

**LIQUOR COMMISSION  
CITY AND COUNTY OF HONOLULU**

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ADMINISTRATOR

ANNA C. HIRAI  
ASSISTANT ADMINISTRATOR

February 6, 2017

The Honorable Angus L.K. McKelvey, Chair  
The Honorable Linda Ichiyama, Vice Chair  
and Members of the Committee on Consumer Protection & Commerce

**Hearing:** Tuesday, February 7, 2017  
2:00 PM; Room 329

**Position:** Strongly Support HB 1465, Relating to Liquor

Dear Chair McKelvey, Vice Chair Ichiyama, and Members:

The Liquor Commission, City and County of Honolulu (Commission), appreciates the opportunity to provide testimony in strong support of House Bill 1465, Relating to Liquor.

House Bill 1465 proposes amendments to a number of sections of HRS Chapter 281, the positive benefits of which are summarized below. The Commission notes that the improved consistency and efficiency that will result from the proposed amendments will not impede or decrease regulatory oversight. Ultimately, all ownership, management, and status matters covered by the proposed amendments will remain subject to the Commission's "fit and proper person to hold a license" standard.

- Identifies entities that should be included as coming within the purview of liquor laws addressing license ownership and ownership changes, to wit:
  - Transfers of a partnership interest from a partner to the same partner's trust (Section 2.1, amending HRS Section 281-41(d)).
  - Identifying both types of limited liability companies (member-managed and manager-managed) (Section 2.1, amending HRS Section 281-41(e); Section 4, amending HRS Section 281-53).
- Provides consistency for a variety of notifications required of licensees so that all ownership or management changes have the same 30-day reporting deadline, to wit:
  - Changes to a partnership, limited partnership, limited liability partnership, or

limited liability company (Section 2.1, amending HRS Section 281-41(e)).

- Changes of 25% or more stock ownership (Section 2.2, amending HRS Section 281-41(i)).
- Changes to a corporation (Section 2.2, amending HRS Section 281-41(i)).
- Makes conforming revisions to sections of HRS Chapter 281 to align with changes made by Act 12, Session Laws of Hawaii 2016, to wit:
  - Conditions for license issuance as it pertains to publicly-traded companies (Section 3, amending HRS Section 281-45).
  - Criminal history record check for publicly-traded companies (Section 5, amending HRS Section 281-53.5).
- Clarifies requirements for the use of management agreements, which are increasingly used in modern business practice, to wit:
  - Specifies that use of management agreements need not be precedent to a license transfer, but imposes reasonable restrictions on their use (Section 2.2, amending HRS Section 281-41(h)).
- Recognizes "safekeeping" status as a legitimate alternative to license cancellation, to wit:
  - Close of business or loss of premises (Section 2.2, amending HRS Section 281-41(j)); Section 6, amending HRS Section 281-96).

The Commission suggests that the statutory number reference in Section 1 be changed from "381" to "281".

The Liquor Commission appreciates the opportunity to provide testimony on House Bill 1465, Relating to Liquor, and urges its passage. Should any refinement to House Bill 1465 be necessary, we submit that any revisions likely would be minor language changes and reasonably could be accommodated going forward.

Respectfully submitted,

  
FRANKLIN DON PACARRO, JR.  
Administrator

**Bernard P. Carvalho, Jr.**  
Mayor

**Wallace G. Rezentes, Jr.**  
Managing Director



**Gerald T. Rapozo**  
Director

**DEPARTMENT OF LIQUOR CONTROL**

**County of Kaua'i, State of Hawai'i**  
4444 Rice Street, Suite 120, Lihu'e, Hawai'i 96766  
TEL (808) 241-4966 FAX (808) 241-6585

February 1, 2017

Representative Angus L.K. McKelvey, Chair  
Representative Linda Uchiyama, Vice Chair  
Committee on Consumer Protection and Commerce

**Hearing:** Tuesday, February 7, 2017  
2:00 p.m.; Room 329

**Position:** Support HB 1465 Relating to Liquor

Dear Chair McKelvey, Vice Chair Uchiyama and Members:


The Department of Liquor Control, County of Kauai, supports House Bill 1465 relating to Liquor Licenses.

