

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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ARMINA A. CHING
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THE HONORABLE CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i

February 22, 2013

RE: S.B. 442, S.D. 1; RELATING TO INTOXICATING LIQUOR.

Chair Hee, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of S.B. 442, S.D. 1.

The purpose of S.B. 442, S.D. 1 is to resolve inequities between section 281-78(b)(1)(A), Hawaii Revised Statutes (“HRS”), and section 781-1250.5, HRS. Essentially, these two sections contain the same offense—service of liquor to a person under 21 years old—but with different penalties. HRS §281-78(b)(1)(A) applies solely to liquor licensees and their employees, and is not currently a full misdemeanor, while HRS §781-1250.5 applies to everyone, “including any licensee as defined in section 281-1” (emphasis added), and is a full misdemeanor. Moreover, HRS §781-1250.5 applies only a knowing or intentional state of mind, whereas the Department routinely charges HRS §281-78(b)(1)(A) as an intentional, knowing or reckless state of mind.

Because these sections address essentially identical offenses, but with two different levels of penalties, this presents a constitutional issue, as previously outlined by the Hawaii Supreme Court in *State v. Modica*, 567 P.2d 420 (1977). The Department agrees that the issue between HRS §281-78(b)(1)(A) and HRS §781-1250.5 should be resolved by the legislature, and further believes that S.B. 442, S.D. 1 is the appropriate vehicle to do so. Liquor licensees and their employees should not have to guess which section they will be charged with (i.e. which penalty will apply to them) for the same offense, and should not be subject to a lower level of punishment than the rest of the public would be subject, for the same offense. At the same time, the Department believes that everyone should equally be held to an intentional, knowing or reckless state of mind, for this type of offense.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 442, S.D. 1. Thank you for the opportunity to testify on this matter.

Justin F. Kollar
Prosecuting Attorney



Kevin K. Takata
First Deputy

Rebecca A. Vogt
Second Deputy

OFFICE OF THE PROSECUTING ATTORNEY

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TESTIMONY IN SUPPORT OF
S.B. NO. 442 S.D. 1
A BILL FOR AN ACT RELATING TO INTOXICATING LIQUOR

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

Senate Committee on Judiciary and Labor

Friday, February 22, 2013
11:30 a.m., Room 016

Honorable Chair Hee, Vice-Chair Shimabukuro, and Members of the Senate Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of Senate Bill No. 442 S.D. 1.


The proposed measure in Senate Bill No. 442 S.D. 1 amends Section 712-1250.5, subsection (1) Hawai'i Revised Statutes, to a person who "recklessly" rather than "knowingly" commits the offense of promoting intoxicating liquor to a person under the age of twenty-one.

By amending the act to be considered "reckless" clarifies that the person committing the offense is negligent in that there was a lack of thought regarding the potential danger or consequences of the offense. This amendment would help necessitate the importance and requirements of identification checks for those that hold liquor licenses as well as hold accountable those persons that allow or influence the sale, possession, or consumption of alcohol to a person under the age of twenty-one.

According to the results of Compliance Checks conducted by the County of Kaua'i Liquor Department (report attached hereto and incorporated herein) between 2006-2012, "On Premises (restaurants, bars, hotels, etc.)" violations regarding a licensee selling liquor to a minor decoy show a higher violation rate as compared to "Off Premises (retail store)" violations. Therefore, the need for the passage of this amendment is validated seeing the trend in violations seem to occur heavily in "On Premises" locations; locations with the license and therefore obligation and responsibility to conduct identification checks.

For these reasons, we strongly support Senate Bill No. 442 S.D. 1. Thank you for the opportunity to testify on this matter.

Respectfully,



Justin F. Kollar
Prosecuting Attorney
County of Kaua'i

**RESULTS OF COMPLIANCE CHECKS
2006-2012**

OFF-PREMISES

2006

53 licensed premises inspected
7 licensees sold to minor decoy
13% non-compliance
6 of the 7 employees checked ID

2007

15 licensed premises inspected
3 licensees sold to minor decoy
20% non-compliance
1 of the 3 employees checked ID

2008

42 licensed premises inspected
11 licensees sold to minor decoy
26% non-compliance
2 of the employees checked ID

2009-2010

No off-premises compliance checks were conducted

2011

75 licensed premises inspected
5 licensees sold to minor decoy
6% non-compliance
4 of the 5 employees checked ID

2012

63 licensed premises inspected
15 licensees sold to minor decoy
24% non-compliance
5 of the 15 employees checked ID

RESULTS OF COMPLIANCE CHECKS
2009-2012

ON-PREMISES

2009

43 licensed premises inspected
14 licensees sold to minor decoy
33% non-compliance
3 of the 14 employees checked ID

2010

61 licensed premises inspected
21 licensees sold to minor decoy
34% non-compliance
12 of the 21 employees checked ID

2011

38 licensed premises inspected
3 licensees sold to minor decoy
8% non-compliance
2 of the 3 employees checked ID

2012

74 licensed premises inspected
16 licensees sold to minor decoy
22% non-compliance
8 of the 16 employees checked ID

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
E-mail address: liquor@honolulu.gov • INTERNET: www.honolulu.gov/liq

KIRK CALDWELL
MAYOR



February 21, 2013

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor

MICHAEL S. YAMAGUCHI
CHAIRMAN

IRIS R. OKAWA
VICE CHAIR

WESLEY F. FONG
COMMISSIONER

JOSEPH V. O'DONNELL
COMMISSIONER

JOSEPH M. MAGALDI, JR.
COMMISSIONER

GREG I. NISHIOKA
ADMINISTRATOR

ANNA C. HIRAI
ASST. ADMINISTRATOR

Hearing: Friday, February 22, 2013
11:30 a.m.; Room 016

Position: Supporting SB 442, S.D. 1 Relating to Intoxicating Liquor

The Liquor Commission, City and County of Honolulu ("Commission"), supports SB 442, S.D. 1 as amended by the Senate Committee on Public Safety, Intergovernmental and Military Affairs.

Initially the Commission opposed SB 442 as it sought to revise H.R.S. §281-78 in an unacceptable manner; i.e., the Liquor Commission derives its authority over illegal liquor sale by way of Chapter 281, and the proposed bill, by placing the offense under Chapter 712, would remove that authority from the Liquor Commission. However SB 442, S.D. 1 has deleted the proposed amendment to HRS §281-78. Accordingly the basis upon which the Commission initially opposed SB 442 has been removed.

The Commission joins in the County of Maui's support for SB 442, S.D. 1 for the reasons stated within their written testimony in favor of this bill.

Thank you for the opportunity to testify on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Greg I. Nishioka".

Greg I. Nishioka, Administrator
Liquor Commission

GIN:lt

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK W. CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE MH-YZ

February 22, 2013

The Honorable Clayton Hee, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol, Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: Senate Bill No. 442 S. D. 1, Relating to Intoxicating Liquor

I am Moana Heu, Major of the Community Affairs Division, Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 442 S. D. 1, Relating to Intoxicating Liquor, which reduces the state of mind of the perpetrator from "knowingly" to "recklessly" for the offense of promoting intoxicating liquor to a person under the age of 21.

This bill will ease the burden of proof in prosecuting these offenses. Successful prosecution of these offenses will further encourage licensees and servers to avoid serving intoxicating liquor to persons under the age of 21.

Thank you for the opportunity to testify in support of Senate Bill No. 442 S. D. 1.

Sincerely,

MOANA HEU, Major
Community Affairs Division

APPROVED:

LOUIS M. KEALOHA
Chief of Police