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

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

From: Isaac W. Choy, Director
Department of Taxation

Date: Tuesday, April 5, 2022
Time: 10:05 A.M.
Place: Written Testimony Only, State Capitol

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

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

With respect to taxation, H.B. 137, H.D. 1, S.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 an effective date of January 5, 2022.

The Department appreciates the consideration given to prior recommendations resulting in technical amendments by the Committee on Commerce and Consumer Protection. The Committee further clarified that; “county liquor commissions may grant a license 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 meet the statutory requirements to hold a license.”

Should this committee decide to move this measure forward, the Department respectfully requests that the effective date be amended to either effective upon approval or January 1, 2023.

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

The Honorable Karl Rhoads, Chair, Committee on Judiciary
The Honorable Donovan M. Dela Cruz, Chair, Committee on Ways and Means

SUBJECT: Request to Hear HB137 HD1 SD1
Relating to Liquor

Dear Chair Rhoads and Chair Dela Cruz:

I hope you, your families, and staff have been safe and well during this legislative session.

In the 2021 session, this measure was heard by the House Committees on Consumer Protection & Commerce and Finance, and following crossover by the Senate Committee on Commerce and Consumer Protection prior to its final referral to your joint committee. We appreciate that you scheduled HB137 HD1 SD1 for hearing before JDC/WAM on Tuesday April 5, 2022 at 10:05 am.

The proposed measure will streamline the license application process through a multi-prong approach, largely accomplished by focusing investigative efforts on statutory requirements that are objective in nature, factually based, and supported by documentation. Regulatory oversight is maintained, but appropriate and reasonable latitude is given to liquor commission directors or administrators to prioritize investigative effort for maximum efficiency. In this regard, we wish to emphasize the following points that will be promoted by this measure:

- 1. This measure does not restrict or remove a county liquor commission's authority to impose conditions on, deny, or revoke a liquor license.** This measure does not repeal the discretionary power of the liquor commission to deny a license, instead it repeals an investigator's power to deny a license to any person that the investigator finds is not fit and proper to hold a license. There is no definition of what is fit and proper, it's vague and ambiguous. The better language is that a person may be granted a license if they meet the statutory requirements to hold a license.
- 2. This measure will reduce potential liability for both county liquor commissions and their investigators by removing ill-defined and vague standards for license approval.**
- 3. This measure establishes objective standards and eliminates subjective opinions from the non-decision maker (investigator) during the license application process.**
- 4. This measure removes the liquor commission from conducting investigations of tax liability, but allows for the State Department of Taxation to conduct those investigations.**
- 5. Passing this measure would make it consistent with HB136HD1SD1 that you passed out of your committee last session and became law.**

We believe that the streamlined and focused perspective of the proposed license application process will provide tangible benefits for both license applicants and the communities they hope to operate in. I and the Liquor Commission's Chief Investigator would welcome the chance to answer any questions you may have at your convenience.

Respectfully Submitted, Administrator Franklin Don Pacarro, Jr. &
Chief Investigator Peter Nakagawa



HB-137-SD-1

Submitted on: 4/3/2022 8:42:06 PM

Testimony for JDC on 4/5/2022 10:05:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

Taxes are illegal under our Constitution of America !! Anyone violating the Consitution should be put in Prison for 10 years!!!

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, SD 1

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.

Our view is that, as it relates to taxation, this bill appears to be a solution in search of a problem, and that it does not even address the complaint that prompted the bill in the first place.

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: January 5, 2022

STAFF COMMENTS: This bill is carried over from the 2021 legislative session.

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 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: 4/4/2022

LATE

To: The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokaole, Vice Chair;
and Members of the Senate Committee on Judiciary

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

From: Daniel Sato

Subject: HB 137 HD1 SD1

Dear Committee Members,

I sincerely apologize for the lateness of my comments, and hope that you will have the opportunity to consider my written testimony in decision-making. My name is Daniel Sato. I am providing the following comments on **behalf of myself** and **not in any official capacity** as the Supervising Liquor Control Investigator for the Honolulu Liquor Commission.

