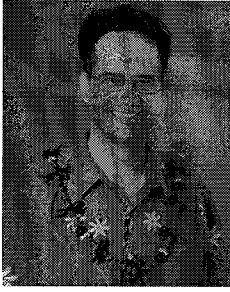


**SB 2545**



**HOUSE OF REPRESENTATIVES**

STATE OF HAWAII  
STATE CAPITOL  
HONOLULU, HAWAII 96813

February 5, 2010

To: Senator Kalani English, Chair of Transportation, International and  
Intergovernmental Affairs, and members of the Committee

Re: SB 2545, relating to intoxicating liquor  
Hearing on Monday, Feb. 8, 2010

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On behalf of my constituents, I urge approval of SB 2545.

BYOBs can be as loud and late as any licensed bar or nightclub but are not licensed, regulated, or monitored.

BYOBs can sometimes be bigger problems than licensed bars or liquor dispensers. BYOBs have less incentive, I'm told, to enforce the drinking age or the quantity consumed on premises by patrons. BYOBs are not visited by C&C liquor inspectors and hence allow activities which licensed liquor establishments would often control or forbid.

If it looks like a liquor establishment and sounds like a liquor establishment, then it should be treated as a liquor establishment.

Mahalo for your favorable consideration.

A handwritten signature in cursive script that reads "Karl".

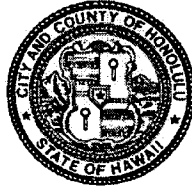
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Karl Rhoads

**Karl Rhoads ~ Chair, Committee on Labor and Public Employment**  
**Member of Committees on Education, Higher Education, Public Safety and Transportation**  
*District 28: Palama, Chinatown, Downtown, Lower Makiki, Sheridan*  
State Capitol, Room 326 – Honolulu, Hawaii 96813  
Phone: 586-6180 – Fax: 586-6189  
E-Mail: [reprhoads@capitol.hawaii.gov](mailto:reprhoads@capitol.hawaii.gov)  
SB 2545, intoxicating liquor, testimony by KR/Letters 2010

LIQUOR COMMISSION  
**CITY AND COUNTY OF HONOLULU**  
711 KAPIOLANI BOULEVARD, SUITE 600 • HONOLULU, HAWAII 96813-5249  
PHONE: (808) 768-7300 or (808) 768-7355 • FAX: (808) 591-2700  
E-mail address: liquor@honolulu.gov • INTERNET: www.honolulu.gov/liq

MUFI HANNEMANN  
MAYOR



February 5, 2010

DENNIS ENOMOTO  
CHAIRMAN

IRIS R. OKAWA  
CO-VICE CHAIR

GREGG HAMMER  
CO-VICE CHAIR

JON F. YAMAGUCHI  
COMMISSIONER

MICHAEL S. YAMAGUCHI  
COMMISSIONER

DEWEY H. KIM, JR.  
ADMINISTRATOR

Senator J. Kalani English, Chair  
Senator Mike Gabbard, Vice Chair  
Committee on Transportation, International & Intergovernmental Affairs

**Hearing:** Monday, February 8, 2010  
2:00 pm; Room 224

**Position:** Oppose SB 2545 Relating to Intoxicating Liquor As Written

The City and County of Honolulu Liquor Commission opposes SB 2545 as written, and respectfully recommends amendments.

In January 2010, the four county liquor control departments met to discuss proposed amendments to Chapter 281 to address concerns from State and City legislators, residents, and even licensees stemming from late night noise and disorderly conduct emanating from unlicensed establishments. The proposed amendments were forwarded to Senate and House representatives but could not be incorporated into SB 2545 prior to the cutoff date for bill introduction. However, we were encouraged to submit the proposed amendments when SB 2545 came up for hearing, and we respectfully make the following recommendations:

- 1. Permissible hours of consumption on unlicensed premises.** We recommend that language referring to hours of operation for dispensers be deleted, and that specific hours for consumption on unlicensed premises be identified, to wit: 8:00 am to 10:00 pm. Without this amendment, unlicensed premises may continue to allow consumption until 2:00 am, and the county liquor control departments could not alter the 2:00 am end time by rulemaking. The 10:00 pm end time will permit consumption by patrons at legitimate unlicensed restaurants, while reducing late night noise created by patrons of non-restaurant establishments.
- 2. Required regulation by permit for counties with a population greater than 500,000.** We recommend that the distinction between counties by population size be eliminated, resulting in a uniform regulatory approach. Further, we recommend that if regulation by permit is retained, that it be optional for all four counties. This will provide the counties with additional time to determine if a permitting process would effectively increase compliance.

