

HB 1858

RELATING TO THE PENAL CODE.

Provides that a person who intentionally or knowingly causes bodily injury to a liquor commission investigator engaged in the performance of duty commits the offense of assault in the second degree.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Seventh Legislature, State of Hawaii
The Senate
Committee on Public Safety, Intergovernmental and Military Affairs

Testimony by
Hawaii Government Employees Association
March 11, 2014

H.B. 1858 – RELATING TO THE PENAL CODE

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the intent of H.B. 1858 which amends HRS 707-711, Section 1(i) and would make an assault on a liquor commission investigator who is engaged in the performance of duty, an assault in the second degree.

Liquor commission investigators inspect premises where intoxicating liquor is manufactured, sold, and consumed, as well as conduct investigations to enforce applicable state and local liquor laws and rules. Carrying out these duties and responsibilities can put these public servants in very dangerous situations. Not only is intoxicating liquor a contributing factor to their potentially volatile work environment, but other factors such as crime, illegal drugs, and weapons add to the dangers these public employees encounter in the course of their job.

Including liquor commission investigators in HRS 707-711 recognizes the essential work they perform on behalf of the public and provides some enhanced legal protection from any assault during the performance of their duties.

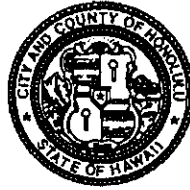
Thank you for the opportunity to testify and we urge your support of H.B. 1858.

Respectfully submitted,

Randy Perreira
Executive Director

LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU
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KIRK CALDWELL
MAYOR



March 7, 2014

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

Hearing: Tuesday, March 11, 2014
2:50 p.m.; Room 224

Position: Support HB1858, Relating to the Penal Code

Dear Chair Espero, Vice Chair Baker, and Members:

The Liquor Commission, City and County of Honolulu, supports House Bill 1858, Relating to the Penal Code.

Like the other public safety individuals identified in Section 707-711(i), Hawaii Revised Statutes, the proposed measure will characterize the knowing or intentional infliction of bodily injury to a liquor control investigator engaged in the performance of duty as assault in the second degree. The environment in which our liquor control investigators work is as potentially hazardous as that occupied by firefighters and water safety officers. As such, the proposed measure is an appropriate recognition of the physical risk inherent in routinely dealing with licensees and patrons in an alcohol-fueled environment, and a deterrent to those who feel infliction of bodily harm to a liquor control investigator is without serious consequence.

The Liquor Commission urges your support of House Bill 1858, Relating to the Penal Code. Thank you for the opportunity to testify.

Respectfully submitted,

Anna C. Hirai
ANNA C. HIRAI
Acting Administrator

ACH:

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DEPARTMENT OF LIQUOR CONTROL

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March 10, 2014

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

Hearing: Tuesday, March 11, 2014
2:50 p.m.; Room 224

Position: Support HB 1858 Relating to the Penal Code

Dear Chair Espero, Vice Chair Baker and Members:

The Department of Liquor Control, County of Kauai, supports House Bill 1858 relating to the Penal Code.

The liquor control investigators often encounter hostile persons when making on-site inspections of liquor licensed premises. Investigators deal with persons that are intoxicated, maybe under the influence of narcotics or both.

In testimony submitted to the Senate Committee on Judiciary and Labor, the Office of the Public Defender on February 12, 2014 stated in part in its testimony "Moreover, these investigators have had a long history of professional malfeasance ranging from abuse of power to solicitation of bribes". It appears that the Public Defender would condone his future client's behavior due to the past history of a few bad examples of liquor control investigators.

The Department of Liquor Control, County of Kauai urges you to support House Bill 1858, Relating to the Penal Code.

Thank-you for the opportunity to testify on this matter.

Respectfully Submitted,


GERALD T. RAPOZO
Director

An Equal Opportunity Employer

The Twenty-Seventh Legislature, State of Hawaii
The House of Representatives
Committee on Judiciary

February 25, 2014

H.B. 1858 - RELATING TO THE PENAL CODE

I am a Liquor Control Investigator III for the Honolulu Liquor Commission, and I would like to submit this written testimony. My written testimony does not represent the official position of the Honolulu Liquor Commission or the City and County of Honolulu. As a liquor commission investigator, I strongly support H.B. 1858 which makes an assault on anyone in my position when we are performing our duty, an assault in the second degree.

Our job is to enforce all of the liquor laws (Chapter 281) and liquor commission rules. This is accomplished by conducting inspections of establishments where intoxicating liquor is manufactured, sold, served and consumed, and also by conducting investigations of potential liquor law violations. We are also by law authorized to make arrests for violations of liquor laws.

These inspections and investigations can put us in situations that can become very dangerous with very little warning. As you know, liquor is a drug that has varying effects on those who choose to consume it depending on the amounts consumed. Most patrons of liquor licensed establishments are responsible when they consume liquor, but there are times when patrons consume irresponsibly or too much. In such instances, their normal mental faculties become impaired to varying degrees, and their ability to make sound, rational decisions is diminished. What they would normally do when not intoxicated is no longer the standard by which they make decisions.

According to Hawaii Revised Statutes §281-1:

“Under the influence of liquor” means that the person concerned has consumed intoxicating liquor sufficient to impair at the particular time under inquiry the person’s normal mental faculties or ability to care for oneself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of oneself which the person would otherwise normally possess.

