

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 687, S.D. 1, RELATING TO INTOXICATING LIQUOR.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Wednesday, March 22, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Jennifer D. Waihee-Polk or Bryan C. Yee,
Deputy Attorneys General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill.

The purpose of the bill is to amend section 281-31(r), Hawaii Revised Statutes, to (1) increase the amount of malt beverages, wine, and alcohol that a small craft producer pub licensee may produce during the license year, and (2) requires licensees to produce such beverages within the State.

The dormant commerce clause prohibits state legislation that discriminates against interstate or international commerce. The Supreme Court has long held that state laws violate the Commerce Clause if they mandate "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." See Granholm vs. Heald, 544 U.S. 460, 472 (2005) (citing Oregon Waste Sys., Inc. v. Dep't of Env't Quality of Ore., 511 U.S. 93, 99 (1994)).

By changing the manufacture limit of malt beverages, wine, and alcohol to be in the amount manufactured "in the State" rather than just the amount manufactured, this bill would be subject to constitutional challenge as discriminating against out-of-state manufacturers.

To avoid a constitutional challenge, we recommend that section 1 of the bill on page 1, line 5, be revised to remove "in the State." Thank you for the opportunity to provide this comment.

**HAWAII LIQUOR WHOLESALERS ASSOCIATION
FIVE WATERFRONT PLAZA
500 ALA MOANA BLVD STE 400
HONOLULU, Hawaii 96813**

March 21, 2023

House Committee on Consumer Protection & Commerce
Representative Mark M. Nakashima, Chair
Representative Jackson D. Sayama, Vice Chair
State Capitol, Conference Room 329
415 S. Beretania St.
Honolulu, Hi 96813

Re: SB 687 SD1 - RELATING TO INTOXICATING LIQUOR
Hearing Date: March 22, 2023, 2:00 PM

Dear Chair Nakashima, Vice Chair Sayama, and Committee Members:

The Hawaii Liquor Wholesalers Association respectfully submits the following written testimony in **opposition** to SB 687 SD1 Relating to Intoxicating Liquor.

This bill would amend Chapter 281-31 (r) to substantially increase the amount of malt beverages, wine and alcohol that a Small Craft Producer Pub Licensee (“pubs”) can manufacture from 70,000 barrels to 150,000 barrels, or a 114% increase for malt beverages, from 20,000 to 30,000 barrels, or a 50% increase for wine, and from 500 to 10,000 barrels, or a 1900% increase for alcohol. Such significant increases are not justified.

These significant increases in the bill will expand Dormant Commerce Clause (DCC) vulnerabilities in Hawaii and could open the state up to costly litigation. Established U.S. Supreme Court caselaw holds that, regarding the production/supplier tier, the DCC prohibits states from enacting alcohol laws that establish privileges for in-state producers/suppliers but not for similarly situated out-of-state entities.

Raising the manufacturing limits expands the likelihood of these laws being challenged on DCC grounds. The state of Hawaii should be aware of the risks presented by increases in manufacturing limits.

The Small Craft Producer Pub License was created to help support small local producers by extending special allowances that are not permitted with a Class 1 manufacturers license, like the ability to sell direct to the consumer and retailers and to have a bar or premises with entertainment for public consumption. The substantial increases proposed in this bill would allow pubs to manufacture amounts of liquor disproportionate to the scale of the marketplace and contrary to the intent of the class of license. For example, one hundred fifty thousand barrels of

malt beverages is the equivalent of 4,650,000 gallons, which is more than 2 million cases, or more than one case for every resident, adult or child, of Hawaii. Such quantities are more appropriate in Hawaii for a Class 1 manufacturers license.

In alignment with the intent of the pub license, any increases to the current quantity limitations should be coupled with an appropriate repeal of special allowances, possibly in tiers, toward Class 1 license.

The environmental impacts relative to the scale of our islands' ability to sustainably support the resources and ingredients needed to manufacture the products in determining appropriate quantity limits should be considered. The water alone to make the proposed increase in malt beverages would strain each county's natural resources as it takes an estimated seven (7) gallons of water to make one gallon of malt beverage.

One important option to consider is the addition of level down language to Chapter 281 of the Hawaii Revised Statutes. Level down language explicitly states that, in the event of a legal challenge, courts should not interpret the law as granting more privileges but instead limit any expansion of privileges. Level down language limits the court's ability to misinterpret the legislative intent of the law, ensuring that beverage alcohol laws are made by elected officials, as intended by the 21st Amendment, rather than a court. Through level down provisions, a state can make their intent clear to protect their authority under the 21st Amendment to determine how beverage alcohol will be distributed in their state.

Based on the above, we respectfully oppose HB 687 S.D.1. Thank you for your consideration of the foregoing.

Very truly yours,

HAWAII LIQUOR WHOLESALERS ASSOCIATION

By: 

Kenneth G. K. Hoo
Its Secretary

SB-687-SD-1

Submitted on: 3/20/2023 12:04:25 PM

Testimony for CPC on 3/22/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Steve Haumschild	Lanikai Brewing Company LLC	Support	Written Testimony Only

Comments:

SB 687 helps local manufacturers increase their limits of products produced in their facility which supports more community jobs and made in Hawaii products.

