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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2010

Wednesday, March 24, 2010
2:05 p.m.

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 92
AND
HOUSE RESOLUTION NO. 41
REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO
STUDY THE FEASIBILITY OF MANDATORY STATEWIDE TRAINING STANDARDS
FOR SELLERS AND SERVERS OF ALCOHOLIC BEVERAGES.**

WRITTEN ONLY

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (Department) appreciates the opportunity to provide comments on H.C.R. No. 92 and H.R. No. 41, which request the Department to study the feasibility of establishing mandatory uniform statewide training standards for sellers and servers of alcoholic beverages. I am Rodney Maile, the Department's Deputy Director.

The Department takes no position on the merits of the study called for in the resolutions as we do not have any involvement with the regulation of liquor. We

appreciate the Legislature's confidence in the Department's ability to conduct such a study. However, notwithstanding House Standing Committee Report (HSCR) No. 680-10, we submit that there are agencies better suited for such an endeavor, specifically the Legislative Reference Bureau (LRB). The resolutions correctly state that the Hawaii Revised Statutes (HRS) leaves the licensing and regulation of commercial alcoholic beverages to the several counties. Specifically, chapter 281, HRS, authorizes the counties to establish a liquor commission or liquor control adjudication board. Chapter 281, HRS, also provides those boards and commissions with the **sole** jurisdiction, power, authority, and discretion to among other things, grant, refuse, suspend, and revoke licenses for the manufacture, importation, and sale of liquor, and to take appropriate action against a person who manufactures, sells, or purchases liquor without being authorized. Consequently, the Department plays no role in the regulation of liquor, and as such, has no involvement, experience, or expertise in the area.

Although the Department has conducted studies on matters that relate to our core mission in the past, studies are not part of our core mission, whereas, research is a principal purpose of the LRB. Specifically, section 23G-3, HRS, enumerates the purposes of the LRB to include the provision of comprehensive research services for the Legislature, and to conduct impartial research as may be necessary for the enactment of substantive legislation, upon request by the Legislature. The LRB has a history of providing quality research services to the Legislature. Some of LRB's more recent studies include: *Access, Distribution, and Security Components of State Medical*

Marijuana Programs, Fair or Foul? A Sports and Entertainment Management Program at the University of Hawaii, and Gimme a Break: Respite Care Services in Other States.

HSCR No. 680-10 does not dispute the Department's contention that the Department plays no role in the regulation of liquor, nor does the committee report dispute the Department's contention that the Department has no involvement, experience, or expertise in the area of liquor regulation. Additionally, HSCR No. 680-10 does not dispute the Department's contention that LRB is the appropriate agency to conduct the study. The committee report merely indicates that the prior committee did not adopt the Department's suggestion of having the LRB conduct the study based on resource issues. However, the resource issue can be address by placing this request high on the Legislature's priority list of LRB studies.

Another resource issue to take into consideration is the Supreme Court's 2008 ruling in the *Hawaii Insurers Council v. Lingle* case. That ruling limits the purposes for which the Department's regulatory fees can be used. As the regulation of liquor has no nexus to the regulatory fees the Department collects, using those fees to conduct the study called for in the resolutions would likely run afoul of the *HIC v. Lingle* decision.

Therefore, the Department respectfully requests that the resolutions be amended to have the LRB conduct the study.

Thank you for the opportunity to comment on the measures.

wakai2-Daniel

From: Hirai, Anna C. [ahirai@honolulu.gov]
Sent: Tuesday, March 23, 2010 2:56 PM
To: CPCtestimony
Cc: ehonma@kauai.gov; Jan Pakele; Sharon Otsubo; franklyn silva; Hyun, Edmund K B; Dennis Enomoto; iris@iokawalaw.com; Hashimoto, Clarice; Morita, Robert
Subject: HCR 92 - HCR 41

Re: HCR 92 – HCR 41

Hearing before Committee on Consumer Protection & Commerce
Wednesday, March 24, 2010
2:05 pm

Committee Chair Herkes and Vice Chair Wakai:

The administrators of the four county liquor jurisdictions are in support of the intent of HCR 92 – HCR 41, however seek your consideration to amend the resolution by replacing the department of commerce and consumer affairs with the administrators of the four county liquor commissions as we are the agencies who administer HRS Chapter 281. We further advise your Committee that contrary to statements in the third paragraph, certifications of employee training are accepted between the four county liquor jurisdictions.

Thank you for the opportunity to provide this testimony,

Janice Pakele, Director, Hawaii County
Eric Honma, Director, Kauai County
Franklyn Silva, Director, Maui County
Anna Hirai, Assistant Administrator, City & County of Honolulu



HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)

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Wednesday, March 24, 2010 @ 2:05 p.m. in CR 325

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

By: Richard C. Botti, President
Lauren Zirbel, Government Relations

Re: HCR 92 and HR 41 RELATING TO THE TRAINING OF ALCOHOLIC
BEVERAGE SERVERS AND SELLERS

Chairs & Committee Members:

We support these resolutions.

While our HRS delegates authority to control alcoholic beverages to each county, it is time that issues involving licensees that conduct business in more than one county have some continuity between the four different rules.

We need to be in a situation where managers and employees can move without restrictions between islands. A licensee and their employees should not have to deal with four different policies when we are one state.



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March 24, 2010

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

From: Arkie Koehl — Chairman, Operations Council, MADD Hawaii

Re: HCR 92 and HR 41 – Relating to Alcoholic Beverage Server Training Standards

I am Arkie Koehl, offering testimony on behalf of the Hawaii members of Mothers Against Drunk Driving **in strong support** of HCR 92 and HR 41, requesting the formation of a working group with MADD Hawaii to study the feasibility of mandatory statewide training standards for sellers and servers of alcoholic beverages, and **we respectfully suggest an amendment**, below.

Brief background: there is a need to standardize server training across our counties, in order to:

- Provide county liquor commissions with statutory tools to enhance the effectiveness of their activities
- Provide single statewide certification to workers in the retail and serving industry
- Enable a framework for more favorable insurance and liability profiles to owners of retail and serving establishments
- Advance Hawaii's efforts to reduce the tragedy and waste of impaired driving and other behaviors

By bringing together community and government stakeholders, we believe sound legislation can be drafted by the end of this year for consideration by the Legislature in its 2011 session.

Suggested Amendment: As drafted, the resolutions call for the Department of Commerce and Consumer Affairs to study the feasibility of such legislation, work with MADD to establish a working group, and submit findings and potential legislation. In its testimony on these resolutions before the House Committee on Economic Revitalization, Business, & Military Affairs, DCCA felt that it was not the most appropriate body to undertake the study. The county liquor commissions subsequently contacted MADD and expressed their wish to take a leadership role in the formation and deliberations of the working group. MADD is in basic agreement with these positions and therefore recommends that “the Honolulu Liquor Commission” replace “the Department of Commerce and Consumer Affairs” throughout the text of the resolution, specifically on page 1 lines 29/30; page 2, lines 6/7; lines 12/13; and lines 19/20.

MADD is grateful to the committee for hearing these resolutions, and we respectfully urge their adoption.

Thank you for this opportunity to testify.