I hold myself and subordinates to a high standard. As being a Liquor Control Investigator has very special obligations, unique obligations. They are held to a very high standard and must hold in trust the fair and impartial administration of liquor laws and rules. It is the Investigator's responsibility to be accountable, transparent, and diligent with their integrity in investigations.

I would like to OPPOSE all changes being made in HB137 HD1 SD1. I have detailed the reasons below:

HRS §244D

The liquor industry has seen an increased volume of business, similarly, increases in the amounts of taxes levied on alcoholic beverages which are inconsistent with proper control objectives. HRS §244D provides effective coordination between the Department of Taxation and the Liquor Commissions on proper oversight and regulations of taxes on alcoholic beverages, while it creates a compromise of temperance and defeats the undermining of respect for the obedience to law.

Licensing Investigators are required by law to determine whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license. Additionally they must determine whether or not the applicant has complied with all the requirements of HRS §281 relative to the making and filing of the applicant's application.

Just as an example, an applicant files a new application for a wholesaler license, through the investigative process, the liquor investigator learns that the applicant was revoked for a liquor license in another county within the state as a liquor wholesaler and later found out that the applicant was still operating (selling without a liquor license) but was reporting sales with a permit pursuant to HRS §244D, under the current law, the investigator would have that information readily available.

Such information would show taxable liquor being paid to the state, but without a liquor license, thus making it easier for the liquor investigator to coordinating the efforts and cooperation with the Liquor Commission and the Department of Taxation.

In another example, a transfer of a liquor license of any required permittee under §244D, would also be vital information being used in liquor investigation of by showing who had the proper control of the business.

Under §244D gallonage tax are reported, which would show a decline of reporting tax by the licensee should a new entity not licensed by any agency (DOTAX & LIQUOR COM). These figures can be matched to the required gross liquor sales that the licensee must report to the Liquor Commission. If those said numbers do not match, or cannot be verified by the Liquor Auditors, it is the Liquor Investigators who need to ascertain through transfer application process if there was a violation and statutory requirements not being met.

There are other uses for this information in part with compliance with a liquor license. As stated by HRS §244D-2 Permit, is a requirement under state law for liquor license dealers that manufacture, wholesale, and distribute. Under subsection (b) states, “the **liquor commission shall certify** to the **department the name of every dealer**, together with the **dealer's place of business and the period covered by the dealer's license**”

Under HRS §244D-2 the Department of Taxation may suspend, revoke, or decline to renew any permit issued under this chapter whenever the department finds that the applicant or permittee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or permittee has:

- (1) Submitted a false or fraudulent application or provided a false statement in an application;
- (2) Possessed or displayed a false or fraudulent permit;
- (3) Failed to comply with, violated, or been convicted of violating any county, state, or Federal law directly pertaining to the sale, importation, acquisition, possession, distribution, transportation, or smuggling of liquor; or
- (4) Failed to maintain complete and accurate records when and if required to be kept.

Because of this working relationship under HRS §244D-3, which states that there be cooperation between department and liquor commissions, the department of taxation and the liquor commission, can exercise its authority under this chapter, shall cooperate in the enforcement of this chapter.

It further states that the department of taxation shall notify the proper liquor commission of the name and address of every permittee whose permit has been revoked, and any license issued to the permittee under the liquor law thereupon shall be deemed forfeited.

The department of taxation may notify the proper liquor commission of the name and address of every person who has failed to file any return required, or to pay any tax prescribed, or to secure a permit, or to perform any other duty or act imposed under this chapter, and such liquor commission shall thereupon suspend any license which may have

been issued to any such person under the liquor law until such time as such person complies with this chapter.

