

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 2905, RELATING TO INTOXICATING LIQUOR.

BEFORE THE:

HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE AND ON
JUDICIARY

DATE: Thursday, February 18, 2010 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Mark K. Miyahira, Deputy Attorney General

Chairs Herkes and Karamatsu and Members of the Committees:

The Department of the Attorney General strongly opposes this bill because it will undermine the purpose of Act 203, Session Laws of Hawaii 2006, and weaken the authority of law enforcement officers to enforce chapter 281, Hawaii Revised Statutes (HRS), regarding intoxicating liquor.

This bill will eliminate the mandatory driver's license suspension provisions for those under 21 years of age by giving the court the option to issue fines instead of license suspensions. It will decriminalize the penalties that may be ordered for individuals, ages 18 to 21, who violate section 281-101.5(b) and (c), HRS. It will prohibit persons from using a false ID to enter premises that exclude persons under age 18 or 21. And it will authorize the issuance of citations in lieu of arrest for violations of chapter 281, HRS.

The purpose of Act 203 was to require the suspension of the driver's license of a person under the age of 21 who violates laws relating to the consumption, possession, or use of an intoxicating liquor. The Legislature clearly recognized that "underage drinking is an extremely prevalent problem", and that intoxicating liquor is the "number one drug of choice for teens

in Hawaii and is commonly recognized as a gateway drug." The Legislature believed that "knowledge that a conviction for possession of alcohol will result in temporary loss of driving privileges is likely to deter many potential underage drinkers from possessing alcohol until they are legally entitled to do so", and that Act 203 could "save lives by deterring underage drinking and drunk driving." Conference Committee Report No. 13-06, in House Journal, Regular Session of 2006, at page 1778.

House Bill No. 2905 will undermine the purpose of Act 203 by eliminating the mandatory driver's license suspension provisions for those under 21 years of age by giving the court the option to issue fines instead of suspensions. The bill will also eliminate the mandatory provision of seventy-five hours of community service work and an eight to twelve hour program of alcohol education and counseling, as the court has the option to issue a fine in lieu of these penalties.

We also oppose the bill's amendment of section 281-80, HRS, which will require law enforcement officers to issue a summons or citation to a person who violates any provision of chapter 281 in lieu of arrest, unless so required by state law. This amendment will virtually strip law enforcement officers of their authority to arrest individuals who violate any provision of chapter 281. An individual commits the offense of exclusion of intoxicated person from premises in violation of section 281-84 when the person, being under the influence of liquor, enters into any place licensed to sell liquor, or remains in the premises after having been asked to leave by the licensee or the licensee's employee. This bill will require a law enforcement officer to issue a summons or citation to a person who allegedly violates section 281-84, rather than arrest and remove the person from the premises.

This bill will also require that a citation be treated as a traffic violation for purposes of disposition pursuant to chapter 291D, if the citation is for a violation of section 281-101.5(b) and (c) and the person is subject to the penalties set forth in subsection (f)(1) or (2). This procedure trivializes the serious problem of underage drinking.

Furthermore, this bill will allow minors visiting from other states and countries to avoid any consequences for underage drinking. Under this bill, the visiting minors could not only avoid the risk of being placed under arrest for underage drinking but they could leave the State without having to appear in court to answer for their unlawful conduct.

Finally, the proposed wording in subsection (f) on page 3 is vague.

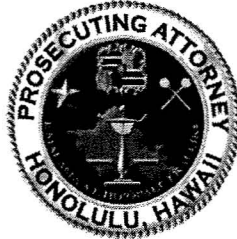
We respectfully request that this measure be held.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
PROSECUTING ATTORNEY

Douglas S. Chin
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE ROBERT N. HERKES, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
THE HONORABLE JON RIKI KARAMATSU, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai'i**

February 18, 2010

RE: H.B. 2905; RELATING TO INTOXICATING LIQUOR.

Chair Herkes and members of the House Committee on Consumer Protection and Commerce, Chair Karamatsu and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following testimony in opposition to House Bill .

The purpose of this bill is to amend the sanctions for minors found to: 1) have consumed or purchased liquor; or 2) using false identification to buy or attempt to buy liquor or gain entry to the premises of a liquor licensee, by authorizing fines in lieu of the current sanctions of a suspension of driver's license or eligibility to obtain a license, 75 hours of community service work, and 8 to 12 hours in an alcohol education and counseling program. In addition, this bill requires arrest by citation only and prohibits physical arrest for violations of Hawaii Revised Statutes (HRS) chapter 281 unless state law or rules adopted pursuant to state law requires physical arrest for the violation; HB 2905 further requires that citations issued be treated like a civil traffic infraction. Finally, HB 2905 provides that 50% of the fines collected for first and second violations for illegal consumption or purchase of alcohol by a minor, go to the county in which the violation occurred and be used for anti-underaged drinking programs.

