

LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



February 22, 2013

Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair
Committee on Consumer Protection & Commerce

Hearing: Monday, February 25, 2013
2:30 p.m.; Room 325

Position: Providing Comments on HB 1314 Relating to Liquor

As Administrator of the Liquor Commission, City and County of Honolulu ("Commission"), thank you for the opportunity to provide comments on HB 1314, HSCR 281.

HB 1314 seeks to create a new class of liquor license for distillery pubs by amending H.R.S. §281-1 and §281-31(r). We provide the following comments for consideration before a new liquor license class for distillery pubs is approved:

- The bill proponent should be asked to confirm that a distillery pub licensee as currently proposed would be eligible to hold an Alcohol and Tobacco Tax and Trade Bureau ("TTB") basic permit. Without the basic permit, activities conducted under the proposed distillery pub license could be considered a form of "moonshining."
- Like the Class 14 brewpub and Class 16 winery licenses, the proposed distillery pub license would enable the holder to conduct a range of activities not typically permitted under a single license. Currently, when a manufacturer wants to have on premises consumption capability, the manufacturer must apply for a second separate license (restaurant or dispenser). Further, the prohibitions in H.R.S. §281-31(b) require the manufacturer to have 100% ownership interest in the on premises license to avoid a prohibited inducement situation. Therefore, existing distilled spirits manufacturers in Honolulu County (four) have the ability to conduct the multiple activities contemplated by the proposed distillery pub license but would be required to hold two separate licenses.

We have no objection to the further amendments proposed by Mr. Flintstone, to wit: (1) making a mathematical correction to the gallonage limits for the distillery pub liquor license class, and (2) making conforming changes to the class 14 brewpub license so that

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both brewpub and distillery pub licensees enjoy equal access to products for resale for consumption on the premises.

Thank you for the opportunity to testify on this matter.

Respectfully submitted,



Greg I. Nishioka, Administrator
Liquor Commission

GIN:lt

February 21, 2013

Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair
Committee on Consumer Protection & Commerce

**Hearing: Monday February 25, 2013
2:30pm; room 325**

Position: providing testimony in favor of HB 1314 Relating to Liquor

As President of Island Distillers, I thank you for the opportunity to provide testimony.

The principal purpose of HB1314 is to amend language in the Hawaii Revised Statutes to allow for an additional class of liquor license, the distillery pub.

This would be similar to a brewpub license, but with distilled spirits instead of beer.

There are brewpubs currently operating in all 4 counties, supporting employment, small business, and the visitor industry, as well as providing unique food and beverage choices. The distillery pub would be similarly beneficial, with the added benefit of supporting diversified agriculture by using Hawaii grown crops as ingredients.

I support this bill with suggestions for two revisions that:

- 1) correct a mathematical calculation error in the original draft
- 2) correct a contradiction in language between classes of license

The mathematical error occurred when calculating the maximum allowable production of the distillery pub license, which is intended to be the equivalent amount of alcohol as the existing brewpub license. 12 oz of beer = 1 oz of distilled beverage was mistakenly used instead of the correct equivalence of 12 oz of beer = 1.5 oz of distilled beverage: 12 oz of 5% beer is 0.6% alcohol ($12 \times 0.05 = 0.6$), the equivalent of 1.5 oz of 40% distilled liquor ($1.5 \times 0.40 = 0.6$).

Correcting this would change the annual maximum production of the distillery pub license to 116,000 gallons from 77,000 gallons; 116,000 gallons of 40% spirits being the alcohol volume equivalent of 30,000 barrels (930,000 gallons) of 5% beer, which is the current brewpub annual maximum.

To correct this, I respectfully request the following revision:

> At page 20, lines 5-7, change "seventy-seven" to "one hundred sixteen" so that it reads as follows:

(1) Shall manufacture not more than one hundred sixteen thousand gallons of distilled beverages on the licensee's premises during the license year;

Correcting this inadvertent calculation error will place the distillery pub license on par with the brewpub license in regards to maximum allowable alcohol production, which is the original intent.

In regards to correcting a contradiction,

the existing 281-31 (n)(4) states that brewpubs "May sell intoxicating liquor purchased from a class 1 manufacturer licensee or a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises.",

yet 281-31 (p)(7) states that winery licensees "May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, **class 14 brewpub licensees**, and class 15 condominium hotel licensees". [emphasis added]

This is contradictory because the former restricts brewpubs to purchasing only from class 1 manufacturer licensees and class 3 wholesale dealer licensees, while the latter allows brewpubs to purchase from winery licensees, just like all other retailers may do.

