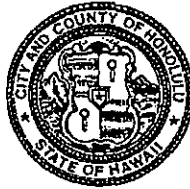


HB 1221, HD1

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) 768-7311
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PETER B. CARLISLE
MAYOR



March 21, 2011

Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair
Committee on Public Safety, Government Operations & Military Affairs

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection

Hearing: Tuesday, March 22, 2011
2:55 pm, Room 224

Position: Oppose HB 1221 HD 1 Relating to Intoxicating Liquor

The City and County of Honolulu Liquor Commission **strongly opposes** HB 1221 HD 1 and respectfully requests that the bill be held in committee.

Current Good Faith Exemption in HRS 281-78

Section 281-78 (Prohibitions), Hawaii Revised Statutes, lists various locations and activities where liquor consumption is prohibited. In the case of the sale, service, furnishing, or allowing consumption of liquor by a minor, the legislature has permitted a single "good faith" defense, available in the situation where the licensee "... was misled by the appearance of the minor and the attending circumstances into honestly believing that the minor was of legal age and the licensee acted in good faith ..." [in making the sale or allowing consumption by the minor].

Not a Strict Liability Standard

In adjudications before the Liquor Commission, the burden is properly placed on the licensee to establish the use of the "good faith" defense, in addition to any facts showing that the alleged violation does not exist, or reasons why no penalty should be imposed for an alleged violation. HRS §281-91. By rule, proof of a matter shall be by a preponderance of the evidence, not strict liability as argued by Centerplate. Rule 3-85-91.5. In fact, in Volume Services, Inc. dba Centerplate vs. Liquor Commission of the City and County of Honolulu, CIV. No. 09-1-2916-12, the 1st Circuit Court declined to adopt Centerplate's contention that the Liquor Commission had impermissibly imposed a strict liability standard in sustaining a

IRIS R. OKAWA
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GREG I. NISHIDKA
ADMINISTRATOR

ANNA C. HIRAI
ASST. ADMINISTRATOR

violation of HRS 281-78(b)(1)(A) [allowing consumption by minor] at events held at the Waikiki Shell and the Blaisdell Arena.

Proposed Amendment Shifts Compliance Responsibility From Licensees

The amendment proposed by HB 1221 HD1 will impose an affirmative requirement on county liquor commissions to approve a large venue licensee's security plan for prevention of sale to and consumption by minors. When applying for a liquor license, all licensees agree to comply with all liquor laws and rules. Although the Liquor Commission routinely requests written security plans from certain licensees, the request is made to memorialize the licensee's verbal representations at its license application or adjudication hearing, and does not constitute an "approval" of said plan. Currently, the Liquor Commission does not "approve" or "disapprove" security plans submitted by any licensee. The proposed amendment would require a county liquor commission to conduct a substantive review of something outside the purview of HRS Chapter 281, and to share a compliance burden that is the licensee's sole responsibility as the holder of a liquor license.

Security Plan Approval, Determination of Good Faith Implementation Makes Liquor Commission a Participant in Sale, Service or Consumption by Minors, and Attendant Consequences

Further, the proposed amendment would require a county liquor commission to make an additional determination that an "approved" security plan was implemented in good faith by a licensee. The approval requirement coupled with this type of good faith determination effectively makes the county liquor commission a participant in the prohibited sale, service, or consumption of liquor by a minor, an illogical and unacceptable position for a government body charged with oversight of licensees in its county. In the case of Centerplate, the proposed amendment arguably would excuse eight (8) violations of HRS 281-78(b)(1)(A) that occurred in one 12-month time period, all because the Liquor Commission ostensibly "approved" the licensee's security plan, which the licensee will argue was implemented in good faith. Such a result - the Liquor Commission's complicity in multiple violations of HRS 281-78(b)(1)(A) - cannot be reconciled with the Liquor Commission's liquor oversight responsibilities under HRS Chapter 281.

Technical Problems

Finally, the proposed amendment is problematic for a number of technical reasons:

1. The "security plan" in the proposed amendment is a generic reference, whereas security plans for "large public facility" licensees should be event and date specific. In other words, a security plan for each event to be held at a "large public facility" should


Committees on Public Safety, Government Operations & Military Affairs
And Commerce and Consumer Protection
Hearing: Tuesday, March 22, 2011
2:55 pm; Room 224

be submitted by the licensee.

