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## A BILL FOR AN ACT

RELATING TO SMOKING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 281-31, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§281-31 Licenses, classes. (a) Licenses may be granted  
4 by the liquor commission as provided in this section.

5 (b) Class 1. Manufacturers' licenses. A license for the  
6 manufacture of liquor shall authorize the licensee to  
7 manufacture the liquor therein specified and to sell it at  
8 wholesale in original packages to any person who holds a license  
9 to resell it and to sell draught beer or wine manufactured from  
10 grapes or other fruits grown in the State in any quantity to any  
11 person for private use and consumption. Under this license, no  
12 liquor shall be consumed on the premises except as authorized by  
13 the commission. Of this class, there shall be the following  
14 kinds:

- 15 (1) Beer;
- 16 (2) Wine;
- 17 (3) Alcohol; and
- 18 (4) Other specified liquor.



1 It shall be unlawful for any holder of a manufacturer's license  
2 to have any interest whatsoever in the license or licensed  
3 premises of any other licensee. This subsection shall not  
4 prevent the holder of a beer class manufacturer's license under  
5 this chapter or under the law of another jurisdiction from  
6 maintaining any interest in the license or licensed premises of  
7 a beer and wine class wholesale dealer licensee under this  
8 chapter whose wholesaling is limited to beer, other than direct  
9 ownership of a beer and wine class wholesale dealer's license,  
10 or direct ownership of a partnership share, one or more shares  
11 of stock, or similar proprietary stake in the holder of a beer  
12 and wine class wholesale dealer's license.

13 (c) Class 2. Restaurant licenses.

14 (1) A license under this class shall authorize the  
15 licensee to sell liquors specified in this subsection  
16 for consumption on the premises; provided that a  
17 restaurant licensee, with commission approval, may  
18 provide off-premises catering; provided further that  
19 the catering activity shall be directly related to the  
20 licensee's operation as a restaurant. A licensee  
21 under this class shall be issued a license according  
22 to the category of establishment the licensee owns or



1 operates. The categories of establishment shall be as  
2 follows:

3 (A) A standard bar; or

4 (B) A premises in which live entertainment or  
5 recorded music is provided. Facilities for  
6 dancing by the patrons may be permitted as  
7 provided by commission rules.

8 (2) If a licensee under class 2 desires to change the  
9 category of establishment the licensee owns or  
10 operates, the licensee shall apply for a new license  
11 applicable to the category of the licensee's  
12 establishment.

13 (3) For each category of class 2 licenses there shall be  
14 the following kinds:

15 (A) General (includes all liquors except alcohol);

16 (B) Beer and wine; and

17 (C) Beer.

18 Any licensee holding a different class of license on June 19,  
19 1990, and who would otherwise come within this class of license  
20 shall not be required to apply for a new license.

21 (d) Class 3. Wholesale dealers' licenses. A license for  
22 the sale of liquors at wholesale shall authorize the licensee to



1 import and sell only to licensees or to others who are by law  
2 authorized to resell but are not by law required to hold a  
3 license, the liquors therein specified in quantities not less  
4 than five gallons at one time if sold from or in bulk containers  
5 or not less than one gallon if bottled goods; provided that  
6 samples of liquor may be sold back to the manufacturer. The  
7 license may authorize the licensee to sell draught beer in  
8 quantities not less than five gallons at one time to any person  
9 for private use and consumption if the licensee files an  
10 affidavit with the commission that there is not a class 4 retail  
11 dealers licensee available to sell the wholesalers brand of  
12 draught beer. Under the license no liquor shall be consumed on  
13 the premises except as authorized by the commission. Of this  
14 class, there shall be the following kinds:

- 15 (1) General (includes all liquors except alcohol);
- 16 (2) Beer and wine; and
- 17 (3) Alcohol.

