OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 14, 2019, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 1460, S.D. 1
Relating to Intoxicating Liquor

Thank you for the opportunity to submit testimony on this bill, which would require carriers to report shipments of liquor to county liquor commissions. The Office of Information Practices (OIP) takes no position on the substance of this bill, but suggests an amendment.

The new section proposed by this bill (at page 2, lines 8-9) provides in subsection (b) that reports received by a county liquor commission under the new section "shall be subject to chapter 92F." Chapter 92F, HRS, is the Uniform Information Practices Act (UIPA). Government records such as the proposed reports are automatically subject to the UIPA without the need to specifically provide as much in statute; however, being subject to the UIPA does not mean that a record is available to the public upon request, as it could fall under one of the UIPA's exceptions to disclosure set out in section 92F-13, HRS. The language providing that the reports are "subject to chapter 92F" does not add anything to what the UIPA already provides for, and as such it is unnecessary.

If this Committee's intent is simply to ensure that members of the public may make UIPA requests for the reports, although the relevant

liquor commission may withhold any information falling under an exception to disclosure, then the Committee can safely delete proposed subsection (b), and OIP recommends that it do so to avoid confusion. If, on the other hand, the Committee specifically intends to make the reports public, the Committee should amend proposed subsection (b) to read as follows:

> **Reports received by a county liquor commission under this section shall be public under chapter 92F.**

Thank you for the opportunity to testify.

LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU
711 KAPIOLANI BOULEVARD, SUITE 600, HONOLULU, HAWAII 96813-5249
PHONE (808) 768-7300 or (808) 768-7333 • FAX (808) 768-7311
INTERNET ADDRESS: www.honolulu.gov/liq • E-MAIL: liquor@honolulu.gov

March 12, 2019

The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
and Members of the Committee on Judiciary

House of Representatives
State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

SUBJECT: Senate Bill 1460 SD1
Relating to Intoxicating Liquor

The Liquor Commission, City and County of Honolulu, (Commission), appreciates the opportunity to submit testimony in **strong support** of the above-referenced measure. Since 2007, the Commission has been regulating and monitoring out-of-state wineries who direct ship wine to Honolulu County residents under properly issued direct wine shipper (DWS) permits. These DWS wineries also collect and pay general excise tax to the state Department of Taxation (DoTax) on these transactions.

However, there are an untold number of out-of-state manufacturers and retailers who ship to residents but who are not licensed in Honolulu County and also are able to avoid tax responsibility to DoTax. The proposed measure will be an important first step in evaluating the volume of this commerce, which penalizes local liquor-licensed businesses and DWS wineries who operate within the boundaries of the liquor and tax laws. We anticipate that rulemaking will address reporting procedures that will facilitate the best use of this information, without unduly burdening the carriers filing the reports.

Thank you for the opportunity to testify.

Sincerely,

Franklin Don Pacarro, Jr.
Administrator

FDPjr:ACH

HAWAII LIQUOR WHOLESALERS ASSOCIATION
FIVE WATERFRONT PLAZA
500 ALA MOANA BLVD STE 400
HONOLULU, Hawaii 96813

March 13, 2019

Via Email

Chris Lee, Chair
Joy A. San Buenaventura, Vice Chair
Committee on Judiciary
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 1460, SD1 Relating to Intoxicating Liquor
Hearing Date: March 14, 2019

Dear Chair Lee and Vice Chair San Buenaventura and Committee Members:

The Hawaii Liquor Wholesalers Association ("HLWA") respectfully submits the following written testimony in **support** of SB 1460, SD1 Relating to Intoxicating Liquor.

Direct shipment of wine from wine producers outside each county to consumers within the county has been allowed by HRS Section 281-33.6, under the pretext that small local wineries were not able to find licensed wholesalers to distribute their wine for them outside of their county. A consequence of this direct shipment law is that wine producers outside the state are allowed to direct ship to consumers within the state.

Other states that allow direct shipment have found, through carrier reporting, that large amounts of liquor have been shipped into their states without payment of liquor, excise and income taxes, resulting in loss of tax revenue to the states.

This bill would require the carriers of liquor to report the amount of statewide liquor being shipped and shipper information to the liquor commissions or liquor control adjudication board who can determine and analyze the shipments made to each county and confirm whether the shipper has complied with the requirements to obtain a direct shipper permit, including payment of all taxes.

Attached is a report from the Wine & Spirits Wholesalers of America which explains why carrier reporting is so important to prevent illegal shipments and loss of revenue to the states.

Illegal shipments of liquor hurt Hawaii's economy and result in loss of income and jobs to local residents. It is unlawful and unfair competition.

Based on the above, we respectfully support SB1460, SD1. Thank you for your consideration of the foregoing.