Underaged drinking is an extremely prevalent problem. It has been estimated that a higher percentage of youths between ages 12 to 20 use alcohol (29%) than use tobacco (23.3%) or illicit drugs (14.9%). National statistics show that in 2002, about 2 million minors aged 12 to

20 drank five or more drinks on an occasion, five or more times a month. And alcohol consumption by underage drinkers is strongly linked to death and injury in vehicle collisions, as well as homicides, suicides, sexual assaults, and unintentional injuries (other than those caused by motor vehicle crashes). Given that most minors and teens greatly cherish the privilege and freedom of driving, we believe that the driver's license suspensions currently mandated under the law serves as a significant deterrent to underaged drinking. We therefore have serious reservations about watering down the sanctions to permit fines in lieu of the license suspensions.

We also have concerns regarding the requirements in the bill that prohibit the physical arrest of persons found violating any of the provisions of HRS chapter 281 unless state statutes or rules adopted pursuant to HRS chapter 281 provide otherwise. We note that HRS chapter 281 contains several misdemeanors and petty misdemeanors and that currently under HRS section 803-6, police and enforcement officers already have the ability to cite someone for a misdemeanor or petty misdemeanor in lieu of physical arrest when certain criteria are met. We are not aware of any reasons or circumstances why the current status should be changed to prohibit physical arrest for violations of HRS chapter 281 unless another statute or rule is passed to permit it.

For these reasons, we oppose the passage of HB 2905 and we thank you for this opportunity to testify.



Mothers Against Drunk Driving HAWAII
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www.maddhawaii.com

February 18, 2010

To: Representative Robert Herkes, Chair – House Committee on Consumer Protection & Commerce; Representative Glenn Wakai, Vice Chair; and Members of the Committee

Representative Jon Riki Karamatsu, Chair – House Committee on Judiciary;
Representative Ken Ito, Vice Chair; and Members of the Committee

From: Arkie Koehl, Council Chairman – MADD-Hawaii

Re: House Bill 2905 – Relating to Intoxicating Liquor

I am Arkie Koehl, offering testimony in opposition to HB 2905 on behalf of the members of Mothers Against Drunk Driving – Hawaii. Since 1999, the third part of MADD’s mission has been to “prevent underage drinking.”

House Bill 2905 allows an option for law enforcement to issue a summons or a citation rather than arrest a minor who violates the state’s laws regarding alcohol. It also allows fines as an alternative to suspension of the drivers license as the major penalty for underage drinking or for using false identification to purchase alcohol.

This bill degrades the important provisions of Hawaii’s basic underage drinking law as well as its “*Use & Lose*” law which has been in effect for 3 years. The *Use and Lose* law is based on research showing that loss of license is a greater deterrent to underage drinking than other penalties such as fines. By adding fines as an optional sanction, HB 2905 seriously jeopardizes the effectiveness of the “*Use & Lose*” sanctions to address the problem of underage drinking. Under this proposed legislation, parents may end up paying the fine for their underage law violator. But, the minor himself or herself is the one to suffer the consequences of a drivers license suspension in our current law.

The “*Use & Lose*” law already permits exceptions to license suspension in the case of a minor’s need to drive for school or work purposes.

The serious consequences of underage drinking remain. These consequences include:

- Alcohol related traffic crashes
- Youth crime
- Suicide
- Alcohol poisoning
- Rapes and assaults
- Unintentional injures
- School failure

Alcohol remains the number one drug of choice for teens and young adults and it kills more youth than all of the other illegal drugs combined. Underage drinking costs U.S. society billions of dollars annually.

A significant majority of states have adopted “Use and Lose” measures. Laws related to underage drinking must be strong enough to deter Hawaii’s youth from engaging in this destructive behavior. A \$100 fine will not have the same deterrent effect as the loss of the minor’s driver’s license for 6 months. A summons or citation for a violation of the law will send the wrong message to our youth...a message that policy makers in Hawaii are not serious about combating underage use of alcohol.

MADD respectfully asks the Committee members to reconfirm our current penalties for underage drinking by holding HB 2905. Thank you for this opportunity to testify.



Retail Liquor Dealers Association of Hawaii

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Phone (808) 533-1292 Fax (808) 599-2606 Email RLSHawaii@aol.com

Thursday, February 18, 2010 @ 2:00 p.m. in CR 325

To: House Committee on Consumer Protection & Commerce
Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice Chair

House Committee on Judiciary
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

By: Richard C. Botti, Executive Director

Re: HB 2905 RELATING TO INTOXICATING LIQUOR

Chairs & Committee Members:

We support HB 2905.

It has been 25 years since the age of majority for purchasing liquor was raised from 18 to 21. During most of that period of time, the Legislature has placed the burden of enforcement against minors purchasing alcoholic beverages on the liquor licensee. In essence, licensees have had to play the role of parents to minors who are very innovative and creative in challenging your laws. We do not dispute that it is the licensee's responsibility to avoid sales to minors, but what about the minor who instigated the purchase in the first place. They are not innocent victims, they are the ones doing everything they can to outsmart the system, and should also be penalized.

This bill does this for those minors between the ages of 18 to 21. We support this. We would support placing mandatory penalties to minors being directed to Family Court. Licensees feel this is currently a black hole, where nobody has any idea as to what punishment is being provided. We request that the Family Court be required to report to the Legislature information relative to how many cases are handled annually, and the disposition of the cases by category, so the black hole syndrome can be eliminated, and we can have an idea as to where efforts should be placed to reduce minor violations.