18 If any wholesale dealer solicits or takes any orders in any  
19 county other than that where the dealer's place of business is  
20 located, the orders may be filled only by shipment direct from  
21 the county in which the wholesale dealer has the dealer's  
22 license. Nothing in this subsection shall prevent a wholesaler



1 from selling liquors to post exchanges, ships service stores,  
2 army or navy officers' clubs, or similar organizations located  
3 on army or navy reservations, or to any vessel other than  
4 vessels performing a regular water transportation service  
5 between any two or more ports in the State, or to aviation  
6 companies who operate an aerial transportation enterprise as a  
7 common carrier, under chapter 269, engaged in regular flight  
8 passenger services between any two or more airports in the State  
9 for use on aircraft, or aviation companies engaged in  
10 transpacific flight operations for use on aircraft outside the  
11 jurisdiction of the State.

12 (e) Class 4. Retail dealers' licenses. A license to sell  
13 liquors at retail or to class 10 licenses shall authorize the  
14 licensee to sell the liquors therein specified in their original  
15 packages. Under the license no liquor shall be consumed on the  
16 premises except as authorized by the commission. Of this class,  
17 there shall be the following kinds:

- 18 (1) General (includes all liquors except alcohol);  
19 (2) Beer and wine; and  
20 (3) Alcohol.

21 (f) Class 5. Dispensers' licenses.



- 1           (1) A license under this class shall authorize the  
2           licensee to sell liquors specified in this subsection  
3           for consumption on the premises. A licensee under  
4           this class shall be issued a license according to the  
5           category of establishment the licensee owns or  
6           operates. The categories of establishments shall be  
7           as follows:
- 8           (A) A standard bar;
- 9           (B) A premise in which a person performs or  
10           entertains unclothed or in attire restricted to  
11           use by entertainers pursuant to commission rules;
- 12           (C) A premise in which live entertainment or recorded  
13           music is provided; provided that facilities for  
14           dancing by the patrons may be permitted as  
15           provided by commission rules; or
- 16           (D) A premise in which employees or entertainers are  
17           compensated to sit with patrons, regardless of  
18           whether the employees or entertainers are  
19           consuming nonalcoholic beverages while in the  
20           company of the patrons pursuant to commission  
21           rules.



1           (2) If a licensee under class 5 desires to change the  
2           category of establishment the licensee owns or  
3           operates, the licensee shall apply for a new license  
4           applicable to the category of the licensee's  
5           establishment.

6           (3) For each category of class 5 licenses there shall be  
7           the following kinds:

8           (A) General (includes all liquors except alcohol);

9           (B) Beer and wine; and

10          (C) Beer.

11          (g) Class 6. Club licenses. A club license shall be  
12          general only (but excluding alcohol) and shall authorize the  
13          licensee to sell liquors to members of the club and to guests of  
14          the club enjoying the privileges of membership, for consumption  
15          only on the premises kept and operated by the club; provided  
16          that the license shall also authorize any club member to keep in  
17          the member's private locker on the premises a reasonable  
18          quantity of liquor, if owned by the member, for the member's own  
19          personal use and not to be sold and that may be consumed only on  
20          the premises.

21          (h) Class 7. Vessel licenses. A general license may be  
22          granted to the owner of any vessel performing a regular water



1 transportation passenger service between any two or more ports  
2 in the State for the sale of liquor (other than alcohol) on  
3 board the vessel while in the waters of the State; provided the  
4 sales are made only while the vessel is en route and only for  
5 consumption by passengers on board. If the vessel has a home  
6 port in the State, the license shall be issuable in the county  
7 in which the home port is situated; provided that if the  
8 licensee's home port is not situated in this State, the license  
9 shall be issuable in the city and county of Honolulu. If, on  
10 any vessel for which no license has been obtained under this  
11 chapter, any liquor is sold or served within three miles of the  
12 shore of any island of the State, it shall constitute a  
13 violation of this chapter.

14 (i) Class 8. Transient vessel licenses. A general  
15 license may be granted to the owner of any vessel that does not  
16 fall within class 7 for the sale of liquor (other than alcohol)  
17 on board the vessel while in any port of the State. Sales shall  
18 be made only for consumption by passengers and their guests on  
19 board the vessel. The license shall be issuable in each county  
20 where the sales are to be made; provided that the application  
21 for the license may be made by any agent representing the owner.