We are in full support!

SB-687-SD-1

Submitted on: 3/20/2023 12:14:30 PM

Testimony for CPC on 3/22/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Pat Korn	Waikiki Brewing Co	Support	Written Testimony Only

Comments:

Waikiki Brewing Co Supports this bill to help keep Hawaiians employed and to help support the local economy. Thank you for your time.

Pat Korn/Brewmaster



March 20, 2023

House Committee on Consumer Protection and Commerce
SB717, SD1 Relating to Alcohol

Re: **IN SUPPORT OF SB687 with Amendment**

Aloha Chair Representative Nakashima, Vice Chair Representative Sayama, 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 the Hawaii, 23 other States, and 4 countries. We began in 2005 with 26 team members and have added more than 400 team members across Hawaii. I was selected as the National Small Business-Person of the year in 2017 for my work at Maui Brewing Co.

I am writing on behalf of myself and our local family-operated business in support of **SB687** which expands the barrelage limitation on production of beer. My only amendment is that we consider **REMOVING** the limitation on production. There is no reasoning for placing a limit on how

As I write this testimony I continue to ask myself "Why in the world does a limit exist on how much beer a local brewer can brew?". This is a question no legislator, lawmaker, or industry member has ever been able to answer effectively. The one answer I've ever gotten 'because that's the way it's always been that way'. I propose that this is not a good reason. This bill exists to raise the limit that some breweries are rapidly approaching and seeks to increase the thresholds. This allows us to continue to grow and create more local manufacturing jobs.

When I first began fighting for change in beer back in 2005 I spoke about creating an industry here in Hawai'i that had never existed. There we 6 breweries then, 2 failed shortly after and as we were able to amend laws (growlers, barrelage limits, license classes, abilities, etc) breweries began to open. Currently Hawai'i boasts 30 breweries with more in planning, we've collectively been able to put Hawai'i on the map of "craft beer" and a vibrant "beer tourism" exists within our State that supports local agriculture endlessly.

Supporting this bill does nothing more than allows us all to continue to grow, hire, support, and ultimately pay more in taxes as we produce more beverages. Keeping in mind for anyone in opposition that limiting our growth does nothing to limit alcohol sales but instead forces the consumer to pick mainland and foreign produced beverages rather than locally made ones.

Mahalo in advance for passing **SB687**.

Sincerely, 
Garrett W. Marrero
CEO/Founder



SB-687-SD-1

Submitted on: 3/21/2023 9:24:40 AM

Testimony for CPC on 3/22/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Justin Guerber	Kauai Beer Company	Support	Written Testimony Only

Comments:

We support SB687 SD1, which increases the liquor manufacturing limits for Class 18 small craft producer pub license holders. We believe local manufacturing is beneficial to our state, and allowing licensees to produce more of their products will help provide more benefits to our community. Some benefits might include increased tax revenue from producers, more usage of local ingredients for value added products, and an increased number of local manufacturing jobs available to residents.

**HAWAII LIQUOR WHOLESALERS ASSOCIATION
FIVE WATERFRONT PLAZA
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March 21, 2023

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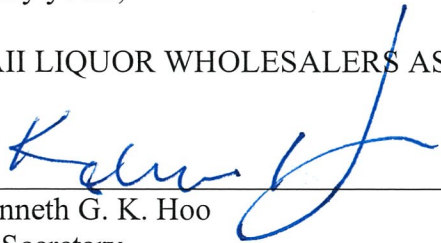
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Based on the above, we respectfully oppose SB 687 S.D.1. Thank you for your consideration of the foregoing.

Very truly yours,

HAWAII LIQUOR WHOLESALERS ASSOCIATION

By: _____


Kenneth G. K. Hoo
Its Secretary

Cindy Goldstein, PhD
98-814 C Kaonohi St
Aiea, HI 96701

SB687_SD1 Relating to alcohol, Increasing annual production limits
Committee on Consumer Protection and Commerce
Weds March 22 at 2:00 pm Rm 329

Chair Nakashima, Vice Chair Sayama, and members of the committee,

Position: Support

My name is Cindy Goldstein and my testimony is in support of SB687_SD1 to enable an increase in the annual production limits for small craft producers. SB687_SD1 would allow Hawaii's liquor manufacturers holding a class 18 license to increase their production. Liquor production ceilings reduce the ability of manufacturers to grow their businesses in our state. Production caps often limit options to modernize equipment and expand product offerings. Supporting and passing this bill will provide an opportunity for liquor manufacturers across the state to expand their existing production and increase sales and revenue. As manufacturing and sales revenue increase, more liquor tax is collected by the state of Hawaii.

Hawaii does not have a large manufacturing sector. Legislation that broadens the capacity of manufacturing contributes to efforts to diversify and strengthen our state's economy. Supporting this bill will support further growth and opportunity for beer, wine, and liquor manufacturers across the state.

Mahalo for the opportunity to provide testimony in support of SB686_SD1 before your House CPC committee.