HRS §281-78 states in part:

(b) At no time under any circumstances shall any licensee or its employee:
(1) Sell, serve, or furnish any liquor to, or allow the consumption of any liquor by... (B) Any person at the time under the influence of liquor;

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

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

HRS §281-84 states:

Every person who, being under the influence of liquor, enters any premises licensed for the sale of liquor, or being under the influence of liquor there remains after having been requested by the licensee or any person in the licensee's employ to leave the premises, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as in section 281-102 provided.

HRS §281-17 states:

(a) The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

(5) ... Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer;

(10) To investigate violations of this chapter, chapter 244D and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution and, where appropriate, the director of taxation to hear and determine complaints against any licensee;...

HRS §281-80 states:

Any investigator or police officer who observes any violation by any person of this chapter or of any rule or regulation of the liquor commission, may forthwith arrest the person without a warrant. Whenever any violation of this chapter or of the regulations of the commission occurs in the presence of any licensee, or any investigator or police officer, upon request of the licensee the police officer or investigator may assist the licensee in arresting any patron for violation thereof.

HRS §281-79 states:

Every investigator shall, and any officer having police power may, at all reasonable times, and at any time whatsoever if there is any reasonable ground for suspicion that the conditions of any license are being violated, without warrant enter into and upon any licensed premises and inspect the same and every part thereof, and any books or records therein, to ascertain whether or not all conditions of the license and all provisions of this chapter and chapter 244D are being complied with by the licensee...

Whenever any investigator or officer, having demanded admittance into any licensed premises and declared the investigator's or officer's name and office, is not admitted by the licensee or the person in charge of the premises, it shall be lawful for the investigator or officer to forcibly and in any manner to break into and enter the premises.

As the above statutes illustrate, there are potential risks involved with performing the duties of a liquor commission investigator that other city employees who work primarily in office settings will not encounter. The responsibilities that come with being a liquor commission investigator oftentimes puts us in environments and situations where patrons are intoxicated, and thus have higher propensities for aggression or violence. This is not to say that there are no risks for any other city employee, but only that our job is unique in that our "office" is comprised of all the bars, nightclubs and other liquor establishments throughout Hawaii.

Furthermore, not only is liquor present and consumed in the establishments where we perform our duties, but illegal drugs and other illegal activity, such as gambling and prostitution, may also exist in the environment we work in and contribute to the dangers we encounter.

Please include liquor commission investigators in HRS 707-711. We would appreciate any support and added legal protection that you would be able to provide as we perform our job in the community.

Thank you for the opportunity to submit testimony in support of H.B. 1858.

Sincerely,

M. Yasuhiro Takeda
Liquor Control Investigator III

The Twenty-Seventh Legislature, State of Hawaii
The House of Representatives
Committee on Judiciary

February 25, 2014

H.B. 1858 - RELATING TO THE PENAL CODE

As a liquor commission investigator working within the City and County of Honolulu, I strongly support H.B. 1858 which makes an assault on anyone in my position when we are performing our duty, an assault in the second degree.

The job requires investigators to enforce applicable state, and administrative liquor laws and rules. We conduct inspection at establishments where intoxicating liquor is manufactured, sold, served and consumed. We also conduct investigations at premises where liquor violations may have occurred as well as other criminal activity.

These inspections and investigations can put us in very dangerous situations with little to know warning. It is very important to keep in mind that liquor is not the only problem at premises where we perform our duties, but illegal drugs and other illegal activity may also exist in the environment that we work in, and contribute to the dangers we encounter.

Please include liquor commission investigators in HRS 707-711. We deserve and need this added legal protection as we perform our job in the community. However, I am speaking on behalf of myself and not the agency.

Thank you for the opportunity to testify in support of H.B. 1858.

Sincerely,

Ephrem Larry
Liquor Licensing Investigator III

The Twenty-Seventh Legislature, State of Hawaii
The Hawaii State Senate
Committee on Public Safety, Intergovernmental and Military Affairs

March 10, 2014

H.B. 1858 - RELATING TO THE PENAL CODE

I am a Liquor Control Investigator III for the Honolulu Liquor Commission, and I would like to submit this written testimony. This (individual) written testimony does not represent the official position of the Honolulu Liquor Commission or the City and County of Honolulu.

I strongly support H.B. 1858 which makes an assault on a liquor commission investigator in the performance of duty, an assault in the second degree.

Our job is to enforce applicable state and local liquor laws and rules. We do so by inspecting establishments and premises where intoxicating liquor is manufactured, sold, and consumed. We also conduct investigations where there may be or have been a violation of liquor laws.

These inspections and investigations can put us in situations that can become very dangerous with very little warning. Not only is liquor present and consumed in the establishments where we perform our duties, but illegal drugs and other illegal activity may also exist in the environment we work in and contribute to the dangers we encounter.

There have been numerous documented incidents where liquor commission investigators were threatened with the use of force, violence, physically obstructed, and prevented by the patrons or operators of liquor establishments during normal routine inspections.

There have been several documented assaults on liquor control investigators in the City and County of Honolulu alone within the past several years. In several instances, have resulted in liquor commission investigators seeking immediate medical attention.

Please include liquor commission investigators in HRS 707-711. This bill will provide Liquor Commission Investigators support and additional legal protection from assaults and violence. We would appreciate any support as we perform our job in the community.

Thank you for the opportunity to testify in support of H.B. 1858.

Sincerely,



Daniel Sato
Liquor Control Investigator III