Senator J. Kalani English, Chair  
Senator Mike Gabbard, Chair  
Committee on Transportation, International & Intergovernmental Affairs  
Page 2

3. **Noise control.** We recommend that unlicensed premises under HRS 281-4 be made subject to noise regulations established by the state and the liquor control departments.

4. **Enforcement.** We recommend that appropriate amendments be made to HRS 281-20 General right of inspection and HRS 281-101.4 Hearing, illegal manufacture, importation, or sale of liquor to give investigators and county liquor commissions or liquor control adjudication boards the necessary authority to effectively monitor and penalize unlicensed premises.

Attached is proposed draft language for the four recommendations described above.

We oppose SB 2545 as written, and respectfully request your action on this matter.

*Anna Chian*  
for Dewey H. Kim, Jr., Administrator  
City and County of Honolulu Liquor Commission

Attachment

SECTION 1. Section 281-4, Hawaii Revised Statutes, is amended to read as follows:

**"281-4 Liquor consumption on unlicensed premises prohibited, when.** (a) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are provided, or brought in by patrons or guests, whether for compensation or not, or to which members of the public, or members of an organization, resort for food, refreshment, or entertainment, and who is not a licensee of the commission under this chapter, to promote, encourage, aid, or permit the consumption of liquor on the premises, except during the hours between [which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located.] 8:00 a.m. to 10:00 p.m.

(b) It shall be unlawful for any person who is present at any restaurant or other premises where food, beverages, or entertainment are sold, provided, or brought in by patrons or guests, or to which members of the public, or members of an organization, resort for food, refreshment, or entertainment, and which premises are not licensed by the commission under this chapter, to consume any liquor on the premises, except during the hours between [which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located.] 8:00 a.m. to 10:00 p.m.

(c) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are provided, or brought in by patrons or guests, whether compensated or not, to sell or provide or allow the

consumption of liquor to or for any of the following persons knowing that such person has, or is about to obtain, liquor for consumption by the person on the premises, to wit: (1) Any minor; (2) Any person at the time under the influence of liquor; (3) Any disorderly person; (4) Any person known to be addicted to the excessive use of liquor; or (5) Any person, for consumption in any vehicle on the premises; provided that the providing of liquor to or for a minor who has or is about to obtain liquor for consumption by the minor on the premises or allowing the consumption of liquor by a minor shall not be deemed to be a violation of this subsection if, at the time, the person providing or allowing the consumption of liquor was misled by the appearance of the minor and the attending circumstances into honestly believing that such minor was of legal age and the person acted in good faith, and it shall be incumbent upon the person to prove that the person so acted in good faith.

(d) Within the meaning of this section, the word "premises" includes any vessel as well as any place, with or without a structure thereon[, and the hours between which licensed premises of dispensers are permitted to be open for the transaction of business shall be deemed to be those during which such dispensers are permitted to keep open their premises for the sale, service, and consumption of liquor, or any of them]."

(e) Unlicensed premises subject to this section shall comply with noise regulations established by the state and liquor commission.

SECTION 2. Section 281-20, Hawaii Revised Statutes, is amended to read as follows:

**"§281-20 General right of inspection.** Any investigator may, at all times, without notice and without any search warrant or other legal process, visit and have immediate access to every part of the premises of every licensee or any premises where consumption of liquor is allowed pursuant to section 281-4 for the purpose of making any examination or inspection thereof or inquiry into the books and records therein, to ascertain whether all of the conditions of the license and all provisions of this chapter and chapter 244D are being complied with by the licensee."

