

Honolulu, Hawaii

MAY 13 2020

RE: H.B. No. 2726
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred H.B. No. 2726, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO INTOXICATING LIQUOR,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Include certain spirits-based beverages in the definition of cooler beverage; and
- (2) Establish a separate tax rate for beer for small craft producer pubs.

Your Committee received testimony in support of this measure from Kauai Beer Company, Hana Koa Brewing Company, Maui Brewing Company, Beer Lab Hawaii, Hawaiian Craft Brewers Guild, Waikiki Brewing Company, Lanikai Brewing Company, Kaua'i Island Brewing Company, and one individual. Your Committee received comments on this measure from the Department of the Attorney General, Department of Taxation, and Tax Foundation of Hawaii.

Your Committee finds that existing law does not provide a tax rate for a spirits-based cooler beverage. This means that, for example, a local distiller that wishes to make a twelve-ounce ready-to-drink cooler beverage that contains only one ounce of



liquor is taxed as if the entire content is alcohol. Despite the growing number of local distilleries, this disparate tax rate is a significant reason there is only one locally produced ready-to-drink spirits-based beverage. The existing tax rate also significantly inhibits growth and the success of small producers. This measure brings parity between spirits, wine, and beer by amending the definition of cooler beverage to include spirits-based beverages to encourage local distilleries to produce ready-to-drink cocktails.

Your Committee further finds that small, local breweries operate on a much different economic scale than larger breweries. This measure implements a smaller brewer tax rate for small craft producer pubs to boost the ability of independent craft breweries to continue to grow and succeed.

Your Committee has heard the concerns raised in testimony that this measure, as written, is problematic because it defines "small craft producer pubs" as those that hold a class 18 liquor license. Therefore, the lower tax rate is available only if the beer is manufactured in Hawaii, and would not be available to out-of-state small craft producer pubs which may run afoul of the Commerce Clause of the U.S. Constitution. Your Committee notes that the language in H.B. No. 2726 as originally drafted is preferable as it extends the lower tax rate to "qualified small brewers", rather than only Hawaii "small craft producer pubs" as defined in this measure. Accordingly, amendments to this measure are necessary to address these concerns.

Your Committee has amended this measure by:

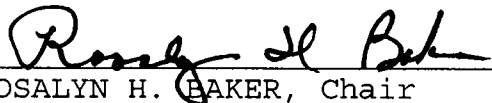
- (1) Clarifying that the tax rate for qualified small brewers shall be \$0.35 per wine gallon on beer and draft beer;
- (2) Deleting the definition of "small craft producer pub";
- (3) Inserting a definition of "qualified small brewer" to mean a brewer who:
 - (A) Produces seventy thousand barrels of beer or less annually;



- (B) Holds an approved brewer's notice from the Alcohol and Tobacco Tax and Trade Bureau; and
- (C) Produces beer within the United States;
- (4) Clarifying that the tax rates established by this measure shall apply on January 1, 2021; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2726, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2726, H.D. 1, S.D. 1, and be referred to your Committees on Ways and Means and Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,




ROSALYN H. BAKER, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 2726 HD1	CPH, NAM/JDC	3/11/20		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
CHANG, Stanley (VC)	✓			
NISHIHARA, Clarence K.	✓			
RUDERMAN, Russell E.	✓			
THIELEN, Laura H.	✓			
WAKAI, Glenn	✓			
FEVELLA, Kurt	✓			
TOTAL	7			
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes