

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Sylvia Luke, Chair;
The Honorable Ty J.K. Cullen, Vice Chair;
and Members of the House Committee on Finance

From: Isaac W. Choy, Director
Department of Taxation

Date: February 25, 2021
Time: 1:00 P.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 comments.

HB-137-HD-1

Submitted on: 2/23/2021 3:17:35 PM

Testimony for FIN on 2/25/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Peter Nakagawa	Honolulu Liquor Commission	Support	No

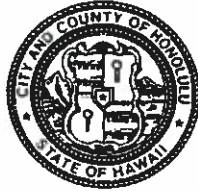
Comments:

My name is Peter Nakagawa, and I am the Chief Investigator for the Honolulu Liquor Commission. I am in strong support of HB137. 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 investigators to focus on objective matters instead of the subjective.

I will be more than happy to answer any questions that the members of the Committee may have, or address any concerns.

**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

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



RICK BLANGIARDI
MAYOR

NARSI A. GANABAN
INTERIM CHAIRPERSON

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FRANKLIN DON PACARRO, JR.
ADMINISTRATOR

ANNA C. HIRAI
ASSISTANT ADMINISTRATOR

February 24, 2021

The Honorable Sylvia Luke, Chair
The Honorable Ty J. K. Cullen, Vice Chair
and Members of the Committee on
Finance

House of Representatives
State Capitol, Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke, Vice Chair Cullen, 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

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



February 24, 2021

Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice Chair
Committee on Finance

Re: HB 137, HD1 RELATING TO LIQUOR
Thursday, February 24, 2021 at 1:00 p.m.
Conference Room 308
Testimony in Support of HB137, HD1

Chair Luke:

I am submitting this testimony in support of HB 137, HD1 RELATING TO LIQUOR. I am a licensed attorney in the State of Hawaii and I have been assisting with Liquor License Applications for over 20 years for various large retail stores, hotels, restaurants and other companies doing business in Hawaii.

I understand that HB137, HD1 streamlines the licensing process and removes any undefined, arbitrary and capricious language contained within the statute.

- I support the removal of investigations regarding State Tax Law and the referral of those investigations to the State Department of Taxation since any tax investigations should be headed by an agency other than the Liquor Commission.
- I support the removal of the arbitrary “fit and proper” terminology since this language is unclear and can result in undue delays in processing of Liquor License Applications.
- I support the removal of the requirement for every application to be verified by oath of the applicant made before any official authorized by law to administer oaths since this requirement is unduly burdensome to applicants.
- I support the added discretion to allow the Administrator of the Liquor Commission to determine which applications are referred to the investigator for investigation since the Administrator has the knowledge and expertise to determine which matters should be referred to investigators.

- I support 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” since the investigative report should contain objective factual information rather than a legal determination regarding a Liquor License Application.

Very truly yours,

A handwritten signature in black ink that reads "Robert A. Ueoka". The signature is written in a cursive style with a large initial 'R' and 'U'.

ROBERT A. UEOKA