



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 2726, H.D. 1, RELATING TO INTOXICATING LIQUOR.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Wednesday, March 11, 2020 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Clare E. Connors, Attorney General, or
Janine R. Udoi, Deputy Attorney General

Chair Baker and Members of the Committee:

The purpose of part II of H.B. No. 2726, H.D. 1, is to “create a more equitable taxation scheme by establishing a separate tax rate on beer for small craft producer pubs.” See H.B. No. 2726, H.D. 1, page 3, lines 8-10. A “small craft producer pub” under the Act is defined as “a small craft producer pub granted a license by the liquor commission pursuant to section 281-31(r).” See id. at page 5, lines 18-20.

A small craft producer pub licensed under section 281-31(r), Hawaii Revised Statutes (HRS), can manufacture no more than a certain amount of malt beverages, wine and alcohol annually. See section 281-31(r)(1), HRS. A small craft producer pub license is required under section 281-31(r) for small craft producers that, among other activities, manufacture and sell malt beverages, wine, or alcohol manufactured on the licensee’s premises. See id. section 281-31(r)(1) – (8). Pursuant to section 281-31(r)(9), small craft producer pub licensees may engage in activities including manufacturing or selling malt beverages, wine, and alcohol at locations other than the licensee’s premises provided that:

- (A) **The manufacturing takes place in Hawaii;**
- (B) Each of the other locations:
 - (i) Operates within the State under the same trade name for the premises; and

- (ii) Is properly licensed within the county of its operation as a . .
 . class 18 small craft producer pub licensee;

Section 281-32(9), HRS (emphasis added).

This bill could be subject to challenge as a violation of the Commerce Clause of the United States Constitution.

The Commerce Clause provides that Congress shall have the power to “regulate Commerce . . . among the several States.” U.S. Const. art I, § 8, ct. 3. “Though phrased as a grant of regulatory power to Congress, the clause has long been understood to have a ‘negative’ aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles in commerce.” *Oregon Waste Systems, Inc. v. Dep’t of Env’tl. Quality*, 511 U.S. 93, 98, 114 S. Ct. 1345, 1349 (1994). This implicit constitutional restriction upon the States has become known as the “negative” or “dormant” Commerce Clause doctrine. See *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1087 (9th Cir. 2013). The doctrine prohibits States from “advancing their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state,” *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep’t of Natural Resources*, 504 U.S. 353, 112 S. Ct. 2019 (1992) (internal brackets omitted), upon concern about “economic protectionism,” i.e., “regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *Department of Revenue of Ky. v. Davis*, 553 U.S. 328, 337, 128 S. Ct. 1801, 1808 (2008). For example, in *Bacchus Imports Ltd. v. Dias*, 468 U.S. 263 (1984), the United States Supreme Court struck down an exemption from the liquor tax for locally produced alcoholic beverages upon finding that the exemption bestowed a commercial advantage on locally produced products.

Here, a lower liquor tax rate on beer would be given to small craft producer pubs that maintain a license to sell malt beverages or intoxicating liquors manufactured on the licensee’s premises. The lower tax rate is therefore available only if the malt beverage is manufactured in Hawaii. The same lower tax rate on beer would not be available to out-of-state small craft producer pubs of beer without a small craft producer pub licensed in Hawaii who manufactures beer outside of Hawaii. Similar to the

situation in *Bacchus*, the proposed tax rate may be challenged as unconstitutional because it bestows a commercial advantage on locally produced beer in the form of lower taxes, while burdening out-of-state competitors who would not be eligible for the same lower tax rate. The bill may further be challenged under the Commerce Clause because it has “both the purpose and effect of discriminating in favor of local products.” *Bacchus*, 468 U.S. 263, 273.

Based on the foregoing, we respectfully ask that these concerns be addressed. One way to do so is to allow for the separate tax rate on beer for “qualified small brewers” as defined in the original version of the bill, H.B. No. 2726, instead of for small craft producer pubs granted licenses by the liquor commission pursuant to section 281-31(r), Hawaii Revised Statutes. This would address the possible Commerce Clause challenge by allowing the lower tax rate for both locally and out-of-state produced beer.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: LIQUOR, Broaden Cooler Beverage Definition, Add Rate for Small Beer Producer

BILL NUMBER: HB 2726, HD-1

INTRODUCED BY: House Committee on Economic Development & Business

EXECUTIVE SUMMARY: Includes certain spirits-based beverages in the definition of cooler beverage. Establishes a separate tax rate for qualified small brewers.