The bill as written clarifies the requirements in the liquor license application process and makes the process more efficient for both applicants and commission and doesn't diminish the oversight in the process.

The Department of Liquor Control, County of Kauai urges you to support House Bill 1465, Relating to Liquor.

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

Respectfully Submitted,

  
GERALD T. RAPOZO  
Director

**McCORRISTON MILLER MUKAI MacKINNON LLP**

ATTORNEYS AT LAW

FACSIMILE TRANSMITTAL

Account No.:49833

FACSIMILE NO.: 586-6221

TO: House Committee on Consumer Protection &amp; Commerce

FROM: Kenneth G. K. Hoo

DATE: February 6, 2017

TOTAL NUMBER OF PAGES SENT (including this page): 3

RE: House Bill No. 1465, RELATING TO LIQUOR  
Hearing Date: 2/7/2017 at 2:00 p.m.

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TRANSMITTED HERewith IS/ARE THE FOLLOWING:

TESTIMONY IN SUPPORT SUBMITTED BY KENNETH G. K. HOO.

If you do not receive all of the pages, please call as soon as possible: (808) 529-7300

P. O. Box 2800  
Honolulu, Hawaii 96803-2800, Telephone: (808) 529-7300  
FAX: (808) 524-8293, E-Mail: "info@m4law.com"

301271.1

**MCCORRISTON MILLER MUKAI MACKINNON LLP**

ATTORNEYS AT LAW

February 6, 2017

Via Fax: 808-586-6221

Representative Angus L. K. McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
415 South King Street  
Honolulu, Hawaii 96813

Re: H.B. No. 1465 Relating to Liquor

Dear Chair McKelvey, Vice Chair Ichiyama, and Committee Members:

This letter is in support of H.B. No. 1465, which would streamline the liquor license application process and procedures so that:

- 1) transfers of partnership interests will not be required to go through costly and time consuming public hearings upon death or withdrawal of a partner or transfers among the partners or to a partner's trust;
- 2) changes in the principals of the entity that holds the liquor license would not be considered a transfer of license, as long as notification is timely given of the change of a principal, and the liquor commissions may still require additional information regarding the principals;
- 3) transactions regarding the licensee's business which require approval are clarified;
- 4) only primary decision makers regarding the purchase and sale of liquor shall be required to go through criminal clearance and fingerprinting for publicly traded entities;
- 5) reporting deadlines of changes in principals are consistent;
- 6) the commissions are given discretion in dealing with the safekeeping of licenses.

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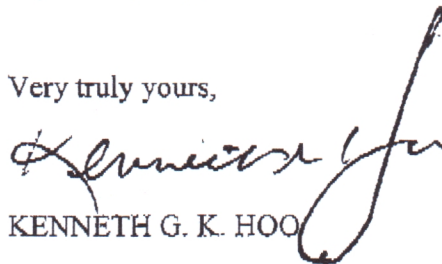
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As a practicing liquor license attorney, I believe this bill modernizes application procedures to reflect current business world realities for publicly and privately owned companies on all counties and will benefit the application process and administration of licenses by the liquor commissions of each county.

This bill revises Act 12, passed last year, to make clear that only the primary decision makers regarding the purchase and sale of liquor require criminal clearances, as was the original intent of Act 12.

For the foregoing reasons, I respectfully support H.B. No. 1465. Thank you for your consideration of the foregoing.