SECTION 3. Section 281-101.4, Hawaii Revised Statutes, is amended to read as follows:

**"281-101.4 Hearing, illegal manufacture, importation, or sale of liquor.** The liquor commission or liquor control adjudication board may assess and collect a penalty, or reprimand a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto or for any violation of section 281-4. In every case where the administrator elects to conduct proceedings under this section where it is proposed to assess and collect a penalty from a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto or for violation of section 281-4, that person shall be entitled to notice and hearing in conformity with chapter 91. At the hearing, before final action is taken by the commission or board, the person shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present facts showing that the alleged cause or causes for the proposed action do not exist, or any reason why no penalty should be imposed. The testimony taken at the

taken at the hearing shall be under oath and recorded stenographically, or by machine, but the parties shall not be bound by the strict rules of evidence; certified copies of any transcript and of any other record made of or at the hearing shall be furnished to a person upon that person's request and at that person's expense. Any order, reprimand, or penalty imposed by the commission or board upon a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto or for violation of section 281-4 shall be in addition to any penalty that might be imposed upon that person's conviction in a court of law for any violation of this chapter. The amount of penalty assessed and collected by the commission or board from any person under this section for not having a valid license to manufacture or sell any liquor or for violation of section 281-4 shall not exceed the sum of \$2,000 for each charge. Whenever the service of any order or notice shall be required by this section, the service shall be made in the following manner: in the case of any violation based upon the personal observation of any investigator, a written notice of the violation shall be given to the person charged with a violation within a reasonable period of time after the alleged violation occurred, the person charged shall be requested to acknowledge receipt of the alleged violation, or, if the person cannot be found after diligent search, by leaving a certified copy thereof at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; and if the person cannot be found after diligent search, and service cannot be made, then service may be made by depositing another certified copy thereof in the certified mail of the United States post office, postage prepaid, addressed to the person



at the person's last known residence address; provided, that in the case of a partnership, corporation, unincorporated association, or limited liability company, service may be made upon any partner, officer, or member thereof."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.



*Retail Liquor Dealers Association of Hawaii*

1188 Bishop St, Suite 608, Honolulu, Hawaii 96813  
Phone (808) 533-1292 Fax (808) 599-2606 Email [LISHawaii@aol.com](mailto:LISHawaii@aol.com)

February 8, 2010 @ 2:00 p.m. in CR 224

To: Senate Committee on Transportation, International & Intergovernmental Affairs  
Senator J. Kalani English, Chair  
Senator Mike Gabbard, Vice Chair

By: Richard C. Botti, Executive Director

Re: SB 2545 RELATING TO INTOXICATING LIQUOR

Chairs & Committee Members:



What we have here is a can of worms.

Many consumers really enjoy going to a restaurant that allows customers to BYOB. It helps control costs, since the purchase is from a liquor or grocery store at a lower price, and the customer can bring home whatever is not consumed. In my favorite restaurant they even open the bottle of wine for the customer.

We have laws now that require a BYOB restaurant to comply with similar laws that apply to a licensed dispenser, such as sales to minors, people under the influence, disorderly persons, etc.



Now comes the . Consider this:

- A retail liquor licensee sells the product, which is good for our members, the retailer;
- The restaurant avoids getting a liquor license that is really expensive and a pain with all of the restrictions, requirements, tax clearance requirements, liquor inspectors, etc.
- Under current law, the fees paid by liquor licensees are being used to enforce unlicensed restaurants that allow BYOB, which is unfair for retail liquor licensees paying the bill;
- Liquor licensees that are marginally profitable may decide to give up their liquor license in favor of the new simplified permit; and
- If there is a serious incident, there will surely be lawsuits, and the deep pocket will be the retailer who sold the liquor in the first place, even though the sale may have been legitimate.



We think the bill has merit, but everything in the must be better addressed before proceeding down this path.

**From:** Derek Kauanoe [dkauanoe@gmail.com]  
**Sent:** Sunday, February 07, 2010 3:38 PM  
**To:** TIATestimony  
**Subject:** S.B. 2545 Hearing on 2/8/10 at 2:00pm

Dear Mr. Chairman Senator English, Vice-Chair Gabbard and other members of the Committee.

