



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

S.B. NO. 2782, S.D. 2, H.D. 1, RELATING TO METAL.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 20, 2008 **TIME:** 2:25 PM

LOCATION: State Capitol Room 325
Deliver to: Committee Clerk, Room 302, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Chair Waters and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill but has concerns.

The purpose of this bill is to deter the theft and resale of stainless steel beer kegs by including them in the scrap metal provisions intended to prevent copper theft.

Section 1 of the bill creates the following definition for "stainless steel beer keg":

"Stainless steel beer keg" means a metal container stamped, engraved, stenciled, or otherwise marked as the property of a brewery manufacturer, including one on which the markings have been made illegible; provided that a deposit beverage container, as defined under section 342G-101, shall not be considered a stainless steel beer keg."

The definition does not clearly require the metal container to be made of stainless steel. It is not clear about how the container needs to be marked as the property of a brewery manufacturer. Is it enough that the name of a beer manufacturer is on the container? As written, the definition could possibly include a beer mug, a cup, or some other kind of container. The phrase, "including one on which the markings have been made illegible", is also troubling. How can a scrap dealer be expected to identify a "stainless steel beer keg" that by definition must be marked as manufacturer property, if all markings on the container are illegible?

Section 3 of the bill adds stainless steel beer kegs to the theft of copper offense under section 708-835.7, Hawaii Revised Statutes (HRS), to create a new offense as follows:

"~~[+]§708-835.7[+]~~ **Theft of copper~~[-]~~ or stainless steel beer keg.**

(1) A person commits the offense of theft of copper if the person commits theft of copper that weighs a pound or more, but not including legal tender of the United States.

(2) A person commits the offense of theft of a stainless steel beer keg if the person commits theft of a stainless steel beer keg that weighs a pound or more.

(3) For purposes of this section, "stainless steel beer keg" shall have the same meaning as defined under section 445-231.

~~[+2+]~~ (4) Theft of copper or a stainless steel beer keg is a class C felony."

While the bill appears to create one new offense called theft of copper or stainless steel beer keg, it actually creates two separate theft offenses under subsections (1) and (2). It is a potential problem for charging and criminal history record keeping having two different offenses under one HRS section number. We recommend that an entirely new section be created for the theft of stainless steel beer keg offense and that the definition of "stainless steel beer keg" be clarified.



**Office of the Public Defender
State of Hawaii**



**Timothy Ho, Chief Deputy Public Defender
Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on Judiciary**

March 20, 2008, 2:25 p.m.

RE: S.B. 2782, HD1: Relating To Metal

Chair Waters and Members of the Committee:

This measure would amend the theft of copper law to include stainless steel beer kegs.

The Office of the Public Defender opposes S.B. 2782, H.D.1.

The problem of beer keg thefts does not come close to the problems created by the theft of copper. Last year, this Legislature came down hard on copper thieves with the passage of Act 197, which created the felony offense of theft copper. And while beer keg thefts are costly to the beverage industry, it does not raise the same public safety concerns nor does it result in the type of monetary damages as copper thefts.

A single act of removing copper wire from streetlights, or parks causes miles of freeways to go dark, and parks to shut down. The cost of repairing the damage caused by a single one of these acts may run into the hundreds of thousands of dollars. The same cannot be said about the theft of beer kegs.

The damage caused by the theft of beer kegs are much more similar to the damages caused by the theft of shopping carts. It is costly, and a nuisance to both industries, but it does not have the same impact on public safety as the problems caused by copper thefts.

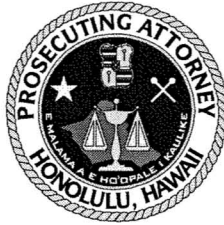
The theft of a beer keg may be prosecuted under our current laws. If it is removed from a business, it may be prosecuted under our burglary statutes, a felony offense. If the keg costs more than a hundred dollars, it is misdemeanor theft. If it costs more than three hundred dollars, the theft of a keg is a class C felony.

Thank you for the opportunity to comment on this bill.

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DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494



PETER B. CARLISLE
PROSECUTING ATTORNEY

DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

**THE HONORABLE TOMMY WATERS, CHAIR
HOUSE COMMITTEE ON JUDICIARY**

Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

March 20, 2008

RE: S.B. 2782, S.D. 2, H.D. 1; RELATING TO METAL.

Chair Waters and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following comments on S.B. 2782, S.D. 2, H.D. 1.

The purpose of this bill is to amend provisions relating to theft of copper and documentation requirements that are mandated when a scrap dealer purchases copper. The amendments would expand the scope of these sections to include the theft of a "stainless steel beverage container" and the sale of a "stainless steel beverage" container to a scrap dealer.

