

# **SB 442**

**Report Title:**

RELATING TO INTOXICATING LIQUOR

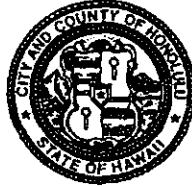
**Measure Title:**

Makes it a misdemeanor for a licensee to recklessly sell,  
serve, or furnish any liquor to,  
or allow the consumption of any liquor by any minor.  
Effective July 1, 2013.

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



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

February 4, 2013

Senator Will Espero, Chair  
Senator Rosalyn H. Baker, Vice Chair  
Committee on Public Safety, Intergovernmental and Military Affairs

**Hearing:** Tuesday, February 5, 2013  
2:45 p.m.; Room 224

**Position:** Opposing SB 442 Relating to Intoxicating Liquor

The Liquor Commission, City and County of Honolulu ("Commission"), **opposes SB 442** in its current form.

SB442 seeks to raise the standard of proof to ascertain a violation of H.R.S. §712-1250.5 from that of "knowing" to "recklessly" promoting intoxicating liquor to a person under the age of twenty-one. The bill would lower the standard of care expected from licensees when serving liquor to those of questionable age, and consumption of liquor by minors continues to be a significant public health issue.

Secondly, it revises 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.

Finally, the proposed bill removes the opportunity for a licensee to present an affirmative defense in cases where the licensee was honestly misled by the appearance of the minor and other circumstances. There have been cases where the Liquor Commission agreed with the affirmative defenses presented by licensees, especially when the false identification used by the minor was of such high quality relative to a legitimate one. Very few systems, legal or otherwise, are fail safe, and retaining an affirmative defense opportunity is conducive to a fair process.

Thank you for the opportunity to testify on this matter.

Respectfully submitted,

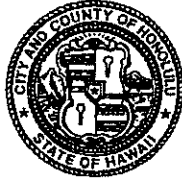
A handwritten signature in black ink, appearing to read "Greg I. Nishioka".

Greg I. Nishioka, Administrator  
Liquor Commission

GIN:lt

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honoluluupd.org



KIRK W. CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

DAVE M. KAJIHIRO  
MARIE A. McCAULEY  
DEPUTY CHIEFS

OUR REFERENCE      RAA-JK

February 5, 2013

The Honorable Will Espero, Chair  
and Members  
Committee on Public Safety, Intergovernmental  
and Military Affairs  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Espero and Members:

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

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

The HPD supports Senate Bill No. 442, 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond Ancheta", written over a horizontal line.

RAYMOND ANCHETA, Major  
Community Affairs Division

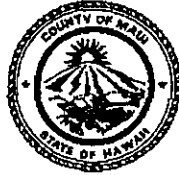
APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoa", written over a horizontal line.  

LOUIS M. KEALOHA  
Chief of Police

*Serving and Protecting With Aloha*

ALAN M. ARAKAWA  
Mayor



JOHN D. KIM  
Prosecuting Attorney  
ROBERT D. RIVERA  
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
150 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD K. MINATOYA  
Deputy Prosecuting Attorney  
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

AMENDED TESTIMONY

ON

SB 442 - RELATING TO INTOXICATING LIQUOR

February 5, 2013

The Honorable Will Espero  
Chair  
The Honorable Rosalyn H. Baker  
Vice Chair  
and Members  
Senate Committee on Public Safety, Intergovernmental and Military Affairs

Chair Espero, Vice Chair Baker and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, is in STRONG SUPPORT of SB 442, Relating to Intoxicating Liquor, but proposes to replace the contents of HB 442 with the contents of HB 1060 to be a Senate Draft 1.

SB 442 creates a new section in Chapter 712 of the Hawaii Revised Statutes to make it a misdemeanor for a liquor licensee (the definition includes employees) to recklessly sell, offer for sale, serve, deliver or give intoxicating liquor to a person under 21 years old, or to allow a person under 21 years old to possess liquor on property controlled by the licensee. This will address the problem of minors having access to alcohol. During compliance sweeps, we found that licensees do not check minors' identification, and then are found not guilty under HRS § 712-1250.5 because the state of mind in HRS § 712-1250.5 is "knowingly." The goal is to ensure that those selling, serving, delivering or giving intoxicating liquor verify the date of birth of the person receiving the intoxicating liquor. The result will be increased compliance with liquor laws and increased safety on our streets.

The Department of Liquor Control, County of Maui, has some concerns about this bill, and prefers the HB 1060 version. We do not object to using the contents of HB 1060 as a Senate Draft 1 of SB 442. We ask that the committee PASS SB 442 with the proposed amendment..

Thank you very much for the opportunity to provide testimony on this bill.