1           (j) Class 9. Tour or cruise vessel licenses. A general  
2 license may be granted to the owner of any tour or cruise vessel  
3 for the sale of liquor (other than alcohol) on board the vessel  
4 while in the waters of the State; provided that sales be made  
5 only for consumption by passengers on board while the vessel is  
6 in operation outside the port or dock of any island of the  
7 State, unless otherwise approved by the county where the license  
8 has been issued. If the vessel has a homeport in the State,  
9 the license shall be issuable in the county wherein the home  
10 port is situated; provided that if the licensee's home port is  
11 not situated in this State, the license shall be issuable in the  
12 city and county of Honolulu. If, on any vessel for which no  
13 license has been obtained under this chapter, any liquor is sold  
14 or served within three miles of the shore of any island of the  
15 State, it shall constitute a violation of this chapter.

16           (k) Class 10. Special. A special license may be granted  
17 for the sale of liquor for a period not to exceed three days on  
18 any occasion and under any conditions as may be approved by the  
19 commission. Of this class, there shall be the following kinds:

- 20           (1) General (includes all liquors except alcohol);  
21           (2) Beer and wine; and  
22           (3) Beer.



1 Under this license, the liquors therein specified shall be  
2 consumed on the premises.

3 (1) Class 11. Cabaret license. A cabaret license shall  
4 be general only (but excluding alcohol) and shall authorize the  
5 sale of liquors for consumption on the premises. This license  
6 shall be issued only for premises where food is served,  
7 facilities for dancing by the patrons are provided, including a  
8 dance floor, and live or amplified recorded music or  
9 professional entertainment, except professional entertainment by  
10 a person who performs or entertains unclothed, is provided for  
11 the patrons; provided that professional entertainment by persons  
12 who perform or entertain unclothed shall be authorized by:

13 (1) A cabaret license for a premise where professional  
14 entertainment by persons who perform or entertain  
15 unclothed was presented on a regular and consistent  
16 basis immediately prior to June 15, 1990;

17 (2) A cabaret license that, pursuant to rules adopted by  
18 the liquor commission, permits professional  
19 entertainment by persons who perform or entertain  
20 unclothed.

21 A cabaret license under paragraph (1) or (2) authorizing  
22 professional entertainment by persons who perform or entertain



1 unclothed shall be transferable through June 30, 2000. A  
2 cabaret license under paragraph (1) or (2) authorizing  
3 professional entertainment by persons who perform or entertain  
4 unclothed shall not be transferable after June 30, 2000, except  
5 when the transferee obtains approval from the liquor commission,  
6 and pursuant to rules adopted by the commission.

7 Notwithstanding any rule of the liquor commission to the  
8 contrary, cabarets in resort areas may be opened for the  
9 transaction of business until 4 a.m. throughout the entire week.

10 (m) Class 12. Hotel licenses. A license to sell liquor  
11 in a hotel shall authorize the licensee to provide entertainment  
12 and dancing on the hotel premises and to sell all liquors,  
13 except alcohol, for consumption on the premises; provided that a  
14 hotel licensee, with commission approval, may provide off-  
15 premises catering; provided that the catering activity is  
16 directly related to the licensee's operation as a hotel.

17 Procedures such as room service, self-service (no-host),  
18 minibars or similar service in guest rooms and service at  
19 private parties in areas that are the property of and contiguous  
20 to the hotel, are permitted with commission approval.



1 Any licensee who would otherwise fall within the hotel  
2 license class but holds a different class of license may be  
3 required to apply for a hotel license.

4 If the licensee applies for a change of classification  
5 prior to July 30, 1992, the licensee shall not be subject to the  
6 requirements of sections 281-52, 281-54, and 281-57 through 281-  
7 59.

8 (n) Class 13. Caterer license. A general license may be  
9 granted to any licensee who serves food as part of their  
10 operation for the sale of liquor (other than alcohol) while  
11 performing food catering functions.