2. The "good faith" implementation of a security plan may be difficult for the Liquor Commission to evaluate. The current "good faith" exemption involves a single face-to-face transaction involving the licensee and a minor. The "good faith" defense proposed by the amendment would require an analysis of multiple elements in order to avoid excusing violations simply because a licensee claims to have complied with the "approved" security plan.

Thank you for the opportunity to testify on this measure, and respectfully request your action on this matter.

Respectfully submitted,



Greg T. Nishioka, Administrator
Liquor Commission



March 21, 2011

The Honorable Will Espero, Chair
Senate Committee on Public Safety, Government Operation, and Military Affairs
The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Conference Room 224
Honolulu, HI 96813

RE: H.B. 1221, HD1 – Relating to Intoxicating Liquor

Dear Chairpersons Espero, Baker and Committee Members:

I am in strong support of HB 1221. I support this bill because I feel that if a liquor licensee who serves alcohol in a large public facility, receives the appropriate county liquor commissions' approval of their security plan and implements the plan accordingly, they should not be punished for a breach in the security plan that is not in their control.

We all do our best to keep drinks out of the hands of minors; however, there will be those irresponsible consumers who choose to do otherwise. This type of behavior is not in our control as an industry.

As a wholesale distributor doing business in Hawaii, we support our customers who are faced with this responsibility and believe that HRS Section 281-78(b)(1)(A) puts the responsibility on the wrong party. It should not be the liquor licensee who is penalized for a party who is breaking the law.

Please pass HB 1221, HD 1. Thank you for the opportunity to present my testimony.

Sincerely,

A handwritten signature in cursive script that reads 'George D. Szigeti'.

George D. Szigeti
President

94-501 KAU STREET • WAIPAHO, HAWAII 96797
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March 21, 2011

The Honorable Will Espero, Chairperson
Senate Committee on Public Safety, Government Operations, and Military Affairs

The Honorable Rosalyn H. Baker, Chairperson
Senate Committee on Commerce and Consumer Protection
State Capitol, Conference Room 224

RE: H.B. 1221, HD-1, Relating to Intoxicating Liquor, Hearing Date Tuesday 3/22/11,
2:55 pm

Dear Chair Espero, Chair Baker and Committee Members:

We are a distributor of alcoholic products in the State of Hawaii and we urge the passage of this bill that will limit the liability of vendors operating concessions at the larger venues in the State.

It is close to impossible to monitor the legal drinking age of attendees at a large gathering such as the Waikiki Shell or Blaisdell Center. The concessionaire can card individuals at the point of sale and issue "legal age" wrist bands but once that individual enters the general crowd, the concessionaire virtually loses all control over that alcoholic beverage.

Beer gardens, where a designated area for drinking is allowed, has worked well in confining individuals who want to drink. However, there are no fail-safe methods to insure that a person of legal age will not hand that drink over to an under-aged minor to consume on the premise.

Sincerely,

Gordon Usui
Chief Financial Officer
Paradise Beverages, Inc.



Paradise Beverages, Inc.

94-1450 MOANANI STREET
WAIKALUA, HAWAII 96782
TEL: 808.678.4000
FAX: 808.677.8280

March 21, 2011

The Honorable Will Espero, Chair

Senate Committee on Public Safety, Government Operation, and Military Affairs
State Capitol
415 S. Beretania Street #207
Honolulu, Hawaii 96813

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol
415 S. Beretania Street #231
Honolulu, Hawaii 96813

RE: **H.B. 1221, HD1 - Relating to Intoxicating Liquor**
Tuesday, March 22, 2011 - 2:55pm

Dear Honorable Will Espero and Honorable Rosalyn H. Baker:

My name is Paul Ah Cook and I am the President of Paradise Beverages, Inc., a wholesale beverage distributor. I am submitting to you a written testimony in **strong support** of H.B. 1221, HD1. This bill would establish that a liquor licensee who serves alcohol in a large public facility would not be found to be in violation of HRS Section 281-78 (b)(1)(A) if a minor manages to consume liquor on the licensed premises, providing the liquor licensee receives the appropriate county liquor commission's approval, and shows due diligence by implementing a security plan in good faith preventing the sale to minors on the licensed premises (identification check, providing wrist bands, etc.).

Once the liquor licensee implements security plans, it is impossible for them to monitor all alcohol consumption in the public facility. In a similar situation, a retailer who implements a security plan by checking identification cards should not be held liable if the purchaser leaves the store and later distributes the alcohol to a minor.

