

DEPARTMENT OF LIQUOR CONTROL

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

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February 6, 2017

The Honorable Clarence K. Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair
and Members of the Committee on Public Safety, Intergovernmental, and Military Affairs

Hearing: Tuesday, February 7, 2017
1:20 PM; Room 229

Position: Support in Part, Oppose in Part SB 278, Relating to Intoxicating Liquor

Dear Chair, Vice Chair Wakai and Members:

The Department of Liquor Control for the County of Maui appreciates the opportunity to provide testimony relative to Senate Bill 278, Relating to Intoxicating Liquor

1. Oppose Section 1.

Section 1 proposes to amend HRS Section 281-17(a)(5) to exempt the appointment and removal of a liquor commission administrator or director from civil service law, and to require council advice and consent a part of the appointment proves. Because the Director of Liquor Control on Maui is appointed by the Maui Liquor Commission and is not a civil service member the proposed amendment is unnecessary.

2. Support Section 2.

Section 2 proposes to amend HRS Section 281-45(3) to permit the issuance of a temporary liquor license when a party to a liquor license transfer is unable to provide a federal or state tax clearance certificate under specified circumstances. This situation has not presented itself as an issue with the Department of Liquor Control on Maui.

3. Oppose Section 3.

Section 3 proposes to amend HRS Section 281-51 to require the phrase "in a reputable way" as it applies to the proposed operation of an applicant under a liquor license to be defined by rule. Our Department believes this phrase to be "vague" and "ambiguous" and almost impossible to enforce. Additionally this phrase may not survive the challenges by an appellate court in Hawaii.

4. Oppose Section 4.

Section 4 proposes to amend HRS Section 281-53.5 to add new paragraph (d) to specify which individuals are subject to criminal history record checks if the applicant is a

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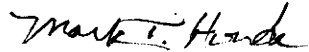
corporation or other entity. Our Department takes the position that this proposed amendment unduly discriminates against the other classes of licensees and/or applicants without legitimate governmental justification.

5. Oppose Section 5.

Section 5 proposes to amend HRS Section 281-104 to allow, rather than require, the representation and defense of liquor commission employees (including investigators) who are named in a criminal or civil action arising out of the individual's employment. In Maui County, the Office of the Corporation Counsel initially makes the determination if the litigation, civil or criminal, involved any county employee within the course and scope of his/her employment. The Department believes that this procedure is a more than adequate process which protects the County and its employees.

The Department of Liquor Control for the County of Maui wishes to thank you for the opportunity to provide this testimony on Senate Bill 278, Relating to Intoxicating Liquor.

Respectfully submitted,



MARK T. HONDA
Deputy Director

**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

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February 6, 2017

The Honorable Clarence K. Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair
and Members of the Committee on Public Safety, Intergovernmental, and Military Affairs

Hearing: Tuesday, February 7, 2017
1:20 PM; Room 229

Position: Support in Part, Oppose in Part SB 278, Relating to Intoxicating Liquor

Dear Chair Nishimura, Vice Chair Wakai, and Members:

The Liquor Commission, City and County of Honolulu (Commission), appreciates the opportunity to provide testimony on Senate Bill 278, Relating to Intoxicating Liquor.

1. *Oppose Section 1.*

Section 1 proposes to amend HRS Section 281-17(a)(5) to exempt the appointment and removal of a liquor commission administrator from civil service law, and to require council advice and consent as part of the appointment process. The Commission opposes this proposed amendment as unnecessary. Effective July 1, 2011, a Honolulu City Council-initiated resolution culminated in an amendment to the Revised Charter of the City & County of Honolulu, which established the positions of Liquor Administrator and Assistant Administrator as civil service exempt.

Further, Section 3-9.2, Revised Ordinances of Honolulu, provides that Council approval shall be limited to the mayoral appointment of the Commission's five-member commission, while Charter Section 4-104 specifically identifies which department head appointments are subject to the advice and consent of Council. As the Commission is attached by Charter to the Department of Budget & Fiscal Services, and is not a separate department, making the appointment of the Commission Administrator subject to Council approval would be unwarranted.

