

**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

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LATE

KIRK CALDWELL
MAYOR



February 20, 2020

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

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

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

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

**SUBJECT: Senate Bill No. 2034
Relating to Liquor Law Violations**

The Liquor Commission, City and County of Honolulu (Commission), appreciates the opportunity to submit testimony providing comments on the above-referenced measure. As a matter of principle, the Commission fully supports legislation that gives reasonable oversight to regulators in addressing the dynamic nature of the liquor industry and its impact on the public and community welfare. This oversight necessarily includes the Commission's ability to deter non-compliance with the liquor laws and the Commission's rules through the imposition of sanctions for sustained violations which range from a written reprimand to monetary penalties to license suspension or license revocation. In exercising this regulatory function, the Commission is guided both by its collective judgment and by principles of due process.

In this regard, we respectfully submit the following comments on the proposed measure for the Joint Committee's consideration:

1. Only Honolulu County Licensees Will Be Subject To The Proposed Measure.

As the penalty schedule in the proposed measure is applicable to repeat violations of any section of HRS Chapter 281, and not limited to violations of the

JOSEPH V. O'DONNELL
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FRANKLIN DON PACARRO, JR.
ADMINISTRATOR

ANNA C. HIRAI
ASSISTANT ADMINISTRATOR

Commission's Honolulu County-based rules, we would question why only Honolulu County licensees would be subject to the elevated penalties. If there is a causal connection between size of population and the likelihood of licensees committing multiple violations of liquor laws or rules, it should be specified in a preamble for clarity.

2. The Elevated Penalties Would Be Assessed For Any Law Or Rule Violation, Regardless Of Type Of Law Or Rule.

If the above comment suggests a too limited subject target, the instant comment will suggest that the proposed measure identifies too broad of a range of violations that would subject Honolulu County licensees to the elevated penalties. As the proposed measure would penalize a repeat violation within twelve (12) months of "... any rule in effect by authority of [Chapter 281] ...", a Honolulu County licensee theoretically could face a penalty of up to \$4,000, \$8,000, license suspension, or license revocation for a repeat violation of a technical rule such as incomplete time card entries (Rule §3-82-38.4); late filing of the annual employee list (Rule §3-82-38.8); or failure to post price lists or menu prices (Rule §3-82-38.11). While no rule violation is inconsequential, we would respectfully suggest that the deterrent effect encompassed in the proposed measure should target substantive violations that are injurious to the health, safety, and welfare of the public and neighborhood, and not rules that regulate business operations that do not impact the public's health, safety, and welfare.

3. Commission Has No Discretion In Tailoring The Penalty To The Licensee And The Conduct Involved.

As provided in section 281-91, the Commission is accorded broad discretion to "... revoke any license at any time issued, or suspend the right of the licensee to use the licensee's license, or assess and collect a penalty, or reprimand the licensee ..." in response to a sustained violation of a liquor law or rule. We would argue that retaining Commission discretion in applying the elevated penalties schedule by authorizing but not requiring the elevated penalties would be appropriate. Faced with a mandatory elevated penalty but no discretion to consider mitigating factors, it is not inconceivable that the Commission might be reluctant to sustain a law or rule violation, particularly one not involving potential injury to the public's health, safety, and welfare.

Thank you for the opportunity to provide comments on Senate Bill 2034.

Sincerely,


Franklin Don Pacarro, Jr.
Administrator



February 20, 2020

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

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RE: Strong opposition to SB2034

We as members of the Hawaii Bar Owners Association strongly oppose the SB2034

This bill is strictly unconstitutional when it is directed to one island and does not apply equally to all liquor licenses throughout the islands. We suspect that it is a reaction to the liquor store in Chinatown and its prevalence in the news in the past year or so.

Why do we need a law to overly punish one establishment that certain people want to see terminated. Please stop writing bills that threaten all businesses when the motivation is against a single business. This is a misuse of the legislative process.

The severe penalties and the threats of termination are designed against one business but would need to be applied toward all should it become law.

Would you charge somebody a severe penalty for failing to buckle their seatbelt and then double or triple their penalties until the point of taking their vehicle away?

The violations under this bill would threaten our businesses for something as simple as an employee forgetting to punch in on a timecard when coming to work. Or something as simple as their failing to have their liquor card in their possession. Hardly as severe as service of a minor but also a violation.

We would ask that the legislators consult with members of the industry before writing reactionary bills targeted toward specific businesses but putting all others at danger of termination. Reactionary law has consequences on all and not just the target.

This bill is not a fair act of legislation, please vote in opposition to SB2034.

Sincerely,

A handwritten signature in black ink that reads "Bill Comerford". The signature is written in a cursive, flowing style.