SYNOPSIS: Amends the definition of “cooler beverage” in section 244D-1, HRS, to include a spirit beverage cooler containing distilled spirits and added natural or artificial blending material, such as fruit juices, flavors, flavorings, colorings, or preservatives, and that contains less than seven per cent of alcohol by volume.

Amends section 244D-4, HRS, to establish a lower tax rate for small craft producer pubs:

Product	Normal Rate	Small Craft Producer Pubs
Beer other than draft beer	\$0.93 per wine gallon	\$0.35
Draft beer	\$0.54	\$0.35

Defines “qualified small brewer” as a small craft producer pub granted a license by the liquor commission pursuant to section 281-31(r).

Makes stylistic and conforming amendments.

EFFECTIVE DATE: This Act shall take effect on July 1, 2112; provided that the tax rates established in section 4 of this Act shall apply on July 1, 2020.

STAFF COMMENTS: The bill recites that under the current definition of “cooler beverage” the tax rate applied is only applicable to wine- or beer-based beverages. Thus, if a local distiller wants to make a ready-to-drink “cooler beverage” that contains one ounce of a distilled spirit and eleven ounces of another consumable liquid, then it is taxed as if the entire contents are distilled spirits. The bill recites that there is a growing number of local distilleries, but there are no locally produced ready-to-drink spirits-based beverages, whereas there are several companies on the mainland exporting small volumes of cocktails in cans or bottles but there is no local option.

The bill also recites that the current taxation scheme on small brewers is punitive and burdensome because small brewers operate on a different economic scale. Thus, a lower tax rate is justified.

The bill is designed to simplify the law and align it to current industry practices, and appears to be a reasonable attempt to accomplish these goals.

Re: SB 2627

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Digested 2/11/2020

Kauai Beer Company
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Lihue, HI 96766
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HB2726 H.D.1 Relating to Intoxicating Liquor: Small Brewer Tax, Cooler Beverage Tax
Senate Committee on Commerce, Consumer Protection, and Health
Wednesday, March 11, 2020 at 9:30 a.m. Conference Room 229

Chair Senator Rosalyn Baker, Vice Chair Senator Stanley Chang, and members of the
Committee on Commerce, Consumer Protection and Health

Position: **Support original HB2726 language for tax rate on beer**

My name is Justin Guerber, I live in Lihue, Kauai and I am the head brewer for the Kauai Beer Company. We are located in Lihue, Kauai. Our brewery began in 2013 with 2 employees. We now provide over 40 jobs in Hawaii.

Kauai Beer Company and the Hawaiian Craft Brewers Guild embrace the responsible consumption of alcohol.

We are members of the Hawaiian Craft Brewers Guild, a nonprofit organization that promotes production of craft beer in Hawaii. Kauai Beer Company is an independent craft brewery producing 100% of our beer in Hawaii. We are united with breweries across the islands in our pursuit to promote successful economic activity and growth for Hawaii's beer manufacturers. The Hawaiian Craft Brewers Guild represents almost all craft beer producers in Hawaii. We are part of our local community and involved to provide support for the community.

Small Brewer Tax Rate

Kauai Beer Company supports **HB 2726 H.D.1.**, with the exception of the change made in **H.D.1** to have the small craft producer defined as holding a liquor license for a small craft producer pub granted by the liquor commission. This changed definition is not desirable and would restrict the tax rate to beer made in Hawaii, which could be challenged as a violation of the Commerce Clause. As a member of the Hawaiian Craft Brewers Guild, only some of our members hold a small craft producer pub license and the tax rate would not apply evenly to our members. We support the original language regarding the tax rate on beer in **HB2726** for a qualified small brewer to mean producing 70,000 barrels or less annually in the US.

As a small brew pub with limited distribution, we are restricted in the amount of staff we can recruit. If we were able to reduce the tax rate on beer, that would go a long way toward hiring

additional staff that could work in our facility. With the reduction asked in **HB2726**, I believe we could afford to hire at least 1 or 2 additional brewery staff members, which would allow us to brew more beer and thus grow our business. We currently only brew 500 barrels per year but could see that grow substantially in the future.