The citation provision is a positive measure that should simplify enforcement of violations.



**Testimony to the House Committees on Consumer Protection and Commerce and Judiciary
Tuesday, February 18, 2010 at 2:00 p.m.
Conference Room 325, State Capitol**

RE: HOUSE BILL NO. 2905 RELATING TO INTOXICATING LIQUOR

Chairs Herkes and Karamatsu, Vice Chairs Wakai and Ito, and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber supports House Bill 2905 relating to Intoxicating Liquor.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure prohibits use by minors of false identification to purchase liquor, establishes fines and other penalties, designates 50% of revenues from fines to county programs for underage drinking awareness and prevention, and authorizes the issuance of citations as an alternative to arrest for violations associations with intoxicating liquor.

We believe HB 2905 is a positive step in the right direction in deterring minors from utilizing false identification to purchase liquor. The deterrence will hopefully prevent unfortunate circumstances that could arise out of a minor purchasing and possibly drinking liquor, such as car accidents, alcohol poisoning or any other harmful result. Furthermore, it provides alternatives for our law enforcement and court systems to impose on minors who violate the law.

Additionally, studies show that cuts to tobacco prevention programs translate directly into higher smoking rates, especially among kids. So the designation of 50% of revenues from fines to county programs for underage drinking awareness and prevention will support the efforts of preventing minors from purchasing and possibly consuming the liquor.

Overall, efforts to prevent underage drinking should continually be pursued. This measure is one step in fulfilling this mission.

Thank you for the opportunity to testify.

Representative Robert Herkes, Chair
Representative Glenn Wakai, Vice Chair
Committee on Consumer Protection & Commerce

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
Committee on Judiciary



HEARING Thursday, February 18, 2010
 2:00 pm
 Conference Room 325
 State Capitol, Honolulu, Hawaii 96813

RE: HB2905, Relating to Intoxicating Liquor

Chairs Herkes and Karamatsu, Vice Chairs Wakai and Ito, and Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to the support of the retail industry and business in general in Hawaii.

RMH supports HB2905, which prohibits use by minors of false identification to purchase liquor, establishes fines and other penalties, designates 50% of revenues from fines to county programs for underage drinking awareness and prevention, and authorizes the issuance of citations as an alternative to arrest for violations associated with intoxicating liquor.

As concerned citizens, we most assuredly support all endeavors to prevent underage drinking and the subsequent damaging effects on our children and society. We believe that HB2905 does not undermine existing efforts, but provides alternatives for and greater flexibility to our law enforcement and court systems as defined in Section 1 (2) of the purpose clause of this bill.

As evidenced by the results of the anti-smoking / anti-tobacco programs, education and information are a critical component of substance abuse prevention. The fines generated from this provision in HB2905 will provide an important source of funding for this preventive tool at the county levels.

For retailers, a significant provision of HB2905 is the prohibition of a minor's use of false identification. Modern technology has facilitated the proliferation of fraudulent kinds of identification that are virtually undetectable to all but the trained professional. These fraudulent documents are prevalent in the marketplace, and are key components in various offenses, not the least of which are check and credit card fraud and identity theft. Creating a penalty for the use of fraudulent documents at any and all levels is a major step to containing these criminal activities.

We respectfully urge your passage of HB2905. Thank you for your consideration and for the opportunity to submit testimony.

Carol Pregill, President

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ph: 808-592-4200 / fax: 808-592-4202

February 15, 2010

Representative Robert N. Herkes, Chair
Representative Glenn Wakai, Vice Chair
Committee on Consumer Protection & Commerce

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
Committee on Judiciary

DATE: Thurs., Feb 18, 2010, TIME: 2:00 p.m.

Regarding Testimony in favor of:

HB 2905 RELATING TO INTOXICATING LIQUOR.
Prohibits use by minors of false identification to purchase liquor.
Establishes fines and other penalties. Designates 50% of revenues from
fines to county programs for underage drinking awareness and prevention.
Authorizes the issuance of citations as an alternative to arrest for
violations associated with intoxicating liquor.

Dear Chair Herkes, Vice Chair Wakai, Chair Karamatsu, Vice Chair Ito and Members of
the Committee,

My name is Sheryl Messamer and I'm writing to support HB 2905, but respectfully
request amendments to the Bill with reconsideration of the issuance of a citation in lieu of
arrest, as well as increasing the fines/penalties.

A citation alone would allow more of an opportunity for additional offences to occur
where an arrest would have a far more intense initial impact and would require immediate
involvement of a parent, in the case of a minor.

The implementation of fines is an important part of this Bill but please reconsider
increasing the fines, especially for Section F, Item 3. Why must we, as community
members, continue to watch multiple offenses occur with such minimal consequences?
The object of these fines should be that they are set high enough to be a deterrent to the
behavior, not just an inconvenience.

Thank you for your time and consideration of my comments.

Sincerely,

Sheryl Messamer