Additionally, the liquor laws under **HRS §281-33.1 Individual permits to receive shipments of liquor**, subsection (d) states, “In the case of a shipment of wine or beer that is otherwise available in the State, **the permit shall not be issued unless the applicant pays a fee equal to the tax that would be imposed by section §244D-4** upon the use of liquor having a wholesale price equal to the price paid or to be paid by the applicant for the wine or beer being shipped, and **such fee shall be in lieu of the imposition by section §244D-4 of any tax upon the use of the wine or beer.**”

Should any liquor licensee submit for renewals without a proper tax clearance or letter from the Department of Taxation, the information pursuant under §244D, could also assist the Liquor Commission in verifying compliance with any liquor licensee.

Pursuant to the liquor laws under HRS §281-45 (3), which states, “unless **the applicant for a license** or a **renewal of a license**, or in the case of **a transfer of a license**, both the **transferor and the transferee, present to the issuing agency a tax clearance certificate from the department of taxation** showing that the **applicant or the transferor and transferee do not owe the state government any delinquent taxes, penalties, or interest**;

Conclusion of §244D: §244D should remain unamended as current state law states. As liquor commission personnel utilize the information in part of their investigation and verification in part of the issuance of the liquor license. Additionally, §281-33.1 and §281-45 (3), respectively requires compliance and potential with 244D for required payment of tax and tax clearance certificate to be submitted to the Liquor Commission. Additionally, it is the Liquor Commission job to certify the named of every dealer.

§281-45

The “fit and proper” criteria that is removed, would and has restricted the Commission’s discretion. Under HRS §281-45 (1) No license issued, it states, “To any minor or to any person who has been convicted of a felony and not pardoned, or **to any other person not deemed by the commission to be a fit and proper person** to have a license.”

According to Black’s Law Dictionary 11th Edition, “**Deem**” means to consider, think, or judge. It is clear the Commission has the right to consider, think, or judge what is required to be a “fit and proper” person, by implementing this change will clearly violate with the Commission’s right.

Under HRS §281-17 (a) (4) From time to time to make, amend, and repeal rules, not inconsistent with this chapter, as in **the judgment of the commission are deemed appropriate for carrying out this chapter** and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent, by order, under the direction or supervision of, or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;

Legislative Intent: Four categories of disqualification for a liquor license are established: (1) to a minor, a person convicted of a felony and not pardoned, or **any person not deemed by the commission a fit and proper person to have a license**; (2) to a corporation if any of its officers or directors would be disqualified under item (1) individually; (3) to an applicant who does not have a certificate of tax clearance; and (4) to an applicant whose liquor license was revoked within the two-year period prior to the date of application.

Comment: This section is derived from section **159-55, Revised Laws of Hawaii 1955**, with minor style changes and with the addition that the **inspector is required to show in his report the reason for his opinion of whether or not an applicant is a fit and proper person** to have a license.

Fit and Proper Person: Someone who is regarded as honest and trustworthy and has the necessary education, background, experience, or other qualifications for a specific position.

Honesty: The character or quality of being truthful and trustworthy; esp., a disposition to behave in accordance with justice and honorable dealing, esp. as regards candor and truth telling.

Trustworthy: Reliable, dependable, and deserving of confidence.

"Applicant has lack of good reputation and character": applicant is associated with people involved in criminal activities; source of the applicant's funding for the licensed establishment is connected to a criminal source funding for the business can be confirmed as legitimate applicant has demonstrated a disregard or lack of awareness of tax and employment laws; proposed location has been problematic for previous licensees; and concerns over the applicants "lack of experience in the industry".

Conclusion of §281-45: As fit and proper" criteria that is removed by HB136 (2021), has restricted the Commission's discretion. Comments was indicated above.

§281-53

I believe that the law as it now stands, relating to the change of section §281-53 by striking out verified by the oath of the applicant and made before any official authorized by law to administer oaths, provides a "loop-hole" through which an applicant for a license would escape punishment for lying or not to attest to the truth of the person's words, in a liquor license application.

Any applicant could claim that an "honest mistake" was made in every case for an application and if the commission (or the court if prosecuted criminally) were in doubt as to the truth of his pleas would have to be given the benefit of the doubt.