We request the Senate Committee on Commerce, Consumer Protection, and Health pass this bill. Mahalo for considering our testimony in support of **HB2726 H.D.1**.

HB-2726-HD-1

Submitted on: 3/9/2020 3:21:29 PM

Testimony for CPH on 3/11/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joshua Kopp	Testifying for Hana Koa Brewing Co.	Support	Yes

Comments:

Hana Koa Brewing Co.

Joshua Kopp

962 Kawaiahao Street

Honolulu, HI

96814

Relating to Intoxicating Liquor: Small Brewer Tax, Cooler Beverage Tax

Senate Committee on Commerce, Consumer Protection, and Health

Wednesday, March 11, 2020 at 9:30 a.m. Conference Room 229

Chair Senator Rosalyn Baker, Vice Chair Senator Stanley Chang, and members of the Committee on Commerce, Consumer Protection and Health

Hana Koa Brewing Co. supports HB2726 featuring the original language for the proposed tax rate on beer which includes more than Type 18 Manufacturing License holders.

This changed definition would restrict the tax rate to beer made in Hawaii, which could be challenged as a violation of the Commerce Clause. If it is all inclusive, we would not be in violation of the Commerce Clause. The original language would allow small beer manufacturers of different licenses to boost Hawaii's local economy by providing more jobs through growth. The lower tax rate would incentivize licensees to allocate resources towards supporting local vendors over mainland vendors considering the reduction in cost of production.

Hana Koa Brewing Co. request the Senate Committee on Commerce, Consumer Protection, and Health pass this bill. Thank you for considering our testimony in support of HB2726 H.D.1.

Cheers

Joshua Kopp
Head Brewer
Hana Koa Brewing Co.



March 8, 2020

Senate Committee on Commerce, Consumer Protection, and Health
HB2726 HD1 Relating to Intoxicating Liquor: Small Brewer Tax Rate, Cooler Beverage Tax
Wednesday, March 11th, 2020 at 9:30am. Conference Room 229

Re: **IN SUPPORT OF HB2726 HD1 with proposed amendments**

Aloha Chair Senator Rosalyn H. Baker, Vice Chair Senator Stanley Chang, and members of the Committee on Commerce, Consumer Protection, and Health,

My name is Garrett W. Marrero, I live in Kula, HI. We have locations on Maui in Lahaina and Kihei, and on Oahu in Waikiki and Kailua. We distribute across the Hawaii, 23 other States, and 13 countries. We began in 2005 with 26 team members and have added more than 500 to our team. My wife and I were selected as the National Small Business Persons of the year in 2017 for our work at Maui Brewing Co. I am writing on behalf of myself and our local family-operated business in support of **HB2726** which adds Spirits-based beverages to the definition of **"Cooler beverages"**, as well as creates a **Small Brewer Tax Rate** on Beer.

When I first opened Maui Brewing in 2005 and began testifying and lobbying for support of beer I spoke each year about how the legislation we were proposing and supporting would "create a real industry in Hawaii". You believed in me then and crafted common-sense legislation to support small brewers. This has led to a flourishing and vibrant industry that has far out-paced the expectations of growth in those early days. I am asking you to again believe that we can create further industry, more local manufacturing-based industry, with this change.

Tax rate for distilled beverages containing spirits

Currently HRS 244D has a "cooler beverage" tax rate for beverages that are either wine or beer based. This makes sense as the coolers are a mixed beverage with only a portion being liquor while the rest is juice, water, soda etc (a "mixer"). Currently the rules do not allow for a spirits-based beverage. This means that a local distiller that wishes to make a ready to drink "cooler beverage" is taxed as if the entire contents are alcohol. As a result, a 12oz can with 1oz of spirit and 11oz of "mixer" is taxed as if it is 12oz of spirits. This makes no sense. The tax rate alone on one case of this type of beverage is more than \$13 often this is more than the case of beverage costs to produce. This significantly inhibits the growth and success of these small producers. Bottom line, this beverage cannot survive in the market with the tax structure that exists. The structure ONLY exists this way because in the past "ready to drink cocktails" were malt or wine based, not actual spirit based, the time has come to modernize and bring code current to industry of today. We believe that this tax is the primary reason there is only one locally produced ready to drink spirits-based beverages despite the growing number of local distilleries.