If the legislature intends to pass this bill we would recommend some amendments. First, we would suggest that the definition of "stainless steel beer keg" be amended to delete references to stainless steel which may require proof of the chromium level of the alloy in each beer keg stolen. We would prefer the following definition used for the theft offense rather than the one on page one lines 4 to 9 of the bill:

"Beer keg" means a metal container, which is used to hold 5 gallons or more of liquid and which is stamped, engraved, stenciled or otherwise marked with the name of a brewery manufacturer; provided that a deposit beverage container, as defined under section 342G-101, shall not be considered a beer keg.

We would also ask that the amendments to Hawaii Revised Statutes (HRS) section 708-835.7 be deleted and that the theft of a beer keg offense be codified separately in its own HRS section. First, it is confusing to have an offense labeled as "theft of copper or stainless steel beer

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keg” and have the elements of the offense in two unrelated subsections. Secondly, we believe that given the heightened concerns relating to copper theft and the measures being enacted to abate copper theft, that accurate recording of the prosecuting of copper theft would be advisable. If beer keg thefts were included in the same theft section as copper theft, it could be somewhat more difficult to track just the numbers of copper theft prosecutions. Thus we would propose that the beer keg theft offense be amended thus:

“708-_____ Theft of beer keg.

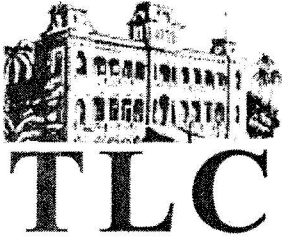
(1) A person commits the offense of theft of a beer keg, if the person commits theft of a beer keg.

(2) For the purposes of this section, “beer keg” means a metal container, which is used to hold 5 gallons or more of liquid and which is stamped, engraved, stenciled or otherwise marked with the name of a brewery manufacturer; provided that a deposit beverage container, as defined under section 342G-101, shall not be considered a beer keg.

If the committee would like to keep the definition of “stainless steel beer keg” on page 1 lines 4 to 9 for use in applying the scrap dealer’s regulation, we would defer to the scrap dealers on their ability to determine stainless steel for purchase.

Thank you for this opportunity to testify.

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THE LEGISLATIVE CENTER

820 MILILANI STREET, SUITE 810
HONOLULU, HAWAII 96813-2938
PHONE: (808) 537-4308 • FAX: (808)533-2739

March 20, 2008

Testimony To: House Committee on Judiciary
Representative Tommy Waters, Chair

Presented By: Tim Lyons, Legislative Liaison
Anheuser Busch Companies

Subject: S.B. 2782, SD 2, HD 1 – RELATING TO METAL.

Chair Waters and Members of the Committee:

I am Tim Lyons, Legislative Liaison for Anheuser Busch Companies and we support this bill.

This bill would include theft of stainless steel beer kegs in the recently passed metal theft bill which is limited only to copper.

This is a huge problem. In fact, a problem that represents about a \$15,000,000 a year loss to the industry with over 300,000 stainless steel containers a year lost. Our local wholesaler here has gone from losing approximately 30 in 2006 to over 350 in 2007. In other words, it has just escalated beyond any reasonable proportion.

We are asking this Committee to assist because stainless steel beer kegs are one of the things that are positive for our environment. They are 100% recyclable. In fact, in the manufacturing process,

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only 35% of the material represents new material; all the rest is recycled material. Additionally, most metal kegs last at least twenty (20) years.

We have been working with retailers and others to have them place the containers in more secure positions as they rotate them between empty and full however, with the very tight space that many restaurants and facilities have, sometimes this is impossible.

Based on the above, we highly recommend passage and we respectfully request your assistance in this problem. We know that the passage of this bill will help to act as a deterrent and bring the numbers back down to a manageable area.

Based on the above, we request your support.

Thank you.

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March 19, 2008

Representative Tommy Waters, Chair
Representative Blake K. Oshiro, Vice Chair
Committee on Judiciary
Hawaii State Capitol, Room 325
Honolulu, HI 96813

RE: SB2782, SD2, HD1—Relating to Metal

Dear Chair Waters, Vice Chair Oshiro and Members of the Committee:

Miller Brewing Company strongly supports SB2782, SD2, HD1, Relating to Metal.

The purpose of this bill is to include stainless steel beer kegs in laws intended to prevent theft and resale of copper. Metal keg theft is a growing problem because they can be redeemed for fast cash at scrap dealerships.

We urge you to pass this bill. This bill will help in the deterrence of criminal activity by including metal beer kegs.

Thank you for the opportunity to submit written comments.

Respectfully Submitted,

Lance Hastings
Western Regional Director
State Government Affairs