12 No catering service for the sale of liquor shall be  
13 performed off the licensee's premises, unless prior written  
14 notice of the service has been delivered to the office of the  
15 liquor commission of the county concerned. The notice shall  
16 state the date, time, and location of the proposed event and  
17 shall include a written statement signed by the owner or  
18 representative of the property that the function will be subject  
19 to the liquor laws and to inspection by investigators.

20 (o) Class 14. Brewpub licenses. A brewpub licensee:



- 1           (1) Shall manufacture not more than ten thousand barrels  
2           of malt beverages on the licensee's premises during  
3           the license year;
- 4           (2) May sell malt beverages manufactured on the licensee's  
5           premises for consumption on the premises;
- 6           (3) May sell malt beverages manufactured by the licensee  
7           in brewery-sealed packages to class 3, wholesale  
8           dealer licensees pursuant to conditions imposed by  
9           county planning and public works departments;
- 10          (4) May sell intoxicating liquor, purchased from a class  
11          1, manufacturer licensee, or a class 3, wholesale  
12          dealer's licensee, to consumers for consumption on the  
13          licensee's premises; provided that the premises is  
14          owned and operated by the licensee. The categories of  
15          establishments shall be as follows:
- 16                (A) A standard bar; or
- 17                (B) Premises in which live entertainment or recorded  
18                music is provided. Facilities for dancing by the  
19                patrons may be permitted as provided by  
20                commission rules;
- 21          (5) May sell malt beverages manufactured on the licensee's  
22          premises to consumers in brewery-sealed kegs and



1 growlers for off-premises consumption; provided that  
2 for purposes of this paragraph, "growler" means a  
3 glass container, not to exceed one half-gallon, that  
4 may be securely sealed;

5 (6) May sell malt beverages manufactured on the licensee's  
6 premises to consumers, in recyclable containers that  
7 may be provided by the licensee or by the consumer,  
8 not to exceed one gallon per container, that are  
9 securely sealed on the licensee's premises, for off-  
10 premises consumption;

11 (7) Shall comply with all regulations pertaining to class  
12 4 retail licensees when engaging in the retail sale of  
13 malt beverages;

14 (8) May sell malt beverages manufactured on the licensee's  
15 premises in brewery-sealed containers directly to  
16 class 2 restaurant licensees, class 3 wholesale dealer  
17 licensees, class 4 retail dealer licensees, class 5  
18 dispensers' licensees, class 6 club licensees, class  
19 7, 8, and 9 vessel licensees, transient vessel  
20 licensees, tour or cruise vessel licensees, class 10  
21 special licensees, class 11 cabaret licensees, class  
22 12 hotel licensees, and class 13 caterer licensees,



1           pursuant to conditions imposed by county planning and  
2           public works departments and regulations governing  
3           class 3 wholesale dealers licensees; and

4           (9) May conduct the activities described in paragraphs (1)  
5           through (8) at one location other than the licensee's  
6           premises; provided that the manufacturing takes place  
7           in Hawaii; and provided further the other location is  
8           properly licensed by the same ownership.

9           (p) Class 15. Smoking establishment; dispensers'  
10          licenses. A license under this class shall authorize the  
11          licensee to sell liquor for consumption on enclosed premises in  
12          which smoking as defined in section 328J-1 is allowed; provided  
13          that a licensee, with commission approval, may provide off-  
14          premises catering, provided that the catering activity shall be  
15          directly related to the licensee's operation of a restaurant. A  
16          licensee under this class shall be issued a license according to  
17          the category of establishment the licensee owns or operates.

18          The categories of establishments shall be as follows:

19                 (1) A standard bar;

20                 (2) A premise in which live entertainment or recorded  
21                 music is provided. Facilities for dancing by the



1           patrons may be permitted as provided by commission  
2           rules; or  
3           (3) A premise in which employees or entertainers are  
4           compensated to sit with patrons, regardless of whether  
5           the employees or entertainers are consuming  
6           nonalcoholic beverages while in the company of the  
7           patrons pursuant to commission rules.