Very truly yours,



KENNETH G. K. HOO

353658.1





COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair  
Rep. Linda Ichiyama, Vice Chair

Rep. Henry J.C. Aquino    Rep. Chris Todd  
Rep. Ken Ito                Rep. Ryan I. Yamane  
Rep. Calvin K.Y. Say      Rep. Beth Fukumoto  
Rep. Gregg Takayama

AMENDED NOTICE OF HEARING

DATE:        Tuesday, February 7, 2017  
TIME:        2:00 PM  
PLACE:      Conference Room 329

TESTIMONY OF OCEAN TOURISM COALITION SPEAKING IN SUPPORT HB1465

Chair McKelvey, Vice Chair Ichiyama and Members of the Committee on Consumer Protection & Commerce:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC). The OTC represents over 300 small ocean tourism businesses state wide. Most of these are family businesses which are locally owned and operated. Many of them have been in business for several decades and are an important and valued part of their respective communities. Most of these businesses operate from State Boating Facilities. Many of them serve liquor and are impacted by changes in the liquor rules.

We believe these are reasonable changes and support HB 1465.

Sincerely,

James E. Coon, President

Captcoon@gmail.com

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# TAKITANI, AGARAN & JORGENSEN

A Law Partnership

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February 3, 2017

Representative Angus I.K. McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
415 South King Street  
Honolulu, Hawaii 96813

VIA FACSIMILE (808) 586-8459

Re: H.B. No. 1465 Relating to Liquor  
**LETTER OF SUPPORT**

Dear Chair McKelvey, Vice Chair Ichiyama, and Committee Members:

This letter is being sent in **support** of H.B. No. 1465.

I represent numerous businesses who operate in the County of Maui and other counties in connection with liquor issues. When H.B. 2422 was passed and signed into law last year as Act 12 to amend Chapter 281 of the Hawaii Revised Statutes, there remained a question whether other sections of Chapter 281 should also have been amended at the same time. H.B. 1465 attempts to resolve any confusion by amending additional provisions of the law, as follows:

In addition, H.B. 1465 contains clean-up language to allow the Commissions to expeditiously address the withdrawal of a partner or manager of an LLC, or address the situation when a partner or member passes away. Other specific amendments requested include:

- The revisions to Chapter 281-41(d) allow for ease of transfer of an interest for estate planning purposes or upon death, withdrawal, without such having to go through the formal transfer of liquor license application process. In such cases, the license remains with the same entity, and the same partners are still in control.
- For Chapter 281-41(e), any change of a principal of the partnership, or limited liability company which holds the license would not be considered a transfer, since the entity that holds the license remains the same. Any new principal would have to be reported to the commission and the commission can still require additional information as needed of the new individual.
- The proposed changes to Chapter 281-41(i) allow for corporations to notify the Commission within thirty (30) days of any change in ownership of twenty-five percent (25%), rather than prior to the change which reflects the factual reality of today's stock market transactions.
- Section 281-45(2) is to be amended to be consistent with the changes made by Act 12 and to amend applicable liquor license procedures to allow publicly owned companies, and subsidiary companies they may own, to provide information when applying for liquor licenses in the various Counties in Hawaii for only those officers designated as primary decision makers regarding the purchase and sale of liquor for those subsidiaries.



Representative Angus I.K. McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
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- Chapter 281-96 provides further flexibility for the Commission to hold a license in safekeeping rather than cancel it.

Requiring all officers, e.g. whether first, second, third, executive, senior, or assistant vice presidents, to undergo the criminal clearance and personal history process is unduly burdensome, redundant, and unnecessary for these companies and their solely owned entities, when just a select few directly supervise the liquor sale and purchase. H.B. 1465 would create a more business friendly environment, without jeopardizing the original purpose of ensuring that inappropriate persons are not involved in the sale of liquor in Hawaii, since it would only apply to publicly owned companies, who are already subject to strict regulation and oversight by the Securities and Exchange Commission and other government agencies.

The amendment to require only a transfer of twenty-five per cent or more of outstanding voting capital stock to secure the approval of the transfer reflects the realities of the modern business world where companies often issue nonvoting stock or other nonvoting equity instruments to finance their operations. The vetting of stockholders who control the company, because of their voting rights, would continue. This would allow corporations to obtain financing and other capitalization faster and more efficiently.

For the foregoing reasons, I respectfully submit my support for H.B. No. 1465.

