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STATE OF HAWAII
DEPARTMENT OF TAXATION
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ISAAC W. CHOY
DIRECTOR OF TAXATION

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

From: Isaac W. Choy, Director
Department of Taxation

Date: Thursday, February 17, 2022
Time: 9:30 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 2331, Relating to Alcohol

The Department of Taxation (Department) offers the following comments on S.B. 2331 for the committee's consideration.

S.B. 2331 changes the definition of "beer" in the liquor tax law by amending section 244D-1, Hawaii Revised Statutes (HRS), to include alcoholic seltzer beverages and specify that beverages must contain no less than 0.5 per cent alcohol by volume to qualify as beer. The measure also expands the list of possible beer ingredients to include malt, grain of any kind, bran, glucose, sugar, molasses, and related substitutes. The measure is effective on January 1, 2023.

The Department is able to implement the measure as drafted. Thank you for the opportunity to testify.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: LIQUOR, Broaden Beer Definition

BILL NUMBER: SB 2331, HB 2370

INTRODUCED BY: SB by KEITH-AGARAN, Baker, Wakai; HB by SAIKI by request

EXECUTIVE SUMMARY: Expands the definition of "beer" to specify an alcohol by volume of no less than 0.5 per cent and to include alcohol seltzer beverages.

SYNOPSIS: Amends section 244D-1, HRS, to include alcoholic seltzer beverages within the definition of "beer" for liquor tax purposes.

Amends section 281-1, HRS, to conform to the first sentence of the new definition. Does not expressly include alcoholic seltzer beverages within the definition of "beer" for regulatory purposes.

EFFECTIVE DATE: January 1, 2023.

STAFF COMMENTS: The apparent purpose of the bill is to allow seltzer beverages to qualify for the lower tax rate (\$0.85 per wine gallon) for "cooler beverages," which are now applicable to wine- or beer-based beverages, as opposed to the higher tax rate (\$5.98 per wine gallon) on distilled spirits.

Section 5052(a) of the Internal Revenue Code defines beer for purposes of the federal gallonage tax on alcoholic beverages:

For purposes of this chapter (except when used with reference to distilling or distilling material) the term beer means beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

The regulations of the Alcohol and Tobacco Tax and Trade Bureau interpreting this law state that a substitute for malt is limited to rice, grain of any kind, bran, glucose, sugar, and molasses. 27 C.F.R. section 25.15(a). That regulation also states that honey, fruit, fruit juice, fruit concentrate, herbs, spices, and other food materials may be used as adjuncts in fermenting beer.

The definition of beer contained in the bill appears to be consistent with the federal definition; however, the bill mentions alcoholic seltzer beverages, which are not mentioned in the federal Code or regulations; and the existing law unchanged by the bill excludes sake, which the federal definition includes.

Digested: 2/14/2022



Lanikai Brewing Company
175 Hamakua Drive, Unit C
Kailua, Hawaii 96734
www.lanikaibrewing.com

9 February 2022

RE: SB 2331

Position: **SUPPORT**

Chair Senator Karl Rhoads, Vice Chair Senator Jarrett Keohokalole, and members of the Senate committee on Judiciary,

I am Steve Haumschild, CEO and founder of Lanikai Brewing Company located in Kailua Hawaii. We are an independent craft brewery producing 100% of our beer in Hawaii. We are united with other members of the Hawaiian Craft Brewers Guild in our pursuit to promote economic activity and growth for Hawaii's beer manufacturers and enhance opportunities in our communities.

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.

HRS 281-1 Currently defines beer in a more historical way and does not include with the Federal Alcohol Tobacco and Trade Bureau (TTB) regulations which allow for both malt and sugar based hard seltzers federally taxed as beer. HRS 281-1 currently defines beer as grain, malt and hops. The addition of sugar based hard seltzers consistent with federal regulations, allows our local manufacturers to meet current demands of the market with lower calorie and gluten free products. This also allows local manufactures to grow their product line, further creating more revenue and therefore tax revenue for the State of Hawaii.

Mahalo for considering our testimony in support of SB565 SD1.

Steve Haumschild, MBA
CEO & Brewmaster, Certified Cicerone®
Lanikai Brewing Company,

LATE



February 16, 2022

Senate Committee on Judiciary
SB2331 Relating to Alcohol
February 17th, 2022 at 9:30am

Re: **IN SUPPORT OF SB2331 with Amendment**

Aloha Chair Senator Rhoads,, Vice Chair Senator Keohokalole, and members of the Committee,

My name is Garrett W. Marrero, I live in Kihei, HI. Maui Brewing Co. has locations on Maui in Lahaina and Kihei, and on Oahu in Waikiki and Kailua. We distribute across Hawaii, 19 other States, and 10 countries. We are a fairly large employer within the State and contribute immensely to Hawaii and its people.


I am writing on behalf of myself and our local family-operated business in support of **SB2331** which amends the definition of beer to align with the Federal definitions under Tax & Trade Bureau and the Internal Revenue Code. This is NOT A TAX REDUCTION BILL. Last session, erroneous testimony was given that stated a decrease in tax revenue would be seen due to "Seltzer being made from spirits". This is not accurate, seltzer can be made from a fermented base of malt or sugar, or from distilled spirits. "How it is made" and "what it is made from" would dictate how it is taxed. The fermented malt/sugar seltzers are classified as beer per Federal laws and in States that maintain laws current to the beverages being produced today. The distilled spirits based seltzers should be taxed as distilled spirits. This is consistent with HRS 244D.

Why is this important? The current definition of beer does not properly fit today's needs as new fermented beverages such as gluten-free beer, non-alcoholic beer, seltzers fermented from malt (FMBs) or sugar (FSBs) and more. These beverages are commonly accepted as beer by both the TTB and IRS under Federal rule as well as 49 other States. We need to bring Hawaii up to par with the rest of our country in definition of these beverages.

I would suggest an amendment to clarify "Seltzers where alcohol is obtained by the fermentation or any infusion or decoction of malt, wholly or in part, or any substitute therefor, including grain of any kind, bran, glucose, sugar, or molasses."

In the end, the growth of local producers will lead to increased revenues to the State.

Mahalo for your consideration. We urge you to pass this bill with amendments. Thank you for the opportunity to provide testimony in support of **SB2331**.

Mahalo,

Garrett W. Marrero
CEO/Founder



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE SENATE COMMITTEE ON
JUDICIARY
HAWAII STATE CAPITOL, VIA VIDEOCONFERENCE
THURSDAY, FEBRUARY 17, 2022 AT 9:30 A.M.**

To The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Jarrett Keohokalole, Vice Chair
Members of the committee on Judiciary

SUPPORT SB2331 RELATING TO ALCOHOL

The Maui Chamber of Commerce **supports SB2331 (with comments)** which expands the definition of "beer" to specify an alcohol by volume of no less than 0.5 per cent and to include alcohol seltzer beverages.

The Chamber supports our local breweries and support their position on this bill: *"The current definition of beer does not properly fit today's needs as new fermented beverages such as gluten-free beer, non-alcoholic beer, seltzers fermented from malt (FMBs) or sugar (FSBs) and more. These beverages are commonly accepted as beer by both the TTB and IRS under Federal rule as well as 49 other States. We need to bring Hawaii up to par with the rest of our country in definition of these beverages."*

We would suggest an amendment to clarify "Seltzers where alcohol is obtained by the fermentation or any infusion or decoction of malt, wholly or in part, or any substitute therefor, including grain of any kind, bran, glucose, sugar, or molasses."

For these reasons we respectfully urge you to pass SB2331.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.