I am neither an owner nor a part owner of any business affected by the passage of Senate Bill 2545. I am however, a concerned citizen who lives with a few BYOB small businesses operating in my community.

**Simply put, although perhaps well-intentioned, S.B. 2545 is bad legislation at a bad time and it will do more harm than good.**

If S.B. 2545 is passed in its current form with the current intent, we should expect a harmful economic impact on:

- local small businesses,
- families of employees of the affected businesses, and
- a decrease in both general excise tax and personal income tax revenues to the State during a time when we need more (not less) revenue.

### **THREE TYPES OF HARMFUL ECONOMIC IMPACT**

#### **- SB 2545 Will Ruin Many of Our Local Small Businesses**

BYOB small businesses allow residents to enjoy spiritous liquors in conjunction with the consumption of services or food. Normally, karaoke singing and dining. BYOB small businesses are favored among many residents. By prohibiting spiritous liquor consumption after 10:00 pm, this bill will impose severe harm on BYOB small businesses by discouraging customers from patronizing such businesses shortly before and after 10pm. As a result, passage of SB 2545 will take profits away from our local small businesses on Oahu.

#### **- SB 2545 Will Have a Harmful Impact on Families Because It Will Reduce Personal Income**

By outlawing spiritous liquor consumption after 10:00 p.m. at BYOB small businesses, SB 2545 will effectively reduce the need for employees to work after 10:00 p.m. at BYOB small businesses. This means there will be reduced work hours for employees which ultimately results in reduced personal income. If passed, Bill 2545 will reduce personal income.

#### **- SB 2545 Will Decrease State Tax Revenue By Indirectly Prohibiting Transactions After 10:00 p.m.**

General Excise Tax revenue will be further reduced, because SB 2545 will dis-incentivize taxable transactions shortly before and after 10:00 p.m. Many people (residents and non-residents) go to our local BYOB Karaoke establishments to "rent" rooms with the expectation that they will be able to consume their own spiritous liquors. This often happens shortly before and after 10:00 p.m. Passing SB 2545 will remove any customer's expectation to be able to go to a BYOB small business (like BYOB Karaoke establishments) and consume spiritous liquors shortly before or after 10:00 p.m. This means there will be fewer, if any, taxable transactions at this time should SB 2545 pass.

Because SB 2545 will take away profits from our local small businesses and reduce the personal income of employers and employees, SB 2545 will further reduce personal income tax revenue during a time when we need more.

**CURRENT ECONOMIC CIRCUMSTANCES REQUIRE THAT SB 2545 NOT BE PASSED.**

It is important to Hawaii residents and citizens alike that SB 2545 not be passed. Our current economic state requires our Legislature to protect existing business by not imposing unnecessary and harmful restrictions on small businesses that employ our people.

I urge you to support our economy and our local small businesses by voting against S.B. 2545

--

Derek H Kauanoë

**From:** frankmorimoto@aol.com  
**Sent:** Saturday, February 06, 2010 9:19 PM  
**To:** TIATestimony  
**Subject:** SB2545 RELATING TO INTOXICATING LIQUOR,Unlicensed Establishments

Testimony to permit consumption of alcohol until closing time (2 am) and not 1000 pm at BYOB establishments . Alcohol Bars sell alcohol to 2 am

SB2545 RELATING TO INTOXICATING LIQUOR,Unlicensed Establishments

I understand the needs of the government to try to regulate alcohol. I believe that the consumption of alcohol at BYOB establishments only until 1000 pm is unfair to the owners and customers of these establishments. These establishments serves a vital part in the community that permits alcohol consumption in a relax environment, since th only other establishments is Korean Bars, Waikiki nightclubs, etc these are something not a very inviting, not relaxing, and very expensive place to spend your evening.

These BYOB establishments have been good for Hawaii and have been around for a long time.. This is where the local people can get together and bring food from home, from restaurants and alcohol (beer) and spent the evening and stay as long as they want to stay. A lot of these BYOB establishments stay open until 2 am. It serves as a friendly place to relax after work and in the evenings.

