

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
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BRANDON ELEFANTE
Councilmember District 8
'Aiea, Pearl City, Waipahū
Chair, Committee on Transportation
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The Honorable Roy Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
And Members of the Committee on Consumer Protection & Commerce
415 South Beretania Street, Conference Room 329
Honolulu, HI 96813

Subject: HB 2230, Relating to Liquor
Hearing: Thursday, February 1, 2018, at 2:00 pm

This testimony is to convey my strong support for HB 2230. On November 1, 2017, the Honolulu City Council unanimously adopted Resolution 17-280, CD1, which urged the Legislature to enact legislation found in HB 2230. This measure helps address an ongoing community problem associated with the sale of liquor at "private" clubs that are not under the jurisdiction of the Honolulu Liquor Commission. This measure increases the penalty for the unlicensed manufacture or sale of liquor to a class C felony, adds unlicensed manufacture or sale of liquor as an offense for which property is subject to forfeiture, includes unlicensed manufacture or sale of liquor in the definitions of "organized crime" and "racketeering activity," and provides an affirmative defense.

Currently, under Hawaii Revised Statutes section 281-101 the penalty for the unlicensed manufacture or sale of liquor is a fine of not more than \$2,000, imprisonment for not more than one year, or both. This penalty has reportedly been described as "a slap on the wrist" and "merely a cost of doing business" for businesses illegally selling liquor without a proper license from the Liquor Commission.

The amendments in this bill give the law "teeth," providing stiffer penalties and creating more of a deterrent against operating without any oversight or regulation from the Liquor Commission. At the same time, it provides for an affirmative defense for those operating in good faith and reasonable belief that their actions were in accordance with the law.

Thank you for allowing me the opportunity to submit testimony. For the foregoing reasons, I respectfully request your passage of HB 2230.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Elefante", is written over a set of horizontal lines.

Brandon Elefante
Councilmember, District 8



RESOLUTION

REQUESTING THE HAWAII STATE LEGISLATURE TO INCREASE THE PENALTY FOR THE UNLICENSED MANUFACTURE OR SALE OF LIQUOR TO A FELONY AND TO ADD THE CRIME TO THE CLASS OF ORGANIZED CRIMINAL ACTIVITIES UNDER HAWAII REVISED STATUTES CHAPTER 842.

WHEREAS, Section 281-3, Hawaii Revised Statutes ("HRS"), provides that it shall be unlawful for any person not having a valid license to manufacture or sell any liquor except as otherwise provided in Chapter 281 (relating to "Intoxicating Liquor"); and

WHEREAS, notwithstanding the prohibition under HRS Section 281-3, persons and organizations currently undertake the unlicensed sale of liquor within the City and County of Honolulu ("City"); and

WHEREAS, the City Council ("Council") notes that because these unlicensed operators and establishments are operating without regulation, they draw crowds and attract other illegal activity that poses health, safety, and community concerns, as evidenced by the recent fatal shooting at a well-known, but unlicensed, bar establishment that has been in operation for a number of years; and

WHEREAS, the Council seeks to provide law enforcement with meaningful tools to close down such unlicensed establishments in order to preserve and protect the general health, safety, and welfare of the City's residents and the communities that have been forced to coexist with these establishments; and

WHEREAS, existing regulatory tools under HRS Chapter 281 have proven inadequate to address the problem of unlicensed liquor establishments and their adverse effects; and

WHEREAS, the Council believes that adding the unlicensed manufacture or sale of liquor to the definitions of "organized crime" and "racketeering activity" will provide law enforcement a viable option for addressing and closing down such unlicensed establishments and reflect the seriousness of the violation; and

WHEREAS, the Council recognizes that the enactment of criminal laws for the unlicensed sale of liquor may be necessary to enable law enforcement agencies to take action, and notes that criminal laws have been enacted for unlicensed contracting offenses under Part XIV, of the Hawaii Penal Code, HRS Sections 708-8300 through 708-8305; now, therefore,



RESOLUTION

BE IT RESOLVED by the Council of the City and County of Honolulu that the Hawaii State Legislature is requested to enact legislation such as the draft House/Senate bill attached hereto as Exhibit A to increase the grade of the offense, hence the penalty for, the unlicensed manufacture or sale of liquor, to add the crime to the definitions of "organized crime" and "racketeering activity" in Hawaii Revised Statutes Chapter 842, and to enact such additional criminal laws for the unlicensed manufacture or sale of liquor as the Legislature may deem necessary for enforcement against this activity under Hawaii Revised Statutes Chapter 842; and



RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the President of the Hawaii State Senate, the Speaker of the Hawaii State House of Representatives, the Hawaii State Attorney General, the Mayor, the acting Chief of Police, and the Administrator of the Honolulu Liquor Commission.

INTRODUCED BY:

Brandon Elefante

DATE OF INTRODUCTION:

October 6, 2017
Honolulu, Hawaii

Councilmembers

EXHIBIT A

____.B. NO.____

A BILL FOR AN ACT

RELATING TO LIQUOR.

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

1 SECTION 1. Section 281-101, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§281-101 Manufacture or sale without license;~~
4 **penalty.** (a) If any person, acting in person or by or through
5 any agent, servant, or employee, manufactures or sells any
6 liquor, either directly or indirectly, or upon any pretense or
7 by any subterfuge, except as authorized pursuant to this
8 chapter, the person [~~shall be fined not more than \$2000 or~~
9 ~~imprisoned not more than one year, or both]~~ is guilty of a class
10 C felony.

