

**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

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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 136 HD1
Relating to Liquor Licenses

The Liquor Commission, City and County of Honolulu, appreciates the opportunity to submit testimony in **support** of the above-referenced measure. In essence, the proposed measure makes housekeeping changes to make provisions of HRS §§281-41 and -45 internally consistent, as well as other changes to conform the law to modern business practice. These changes are summarized below:

1. SECTION 1 CHANGES.

A. Regrouping. Proposed changes to HRS §281-41(e) and (i) move partnership-type entities and corporation-type entities to the appropriate paragraph so that each type of business entity is treated within a single paragraph. For both types of entities, commission oversight of the "fit and proper" characteristic of the partner, member, or stockholder who becomes a part of a licensee entity is retained.

B. Uniform Deadlines and Thresholds. For both types of entities, proposed changes make notices of admission, withdrawal, and other changes of ownership a uniform 30-day deadline, with a 25 percent or more ownership reporting threshold regardless of type of entity. Previously, limited liability partnerships and limited liability companies had to report any change in membership, without a justifiable reason for the different ownership reporting threshold. The proposed change will make the 25 percent or more threshold applicable across the board.

C. Publicly-traded entities. Because of the size of publicly-traded entities, as well as corporate and securities regulation reporting requirements unique to publicly-traded entities, this type of licensee is permitted to restrict reporting and “vetting” of its principals to those designated as “primary decision-makers” regarding the purchase and sale of liquor (PDM), rather than requiring reporting and “vetting” of all principals in the corporate structure. The proposed measure adds publicly-traded limited liability corporations to this special reporting and “vetting” procedure, rather than restricting to just publicly-traded corporations. Commission oversight of the “fit and proper” characteristic of the PDM is retained for both corporations and limited liability companies, as well as the 30-day reporting deadline for election, admission, or replacement of the PDM.

D. Conversion or merger. HRS §281-41(k) currently provides that the conversion of an entity into any other form of entity, or the merger of any entity with any other entity, will not require a transfer application for the underlying liquor license if the commission approves the transaction prior to the conversion or merger. The prior approval requirement inadvertently created a dilemma for many licensees in this situation as there are legitimate business reasons for keeping this type of transaction confidential until the transaction is ready to close. Similar to other changes in the proposed measure, the notice and approval required by this subparagraph has been changed to the 30-day report and approval requirement used elsewhere in HRS §281-41, with no reduction in commission oversight of the “fit and proper” characteristic of the entity’s principals.

E. “Intermediate” possession or control of the licensed business. HRS §281-41(h) ensures that any transfer of a licensee’s business, or transfer of possession and control of the licensed business, must obtain commission approval. This protection prevents hidden ownership or control of a licensed business by an individual or entity that may not be considered “fit and proper” to hold a liquor license. The proposed measure adds two types of permissible “intermediate” possession or control – the granting of a Temporary license to an applicant and the use of a management agreement, as defined – provided prior commission approval is obtained. The proposed change will accommodate the common use of a Temporary license in connection with a license transfer or new license application. It will also accommodate the increasing use by licensees of a third party individual or entity to manage and operate the licensee’s business on its behalf. In both instances provided the appropriate approvals are obtained, commission oversight over the individual or entity operating the business is retained, while permitting the applicant or licensee reasonable flexibility in conducting its operations.

2. SECTION 2 CHANGES.

HRS §281-45 is the statutory section that lists the characteristics that would make license issuance inappropriate to certain types of individuals or entities. Proposed changes to this section have added conforming changes to match those proposed in Section 1 of the proposed measure.

For the foregoing reasons, the proposed measure will clarify, modernize, and make uniform infrastructure changes that our licensees encounter on a regular basis,

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without any reduction in the commission's ability to exercise oversight of the "fit and proper" quality of the individuals or entities holding a liquor license. Thank you for the opportunity to testify in support of this proposed measure.

Sincerely,

for
Franklin Don Pacarro, Jr.
Administrator

FDPjr:ACH

KENNETH G. K. HOO, ATTORNEY AT LAW
POB 2800
HONOLULU, HAWAII

February 24, 2021

Representative Sylvia Luke, Chair
Representative Ty J. K. Cullen, Vice Chair
and Members of the Committee on Finance
State House
State Capitol, Room 229
415 South Beretania Street
Honolulu, Hawaii 96813

Re:: HB 136 HD1
Relating to Liquor Licenses
Hearing Date: February 25, 2021 1:00PM

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

The undersigned is an attorney with a liquor law practice in the State of Hawaii. This letter is in **support** of House Bill No. 136 HD1 related to liquor licenses.

This bill amends HRS 281 by removing inconsistencies regarding changes in the principals of the entity holding the liquor license and allows publicly traded limited liability companies or limited liability companies ultimately solely owned by a publicly traded company to be treated the same as publicly traded corporations. This would make Hawaii law consistent with the prevalent use of limited liability companies in the business world today.

This bill also recognizes the reality of business transactions today where often the closing of hotel and other properties must occur before there is time to affect the final transfer of the license, by allowing the sale to occur upon obtaining a temporary license or approval of a management agreement.

Thank you for the opportunity to provide comments on House Bill 136 HD1.

Very Truly Yours,


Kenneth G. K. Hoo