I urge you to pass H.B. 1221, HD1, and thank you for giving me the opportunity to present this testimonial letter. Please feel free to contact me should there be any questions or concerns regarding this matter.

Sincerely,

Paul Ah Cook
President

OAHU - HILO - MAUI - KAUAI - KONA



Centerplate

Hearing Date/Time: March 22, 2011 (2:55 PM)

The Honorable Will Espero, Chair

Senate Committee on Public Safety, Government Operation, and Military Affairs

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection

State Capitol, Conference Room 224

Honolulu, Hawai'i 96813

Re: H.B. 1221, HD1 – Relating to Intoxicating Liquor

Dear Chair Agaran and Committee Members:

I am Roger Reeves, Centerplate's Director of Operations for the Hawai'i Region, testifying in **strong support** of H.B. 1221, HD1. The bill would establish that a liquor licensee who serves alcohol in a large public facility, receives the appropriate county liquor commission's approval of the licensee's security plan for preventing minors from consuming alcohol on the licensed premises, and implements the security plan in good faith, will not be found to be in violation of HRS Section 281-78(b)(1)(A) if a minor somehow still manages to get and consume liquor on the licensed premises.

For 19 years, Centerplate has been the concessionaire for the Waikiki Shell and Neal S. Blaisdell Center, and for the past 10 years, we have been the concessionaire for the Aloha Stadium. We provide the food and beverages for events such as the KCCN Birthday Bash, Kokua Fest, and Jammin' Hawaiian Events, and concerts such as Jimmy Buffet, Bon Jovi, and Elton John. The success of such events depends on attracting a broad age-range of customers, including customers over and under the age of 21. And many of our customers over the age of 21 (Hawaii's legal drinking age) like to have beer, wine, and other liquor at events at the Stadium, Shell, and Blaisdell Center.

Because people over and under the age of 21 attend events at the Stadium, Shell, and Blaisdell Center, Centerplate strives to make sure that minors cannot get and consume liquor on the licensed premises. We submit security plans to the Honolulu Liquor Commission that include, among other things, plans for preventing minors from consuming liquor at the Stadium, Shell, and Blaisdell Center events. The plans include carding everyone and attaching wristbands to those of legal drinking age before they are allowed to purchase any beer, wine, or other liquor. Centerplate also has a number of uniformed security personnel ("spotters") and off-duty police officers (paid by Centerplate) patrolling the licensed premises. In addition, the Honolulu Police department has special duty police officers patrolling the area, and Centerplate keeps in constant communication with the HPD Special Duty Supervisor. Our spotters do patrol the Waikiki

Shell's lawn area during concerts. At the Blaisdell Center, once concerts begin it becomes dark, and Centerplate cannot reasonably be expected to disturb concertgoers and patrol the aisles with flashlights (though we do patrol without turning on the flashlights). The City & County of Honolulu has never indicated that any of Centerplate's security plans were deficient.

The problem is that some customers of legal drinking age pass on their liquor to their friends who are under 21. Of course, they generally do so when uniformed spotters and police officers are out-of-sight or not patrolling.

Until 2009, Centerplate had never been cited for any liquor license violation at the Stadium, Shell, or Blaisdell Center. In 2009, however, the Honolulu Liquor Commission cited Centerplate for not catching a minor drinking liquor at the Blaisdell Center. Centerplate was cited even though we implemented in good faith our security plan that was submitted to the Liquor Commission and did not knowingly allow any minor to consume liquor. Since 2009, Centerplate has also been cited for "allowing" minors to consume liquor at the Shell even though, as was the case at the Blaisdell Center, Centerplate implemented in good faith our security plan that was submitted to the Liquor Commission and did not knowingly allow any minor to consume alcohol. It is simply unreasonable to sanction Centerplate for something it could not reasonably have prevented.

The Honolulu Liquor Commission has taken the position that if someone under the age of 21 somehow manages to get someone over 21 to pass on his or her liquor and the under-21 year old drinks the liquor, the liquor licensee is strictly liable for violating HRS Section 281-78(b)(1)(A) regardless of the intent of the licensee or the standard of care exercised by the licensee. (HRS Section 281-78(b)(1)(A) prohibits liquor licensees from selling, serving, or furnishing any liquor to, or allowing the consumption of any liquor by a minor.) In fact, the Honolulu Liquor Commission has taken the position that the liquor licensee is strictly liable even if the licensee implements in good faith its security plan that has been submitted to the Commission. Finally, the Honolulu Liquor Commission has essentially stated that it will not change its interpretation of HRS Section 281-78(b)(1)(A) unless the Legislature amends the law.