As with the increase and changes to corporate laws in State across the US, reporting of principals of organizations are not being required. This in return, would enable hidden ownerships, money laundering, and organized crime organizations obscuring the truth in liquor license applications, which is why the oath is necessary if there is any materially false statement within a liquor license application.

Under HRS §710-1000 "Oath required or authorized by law" means an oath the use of which is specifically provided for by statute or appropriate regulatory provision.

"Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or **other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding.**

"Materially false statement" means any false statement, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a falsification is material in a given factual situation is a question of law.

§91-14 Judicial review of contested cases. (Where a public hearing pertaining to the **issuance of a liquor license was statutorily required under §§281-52 and 281-57,** and petitioner's legal rights, duties, and privileges were determined based on the public hearing regarding the decision to grant or deny a liquor license to petitioner, **the public hearing was a "contested case" hearing governed by chapter 91; thus, (1) petitioner was entitled to judicial review under this section. (2) §91-11 applied to proceedings on petitioner's application for liquor.**

Conclusion of §281-53: The perjury in applications should remain, as obscuring the truth in liquor license applications will become even more prevalent. The oath to attest to the truth is necessary if there is any materially false statement within a liquor license application, as the liquor license process is an official proceeding.

§281-55

This bill by changing the language of HRS §281-55, to "at the discretion of the administrator of the liquor commission", would allow the administrator to pick and choose what application is subject to an investigation which would create many inconsistencies in the application process. This would also create a manifestation of bias, favoritism, or other possible unlawful activity.

The process by all applicants required to make formal application in writing for a license with all statements thereunder supported by oath or affirmation, and with applicants being held strictly accountable for the accuracy, completeness and truthfulness of information thereby submitted should be investigated and all such applications should be carefully examined with emphasis on the qualifications of the applicant as tested by all qualifying criteria by investigators. By simply bypassing the investigation process, this control mechanism can create more issues down the road.

In legislative history archives in 1969, indicated that one of the most glaring weaknesses which exist in the field of alcoholic beverage control is to be found in the frequent turnover among ABC **administrators.** This condition is the result largely of changes of the chief executives of the states, **but is also influenced, in many instances, by inadequate compensation and all too frequently by unhealthy political pressure.**

§281-56.

This bill by striking out, "whether or not in the opinion of the investigator the applicant is a fit and proper person to have a license", will take away the liquor investigators ability to use

of all pertinent objective criteria bearing upon the personal qualifications of applicants for licenses and determination of the suitability to insure that only honest, honorable, respectable business people engage in the liquor business.

Legislative Reference Bureau 1969- "It is in the interest of good control that there be available to the public definite and specific information relating to the basic requirements and prohibitions binding on applicants and licensees. To the extent that these requirements and prohibitions can be stated in definite and precise language without thereby limiting or destroying good administration or weakening control, they should in due course be incorporated either into the law or into the written rules."

It is difficult to fix arbitrarily the limits of reasonableness, since the public interest requires that applications be investigated thoroughly and since any of several valid reasons frequently prevent expeditious action on applications. **Uniformity in handling all comparable applications is highly important** there expedition and **thoroughness conflict the latter consideration should prevail.** Delay, however, even for justifiable reasons, creates an unwholesome atmosphere and gives rise to suspicions about favoritism, improper influence and venality and it is, therefore, of the highest importance that efforts be made assiduously to find techniques and to train personnel to **accomplish thoroughness with the greatest possible dispatch.**

If this bill was passed into law, an applicant for a license could have several incidents pertaining to the following:

Multiple convictions for selling or furnishing a liquor to a minor;

Multiple convictions for narcotics related misdemeanors;

Multiple convictions of misdemeanors (sex assaults, dui's, assaults, etc.);

To obtain a license, the applicant must prove his qualifications and to maintain those qualifications. Fit and proper, "be of good repute and moral character."

I personally hold myself along with my subordinates to a higher standard to do the right thing. And to show the public that we did our due diligence in reporting facts of all the details necessary for investigations.

Thank you for your time, and I hope this has helped guide your decision-making process.