Thank you for your consideration of this matter.

Sincerely,



DAVID M. JORGENSEN  
Dave/Letters/Misc/McKelvey – HB 1465

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**TORKILDSON, KATZ, MOORE,  
HETHERINGTON & HARRIS**

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February 3, 2017

Via Facsimile (808) 586-8459

Representative Angus I.K. McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
415 South King Street  
Honolulu, Hawaii 96813

Re: H.B. No. 1465 relating to Liquor – **LETTER OF SUPPORT**

Dear Chair McKelvey, Vice Chair Ichiyama, and Committee Members:

This letter is in **support** of H.B. No. 1465, which would amend the liquor license procedures to allow publicly owned companies, and entities they own, to provide information for only those officers designated as primary decision makers regarding the purchase and sale of liquor. Last year HB 2422 passed and was signed into law as Act 12, but there was a question as to whether another section of Chapter 281 should have been amended as well. This HB 1465 addresses that question by amending Chapter 281-45(2) to be consistent with the changes made by Act 12.

In addition, the Bill contains clean-up language to allow the Commissions to expeditiously address the withdrawal of a partner or manager of an LLC, or address the situation when a partner or member passes away. Chapter 281-41(d) allows for ease of transfer of an interest for estate planning purposes or upon death, withdrawal, without such having to go through the formal transfer of liquor license application process. In this case the license remains with the same entity, and the same partners are still in control.

For Chapter 281-41(e), any change of a principal of the partnership, or limited liability company which holds the license should not be considered a transfer, since the entity that holds the license remains the same. Any new principal would have to be reported to the commission and the commission can still require additional information as needed of the new individual.

The proposed changes to Chapter 281-41(i) allow for corporations to notify the Commission within thirty (30) days of any change in ownership of twenty-five percent (25%), rather than prior to the change which reflects the factual reality of today's stock market transactions.

Representative McKelvey, Chair  
Representative Ichiyama, Vice Chair  
February 3, 2017  
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Chapter 281-96 provides further flexibility of the Commission to hold a license in safekeeping rather than cancel it.

As a practicing attorney, I represent numerous publicly and privately owned companies in connection with liquor issues in all counties and believe this bill would benefit the application process in each county.

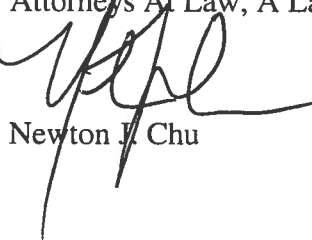
This bill would streamline the liquor license application process for publicly owned companies which typically have a multitude of officers and directors, by title, even though only a select few are involved in the purchase, sale and service aspect of the liquor licensee's business. Requiring all officers, e.g. whether first, second, third, executive, senior, or assistant vice presidents, to undergo the criminal clearance and personal history process is unduly burdensome, redundant, and unnecessary for these companies and their solely owned entities, when just a select few directly supervise the liquor sale and purchase. This bill would create a more business friendly environment, without jeopardizing the original purpose of ensuring that ex-felons are not involved in the sale of liquor in Hawaii, since it would only apply to publicly owned companies, who are already subject to strict regulation and oversight by the Securities and Exchange Commission and other government agencies.

The amendment to require only a transfer of twenty-five per cent or more of outstanding voting capital stock to secure the approval of the transfer reflects the realities of the modern business world where companies often issue nonvoting stock or other nonvoting equity instruments to finance their operations. The vetting of stockholders who control the company, because of their voting rights, would continue. This would allow corporations to obtain financing and other capitalization faster and more efficiently.

Finally, the provisions for the withdrawal of partners or members reduces procedures that are unnecessary and where the current law does not provide for the business realities of the situation. For the foregoing reasons, I respectively support H.B. No. 1465. Thank you for your consideration of the foregoing.

