



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 137, H.D. 1, RELATING TO LIQUOR.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Tuesday, March 23, 2021

TIME: 10:00 a.m.

LOCATION: State Capitol, Conference Room 229 and Via Videoconference

TESTIFIER(S): Clare E. Connors, Attorney General, or
Jennifer Waihee-Polk, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments.

With respect to the liquor tax law, the purpose of this measure is to remove the authority of the county liquor commissions to investigate and enforce violations of chapter 244D, Hawaii Revised Statutes (HRS)—leaving such authority solely with the Director of Taxation.

We note that the measure does not remove the authority of the county liquor commissions to demand records for inspection and examination under section 244D-9(a), HRS, and that appears to create an inconsistency in authority.

To resolve this problem, we recommend the Committee amend the first paragraph of section 244D-9(a), HRS, to delete "or commission" and to read as follows:

Every dealer shall keep a record of all sales of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) made by the dealer, in such form as the department of taxation may prescribe. Every person holding a license under the liquor law, other than a manufacturer's or wholesaler's license, shall keep a record of all purchases by the person of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a), in such form as the department may prescribe. All such records shall be offered for inspection and examination at any time upon demand by the department [~~or commission~~] and shall be preserved for a period of five years, except that the department may in writing consent to their destruction within such period or may require that they be kept longer.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable Rosalyn H. Baker, Chair;
The Honorable Stanley Chang, Vice Chair;
and Members of the Senate Committee on Commerce and Consumer Protection

From: Isaac W. Choy, Director
Department of Taxation

Date: March 23, 2021
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 137, H.D. 1, Relating to Liquor

The Department of Taxation (Department) offers the following comments regarding H.B. 137, H.D. 1, for your consideration.

With respect to taxation, H.B. 137, H.D. 1, removes the general right of the county liquor commissions to investigate violations of the liquor tax under chapter 244D, Hawaii Revised Statutes (HRS), or enter premises for the purposes of ensuring compliance with that chapter. This measure specifies that investigations of violations of chapter 244D, HRS, shall be referred to the Director of Taxation to hear and determine complaints. This measure has a defective effective date of January 1, 2050.

The Department notes the Committee on Consumer Protection & Commerce made several amendments to this measure at the Department's suggestion. The Department appreciates the consideration of its testimony. The Department further suggests the following technical amendment to the first paragraph of section 244D-9(a), HRS:

(a) Every dealer shall keep a record of all sales of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) made by the dealer, in such form as the department of taxation may prescribe. Every person holding a license under the liquor law, other than a manufacturer's or wholesaler's license, shall keep a record of all purchases by the person of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a), in such form as the

department may prescribe. All such records shall be offered for inspection and examination at any time upon demand by the department [~~or commission~~] and shall be preserved for a period of five years, except that the department may in writing consent to their destruction within such period or may require that they be kept longer.

Thank you for the opportunity to provide testimony on this measure.

**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

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COMMISSIONER

DUANE R. MIYASHIRO
COMMISSIONER

FRANKLIN DON PACARRO, JR.
ADMINISTRATOR

ANNA C. HIRAI
ASSISTANT ADMINISTRATOR

March 19, 2021

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
and Members of the Committee on
Commerce and Consumer Protection

State Senate
State Capitol, Room 229
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

SUBJECT: House Bill 137 H.D.1
Relating to Intoxicating Liquor

The Liquor Commission, City and County of Honolulu (Commission), strongly supports the intent of HB 137 HD1, as amended. We suggest the following **clarifying** changes as noted below by deleting the words "are fit" and replacing it with the words "that meet the statutory requirements to hold a liquor license."

SECTION 5. §281-45 No license issued, when.

(1) To any minor or to any person who has been convicted of a felony and not pardoned [~~, or any or any other person not deemed by the commission to be a fit and proper person to have a license~~]; provided that the commission may grant a license under this chapter to a corporation that has been convicted of a felony where the commission finds that the corporation's officers and shareholders of twenty-five per cent or more of outstanding stock **"that meet the statutory requirements to hold a license."** [~~are fit~~] [~~and proper persons to have a license~~];

The arbitrary term, "fit and proper," can be construed as undefined, vague and overly broad. Should an individual be disqualified from holding a liquor license, it should be based on clear and articulable facts, which are already in place within the statute.