Simply put, by creating a spirits cooler beverage category the State will give birth to an entire industry primed for growth in Hawaii. A locally produced alternative for ready to drink cocktails makes sense versus imported beverages when we aim to deliver an authentic Hawaiian experience to our visitor industry.

Handcrafted Ales & Lagers Brewed with Aloha
605 Lipoa Parkway, Kihei, HI 96753
808.213.3002

Consolidate beer tax to one rate

This bill creates a Small Brewer Tax Rate on beer. This will standardize and simplify the tax rate on beer brewed by Small Brewers. This follows the ways several States support small brewers and is similar to the Federal taxation structure. These rates are based on volume of beer brewed in order to recognize that small brewers operate on a much different economic scale than large brewers.

A Small Brewer is defined as a brewer that produces 70,000 barrels of beer or less annually as set forth in 281-1; has a Brewers Notice that is filed with the State from the Federal Alcohol Tobacco Tax and Trade Bureau (TTB); and the Beer is produced in the United States.

HRS 244D has two separate rates for beer. This is the only beverage that has a disparity in tax rates. Wine and spirits both enjoy a uniform tax rate based on gallonage. Beer however is subject to a confusing burdensome set of accounting for tax. There is "Draft Beer" and "other than draft Beer", you would think that draft means anything served on draft as in from a keg and everything else (i.e. cans, bottles etc.) would be "beer". This is not the case. "Draft beer" is defined as an "individual container of 7 gallons or more"; many of us serve "Draft" from 5 gallon or even 1 gallon kegs in some instances. The draft beer rate is currently \$0.54/gallon. We refer to the "beer" definition as the "package tax" as it at least should relate to individual packages. The "package" rate is \$0.93/gallon. I would argue that this an odd definition to draft and unique to Hawaii. This bill encourages compliance with laws by simplifying and making tax terminology less confusing and results in a significant boost to the industry growth.

Amendments

We appreciate the amendments made by the prior committee and agree to the lowering of spirits based cooler beverages to 7% alcohol by volume. We do however respectfully request that the definition of what was formerly "qualified small brewer" and amended to "small craft producer licenses" be again amended to the original language submitted. This will better adhere to the intent of the bill assuring all small brewers are afforded the benefits of this bill. Excluding by license class could be legally challenged.

The bill helps support Small Brewers by standardizing the rate to the same rate for draft and packaged beer, simplifying the filing of taxes without discouraging growth. Hawaii has a high beer tax compared to other states and is in the top 10% for highest beer tax rates. This bill helps even out the economics of production for Hawaii's breweries where cost of ingredients and production are among the highest compared to other States. Higher tax rates present an additional economic disincentive for Hawaii's craft beer producers to manufacture and grow locally.

Mahalo for your consideration. We urge you to pass this bill.

Mahalo,



Garrett W. Marrero
CEO/Founder

Handcrafted Ales & Lagers Brewed with Aloha
605 Lipoa Parkway, Kihei, HI 96753
808.213.3002



Beer Lab HI
Nicolas Wong
1010 University Ave
Honolulu HI 96826

HB2726 H.D.1 Relating to Intoxicating Liquor: Small Brewer Tax, Cooler Beverage Tax
Senate Committee on Commerce, Consumer Protection, and Health
Wednesday, March 11, 2020 at 9:30 a.m. Conference Room 229

Position: **Support**

Chair Representative Sylvia Luke, Vice Chair Representative Ty Cullen, and members of the Committee on Finance,

My name is Nicolas Wong, I live in Honolulu and I am the Founder of Beer Lab HI. We are located in Honolulu, Pearl City and Waipio. Our brewery began in 2016 with 1 employee. We now provide 44 jobs in Hawaii.

Beer Lab HI and the Hawaiian Craft Brewers Guild embrace the responsible consumption of alcohol.