This contradiction in the existing law arose because the brewpub license preceded the creation of the winery license by a number of years. When the brewpub license was created, only class 1 manufacturers and class 3 wholesalers existed as sources of purchase for the brewpub licensee. When the winery license was subsequently created, it is clear from the language that it was intended for class 14 brewpubs to be able to purchase directly from winery licensees, just as all other retailer licensees may do. Thus the restrictions on purchase in 281-31(n)(4) should have been expanded to include the class 16 winery license, but apparently this was overlooked, creating the current contradiction. Because the class 14 brewpub license was used as a template for the proposed class 18 distillery pub license in HB 1314, this contradiction is also present.

To correct these contradictions in HB 1314, I respectfully suggest the following revisions:

>At page 13, lines 21-22, and page 14, lines 1-2, add "a class 16 winery license, or a class 18 distillery pub license" so that it reads as follows:

(4) May sell intoxicating liquor purchased from a class 1 manufacturer licensee, ~~or a class 3 wholesale dealer licensee,~~ a class 16 winery licensee, or a class 18 distillery pub licensee to consumers for consumption on the licensee's premises.

>At page 20, lines 11-14, add "a class 14 brewpub licensee, or a class 16 winery licensee" so that it reads as follows:

(3) May sell intoxicating liquor purchased from a class 1 manufacturer licensee, a class 3 wholesale dealer licensee, a class 14 brewpub licensee, or a class 16 winery licensee to consumers for consumption on the licensee's premises.

Correcting these contradictions will provide brewpub licensees and distillery pub licensees with the same ability to purchase directly from winery licensees, brewpub licensees, and distillery pub licensees that all other retailer licensees enjoy. This is fair, provides all retailer licensees with the same purchase abilities, and reflects the intent of these newer license classes.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Dave Flintstone', with a long horizontal line extending to the right.

Dave Flintstone
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February 22, 2013

Representative Angus L. K. McKelvey
Representative Derek S. K. Kawakami
House Committee on Consumer Protection & Commerce
House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: House Bill No. 1314 relating to liquor

Dear Chair McKelvey, Vice-Chair Kawakami and Committee Members:

On behalf of the Hawai'i Liquor Wholesalers Association ("HLWA"), we submit the following testimony on House Bill No. 1314 relating to liquor, which is scheduled to be heard by your Committee on Consumer Protection & Commerce on Monday, February 25, 2013.

House Bill No. 1314 proposes to establish a new class of Liquor Commission licensee for distillery pubs.

HLWA does not object to the creation of a new licensee category of distillery pubs, as long as the exemption for distillery pubs and brew pubs to not purchase liquor from licensed wholesalers is limited to liquor that the pubs manufacture themselves. The exemption should not apply to liquor that the pubs do not manufacture. If brewpub and distillery pub licensees are permitted to purchase directly from other manufacturers, these brewpub and distillery pub licensees will obtain an unfair competitive advantage *vis a vis* other retail licensees, who are required to purchase from licensed wholesalers.

Specifically, if this Committee intends to move House Bill No. 1314 forward, we respectfully suggest the following revisions in Section 2 of the bill:

- At page 13, lines 21-22, delete "a class 1 manufacturer licensee or", so that the first sentence of Section 281-31(n)(4) relating to brewpubs provides as follows:
 - (4) May sell intoxicating liquor purchased from [~~a class 1 manufacturer licensee or~~] a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises.

- At page 20, lines 11-12, delete “a class 1 manufacturer licensee or”, so that the first sentence of new Section 281-31(r)(4) relating to distillery pubs provides as follows:

(3) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises.

Deleting the ability of existing brewpub licensees and the new proposed distillery pub licensees to purchase liquor directly from other manufacturers for consumption on their premises would not prevent brewpub and distillery pub licensees from selling their own products directly to consumers on their premises, which presumably is the intent of the brew pub and distillery pub licensing. Brew pubs and distillery pub licensees, however, would be required to purchase products manufactured by other manufacturers from licensed wholesalers, as generally is required of all other retail liquor licensees.

The purpose of the proposed revisions is to maintain the integrity of the three tier liquor distribution system and to prevent brewpub and distillery pub licensees from having a competitive advantage over other retail licensees with respect to products that the brewpubs and distillery pub licensees do not manufacture. We do not believe that the intent of brewpub or distillery pub licensing is or should be to create such an unfair advantage and we therefore support amendment of House Bill No. 1314 as set forth above if the Committee advances this measure.

Thank you for your consideration.

Very truly yours,

HAWAI'I LIQUOR WHOLESALERS ASSOCIATION

A handwritten signature in black ink, appearing to be "Randy", with a long horizontal line extending to the right.