The Commission also **supports** the proposed measure because it streamlines the licensing process and removes any undefined, arbitrary and capricious language contained within the statute. Proposed changes are summarized below:

1. H.B. 137, H.D. 1, SECTION 3

§HRS 281-17 (10) Jurisdiction and Powers.

We agree the Commission should not be investigating violations of State Tax Law (Chapter 244D), as our investigators do not have the expertise to competently investigate tax law, nor do they have training in forensic accounting. However, should we discover any potential tax law violations, we agree it shall be referred to the State of Hawaii's Department of Taxation for investigation. This current administration has been in place for over 6 years, and we have not criminally investigated tax fraud issues.

2. H.B. 137, H.D. 1, SECTION 4

§HRS 281-20 General Right of Inspection.

Same testimony as Item 1 above (re: §HRS 281-17(10)).

3. H.B. 137, H.D. 1, SECTION 6

§HRS 281-53 Application; penalty for false statements.

We agree an application does not need to be "verified by the oath of the applicant," which must be made before an official authorized by law to administer oaths. It is sufficient to have the application notarized in order to verify the identity of the person filing the application.

To require an applicant to seek out and identify a notary willing to administer an undefined oath is overly burdensome on applicants, many of who are attempting to navigate the licensing process on their own.

§HRS 281-53(4) Application; penalty for false statements.

The removal of the perjury language from this statute is also appropriate as it is contrary to HRS §710-1060 Perjury. In accordance with the statute, perjury occurs when a person **in any official proceeding** makes, under oath, a false statement which the person does not believe to be true. The mere filing of an application for a license does not constitute an official proceeding. The initial application process is merely to determine if the applicant meets the statutory requirements in order to appear before the Commission to request a liquor license.

4. H.B. 137, H.D. 1, SECTION 7

§HRS 281-55 Reference to investigator.

The Commission supports the added discretion to allow the Administrator of the Liquor Commission to determine which applications are referred to the investigator for investigation. There are over 90 different types of applications, and a number of which are mere notifications or single use permits. These burdensome types of applications often require proper forms to be submitted. Removing these applications from the investigator's workload would greatly streamline the process for the applicant, and allow the timely processing of more complex licensing applications. Currently, the Commission grants the Administrator the specific authority to approve certain routine applications after the investigator reviews the information and reports what is already documented in the submitted documents.

5. H.B. 137, H.D. 1, SECTION 8

§HRS 281-56 Report by investigator.

The Commission supports the removal of any and all language which allows opinion, conjecture, innuendo, or the arbitrary, overly broad, and undefined terms such as "fit and proper" and "any and all other matters and things." By reducing the investigator's report to factual information substantiated by documentation, will allow the investigative process to be more streamlined and focused. Removing this arbitrary, and undefined language will also negate the potential for abuse in the future, and allow the investigator to present an investigation to the Commission based on objective facts and not subjective theory.

6. H.B. 137, H.D. 1, SECTION 9

§HRS 281-79 Entry for examination; obstructing liquor commission operations; penalty.

Same testimony as Item 1 above (re: §HRS 281-17(10)).

Thank you for the opportunity to testify on this proposed measure.

Sincerely,



FRANKLIN DON PACARRO, JR.
Administrator



info@beerlabhi.com
www.beerlabhi.com

Nicolas Wong
President
3266 Kalua PL
Honolulu, HI 96816

HB137, HD1 Relating to Intoxicating Liquor: Provides that violations of liquor tax law shall be referred to the director of taxation for investigation. Repeals the general right of inspection without a warrant for potential violations of liquor tax law. Repeals the discretionary power of the liquor commission to deny a license to any person the commission finds is not fit and proper to hold a license. Requires applications for liquor licenses to be notarized. Provides the administrator of the liquor commission discretion over whether to refer applications for investigation. Repeals the requirement that investigative reports to the liquor commission include any and all matters that are relevant to the application or license in the judgment of the investigator.

