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February 13, 2017

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

Senator Donna Mercado Kim, Chair
Senator Russell E. Ruderman, Vice Chair
Committee on Government Operations

Hearing: Tuesday, February 14, 2017
1:45 p.m.; Room 229

Position: Strongly Support SB 1291 Relating to Liquor

Dear Chair Nishihara, Vice Chair Wakai and Members:
Dear Chair Kim, Vice Chair Ruderman and Members:

The Department of Liquor Control, County of Kauai, strongly supports and concurs with the Honolulu Liquor Commission on Senate Bill 1291 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 Senate Bill 1291, Relating to Liquor.

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

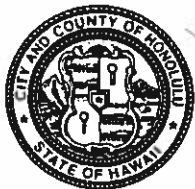
Respectfully Submitted,


GERALD T. RAPOZO
Director

**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

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ADMINISTRATOR

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ASSISTANT ADMINISTRATOR

February 13, 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

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Dear Chair Nishihara, Vice Chair Wakai, and Members:
Dear Chair Kim, Vice Chair Ruderman, and Members:

The Liquor Commission, City and County of Honolulu (Commission), appreciates the opportunity to provide testimony in strong support of Senate Bill 1291, Relating to Liquor.

Senate Bill 1291 proposes clarifying and conforming 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)).

- Specifies 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^[1] 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).

[1] "Safekeeping" is an intermediate stage between active status and cancelled status. If the law requires the license to be surrendered because of loss of lease or close of business, safekeeping preserves the license so that the licensee has time to salvage the value of the license, usually by way of a license transfer. Safekeeping satisfies statutory requirements because it takes the license out of active status (no liquor sales may be conducted while in safekeeping), but keeps the licensee subject to all applicable liquor laws and rules while preserving the value of the license. Further, in the Transfer-Temporary transaction situation, safekeeping allows the transferee to operate under the Temporary license while preserving the permanent license for the later license transfer.

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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 Senate Bill 1291, Relating to Liquor, and urges its passage. Should any refinement to Senate Bill 1291 be necessary, we submit that any revisions would be minor language changes and reasonably could be accommodated going forward.

Respectfully submitted,


FRANKLIN DON PACARRO, JR.
Administrator

FDP:ACH

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February 13, 2017

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Senator Clarence K. Nishihara, Chair
Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Donna Mercado Kim, Chair
Committee on Governmental Operations
Hawaii State Capitol
415 South King Street
Honolulu, Hawaii 96813

Re: S.B. No. 1291 relating to Liquor – **LETTER OF SUPPORT**
Hearing Date: February 14, 2017, 1:45 p.m. Conference Room 229

Dear Chair Nishihara, Chair Kim and Committee Members:

This letter is in **support** of S.B. No. 1291, 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 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 remaining 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.

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Senator Mercado Kim Chair
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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 that 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 respectfully support S.B. No. 1291. 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