Very truly yours,

HAWAII LIQUOR WHOLESALERS ASSOCIATION

By:____________________________________

Kenneth G. K. Hoo
Its Secretary

COMMON CARRIER REPORTING OF BEVERAGE ALCOHOL SHIPMENTS

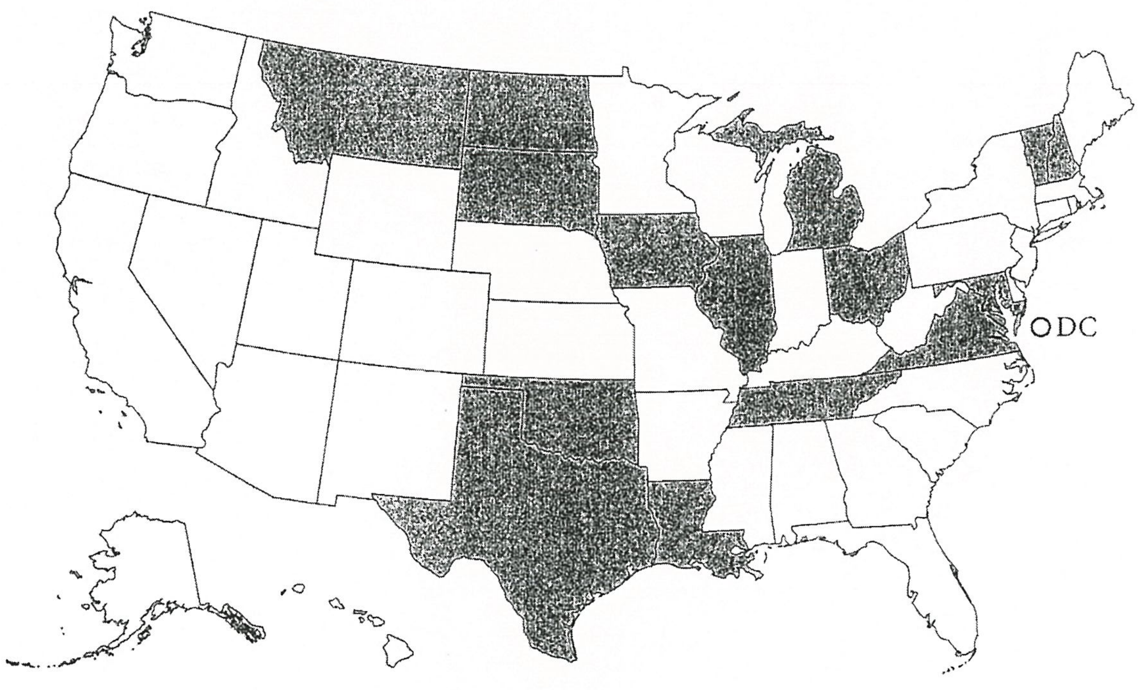
WINE & SPIRITS **WHOLESALERS** OF AMERICA

*As of October 2017

Prevent Bad Actors from Undercutting Legal Businesses

Consumers seek convenience in their everyday purchases and as a result direct shipment of beverage alcohol has become increasingly common. Unfortunately, the same mechanism that provides this convenience offers an avenue for unlicensed, unscrupulous actors to avoid state license and tax requirements. By operating outside the regulatory system, these bad actors undercut law abiding industry members and compromise the state's regulatory authority.

State laws should be strengthened and modernized, to eliminate those who seek to undermine and exploit the system, and to encourage the preservation of the orderly marketplace by weeding out illegal activity. Common Carrier Reporting can accomplish this by providing a means to differentiate between legal and illegal sales/shipments.



States with Common Carrier Reporting

*Oklahoma effective October 2018

WINE & SPIRITS WHOLESALERS OF AMERICA
805 15th St. NW Suite 430 | Washington, DC 20005 | (202) 371 9792 | FAX: (202) 789 2405 | www.wswa.org

COMMON CARRIER REPORTING

Why Should Alcohol Shipments be Subject to Reporting Requirements?

Regulators and public safety officials in many states lack the tools to accurately identify the participants in the illegal alcohol market. Ignoring the realities of illegal direct to consumer alcohol shipping and the challenges they pose to a stable marketplace will cost the public in the long run. Businesses who play by the rules and follow the law will lose. Should state law not account for these realities, law-abiding locally-owned businesses will suffer while unscrupulous merchants exploit loopholes and evade taxes to undercut competitors.

By requiring common carriers to submit information – which their systems already gather – regarding shipments of alcohol to the relevant regulatory agencies, officials will have in their possession the data necessary to differentiate between legal and illegal sales and shipments. These requirements not only serve public safety goals, but account for the evolution of the modern marketplace and preserve ease of access to quality products by the consumer.

When a seller (without a license in the state where the recipient resides) ships directly to a consumer via a common carrier (such as UPS or FedEx) the seller avoids the regulatory structure that prevents illegal sales. Because states lack the necessary tools for enforcement, these sellers can often do so with no repercussions. Bad actors, of course, will never self-report their shipments to the appropriate authorities. Therefore, an alternative means of identifying illegal activity must be employed to curtail harmful and illegal transactions.

Background

Along with the repeal of prohibition, the 21st Amendment gave authority to the states to regulate alcohol sales. To prevent the widespread abuses that led to prohibition, states created the three-tier system: a highly effective, regulated distribution arrangement that consists of suppliers, wholesalers, and retailers as distinct entities. The balance provided by the three tier system has worked for over eighty years to prevent the societal issues that led to prohibition.

Within this system, each entity is held accountable for the responsible and legal handling of alcohol on its way to the consumer, and each shielded from the undue influence of the others. Ultimately this benefits consumers and protects public interests. The system promotes accurate tax collection; prevents illegal distribution; prevents underage drinking; eliminates counterfeit products; and ensures the integrity and safety of those products supplied for consumer enjoyment.

States with Common Carrier Reporting:

Iowa, Illinois, Louisiana, Maryland, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oklahoma*, South Dakota, Tennessee, Texas, Vermont, Virginia

*Effective October 2018

WINE & SPIRITS WHOLESALERS OF AMERICA
805 15th St. NW Suite 430 | Washington, DC 20005 | (202) 371 9792 | FAX: (202) 789 2405 | www.wswa.org

SB-1460-SD-1
Submitted on: 3/12/2019 7:13:07 PM
Testimony for JUD on 3/14/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments: