \$5,000.

They are increasing the maximum fine so they can fund these outside programs, currently according to their testimony before the SBRRB they said they are operating in the black

and responsibly so these increases appear to fund their outside programs or programs we are unaware of.

Has there been any explanation to the Senators about the purpose for raising fines?

We also oppose this change in charitable special licenses without some further explanation.

SECTION 23. Section 281-32.3, Hawaii Revised Statutes, is repealed.

[**"§281-32.3 One-day special licenses for fundraising events.** Notwithstanding any other section of this chapter to the contrary, the commission shall adopt rules to streamline procedures including the waiving of hearings, fees, notarization of documents, submission of floor plans, and other requirements, to provide for the issuance of special licenses for the sale of liquor for a period not to exceed one day, for classes of fundraising events by nonprofit organizations established by the commission. The commission shall also adopt rules to facilitate the issuance of such licenses through the mail.

Any registered educational or charitable nonprofit organization may sell liquors in their original packages for off-premises consumption for fundraising events allowed in this section, in accordance with rules adopted by the commission pursuant to chapter 91."]

What is the reasoning for repealing this whole section of law?

Are there other provisions for these fundraising events or are we eliminating them altogether?

We also as a group question this change requiring **automatic denial of transfer.**

"§281-41 Transfer of licenses; notice of change in

officers, directors, and stockholders of

corporate licenses, partners of a partnership

license, and members of a limited liability

company license; penalty. (a) No license issued

under this chapter to an original applicant or to

any transferee shall be transferable or be

transferred within one year of the issuance or

transfer, except for good cause shown to the

satisfaction of the liquor commission. Transfers

shall be for the same class, kind, and category

of license then in effect. No license issued under this chapter shall be transferable or be transferred except upon written application to the commission by the proposed transferee, and after prior inspection of the premises, reference to, and report by an inspector, and a public hearing held by the commission not less than fourteen days after one publication of notice thereof, but without sending notice of the hearing by mail to persons being the owners or lessees of real estate situated within the vicinity of the premises and without the right to ~~[the owners or lessees to protest the transfer of a license.]~~ automatic refusal based on majority protests by owners or lessees or registered voters pursuant to sections 281-39.5 and 281-59. Exceptions are class 5 and 11 licensees who must comply with the notice requirements as set forth in ~~[section]~~ sections 281-57[-] to 281-60.

*What is the purpose of this legislative intent?
Are we making business less salable or are we limiting changes in ownership?
The LC has a purpose to decide, if it is automatic then the business is not sellable.*

Sincerely,

A handwritten signature in black ink that reads "Bill Comerford". The signature is written in a cursive style with a large, prominent "B" and "C".

Bill Comerford
Spokesperson for the Hawaii Bar Owners Association
President of E & J Lounge Operating Co, Inc
307 Lewers St #200
Honolulu, HI 96815
bill@ejlounge.com
808-926-4711

testimony

From: jim houghton [jwhangles@yahoo.com]
Sent: Monday, March 24, 2008 1:57 PM
To: testimony
Subject: HB 2253

Committee on Judiciary & Labor
 <!--[if !supportEmptyParas]--> <!--[endif]-->
 Senator Brian T. Taniguchi, Chair
 Senator Clayton Hee, Vice-Chair
 <!--[if !supportEmptyParas]--> <!--[endif]-->
 Committee Members:
 Senator Sam Slom
 Senator Clarence K. Nishihara
 Senator Mike Gabbard
 Senator Russell S.Kokubun
 <!--[if !supportEmptyParas]--> <!--[endif]-->
 Hearing: Tuesday, March 25, 2008 Hearing Time 9:30 am Room 016
 <!--[if !supportEmptyParas]--> <!--[endif]-->
 Re: Hb2253 testimony on Section 4, 281-17-a-3

Please consider removing proposed Section 4 paragraph 281-17-a-3, regarding use of fine monies, and retaining the original language from Chapter 281, 17-a-3 Intoxicating Liquor restricting the use of fine monies to educating licensees and their employees.

<!--[if !supportEmptyParas]--> <!--[endif]-->
 The additional uses of the monies received from fines for programs that are already in place or should be in place, and paid for by budget (ie. drinking and driving outreach, liquor law enforcement, and improvements in operation of the department) should not become a burden to be paid for by licensee fines. That would promote a citation, fine and punishment approach to raising money.

<!--[if !supportEmptyParas]--> <!--[endif]-->
 Thank you for considering this request.
 <!--[if !supportEmptyParas]--> <!--[endif]-->
 <!--[if !supportEmptyParas]--> <!--[endif]-->
 Jim Houghton
 President
 Bombay's of Amsterdam Inc.

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testimony

From: Fred Remington [fred@ejlounge.com]
Sent: Monday, March 24, 2008 1:42 PM
To: testimony
Subject: Fw: HB-2253

Committee on Judiciary & Labor

Senator Brian Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Committee Members:
Senator Sam Slom
Senator Clarence Nishihara
Senator Mike Gabbard
Senator Russell S. Kokubun

Hearing: Tuesday, March 25, 2008 Hearing Time: 9:30 AM Room 016

Re: HB-2253 Testimony on Section 4, 281-17-a-3

Gentlemen;

I am in opposition of the proposed Section 4, paragraph 281-17-a-3 regarding the use of money collected by the Liquor Commission, to be used for other special interest groups other than those related to the Liquor Industry. The fines that are imposed by the commission should be used for the sole purpose of educating licensees and their employees. Period.

Thank you for attention to this matter.

