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TO: Representative Ryan Yamane
Chair, Committee on Health
Via Email: HLTtestimony@Capitol.hawaii.gov

FROM: Mihoko E. Ito

DATE: February 6, 2011

RE: **H.B. 903 – Relating to Intoxicating Liquor**
Hearing: Tuesday, February 8, 2011 at 9:30 a.m., Room 329

Dear Chair Yamane and Members of the Committee on Health:

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, 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.

DISCUS generally supports responsible drinking, but as presently drafted, the terms “caffeinated liquor” and “pre-mixed drink” in H.B. 903 are overly broad in scope, and do not reflect the intent of the FDA’s ruling. DISCUS therefore respectfully requests that

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this term be amended (as it was in a related measure, H.B. 904) to “*caffeinated beer beverage*”:

“Caffeinated beer beverage” means a beverage defined as beer pursuant to Section [] in which caffeine has been added as a food additive to the beverage. For purposes of this Section, the term “food additive” shall have the same meaning as defined in Section 201(s) of the Federal Food, Drug, and Cosmetic Act. This Section does not apply to alcohol beverages made with ingredients that contain naturally occurring caffeine, including, but not limited to, coffee, tea, cacao, or extracts derived from these foods.

DISCUS asks for your favorable consideration of this language, so that the measure proscribes only the intentional and direct addition of caffeine by the manufacturer, as a separate ingredient to beer.

Thank you very much for the opportunity to testify.