8           [~~(p)~~] (q) It shall be unlawful for any retail licensee,  
9           except a class 10 licensee, to purchase, acquire, or sell liquor  
10          from any person other than a wholesaler licensed pursuant to  
11          this chapter, except as otherwise provided in this section.

12          [~~(q)~~] (r) Any provision to the contrary notwithstanding,  
13          at the discretion of the county liquor commission, permission  
14          may be granted to a bona fide hotel, restaurant, or club  
15          licensed under class 2, class 6, class 11, class 12, or class 14  
16          to allow a patron to remove from the licensed premises any  
17          portion of wine that was purchased for consumption with a meal;  
18          provided that it is recorked or resealed in its original  
19          container. This subsection applies only to a valid holder of a  
20          class 2, class 6, class 11, class 12, or class 14 license  
21          engaged in meal service.



1        [~~r~~] (s) Sections 281-57 to 281-61 shall not apply to  
2 classes 7 through 10 and 13."

3        SECTION 2. Section 328J-1, Hawaii Revised Statutes, is  
4 amended by amending the definitions of "bar" and "restaurant" to  
5 read as follows:

6        "Bar" means an establishment that is devoted to the serving  
7 of alcoholic beverages for consumption by guests on the premises  
8 regardless of whether food is served, including but not limited  
9 to taverns, cocktail lounges, and cabarets, including outdoor  
10 areas of bars~~[-]~~; provided that establishments operating with a  
11 class 15 license under chapter 281 shall not be included.

12        "Restaurant" means an eating establishment, including but  
13 not limited to coffee shops, cafeterias, sandwich stands, and  
14 private and public school cafeterias, which gives or offers for  
15 sale food to the public, guests, or employees, as well as  
16 kitchens and catering facilities in which food is prepared on  
17 the premises for serving elsewhere. The term "restaurant"  
18 includes a bar area within the restaurant and outdoor areas of  
19 restaurants~~[-]~~; provided that establishments operating with a  
20 class 15 license under chapter 281 shall not be included."

21        SECTION 3. Section 328J-7, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           " ~~[+]~~ §328J-7 ~~[+]~~ **Exceptions.** Notwithstanding any other  
2 provision of this chapter to the contrary, the following areas  
3 shall be exempt from the provisions of sections 328J-3, 328J-4,  
4 and 328J-5:

5           (1) Private residences, except when used as a licensed  
6 child care, adult day care, or health care facility;

7           (2) Hotel and motel rooms that are rented to guests and  
8 are designated as smoking rooms; provided that not  
9 more than twenty per cent of rooms rented to guests in  
10 a hotel or motel may be so designated. All smoking  
11 rooms on the same floor shall be contiguous and smoke  
12 from these rooms shall not infiltrate into areas where  
13 smoking is prohibited under this chapter. The status  
14 of rooms as smoking or nonsmoking may not be changed,  
15 except to add additional nonsmoking rooms;

16           (3) Retail tobacco stores; provided that smoke from these  
17 places shall not infiltrate into areas where smoking  
18 is prohibited under this chapter;

19           (4) Establishments operating with a class 15 smoking  
20 establishment dispensers' license under chapter 281;

21           ~~[+]~~ (5) Private and semiprivate rooms in nursing homes  
22 and long-term care facilities that are occupied by one



1 or more persons, all of whom are smokers and have  
2 requested in writing to be placed in a room where  
3 smoking is permitted; provided that smoke from these  
4 places shall not infiltrate into areas where smoking  
5 is prohibited under this chapter;

6 ~~(5)~~ (6) Outdoor areas of places of employment except  
7 those covered by the provisions of sections 328J-3 and  
8 328J-5;

9 ~~(6)~~ (7) All areas covered by this chapter when smoking is  
10 part of a production being filmed; and

11 ~~(7)~~ (8) State correctional facilities."

12 SECTION 4. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect upon its approval.

15

INTRODUCED BY: But Not a B/R

JAN 24 2007



**Report Title:**

Smoking; Establishments

**Description:**

Authorizes a new class of dispenser's license under the liquor code which has the off-premises catering privileges of a restaurant license, permits smoking, and is exempt from smoking prohibitions.