Fred Remington
Vice President
E & J Lounge Operating Co., Inc.
307 Lewers St., Suite #200
Honolulu, HI 96815
Office 808-926-4711
Fax 808-924-5420
Cell 808-479-0782

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Jolyn Tenn
Kaneohe, Hawaii
808-721-8384

To Committee Chair Senator Brian Taniguchi, Vice Chair Senator Clayton Hec and Judiciary Committee Senate members Kokubun, Slom, Gabbard and Nishihara:

Hearing: Tuesday, March 25, 2008 Hearing Time 9:30 am Room 016

Re: HB2253 testimony in opposition to the Section 4, 281-17-a-3 language and intent of this specific portion of the bill.

Gentlemen:

Please remove the proposed Section 4 paragraph 281-17-a-3, regarding use of fine monies, and retain the original language from Chapter 281, 17-a-3 Intoxicating Liquor restricting the use of fine monies to educating licensees and their employees. If fine monies are to be used toward anything, it should be toward the educating of proper procedure, etc of that industry, not a slush fund for the agency that is issuing the citations.

The broad swath of the current language in this section would lead to the undesired effect of a Cite, Fine and Punishment approach to what could only be called a fundraising effort. The additional uses of the monies received from fines for programs that are already in place or should be in place, and paid for by the particular civil agencies budget (ie. drinking and driving outreach, liquor law enforcement, and improvements in operation of the department or any other use) and should not become a burden to be paid for by licensee fines. There should be no better or higher use for these fines then the education of licensee's and employee's to insure their compliance and understanding of the counties current liquor laws, this way they can avoid future transgressions and the industry will benefit from the process, not a government agency.

Thank you for considering this opinion.

Jolyn M. Tenn

LATE**testimony**

From: Honolulu Tavern [party@honolulutavern.com]
Sent: Monday, March 24, 2008 8:23 PM
To: testimony@capitol.hawaii.gov
Subject: Re: Hb2253 testimony on Section 4, 281-17-a-3

Committee on Judiciary & Labor

Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice-Chair

Committee Members:
Senator Sam Slom
Senator Clarence K. Nishihara
Senator Mike Gabbard
Senator Russell S.Kokubun

Hearing: Tuesday, March 25, 2008 Hearing Time 9:30 am Room 016

Re: Hb2253 testimony on Section 4, 281-17-a-3

Please consider removing proposed Section 4 paragraph 281-17-a-3, regarding use of fine monies, and retaining the original language from Chapter 281, 17-a-3 Intoxicating Liquor restricting the use of fine monies to educating licensees and their employees.

The additional uses of the monies received from fines for programs that are already in place or should be in place, and paid for by budget (ie. drinking and driving outreach, liquor law enforcement, and improvements in operation of the department) should not become a burden to be paid for by licensee fines. That would promote a cite, fine and punishment approach to raising money.

Thank you for considering this request.

Byron E Chalfont
Honolulu Tavern
417 Nohonani St. #C
Honolulu, Hi. 96815

LATE

DONALD L. DYMOND

127 KUUKAMA STREET

KAILUA, HI 96734

CELL # (808) 753-2062

MARCH 24, 2008

E-Mail testimony to Testimony@capitol.Hi.gov

Committee on Judiciary & Labor

Hearing: Tuesday, March 25, 2008

Hearing Time 9:30 am Room 016

Senator Brian T. Taniguchi, Chair

Senator Clayton Hee, Vice-Chair

Re: HB2253 HD2 testimony on Section 4, 281-17-a-3

My name is Donald Dymond and I am a small business operator. I currently have 3 restaurant liquor licenses and 1 retail liquor license. The total of licensee years for all locations exceed forty years. I am also a member of the DBEDT's Small Business Regulatory Review Board (SBRRB) and one of the objectives of that board is to help small business survive in a highly regulated environment.

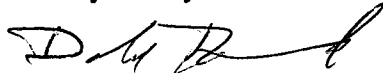
The bill being heard today, HB2253 HD2 contains mostly changes of a technical nature and present no problem for small business operators. However the proposed language in section 4 of the document, specifically paragraph 281-17-a-3 does cause a high level of concern among licensees.

The existing language in the statute states that income from licensee fines be used for educating licensees and their employees only. The new language extends the use of fine monies to include enforcement, and furthering liquor law compliance. Those goals are commendable but are already paid for by City & County of Honolulu budget requirements.

With the direction the current Liquor Commission administration is taking for this fiscal year the income from fine monies will be increasing from an annual average of \$200,000 to the range of \$400,000 to \$500,000. (all from licensees) Instead the Commission should redirect its efforts and improve the current educational programs and help the licensees and their employees understand the laws and further compliance through an ongoing proactive plan of compliance through understanding.

In summary, I respectfully request that this committee amend the Section 4 language in HB2253 HD to re-insert the current statute language regarding use of fine monies. The other proposed technical changes are supported by this licensee.

Thank you for your consideration,



Donald Dymond

Testimony for;

Senate JDL committee hearing on 3-25-08 at 9:30 am. , rm 016.

HB-2235, Position: Opposition in current proposed form.

Dear Honorable Chair, Co-Chair and Committee,

I stand on the testimony submitted by the representative(s) of the Hawaii Bar Owner's Association. Further business impediments and increased fines are not needed on an industry that is already in hardship since November, 2006. I am also troubled by the lack of accountability of accusers and lack of fairness that the liquor law allows in its' current form.

Respectfully, Michael Zehner
750 Amana street
Honolulu, HI 96814
952-0275