2. *Support Section 2.*

Section 2 proposes to amend HRS Section 281-45(3) to permit the issuance of a Temporary liquor license when a party to a liquor license transfer is unable to provide a federal or state tax clearance certificate under specified circumstances. The inability of a liquor license applicant to obtain its Temporary license under the specified circumstances has not been an

issue for this Commission. However, to the extent that the proposed amendment would benefit applicants in other counties, we would support the proposed amendment.

3. *Oppose Section 3.*

Section 3 proposes to amend HRS Section 281-51 to require the phrase "in a reputable way" as it pertains to the proposed operation of an applicant under a liquor license to be defined by rule. The inability of a liquor license applicant to determine what may be a "reputable way" to conduct business has not been an issue for this Commission, nor a reason for application denial in this Commission's history. Instances of misconduct or illegal activity associated with liquor license operations are adequately addressed by violation issuance and adjudication. We submit that requiring the definition of "in a reputable way" is similar to the requirement to define "dancing" that was imposed on the county liquor commissions in the 2015 Legislative Session.

4. *Support Section 4.*

Section 4 proposes to amend HRS Section 281-53.5 to add new paragraph (d) to specify which individuals are subject to criminal history record checks if the applicant is a corporation or other entity. While the Commission supports the purpose of this proposed amendment, we submit that the treatment of the subject matter as reflected in HB 1465 and SB 1291 would be more comprehensive in that said bills propose to make conforming changes to all sections of HRS Chapter 281 that touch upon business entity licensees (e.g., HRS Sections 281-41, -45, -53, and -53.5), and not just Section 281-53.5.

5. *Oppose Section 5.*

Section 5 proposes to amend HRS Section 281-104 to allow, rather than require, the representation and defense of liquor commission employees (including investigators) who are named in a criminal or civil action arising out of the individual's employment. The Commission opposes this proposed amendment as unnecessary and duplicative of current practice. In Honolulu County, if a Commission employee is named in either a criminal proceeding or a civil cause the Commission is required to determine if the actions of said employee were conducted within the course and scope of his or her employment. If the action of said employee is determined to be outside of the course and scope of employment, representation and defense at Commission expense is denied. We submit that the existing practice provides adequate and reasonable controls over the use of Commission funds for this type of activity, and is a more objective standard in determining whether an employee is or is not entitled to representation and defense at Commission expense.

The Liquor Commission appreciates the opportunity to provide testimony on Senate Bill 278, Relating to Intoxicating Liquor.

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

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February 3, 2017

Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair
Committee on Public Safety, Intergovernmental, and Military Affairs

Hearing: Tuesday, February 7, 2017
1:20 p.m. Room 229

Position: Oppose SB 278 in part Relating to Intoxicating Liquor

Dear Chair Nishihara, Vice Chair Wakai and Members:

Thank-you for the opportunity to comment on proposed House Bill 707. The Department of Liquor Control, County of Kauai, opposes House Bill 707 relating to Intoxicating Liquor.

Proposed legislation to Section 281-17(5) of the Hawaii Revised Statutes would add that the appointment of the liquor administrator would require the "advice and consent of the legislative body of the county".

Currently, the Liquor Control Commission appoints the liquor director supposedly without any outside influence. The commissioners are a group of private citizens who have no involvement with the liquor industry and are appointed by the Mayor and confirmed by the counties legislative body, the County Council. The main reason for commissions like the police, fire, ethics, planning and liquor are for the purpose of being a buffer between the administrations and the departments.

If the counties feel that the current statute is problematic, they should address it in their individual county charter and keep the current statute as is.

Thank-you for the opportunity to provide testimony on SB 278, relating to Liquor.

Respectfully Submitted,

GERALD T. RAPOZO
Director

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 4, 2017 12:59 PM
To: PSMTestimony
Cc: jamesjtz@aol.com
Subject: *Submitted testimony for SB278 on Feb 7, 2017 13:20PM*

SB278

Submitted on: 2/4/2017

Testimony for PSM on Feb 7, 2017 13:20PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
James Gauer	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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