We are members of the Hawaiian Craft Brewers Guild, a nonprofit organization that promotes production of craft beer in Hawaii. Beer Lab HI is an independent craft brewery producing 100% of our beer in Hawaii. We are united with breweries across the islands in our pursuit to promote successful economic activity and growth for Hawaii's beer manufacturers. The Hawaiian Craft Brewers Guild represents almost all craft beer producers in Hawaii. We are part of our local community and involved to provide support for the community.

Small Brewer Tax Rate

Beer Lab HI support HB2726 H.D.1 because running a small business in Hawaii is extremely difficult and it is even more difficult to compete with mainland breweries who are able to produce over 50 times the amount we are and produce it at a cheaper rate and flood out shelves with these products.

We believe HB2726 H.D.1 will help our brewery business on the island of Oahu grow because it will tax larger breweries (the vast majority from the mainland) a different rate from smaller locally grown craft breweries. This small tax change will help create more income for local breweries and spur growth.

Cooler Beverage Tax



By amending and expanding the definition of cooler beverage to include spirit beverage coolers containing distilled spirits, HB2726 H.D.1 would encourage local Hawaii distilleries to expand the number and types of products they manufacture.

The Hawaiian Craft Brewers Guild supports the use of ingredients sourced from Hawaii farms. Development and production of spirit cooler beverages encourages additional use of Hawaii grown agricultural products used as ingredients, for example tropical fruits, coffee, ginger, lemon grass and other locally grown farm products.

Cooler beverages with distilled spirits produced in Hawaii are a new potential product line that would bring a new stream of tax revenue.

We request the House Committee on Finance pass this bill. Mahalo for considering our testimony in support of HB2726 H.D.1.



Cindy Goldstein, PhD
Executive Director
Hawaiian Craft Brewers Guild
98-814 C Kaonohi Street
Aiea, HI 96701

HB2726 H.D.1 Relating to Intoxicating Liquor: Small Brewer Tax, Cooler Beverage Tax
Senate Committee on Commerce, Consumer Protection, and Health
Wednesday, March 11, 2020 at 9:30 a.m. Conference Room 229

Chair Senator Rosalyn Baker, Vice Chair Senator Stanley Chang, and members of the
Committee on Commerce, Consumer Protection and Health

Position: **Support original HB2726 language for tax rate on beer**

The Hawaiian Craft Brewers Guild is a nonprofit trade organization representing the interests of small craft breweries across the State of Hawaii. Our members are independent craft breweries producing 100% of their beer in Hawaii. The Hawaiian Craft Brewers Guild represents 18 small craft brewery businesses from across the state, almost all of the craft beer producers in Hawaii. Our members are united in our pursuit to promote economic activity and growth for Hawaii's beer manufacturers and enhance opportunities in our communities.

The Hawaiian Craft Brewers Guild and our member breweries embrace the responsible consumption of alcohol.

Tax Rate on Beer

The Hawaiian Craft Brewers Guild supports HB2726 H.D.1 because it recognizes that current Hawaii tax rates on beer discourage the business of small craft breweries. Small brewers find it difficult to compete as they are operating on a much different economic scale than larger breweries. HB2726 H.D.1 recognizes the different and more difficult position of small breweries, with the creation of a differential tax rate structure for qualifying breweries.

Language related to the tax rate on beer in the original HB2726 is supported by the Hawaiian Craft Brewers Guild and our member breweries. Amending HB2726 H.D.1 by returning to the original bill language defining a qualified small brewer in HB2726 is more desirable. A qualified small brewer produces 70,000 barrels or less annually within the United States. HB2726 H.D.1 restricts the proposed differential tax rate to small craft producer pubs granted a license by the liquor commission pursuant to section 281-31(r). This would only allow the proposed legislation to apply to beer manufactured in Hawaii. The Hawaiian Craft Brewers Guild puts forward the suggestion to have the original bill language for HB2726 because the lower tax rate on beer would not be available to other U.S. producers outside of Hawaii making 70,000 barrels or less, potentially resulting in a challenge for interfering with the U.S. Commerce Clause. Additionally, narrowing the tax rate to small craft producer pubs licensed by the liquor commission as class 18 does not provide an equitable positive impact for member breweries.

Hawaii's independent craft breweries produce less than 70,000 barrels annually. By implementing a small brewer tax rate, this proposed legislation will boost the ability of independent craft breweries to continue to grow and succeed.