11 (b) It is an affirmative defense to prosecution under this
12 section that the defendant acted under a good faith and
13 reasonable belief that the manufacture or sale of liquor was
14 authorized pursuant to this chapter."

15 SECTION 2. Section 712A-4, Hawaii Revised Statutes, is
16 amended to read as follows:

____.B. NO. _____

1 "§712A-4 Covered offenses. Offenses for which property is
2 subject to forfeiture under this chapter are:

3 (a) All offenses that specifically authorize forfeiture;

4 (b) Murder, kidnapping, labor trafficking, unlicensed
5 manufacture or sale of liquor, gambling, criminal property
6 damage, robbery, bribery, extortion, theft, unauthorized entry
7 into motor vehicle, burglary, money laundering, trademark
8 counterfeiting, insurance fraud, promoting a dangerous, harmful,
9 or detrimental drug, commercial promotion of marijuana,
10 methamphetamine trafficking, manufacturing of a controlled
11 substance with a child present, promoting child abuse, promoting
12 prostitution, sex trafficking, solicitation of a minor for
13 prostitution, habitual solicitation of prostitution, or
14 electronic enticement of a child that is chargeable as a felony
15 offense under state law;

16 (c) The manufacture, sale, or distribution of a controlled
17 substance in violation of chapter 329, promoting detrimental
18 drugs or intoxicating compounds, promoting pornography,
19 promoting pornography for minors, or solicitation of
20 prostitution near schools or public parks, which is chargeable
21 as a felony or misdemeanor offense, but not as a petty
22 misdemeanor, under state law; and

____.B. NO. _____

1 (d) The attempt, conspiracy, solicitation, coercion, or
2 intimidation of another to commit any offense for which property
3 is subject to forfeiture."

4 SECTION 3. Section 842-1, Hawaii Revised Statutes, is
5 amended by amending the definitions of "organized crime" and
6 "racketeering activity" to read as follows:

7 "Organized crime" means any combination or conspiracy to
8 engage in criminal activity as a significant source of income or
9 livelihood, or to violate, aid, or abet the violation of
10 criminal laws relating to prostitution, gambling, loan sharking,
11 drug abuse, illegal drug distribution, counterfeiting,
12 extortion, labor trafficking, unlicensed manufacture or sale of
13 liquor, or corruption of law enforcement officers or other
14 public officers or employers.

15 "Racketeering activity" means any act or threat involving
16 but not limited to murder, kidnapping, gambling, criminal
17 property damage, robbery, bribery, extortion, labor
18 trafficking, unlicensed manufacture or sale of liquor, theft, or
19 prostitution, or any dealing in narcotic or other dangerous
20 drugs that is chargeable as a crime under state law and
21 punishable by imprisonment for more than one year."

____.B. NO. _____

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

3 SECTION 5. This Act shall take effect upon its approval.

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5

INTRODUCED BY: _____

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

RESOLUTION 17-280, CD1

Introduced: 10/06/17 By: BRANDON ELEFANTE

Committee: PUBLIC HEALTH,
SAFETY AND WELFARE

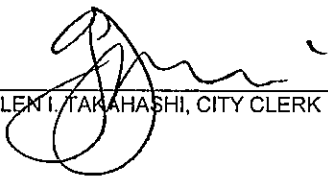
Title: RESOLUTION REQUESTING THE HAWAII STATE LEGISLATURE TO INCREASE THE PENALTY FOR THE UNLICENSED MANUFACTURE OR SALE OF LIQUOR TO A FELONY AND TO ADD THE CRIME TO THE CLASS OF ORGANIZED CRIMINAL ACTIVITIES UNDER HAWAII REVISED STATUTES CHAPTER 842.

Voting Legend: * = Aye w/Reservations

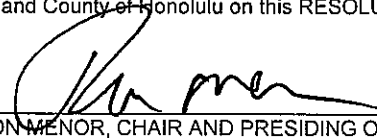
10/24/17	PUBLIC HEALTH, SAFETY AND WELFARE	CR-377 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN CD1 FORM.
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11/01/17	COUNCIL	CR-377 AND RESOLUTION 17-280, CD1 WERE ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.
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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN I. TAKAHASHI, CITY CLERK



RON MENOR, CHAIR AND PRESIDING OFFICER

**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

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INTERNET ADDRESS: www.honolulu.gov/liq • E-MAIL: liquor@honolulu.gov



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ADMINISTRATOR

ANNA C. HIRAI
ASSISTANT ADMINISTRATOR

January 31, 2018

The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
and Members of the Committee on Consumer Protection
& Commerce

Hearing: Thursday, February 1, 2018
2:00 PM; Room 329

Position: Strongly Support HB 2230, Relating to Liquor

Dear Chair Takumi, Vice Chair Ichiyama, and Members:

The Honolulu Liquor Commission fully supports House Bill 2230. Currently, there are business in Honolulu that operate clubs after hours and sell liquor without a license. Our experience has shown that businesses who sell liquor illegally are also conducting other illegal activities. By increasing the penalties to a felony, this bill will deter the illegal sale of liquor.

We fully support this bill as it is not intended to penalize an unwitting server or an owner who may be inadvertently late in their license renewal. Instead, it is to address the growing problem of illicit businesses opening and operating outside of the established laws and becoming a blight on the surrounding communities.

We also support including the unlicensed manufacture or sale of liquor to the covered offenses subject to forfeiture, and to the definitions of "Organized crime" and "Racketeering activity" because it gives law enforcement another tool to prosecute these types of activities.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Franklin Don Pacarro, Jr.", written over a printed name and title.

FRANKLIN DON PACARRO, JR.
Administrator

FDP:PN