



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

H.B. NO. 96, RELATING TO INTOXICATING LIQUOR.

BEFORE THE:

HOUSE COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS

DATE: Thursday, January 27, 2011 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): David M. Louie, Attorney General, or
Mark K. Miyahira, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General strongly opposes portions of this bill because they will undermine the purpose of Act 203, Session Laws of Hawaii 2006. Specifically, we oppose certain amendments to Hawaii Revised Statute § 281-101.5(d) and (e).

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 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.

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This bill will undermine the purpose of Act 203. The amendments to Hawaii Revised Statute § 281-101.5(d) of this measure propose to permit courts, while suspending the license, provisional license, or instructional permit of an individual under the age of 21, to drive, at the discretion of the court for reasons other than to drive to and from school, school related activities, and employment, when the lack of alternative transportation presents "undue hardship".

The point of Act 203 is to deter minors from consuming, possessing, or using liquor. As Section 1 of this bill notes, "license suspensions sometime present significant hardships to violators". That hardship is the deterrent envisioned by Act 2003. Without it, the law is toothless. Driving is a privilege, not a right. If a person does not want that privilege revoked, then that person should not break the law. We should not weaken the deterrent, which this bill would do.

Furthermore, this amendment will make it virtually impossible for law enforcement to enforce any driving restrictions on the person's license. When the sentencing court makes an exception that permits an individual to drive to and from school, school-sponsored activities, and employment, enforcement of the licensing restrictions is possible. However, the proposed amendment is so vague that no court could create a workable time or place exception. Therefore, either the court will not do so, or law enforcement will not be able to enforce the individualized license suspension.

The amendments to Hawaii Revised Statute § 281-101.5(e) of this bill also propose to create a permissive

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rather than a mandatory sentencing provision relating to fines, which we also oppose. Under the current law, persons under 18 years old are subject to the jurisdiction of the family court, which already has the power to impose a fine on a minor. Also, under the current law, a violation of section 281-101.5(b) or (c), Hawaii Revised Statutes, is a petty misdemeanor and the courts are authorized to impose a fine up to \$1000. Under the proposed language, the court **may** impose a fine as set out in subsection (e). Because the penalty is permissive rather than mandatory (using "may" rather than "shall"), the court does not have to impose a fine pursuant to subsection (e).

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**Testimony to the House Committee on Economic Revitalization & Business
Thursday, January 27, 2011 at 9:00 a.m.
Conference Room 312, State Capitol**

RE: HOUSE BILL NO. 96 RELATING TO INTOXICATING LIQUOR

Chair McKelvey, Vice Chair Choy, and Members of the Committee:

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 96 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.

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 submit comments.