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TO: Representative Robert N. Herkes
Chair, Committee on Consumer Protection & Commerce
Representative Gilbert S.C. Keith-Agaran
Chair, Committee on Judiciary
Via Email: CPCtestimony@Capitol.hawaii.gov

FROM: Mihoko E. Ito

DATE: February 22, 2011

RE: **H.B. 903, H.D.1 – Relating to Intoxicating Liquor**
Hearing: Wednesday, February 23, 2011 at 2:00 p.m., Room 325

Dear Chairs Herkes and Keith-Agaran and Members of the Committees:

I am Mihoko Ito, appearing on behalf of the Distilled Spirits Council of the United States ("DISCUS"). DISCUS is a national trade association representing producers and marketers of distilled spirits sold in the United States.

DISCUS supports the intent of H.B. 903, H.D.1, which prohibits the sale or distribution of caffeinated liquors labeled as "pre-mixed drinks" in the State.

In November 2010, the FDA issued rulings warning that beverages such as "Four Loko" or "Joose," are unsafe. This determination has resulted in an influx of legislation and regulation aimed at banning these caffeinated malt beverage products. Six other states besides Hawaii (Iowa, Illinois, Oregon, South Carolina, Texas, and Virginia) have introduced legislation to address this issue.

The FDA has clarified that its interest was restricted to regulating this new breed of alcoholic energy drinks, not coffee-flavored liqueurs (for example, Kahlua Coffee Liqueur or Mudslides). As such, DISCUS believes that the language of the bill needs to be carefully crafted in order to avoid the unintentional inclusion of other spirit products that naturally contain caffeine and were not the intended target of the FDA ruling.

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DISCUS generally supports responsible drinking, and supports the intent of the amendment made to clarify that this measure applies to “*caffeinated beer beverage*” to which caffeine has been added as a food additive, as defined in Section 201(s) of the Federal Food, Drug, and Cosmetic Act. However, we would respectfully recommend the removal of the language, “and which contains at least one-half of one percent caffeine by volume,” to make sure that it conforms to Federal law.

Thank you very much for the opportunity to testify.