Bill Comerford
Chairman
Hawaii Bar Owners Association
10 Marin Lane
Honolulu, HI 96817
521-4712 office
223-3997 cell
bill@ejlounge.com



CGPTA
Chinatown Gateway Plaza Tenant Association
Since 2006

**To: Committee on Commerce, Consumer Protection, and Health (CPH),
Committee on Judiciary (JDC)**

From: Chinatown Gateway Plaza Tenant Association (CGPTA)

Date: Friday, February 21, 2020, 10:00 AM

Place: Conference Room 229, State Capitol, 415 South Beretania Street

Re: Strong Support for SB2034, Relating to Liquor Law Violations.

Aloha e Chairs Baker and Rhoads, Vice Chairs Chang and Keohokalole,
and Members of the Committees on CPH and JDC,

My name is Steve Lohse, I'm a constituent of Sen. Karl Rhoads and a resident of Chinatown Gateway Plaza (CGP), a 200-unit, city-owned, affordable housing project in Chinatown. I'm also a cofounder of the CGP Tenant Association (CGPTA), organized by CGP residents in 2006 to represent our resident voice in matters of concern to our affordable housing and Chinatown communities. On behalf of the CGPTA, thank you for this opportunity to submit written **Strong Support for SB2034**.

Chinatown Gateway Plaza is located on Hotel between Nuuanu and Bethel, the densely-populated ground zero for Chinatown's entertainment district and its large, loud, liquor-sales street parties. No doubt, you are also aware of the increasing street crime in Chinatown. The CGPTA suggests that a necessary first action to address rising crime and grime in Chinatown is to ensure that all area business and event promoters adhere strictly to Honolulu Liquor Laws regarding liquor sales, consumption, and noise.

Unfortunately, after nearly 20 years' experience with area liquor and the Honolulu Liquor Commission (HLC), we have learned that without legal consequences that get their attention, area liquor businesses tend to ignore "inconvenient" Liquor Laws or to consider occasional small fines simply to be the cost of business. This is not a hypothetical situation – only *demonstrated and substantial* legal consequences from the HLC reliably stop repeat liquor-fueled violations in this small, densely-populated area.

For example, several years ago, Hotel Street bars were ignoring excessive noise prohibitions, especially regarding loud, late-night, low-frequency noise. The HLC finally issued six noise citations to four bars in one month, including multiple citations to two of those four bars. In another example, a new restaurant received multiple excessive noise citations before it even received a permanent liquor license! Sadly, several event promoters continue to ignore repeated 'warnings' not to violate excessive noise laws.

Please, pass SB2034 to enhance legal consequences to help us stop disturbing, costly, and dangerous repeat violations of Honolulu Liquor Law. In our experience with the HLC, the *demonstrated willingness* to apply substantial legal consequences can be enough to stop area businesses from ignoring Liquor Laws!

Aloha no,
Steve Lohse, Chair
Chinatown Gateway Plaza Tenant Association (CGPTA)
CGP.Tenant.Association@gmail.com

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

February 20, 2020

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State Senate
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Honolulu, Hawaii 96813

Re:: Senate Bill No. 2034
Relating to Liquor Law Violations
Hearing Date: February 21, 2020 10:00AM

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

The undersigned is an attorney with a liquor law practice primarily in Honolulu. This letter is in **opposition** to Senate Bill No. 2034 related to the penalty schedule for repeat violations of HRS Chapter 281. This bill takes away the liquor commission's discretion in imposing penalties for repeat violations.

The penalty schedule in the proposed measure is applicable to repeat violations of any section of HRS Chapter 281 and rules, and yet only Honolulu County licensees would be subject to the elevated penalties based upon the population minimum. It is not fair for only Honolulu licenses to be subject to the mandatory penalties.

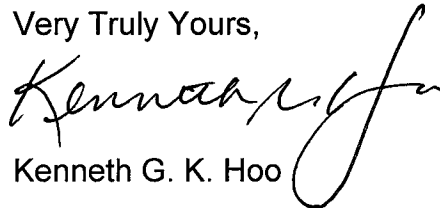
Many of the rules and laws of the Honolulu Liquor Commission relate to record keeping and time deadlines, violations for which have been subject to fines as low as \$100 or letters of reprimand. To impose a minimum of \$2,000 for a second violation, and \$4,000 for a third violation, without considering the circumstances of the violation is totally overbroad, arbitrary and unreasonable. Often a filing deadline is not met

because of a medical or family issue.

HRS Sections 281-17 and 291-91 were intended to give the liquor commissions broad discretion to enforce the liquor rules. Requiring mandatory fines in such large amounts, takes away such discretion and the ability to issue more appropriate penalties.

Thank you for the opportunity to provide comments on Senate Bill 2034.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Kenneth G. K. Hoo". The signature is written in a cursive style with a large, sweeping flourish at the end.

Kenneth G. K. Hoo