Most beer shipped to Hawaii is made by breweries that far exceed annual production of 70,000 barrels. The economics of production and shipping make it much more feasible for large scale breweries to have their beer distributed and sold in Hawaii. There are a few breweries from other states that produce less than 70,000 barrels, qualifying as small breweries that have their beer distributed and sold in Hawaii. This makes up a very small part of beer tax revenue for Hawaii with less than 20 brands, and 80% of those breweries produce less than 30,000 barrels annually. While these small breweries are selling beer in Hawaii, the amounts are very small.

Tax rates on beer are burdensome for small craft breweries impacting their ability to thrive and grow. This can be especially difficult for small breweries manufacturing their beer 100% in Hawaii. It is estimated that ingredients, equipment, other supplies and cost of operations can be 30 – 40% higher in Hawaii compared to similar small craft breweries on the mainland. Hawaii ranks in the top 10% for highest tax rates on beer in the nation. HB2726 H.D.1 helps even out the economics of production for Hawaii's breweries where cost of ingredients and production are high. Higher tax rates present an additional economic challenge to the success of Hawaii's small craft beer producers.

The Small Brewers Tax Rate simplifies tax rates on beer for both draft, and beer other than draft, for small breweries producing less than 70,000 barrels annually. Beer is the only beverage with this disparity of one tax rate for draft beer and another rate for beer other than draft for the same beverage. Hawaii taxation for wine and spirits both have a uniform tax rate based on gallonage. With changes proposed in HB2726 H.D.1, small craft breweries would have a more uniform tax rate for both draft and beer other than draft, aligning more closely with other alcoholic beverage taxes.

Cooler Beverage Tax

HB2726 H.D.1 amends the definition of cooler beverage to include spirits-based beverages. By expanding the definition of cooler beverage to include spirit beverage coolers containing distilled spirits, locally distilleries would be encouraged to expand the number and types of products they manufacture in Hawaii.

Development and production of spirit cooler beverages encourages additional use of Hawaii grown agricultural products used as ingredients, for example tropical fruits, coffee, ginger, lemon grass and other locally grown farm products. The Hawaiian Craft Brewers Guild supports the use of ingredients sourced from Hawaii farms.

Cooler beverages made in Hawaii with distilled spirits produced in Hawaii are a new potential product line. This would bring a stream of tax revenue that does not currently exist, as a newly created and defined category of product is created and offered to consumers. The passage of this bill will also create parity between malt and wine based coolers and spirits based versions.

We request the Senate Committee on Commerce, Consumer Protection and Health pass this bill with amendments, returning to the original qualified small brewer language in HB2726. Mahalo for considering Hawaiian Craft Brewers Guild testimony in support of this legislation.

WAIKIKI BREWING COMPANY

Joe P. Lorenzen, Partner/Brewmaster

831 Queen St.

Honolulu, HI 96813

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HB2726 H.D.1 Relating to Intoxicating Liquor: Small Brewer Tax, Cooler Beverage Tax
Senate Committee on Commerce, Consumer Protection, and Health
Wednesday, March 11, 2020 at 9:30 a.m. Conference Room 229

Chair Senator Rosalyn Baker, Vice Chair Senator Stanley Chang, and members of the Committee on Commerce, Consumer Protection and Health

Position: **Support original HB2726 language for tax rate on beer**

My name is Joe Lorenzen. I live in Honolulu, on the island of Oahu, and I am a partner in and Brewmaster of Waikiki Brewing Company with business locations in Waikiki and in Kaka'ako. Our brewery began with 15 employees in 2015, and now employs a staff of 45.

Waikiki Brewing Company supports HB 2726. This bill would go a long way to helping support small independent breweries in Hawaii by reducing our tax burden. As a small independent brewery producing less than 70,000 barrels annually, we have a hard time competing with large breweries that are able to leverage economies of scale and other cost advantages.

We did notice that in the H.D. 1 version that passed out of EBD, there was a change that defined a small craft brewery as a "small craft producer pub granted a license by the liquor commission pursuant to section 281-31 (r)." This would not only eliminate brewers who hold a different license type, such as manufacturer or brewpub, from the benefits of this bill but also create problems by disallowing brewers from other states who are not licensed by the State of Hawaii as "small craft producer pubs." We would like to see this revert back to the original language which referred only to a brewer producing less than 70,000 barrels annually.