Please note that the Honolulu Liquor Commission's interpreting HRS Section 281-78(b)(1)(A) to impose strict liability on licensees is inconsistent with basic legal principles. Strict liability offenses are generally disfavored and should be found only when there is clear legislative intent that an offender's state of mind (in criminal cases) or reasonableness of the standard of care exercised by an offender (in civil cases) is irrelevant to the application of a law. (See, e.g., 21 Am. Jur. 2d. Criminal Law §135 (2009); State v. Eastman, 81 Hawaii 131 (1996); State v. Buch, 83 Hawaii 308 (1996).) And there is no "clear legislative intent" to impose strict liability under HRS Section 281-78(b)(1)(A). In fact, an exemption from liability is already in the law for licensees who are "misled by the appearance of a minor and attending circumstances into honestly believing that the minor was of legal age."

The Honorable Will Espero, Chair
Senate Committee on Public Safety, Government Operation, and Military Affairs
The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
H.B. 1221, HD1
March 22, 2011
Page 3

H.B. 1221, HD1 would establish a very limited exemption for liquor licensees of large public facilities such as the Aloha Stadium, Waikiki Shell, and Neal S. Blaisdell Center. Licensees would still have to have security plans for preventing minors from drinking on the licensed premises approved by the appropriate county liquor commission, and would still have to carry out their security plans in good faith. This limited exemption would recognize the unique circumstances and difficulties faced by licensees providing liquor for events in large public facilities.

We note that the Honolulu Liquor Commission has objected to the amendment proposed by the bill because, among other things, "large public facility" and "security plan" are not defined. HD1 provides the basic language for defining "large public facility", but leaves the capacity of the large public facility to be filled in. For your reference, the capacity of Aloha Stadium is 50,000, Waikiki Shell is 10,000, and Neal S. Blaisdell Center is 8,800.

Finally, the Honolulu Liquor Commission has stated that it currently does not "approve" or "disapprove" security plans submitted by licensees. If the Commission approval requirement remains in the bill, it should be made clear that security plans shall not unreasonably be disapproved by the Commission. Perhaps an acceptable alternative (or additional) amendment would be to insert the word "knowingly" before "allow" on line 9 of page 3 of H.B. 1221, HD1.

Centerplate urges you to pass H.B. 1221, HD1. Thank you for this opportunity to present testimony. We're happy to answer any questions you might have.

Sincerely,



Roger Reeves
Director of Operations
Centerplate – Hawai'i Region

Anheuser-Busch Sales of Hawaii

99-877 Iwaena Street

Aiea, Hawaii 96701

Fax : 808-484-4382

Telephone : 808-484-4335

DATE: Tuesday, March 22, 2011 (2:55 PM)

PLACE: Conference Room 224

FROM: Bonny Amemiya, Director of Marketing/Sr. Business Analyst

TO: SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT
OPERATION, AND MILITARY AFFAIRS

SENATE COMMITTEE ON COMMERCE AND CONSUMER
PROTECTION

Senator Will Espero, Chair

Senator Rosalyn Baker, Chair

RE: H.B. 1221, HD1 RELATING TO INTOXICATING LIQUOR

**Anheuser-Busch respectfully requests that this Committee support HB
1221, HD 1.**

Anheuser-Busch InBev is proud to be the world's largest brewer. We believe that beer can add to the enjoyment of life when it's consumed legally as intended: responsibly by adults.

At Anheuser-Busch InBev, we are also proud to lead the industry in promoting alcohol awareness and education, and we are firmly committed to preventing alcohol abuse and illegal underage drinking. Our commitment to prevent illegal underage drinking includes programs that offer retailer training, a variety of materials to assist in checking and verifying valid IDs, and free wristbands for

retailers to identify those that are of the legal drinking age. Together with our education initiatives, these programs have been effective in reducing underage drinking to its lowest level in two decades.

With respect to this measure, Anheuser-Busch supports the premise that when a licensee serving alcohol in a large public facility receives the appropriate county liquor commission's approval of the licensee's security plans for preventing minors from consuming alcohol on the licensed premises, and the licensee implements said plan in good faith, the licensee should not be deemed in violation of HRS Section 281-78(b)(1)(A).

Please support HB 1221, HD1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Bonny Arremiya', with a large circular flourish at the bottom.

Bonny Arremiya