Very truly yours,

TORKILDSON, KATZ, MOORE,  
HETHERINGTON & HARRIS  
Attorneys At Law, A Law Corporation



Newton J. Chu

# Merchant ♦ Horowitz

A LIMITED LIABILITY LAW COMPANY

David B. Merchant  
Peter A. Horowitz  
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**LATE**

February 6, 2017

**VIA FACSIMILE (808) 586-8459**

Representative Angus I.K. McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
415 South King Street  
Honolulu, Hawaii 96813

Re: H.B. No. 1465 Relating to Liquor – LETTER OF SUPPORT

Dear Chair McKelvey, Vice Chair Ichiyama, and Committee Members:

Our firm represents various publicly and privately owned companies in connection with liquor license issues in several counties. This letter is written in **support** of H.B. No. 1465, as it provides much needed clarification of the requirements in the liquor license application process and makes the process more efficient for both applicants and Liquor Commissions.

As you may recall, last year the Legislature passed H.B. No. 2422, which was signed into law as Act 12. One of the stated aims of the Legislature was to allow publicly traded companies, or entities ultimately solely owned by publicly traded entities, to submit personal history and criminal information for only those officers designated as primary decision makers regarding the purchase and sale of liquor. While the objective of the bill was clear, there were issues as to whether the Legislature's intent could be implemented based upon the requirements of HRS Chapter 281-45(2). This bill amends Chapter 281-45(2) to be consistent with the changes made by Act 12 and will allow publicly traded companies and their wholly owned subsidiaries to streamline the liquor license process.

The amendments proposed through H.B. No. 1465 continue to maintain the oversight process while taking into consideration the practical realities of corporations that are publicly traded or entities ultimately solely owned by a publicly traded company. Publicly traded companies often have a large number of corporate officers, many of whom are located throughout the country and have no knowledge of or responsibility for liquor purchases and sales taking place at a particular premises in Hawaii. Requiring personal history information and conducting criminal background checks for these individuals can be extremely burdensome and time consuming for both the entity and Commission staff, while providing the Commission with little benefit as far as regulatory oversight.

Because publicly-traded companies are regulated by the Securities & Exchange Commission, these companies and their respective officers and directors are subject to strict corporate governance, disclosure, and accountability requirements that are far more extensive than that imposed by Commissions. As such, there is already a framework in place to ensure that these individuals are “fit and proper” to hold a liquor license. Limiting the vetting process to the person(s) designated as the primary decision maker for the purchase and sale of liquor provides the Commission with assurances that the actual person who has knowledge of and is responsible for liquor related activities at the premises has met the specific requirements imposed by State law and the respective Commissions, while also encouraging a more business-friendly environment.

The proposed amendment to Chapter 281-41(i) that allows corporations to notify the Commission of a change in ownership of twenty-five percent (25%) of the outstanding voting capital stock within thirty days of the transfer, rather than *prior to* the transfer, is also a welcome change that takes into consideration the realities of conducting business. While a change in ownership will still require the new twenty-five percent (25%) or more stockholder(s) to be approved by the Commission, it will allow businesses some needed flexibility in the timing and effectuation of a stock transfer.

The bill also addresses situations that would not be considered a “transfer” of the license, such as the admission or withdrawal of a partner of a limited liability partnership, member of a member-managed LLC, or manager of a manager-managed LLC, because the entity that holds the license remains the same. Any new principal would still be reported to the Commission, and the Commission can still require additional information, as needed, of the new individual. This change again provides a thoughtful balance between the oversight of the Commission and the practical realities of conducting business, where personnel may be added or replaced from time to time. Allowing partnerships and corporations to make the necessary changes expeditiously without going through the formal transfer of a liquor license will streamline the process for all involved.

Finally, the provisions that allow a licensee to obtain approval from the Commission to place its license with the Commission for safekeeping rather than cancel the license will provide flexibility to licensees who may need a short break in conducting business without requiring the licensee to expend significant time and resources to re-apply for a brand new license.

For the reasons stated, I support H.B. 1465. Thank you for your time and consideration of these important matters.

Sincerely,

MERCHANT HOROVITZ, LLLC

Peter A. Horovitz, Esq.