Stopping consumption of alcohol (beer) at many of these BYOB establishments will hurt these business financially and could put some of these businesses out of business. The government should be taking care and looking after the best interest of the people and businesses of Hawaii. Please provide Hawaii with a better business environment.

Since this bill will require BYOB establishments to follow the Alcohol Commission rule and enforcement, they must apply for permits, file application for permits, pay fees and get renewal fees. This appears to put BYOB establishments at the same level of requirements that a regular alcohol bar where you have to buy your alcohol from the establishments. Since most alcohol bars can sell their customers drinks until 2 AM closing time,.BYOB establishments must restrict alcohol consumption starting at 1000 pm. This put the BYOB establishments at at disadvantage by restricting their hours by 4 hours. Because the BYOB establishments can still remain open after 1000 pm, but customers can't drink alcohol. Most BYOB establishments will most likely remain open after 1000 pm, this would put a unfair burden of enforcement on the staff of the BYOB establishments. Of course this, alcohol bars would not have this enforcement problem because they close and stop serving alcohol at 2 am.

If BYOB establishments are going to be regulated be the Alcohol Commission with all the requirements of that commission just like the alcohol bars. To me this is placing bars and BYOB establishments at the same level, so this should entitle the BYOB establishments to allow alcohol consumption by customers until closing time (2 am), just like the alcohol bars, and not at an arbitrary time (1000)..

Thank you for your consideration of my testimony,  
Frank Morimoto

February 5, 2010

To: Senator Kalani English, Chair of Transportation, International and  
Intergovernmental Affairs

Re: SB 2545, relating to intoxicating liquor  
Hearing on Monday, Feb. 8, 2010

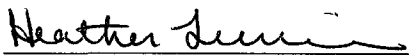
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As a resident of Makiki who lives near a BYOB (bring your own bottle) 'karaoke' establishment, I urge approval SB 2545.

BYOBs can be as loud and late as any licensed bar or nightclub but are not licensed, regulated, or monitored. As a neighbor of an unlicensed BYOB, I have no one to help curb the noise and disturbance which this BYOB causes.

If it looks like a liquor establishment and sounds like a liquor establishment, then it should be treated as a liquor establishment.

Mahalo for your favorable consideration.



Heather Lieurance  
Young Street  
Honolulu, HI 96814

February 5, 2010

To: Senator Kalani English, Chair of Transportation, International and  
Intergovernmental Affairs

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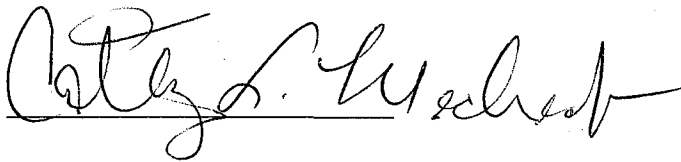
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Mahalo for your favorable consideration.



1270 Young St  
Honolulu HI 96844

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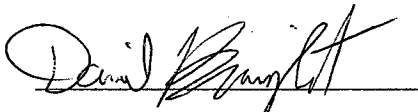
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1302 Young ST  
Honolulu, HI 96814



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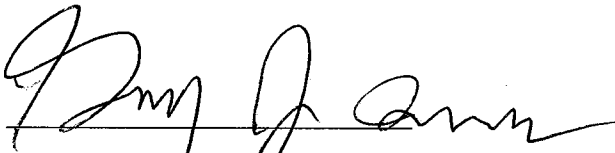
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As a resident of Makiki who lives near a BYOB (bring your own bottle) 'karaoke' establishment, I urge approval SB 2545.

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Gary Owens  
Young St  
Honolulu HI 96814

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JONATHAN A. MATSUDA

1302 Young St ~~1302~~  
Honolulu HI 96814

February 5, 2010

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*Harriet Aketa*  
*1270 Young St. 21976814*

February 5, 2010

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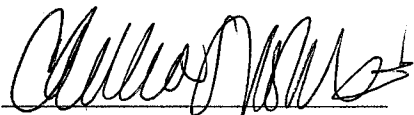
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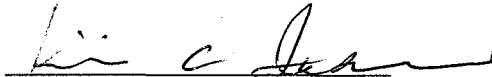
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Honolulu, HI 96814