Waikiki Brewing Company is proud to have created many jobs in our community, both in service and manufacturing, and in supporting other Hawaii based industry, such as agriculture and farming, can and packaging production and distribution. Supporting this bill helps support small and independent breweries and in doing so, supports job creation and manufacturing as well

Thank you for the opportunity to testify in support of HB2726 with original language.

Sincerely,



Joe P. Lorenzen

Kauai Beer Company

James Guerber
4265 Rice Street
Lihue, HI 96766
98080 639 7821
jim@kauaibeer.com

HB2726 H.D.1 Relating to Intoxicating Liquor: Small Brewer Tax, Cooler Beverage Tax
Senate Committee on Commerce, Consumer Protection, and Health
Wednesday, March 11, 2020 at 9:30 a.m. Conference Room 229

Chair Senator Rosalyn Baker, Vice Chair Senator Stanley Chang, and members of the
Committee on Commerce, Consumer Protection and Health

Position: Support original HB2726 language for tax rate on beer

My name is Jim Guerber and I am the President of the Kauai Beer Company, located in downtown Lihue, Kauai on Rice Street. We have been in business here since 2006 and began formally serving beer since September 2013. We have been instrumental in the effort to revitalize our downtown and are widely recognized for our contribution in that regard. We are in the process of renovating an adjacent space, which will dramatically enhance our ability to serve a larger customer base, increase production and increase our personnel, which is presently ~60 full and part-time personnel.

We hold a liquor license as a small craft producer pub. We support HB 2726 H.D.1., with the exception of the change made in H.D.1 to have the qualified small brewer defined as holding a liquor license for a small craft producer pub granted by the liquor commission. This changed definition is not desirable and would restrict the tax rate to beer made in Hawaii, which could be challenged as a violation of the Commerce Clause. As a member of the Hawaiian Craft Brewers Guild, only some of our members hold a small craft producer pub license and the tax rate would not apply evenly to its members. We support the original language regarding the tax rate on beer in HB2726 for the qualified small brewer to mean producing less than 70,000 barrels of beer annually in the U.S.

The Kauai Beer Company is an independent craft brewery producing 100% of our beer in Hawaii. We are united with breweries across the islands in our pursuit to promote successful economic activity and growth for Hawaii's beer manufacturers. The Hawaiian Craft Brewers Guild represents almost all craft beer producers in Hawaii. We are part of our local community and involved to provide support for the community.

1. Current tax rates on beer discourage the business of small craft breweries. Small brewers find it difficult to compete as they are operating on a much different economic scale than larger breweries.
2. We are a small craft brewery producing far less than the 70,000 barrels of beer annually. The small brewer tax rate will benefit our brewery business directly.
3. HB2726 recognizes the different and more difficult position of small breweries, with the creation of a tax structure well suited for smaller brewery businesses.
4. HB2726 creates a more equitable tax scheme for qualified brewers. Most beer shipped to Hawaii is made by large breweries that produce much more than 70,000

barrels annually.

5. As a growing business sector Hawaii's craft breweries contribute an increasingly greater amount of revenue to the state. This includes a number of taxes The amount of tax revenue for the State of Hawaii increases with the expansion in both number of breweries and amount of production by each brewery.

Cooler Beverage Tax

By amending and expanding the definition of cooler beverage to include spirit beverage coolers containing distilled spirits, HB2726 H.D.1 would encourage local Hawaii distilleries to expand the number and types of products they manufacture. The Hawaiian Craft Brewers Guild supports the use of ingredients sourced from Hawaii farms. Development and production of spirit cooler beverages encourages additional use of Hawaii grown agricultural products used as ingredients, for example tropical fruits, coffee, ginger, lemon grass and other locally grown farm products. Cooler beverages with distilled spirits produced in Hawaii are a new potential product line that would bring a new stream of tax revenue.

We request the House Committee on Consumer Protection and Commerce to pass this bill.

Mahalo for considering our testimony in support of HB2726 H.D.1.

Sincerely,

Jim Guerber