

SB 740

RELATING TO INTOXICATING LIQUOR.

Exempts liquor licensees from certain violations when licensees have a security plan approved by the liquor commission to prevent minors from consuming alcohol on the licensee's premises and the licensee acts in good faith in implementing that plan.

LIQUOR COMMISSION
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PETER B. CARLISLE
MAYOR



February 7, 2011

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Committee on Public Safety, Government Operations, and Military Affairs

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

Hearing: Tuesday, February 8, 2011
10:00 am, Room 229

Position: Oppose SB 740 Relating to Intoxicating Liquor

The City and County of Honolulu Liquor Commission **strongly opposes** SB 740 and respectfully requests that the bill be held in committee.

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]. In adjudications before the Commission, the burden is properly placed on the licensee to establish the use of the "good faith" defense.

The amendment proposed by SB 740 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.

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 a 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 one Honolulu County large venue licensee, 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.

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

1. The term "large public facility" is not defined in the proposed amendment, in HRS Chapter 281, our Rules, or by reference to a state statute or county ordinance, nor is there sufficient justification for treating this type of licensee differently.
2. 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.
3. The "good faith" implementation of a security plan may be difficult to quantify for the Liquor Commission. The existing "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 necessarily involve 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,



Anna C. Hirai, Acting Administrator
Liquor Commission



Centerplate

Hearing Date: February 8, 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 229

Honolulu, Hawai'i 96813

Re: S.B. 740 – Relating to Intoxicating Liquor

Dear Chair Espero, Chair Baker, and Committee Members:

I am Roger Reeves, Centerplate's Director of Operations for the Hawai'i Region, testifying in strong support of S.B. 740. 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. As noted in our security plans, spotters do not patrol the Waikiki Shell's lawn area during concerts due to legitimate safety considerations. 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 Honorable Will Espero, Chair, and Committee Members
Senate Committee on Public Safety, Government Operation, and Military Affairs
The Honorable Rosalyn H. Baker, Chair
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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 guilty of violating HRS Section 281-78(b)(1)(A). (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 guilty even if the licensee implements in good faith its security plan that has been submitted to the Commission.

S.B. 740 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.

Centerplate urges you to pass S.B. 740. Thank you for this opportunity to present testimony. I'm happy to answer any questions you might have.

Sincerely,



Roger Reeves
Director of Operations
Centerplate – Hawai'i Region

Paradise Beverages

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February 7, 2014

Senator Will Espero
Hawaii State Capitol
415 S. Beretania Street, Room 231
Honolulu, Hawaii 96813

via email: senespero@CapitolHawaii.gov

Dear Senator Espero:

RE: SB 740 - Relating to Intoxicating Liquor

We urge support of SB 740 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.)

Sincerely,



Paul Ah Cook
President

From: Will at Page Marketing [will@pagemarketing.com]
Sent: Friday, February 04, 2011 8:19 AM
To: PGM Testimony
Subject: Bad Liquor laws proposed

TESTIMONY AGAINST SB740 TUES., FEB. 8, 2011

Aloha Senators Espero and Kidani,

Please accept this testimony OPPOSED to SB 740.

SB 740 allows strict and inflexible rules for private liquor licensees and another much more flexible set of rules for government operated public facilities where a deal has been cut with the liquor commission.

The reasoning behind this bill is that it is too difficult to effectively police large public facilities against liquor violations and therefore the government operated facilities need to be given a "pass" on enforcement of liquor licenses.

What's good enough for the private sector is good enough for government operated facilities.

If you're going to give a "pass for good planning" to government facilities than the same pass should be made available to operators of large private clubs.

What a mess of enforcement and litigation this will create. What a mess of payoffs and shady deals this will engender with the liquor commission.

Thank you for not giving further consideration to one set of flexible laws for government-operated entities and much stricter rules for the rest of us.

Mahalo,
Will Page

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