

**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

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April 1, 2021

The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
and Members of the Committee on Judiciary

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
and Members of the Committee on Ways and Means

State Senate
State Capitol, Room 211
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:
Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

**SUBJECT: House Bill 136 HD1 SD1
Relating to Liquor Licenses**

The Liquor Commission, City and County of Honolulu, appreciates the opportunity to submit testimony in **support** of the above-referenced measure. In essence, the proposed measure makes housekeeping changes to make provisions of HRS §§281-41 and -45 internally consistent, as well as other changes to conform state liquor law to modern business practices. These changes are summarized below.

1. SECTION 1 CHANGES.

A. Regrouping. Proposed changes to HRS §281-41(e) and (i) move partnership-type entities and corporation-type entities to the appropriate paragraph so that each type of business entity is treated within a single paragraph. For both types of entities, commission oversight of the statutorily suitable characteristics of the partner, member, or stockholder who becomes a part of a licensee entity will be retained.

As more particularly described in Item No. 3 below, references to "unfit or improper person/partner/limited partner/transferee/et al." or "fit or proper person/partner/limited partner/transferee/et al." have been changed to the more

objective “does not meet statutory requirements to hold a license” or “does meet statutory requirements to hold a license.”

B. **Uniform Deadlines and Thresholds.** For both types of entities, proposed changes make notices of admission, withdrawal, and other changes of ownership a uniform 30-day deadline, with a 25 percent or more ownership reporting threshold regardless of type of entity. Previously, limited liability partnerships and limited liability companies had to report any change in membership, without a justifiable reason for the different ownership reporting threshold. The proposed change will make the 25 percent or more threshold applicable across the board.

C. **Publicly-traded entities.** Because of the size of publicly-traded entities, as well as corporate and securities regulation reporting requirements unique to publicly-traded entities, this type of licensee is permitted to restrict reporting and “vetting” of its principals to those designated as “primary decision-makers” regarding the purchase and sale of liquor (PDM), rather than requiring reporting and “vetting” of all principals in the corporate structure. The proposed measure adds publicly-traded limited liability corporations to this special reporting and “vetting” procedure, rather than restricting to just publicly-traded corporations. Commission oversight of the statutorily suitable characteristics of the PDM is retained for both corporations and limited liability companies, as well as the 30-day reporting deadline for election, admission, or replacement of the PDM.

D. **Conversion or merger.** HRS §281-41(k) currently provides that the conversion of an entity into any other form of entity, or the merger of any entity with any other entity, will not require a transfer application for the underlying liquor license if the commission approves the transaction prior to the conversion or merger. The prior approval requirement inadvertently created a dilemma for many licensees in this situation as there are legitimate business reasons for keeping this type of transaction confidential until the transaction is ready to close. Similar to other changes in the proposed measure, the notice and approval required by this subparagraph has been changed to the 30-day reporting and approval requirement used elsewhere in HRS §281-41, with no reduction in commission oversight of the statutorily suitable characteristics of the entity’s principals.

E. **“Intermediate” possession or control of the licensed business.** HRS §281-41(h) ensures that any transfer of a licensee’s business, or transfer of possession and control of the licensed business, must obtain commission approval. This protection prevents hidden ownership or control of a licensed business by an individual or entity that may not be considered to meet statutory requirements to hold a liquor license. The proposed measure adds two types of permissible “intermediate” possession or control – the granting of a Temporary license to an applicant and the use of a management agreement, as defined – provided prior commission approval is obtained. The proposed change will accommodate the common use of a Temporary license in connection with a license transfer or new license application. It will also accommodate the increasing use by licensees of a third party individual or entity to manage and operate the licensee’s business on its behalf. In both instances provided the appropriate approvals are obtained, commission oversight over the individual or entity operating the business is retained, while permitting the applicant or licensee reasonable

flexibility in conducting its operations.

F. As more particularly described in Item No. 3 below, references to “unfit or improper person/partner/associate” or “fit or proper person/partner/associate” found in HRS §281-41(g) and (h) have been changed to the more objective “does not meet statutory requirements to hold a license” or “does meet statutory requirements to hold a license.”

2. SECTION 2 CHANGES.

HRS §281-45 is the statutory section that lists the characteristics that would make license issuance inappropriate to certain types of individuals or entities. Proposed changes to this section have added conforming changes to match those proposed in Section 1 of the proposed measure. As more particularly described in Item No. 3 below, references to “fit and proper person/persons” found in HRS §281-45(1) have been changed to the more objective “does not meet statutory requirements to have a license” or “does meet statutory requirements to have a license.”

3. SECTION 1 AND SECTION 2 CHANGES.

When HB136 HD1 was heard by the Committee on Commerce and Consumer Protection, we respectfully requested that certain conforming language changes be made to the measure to align with proposed changes contained in HB137 HD1, which was heard immediately after HB136 HD1. The changes proposed by HB137 HD1 SD1 propose the elimination of the subjective concept of a “fit and proper person to have a license” for the more objective standard of “one who meets statutory requirements to hold a license.” If the Committees on Judiciary and Ways and Means do take action on HB137 HD1 SD1 – which we respectfully urge – the language in both measures will be aligned in terms of this proposed change.

For the foregoing reasons, the proposed measure will clarify, modernize, and make uniform infrastructure changes that our licensees encounter on a regular basis, without any reduction in the commission’s ability to exercise oversight of the statutorily appropriate quality of the individuals or entities holding a liquor license. Thank you for the opportunity to testify in support of this proposed measure.

Sincerely,


for Franklin Don Pacarro, Jr.
Administrator

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