Senate Committee on Commerce and Consumer Protection
Tuesday March 23, 2021 at 10:00 a.m. Conference Room 229

Position: **Support**

Chair Senator Rosalyn Baker, Vice Chair Senator Stanley Chang and members of the Committee on Commerce and Consumer Protection,

My name is Nicolas Wong and I am the President of Beer Lab HI and we have 3 locations across Hawaii and employ 45 people among our company. We are an independent craft brewery manufacturing 100% of our beer in Hawaii.

I am a board member of the HCBG. Our brewery along with the other member breweries of the Hawaiian Craft Brewers Guild embrace the responsible consumption of alcohol.

Changes to Liquor Licensing

The process to obtain a liquor license is outrageously long being 8-12 months. This hurts not only small local businesses but all businesses, as a new establishment would not be allowed to open for 8-12 months and then have the possibility of not obtaining a license due to "the opinion" of an investigator.

Below is an account of what we have just experienced with a liquor commission investigator.

- We opened the new beer lab restaurant in Pearlridge mall in the end of September 2020. During this time, we held 3 liquor licenses and were up to date with taxes and payments.
- We were operating on a temporary "Class -2 Restaurant license. " We are allowed this temporary measure as long as we are in the process of obtaining our permanent license.
- We applied for both permanent and temp license in **August 2020**.

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- The maximum time you may hold a temp license is 8 months (**we are currently at the end of month 7**). The investigator handling our license has taken the maximum amount of time to finish his report to where we may lose our temp license if our permanent is not approved immediately.
- We have been operating for roughly 6 months with no issues, up to date with our sales tax and have received no violations.

The investigator put out a 40 page report regarding our operation and has stated to the liquor commission, "In my opinion, that statutory requirements for a restaurant have not been met. The Applicant does not appear to be operating a restaurant in a bona fide manner."

The opinion of one person should not railroad an entire business that has been properly operating for over 5 years. A application of a government license should be based on facts not opinions.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: LIQUOR, Withdraw Powers of County Liquor Inspectors to Enforce Tax Laws

BILL NUMBER: HB 137, HD1

INTRODUCED BY: House Committee on Consumer Protection and Commerce

EXECUTIVE SUMMARY: Provides that violations of liquor tax law shall be referred to the director of taxation for investigation. Repeals the general right of inspection without a warrant for potential violations of liquor tax law. Repeals the discretionary power of the liquor commission to deny a license to any person the commission finds is not fit and proper to hold a license. Requires applications for liquor licenses to be notarized. Provides the administrator of the liquor commission discretion over whether to refer applications for investigation. Repeals the requirement that investigative reports to the liquor commission include any and all matters that are relevant to the application or license in the judgment of the investigator.

SYNOPSIS: As it relates to taxation, section 281-20, HRS, currently provides that county investigators have the right to inspect the licensed premises to ascertain whether all of the conditions of the license and all provisions of chapter 281 and 244D (the Liquor Tax Law) are being complied with. The bill amends section 281-20, HRS, by deleting the reference to chapter 244D.

Makes technical and conforming changes to sections 244D-3, 244D-10, and multiple sections in chapter 281, HRS.

EFFECTIVE DATE: 1/1/2050.

STAFF COMMENTS: Currently, county liquor commission examiners have primary responsibility to monitor regulatory compliance with chapter 281, HRS. County liquor investigators may well discover information relevant to compliance with the liquor tax laws as well. If they do, deletion of the language in 281-20 would prevent the county from disclosing information to the state. Such a wall would not be efficient, and DOTAX needs all the help in can get.

We are all for streamlining the liquor license application processes, but wonder if this bill is not a solution in search of a problem.

At testimony before the Committee on Consumer Protection and Commerce, the City & County of Honolulu Liquor Commission's main complaint appeared to be that the investigators were demanding income tax returns of potential new and renewal licensees, which the Administrator believed to be improper. The bill does very little to address that problem; the bill does not involve income tax at all.

