

SB 3031

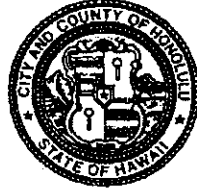
RELATING TO INTOXICATING LIQUOR

Description:

Amends section 281-78(b), HRS, to clarify that a licensee who timely suppresses unlawful activity, including by means of detaining and reporting an offender to the police, from occurring on the licensed premises shall not be in violation of that section.

LIQUOR COMMISSION
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PETER B. CARLISLE
MAYOR



February 13, 2012

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

Hearing: Tuesday, February 14, 2012
3:15 pm; Room 224

Position: Providing Comments on SB 3031 Relating to Intoxicating Liquor

As Administrator of the Liquor Commission, City and County of Honolulu, thank you for the opportunity to provide comments on SB 3031.

SB 3031 seeks to amend the prohibition contained in Section 281-78(b)(6), Hawaii Revised Statutes, that makes a licensee in violation of the liquor laws if any person on the licensed premises is engaged in unlawful conduct. The objection to the current language is that "immediately" has been and can be interpreted to impose liability on a licensee as soon as the unlawful conduct occurs, regardless of attempts made by the licensee to prevent or to rectify the situation immediately following discovery of the unlawful conduct.

While one can appreciate the challenge certain types of licensees face in controlling the conduct of persons on their premises, the following concerns warrant consideration:

- Having a liquor license is a privilege, not a right, and which is accompanied by public safety responsibilities regarding conduct taking place on the licensed premises. Accordingly, any diminution of that responsibility should be both reasonable and conservative.
- Query whether "timely" will provide sufficient specificity so that both licensees and the liquor commission decision makers (the commissions or adjudication boards) can make consistent, reasonable, and predictable evaluations of licensee response time.
- Because liquor control investigators exercise limited discretion in the field, it is likely that the proposed amendment *will not* result in fewer violations being

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issued to licensees. As only the commissions and adjudication boards can make the determination of what is or is not "timely" under the circumstances, licensees will still have to appear before the decision makers to justify the timeliness of its response for a violation of HRS §281-78(b)(6).

As Administrator, I am committed to working with the bill proponents to refine the proposed amendment, and thank you for the opportunity to provide comments on this matter.

Respectfully submitted,



Greg I. Nishioka, Administrator

GIN:ACH



Hearing Date/Time: February 14, 2012 (3:15 PM)

The Honorable Will Espero, Chair

Senate Committee on Public Safety, Government Operation, and Military Affairs
State Capitol, Conference Room 224
Honolulu, Hawai'i 96813

Re: S.B. 3031 – Relating to Intoxicating Liquor

Dear Chair Espero, Vice Chair Kidani, and Committee Members:

I am Roger Reeves, Centerplate's Director of Operations for the Hawai'i Region, testifying in support of S.B. 3031. The bill would clarify that a liquor licensee who timely suppresses unlawful activity from occurring on the licensed premises (for example, by detaining and reporting the offending person to the police) shall not be deemed to be in violation of Hawaii Revised Statutes ("HRS") §281-78(b)(6).¹

For 20 years, Centerplate has been the concessionaire for the Waikiki Shell and Neal S. Blaisdell Center, and for the past 11 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.

S.B. 3031 addresses a problem with Hawaii's liquor licensing law that we have encountered when people manage to sneak illegal drugs (primarily marijuana) into an event at one of our large public venues. The mere fact that a patron has been caught with an illegal drug on the licensed premises has been found to be a violation *by the liquor licensee* of HRS §281-78(b)(6), even if the offending patron is detained and reported to appropriate authorities in a timely manner. It is our understanding that the Honolulu Liquor Commission believes that HRS §281-78(b)(6) and the rules it has adopted pursuant to that section of the liquor licensing law require such a "strict liability" interpretation.

Because of that, the Honolulu Liquor Commission and Centerplate have worked together to try and clarify HRS §281-78(b)(6). Centerplate truly appreciates the Honolulu Liquor

¹ HRS §281-78(b)(6) currently reads, in pertinent part, "[a]t no time under any circumstances shall any licensee or its employee ... [f]ail immediately to prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any person on the premises."

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Commission's collaborative spirit and believes that the clarification made by S.B. 3031 will result in HRS §281-78(b)(6) being appropriately interpreted.

To further aid in the appropriate interpretation of HRS §281-78(b)(6), we respectfully request that the second paragraph of the purpose section of S.B. 3031 (at line 9) be amended to read identically to the bill's description, as follows:

The purpose of this Act is to clarify that a licensee who timely suppresses unlawful activity from occurring on the licensed premises, including by means of detaining and reporting ~~the~~ an offender to the police, shall not be deemed to be in violation of section 281-78(b)(6), Hawaii Revised Statutes.

Finally, we note that irresponsible liquor licensees who do *not* "timely prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any person on the premises" are still subject to discipline under HRS §281-61(b), which allows the liquor commission to, "at the time of renewal or at any time ... revoke, suspend, or place conditions or restrictions on any license issued under this chapter for the purpose of preventing activities within the licensed premises or adjacent areas that are potentially injurious to the health, safety, and welfare of the public and neighborhood including but not limited to criminal activity, including assault, drug dealing, drug use, or prostitution, upon proper notice to the licensee, and a hearing before the commission pursuant to chapter 91."

Centerplate respectfully requests that you to pass S.B. 3031, with the correction to the purpose section of the bill. 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