---

## A BILL FOR AN ACT

RELATING TO PROMOTING INTOXICATING LIQUOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1           SECTION 1. Section 281-78, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3           "(b) At no time under any circumstances shall any licensee  
4 or its employee:

5           (1) Sell, serve, or furnish any liquor to, or allow the  
6 consumption of any liquor by:

7           (A) Any minor; provided that any person who violates  
8           this subparagraph shall be guilty of the offense  
9           under section 712-1250.5;

10           (B) Any person at the time under the influence of  
11 liquor;

12           (C) Any person known to the licensee to be addicted  
13 to the excessive use of intoxicating liquor; or

14           (D) Any person for consumption in any vehicle that is  
15 licensed to travel on public highways;

16           provided that the consumption or sale of liquor to a  
17 minor shall not be deemed to be a violation of this  
18 subsection if, in making the sale or allowing the



# H.B. NO. 1060

1 consumption of any liquor by a minor, the licensee was  
2 misled by the appearance of the minor and the  
3 attending circumstances into honestly believing that  
4 the minor was of legal age and the licensee acted in  
5 good faith; and provided further that it shall be  
6 incumbent upon the licensee to prove that the licensee  
7 so acted in good faith;

8 (2) Permit any liquor to be consumed on the premises of  
9 the licensee or on any premises connected therewith,  
10 whether there purchased or not, except as permitted by  
11 the terms of its license;

12 (3) Permit any liquor to be sold or served by any person  
13 eighteen to twenty years of age except in licensed  
14 establishments where selling or serving the  
15 intoxicating liquor is part of the minor's employment,  
16 and where there is proper supervision of these minor  
17 employees to ensure that the minors shall not consume  
18 the intoxicating liquor;

19 (4) Permit any liquor to be sold or served by any person  
20 below the age of eighteen years upon any licensed  
21 premises, except in individually specified licensed  
22 establishments found to be otherwise suitable by the



# H.B. NO.

1           liquor commission in which an approved program of job  
2           training and employment for dining room waiters and  
3           waitresses is being conducted in cooperation with the  
4           University of Hawaii, the state community college  
5           system, or a federally sponsored personnel development  
6           and training program, under arrangements that ensure  
7           proper control and supervision of employees;

8           (5) Knowingly permit any person under the influence of  
9           liquor or disorderly person to be or remain in or on  
10          the licensed premises;

11          (6) Fail to timely prevent or suppress any violent,  
12          quarrelsome, disorderly, lewd, immoral, or unlawful  
13          conduct of any person on the premises;

14          (7) Sell any draught beer unless upon the faucet, spigot,  
15          or outlet wherefrom the beer is drawn there is  
16          attached a clear and legible notice, placard, or  
17          marker which in the English language indicates and  
18          declares the name or brand adopted by the manufacturer  
19          of the draught beer, so situated as to be clearly  
20          legible for a distance of at least ten feet from the  
21          spigot, faucet, or outlet, to a purchaser with normal  
22          vision; or





1           (8) Receive from a person, as payment or as a  
2           consideration for liquor, any personal or household  
3           goods, including clothing and food, or any implements  
4           of trade. Any person violating this paragraph shall  
5           be guilty of a misdemeanor and upon conviction shall  
6           be punished as provided in section 281-102."

7           SECTION 2. Section 712-1250.5, Hawaii Revised Statutes, is  
8 amended by amending subsection (1) to read as follows:

9           "(1) A person, including any licensee as defined in  
10 section 281-1, commits the offense of promoting intoxicating  
11 liquor to a person under the age of twenty-one if the person  
12 [~~knowingly~~] recklessly:

13           (a) Sells or offers for sale, influences the sale, serves,  
14           delivers, or gives to a person intoxicating liquor,  
15           and the person receiving the intoxicating liquor is a  
16           person under the age of twenty-one; or

17           (b) Permits a person to possess intoxicating liquor while  
18           on property under his control, and the person  
19           possessing the intoxicating liquor is a person under  
20           the age of twenty-one."



H.B. NO. 1060

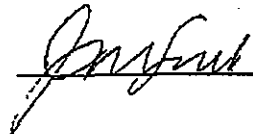
1 SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2013.

7

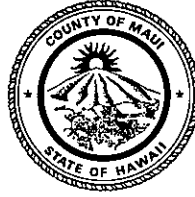
INTRODUCED BY:

  
\_\_\_\_\_

JAN 23 2013



ALAN M. ARAKAWA  
MAYOR



FRANKLYN L. SILVA  
DIRECTOR

TRACI FUJITA VILLAROSA  
DEPUTY DIRECTOR

DEPARTMENT OF LIQUOR CONTROL

C O U N T Y O F M A U I

2145 KAOHU STREET, ROOM 105 • WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 243-7753 • FAX (808) 243-7558

February 1, 2013

To: Senator Will Espero, Chair  
Committee on Public Safety, Intergovernmental and Military Affairs

While the County of Maui, Department of Liquor Control supports the intent of SB442, we must oppose the bill in its current form.

The purpose of SB442 is to clarify that a person can **recklessly** promote intoxicating liquor to a person under the age of twenty-one. This clarification is important when someone sells or serves liquor to a minor without making a reasonable determination if the person is under the age of twenty-one.

Unfortunately, Section 2 of the bill also revises Section 281-78, Hawaii Revised Statutes, in a way that we do not support.

However, we do support a similar bill, HB 1060, which fulfills the intent of SB442 but does propose the same revisions to Section 281-78, Hawaii Revised Statutes.