The Liquor Commission's testimony also makes the point that Commission investigators are not trained to be forensic accountants. Well, of course they are not. But liquor investigators can be

Re: HB 137, HD1
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well placed to detect such things as unreported cash transactions, dealing in unlicensed liquor, and other offenses that impact chapter 281 as well as the tax laws.

Digested 2/14/2021

HB-137-HD-1

Submitted on: 3/19/2021 10:08:57 PM

Testimony for CPN on 3/23/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---|---------------------------|---------------------------|
| Peter Nakagawa | Testifying for Honolulu Liquor Commission | Support | No |

Comments:

My name is Peter Nakagawa, and I am the Chief Investigator for the Honolulu Liquor Commission. I am in strong support of HB137 HD1. Amendments to the law will streamline the application process while retaining adequate safeguards and community considerations. Removing any ambiguous, overly-broad, and undefined language will allow the liquor licensing investigators to focus on objective matters instead of the subjective. I would like to be clear that we are in no way advocating the weakening of the respective Commissions overall authority to grant, deny, or revoke any liquor license.

Thank you for this opportunity to provide testimony in this matter.



LATE

Cindy Goldstein, PhD
Hawaiian Craft Brewers Guild
98-814 C Kaonohi Street
Aiea, HI 96701

HB137_HD1 Relating to Liquor Licensing and Investigations
Senate Committee on Commerce and Consumer Protection
Tuesday, March 23, 2021 at 10:00 a.m. Conference Rm 229

Position: **Support**

Chair Senator Rosalyn Baker, Vice Chair Senator Stanley Chang, and members of the Senate Committee on Commerce and Consumer Protection,

The Hawaiian Craft Brewers Guild is a nonprofit trade organization representing the interests of small craft breweries across the State of Hawaii. Our members are independent craft breweries producing 100% of their beer in Hawaii. The Hawaiian Craft Brewers Guild represents small craft brewery businesses from across the state of Hawaii. Our members are united in our pursuit to promote economic activity and growth for Hawaii's beer manufacturers and enhance opportunities in our communities.

The Hawaiian Craft Brewers Guild and our member breweries embrace the responsible consumption of alcohol.

Liquor licensing, tax, investigations

The Hawaiian Craft Brewers Guild supports legislation proposed in HB137_HD1. Provisions of this bill could have a positive impact on craft breweries making 100% of their beer in Hawaii. We support the increased cooperation between the Department of Tax and liquor commission. Referring violations of liquor tax to the Department of Taxation for investigation allows for a more straightforward process. Similarly, if an applicant has complied with requirements and no disqualifications arise, allowing discretion of the administrator of the liquor commission to determine further referral for investigation becomes a more straightforward process. The HCBG agrees with and supports the provision that repeals the requirement that investigative reports to the liquor commission include any matter an investigator might include, reducing the likelihood that irrelevant or unsubstantiated claims would be used in determining outcomes.

Mahalo for considering our Hawaiian Craft Brewers Guild testimony in support of HB137_HD1.

From: [kleptocracy808](#)
To: [CPN Committee](#)
Subject: HB137 HD1
Date: Tuesday, March 23, 2021 8:01:03 AM



Honorable Senator Rosalyn Baker
Honorable Stanley Chang

I would like to submit this testimony against HB 137 HD1. I apologize i couldn't login to submit this testimony.

The liquor commission wants to get rid of 244D because they don't know anything about it. 244D is about gallonage tax. Sure why would anyone want the government to check to see if this tax is paid? Don't want more people looking into it!

The liquor commission wants to get rid of the oath in the application because its cumbersome to tell the truth. Sure forcing the truth in applying for a liquor license is cumbersome!

And fit and proper? Well why can't we just have anyone sell liquor anyways? Even if I had several DUI's?

Let applications go unchecked, because investigations are cumbersome let people sell alcohol!

I am greatly affected by this pandemic and in fear as some agencies have shut down businesses and I don't want to be affected by this testimony.

The government needs accountability and transparency, not an open season on liquor licenses to make this pandemic worse.