

JAN 25 2017

A BILL FOR AN ACT

RELATING TO LIQUOR.

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

1 SECTION 1. The purpose of this Act is to:
2 (1) Clarify ambiguous statutory language in Act 12,
3 Session Laws of Hawaii 2016;
4 (2) Modernize chapter 381, Hawaii Revised Statutes; and
5 (3) Enable the various county liquor commissions to
6 execute their duties in a more efficient and effective
7 manner.

8 SECTION 2. Section 281-41, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By amending subsections (d), (e), and (f) to read:

11 "(d) Where a license is held by a partnership, the
12 commission may, notwithstanding any other provision of this
13 section, approve the transfer of [the partnership interest upon
14 the death or withdrawal of a member of the partnership to any
15 remaining partner or partners without publication of notice at a
16 public hearing.] a partnership interest, without publication of
17 notice at a public hearing, to any remaining partner or



1 partners, upon the death or withdrawal of a partner of the
2 partnership, or to a trust of which the partner is the trustee.

3 (e) Where a license is held by a partnership, limited
4 partnership, limited liability partnership, or a limited
5 liability company, the admission or withdrawal of a partner,
6 limited partner, partner of a limited liability partnership, [or
7 a member of the] member of a member managed limited liability
8 company, or manager of a manager managed limited liability
9 company shall not be deemed a transfer of the license [held by
10 the partnership or limited liability company, but], provided the
11 licensee shall, [prior to such] within thirty days from the date
12 of the admission or withdrawal, so notify the commission in
13 writing, stating the name of the partner, [partners, member, or
14 members who have withdrawn, if such be the case, and the name,
15 age, and place of residence of the partner, partners, member, or
16 members who have been admitted, if that be the case. If the
17 commission finds a partner or a member to be an unfit or
18 improper person to hold a license in the partner's or member's
19 own right pursuant to section 281-45, it may revoke the license
20 or suspend the license of the partnership or the limited
21 liability company until the unfit or improper partner or member



1 ~~is removed or replaced.]~~ member, or manager, who has been
2 admitted or withdrawn, and any other information as may be
3 required by the commission.

4 (f) Except as otherwise provided in this section, the same
5 procedure shall be followed in regard to the transfer of a
6 license as is prescribed by this chapter for obtaining a
7 license. Sections 281-51 to 281-60, except where inconsistent
8 with ~~[any provision hereof,]~~ this section, are ~~[hereby made]~~
9 applicable to ~~[such]~~ the transfers. The word "applicant", as
10 used in ~~[such]~~ sections~~[,]~~ 281-51 to 281-60, shall include each
11 ~~[such]~~ proposed transferee, and the words, "application for a
12 license or for the renewal of a license", as used in ~~[such]~~
13 those sections, shall include an application for the transfer of
14 a license."

15 2. By amending subsections (h), (i), and (j) to read:

16 "(h) If any licensee without ~~[such]~~ prior approval
17 transfers to any other person the licensee's business for which
18 the licensee's license was issued, either openly or under any
19 undisclosed arrangement, whereby any person, other than the
20 licensee, comes into exclusive possession or control of the
21 business or takes in any partner or associate, who would be



1 unfit or improper to hold a license pursuant to section 281-45,
2 the commission may in its discretion suspend or cancel the
3 license.

4 (i) If the licensee is a corporation, a change in
5 ownership of any outstanding capital stock shall not be deemed a
6 transfer of a license; provided that in the case of a change in
7 ownership of twenty-five per cent or more of the voting capital
8 stock or in the case of change in ownership of any number of
9 shares of the stock that results in the transferee thereof
10 becoming the owner of twenty-five per cent or more of the
11 outstanding voting capital stock, the corporate licensee shall,
12 [~~prior to~~] within thirty days of the date of the transfer, apply
13 for [~~and secure~~] the approval of the transfer from the
14 commission in writing. If the commission finds that the
15 [~~proposed~~] transferee is an unfit or improper person to hold a
16 license in the [~~proposed~~] transferee's own right pursuant to
17 section 281-45, it shall not approve the [~~proposed~~] transfer.
18 If any transfer is made without the prior approval of the
19 commission, the commission may in its discretion revoke or
20 suspend the license until it determines that the transferee is a
21 fit and proper person, and if the commission finds that the



1 transferee is not a fit and proper person, until a retransfer or
2 new transfer of the capital stock is made to a fit and proper
3 person pursuant to section 281-45. In addition, the corporate
4 licensee, if not a publicly-traded company, or an entity
5 ultimately solely owned by a publicly-traded company, shall,
6 within thirty days from the date of election of any officer or
7 director, notify the commission in writing of the name, age, and
8 place of residence of the officer or director [~~;~~ ~~provided that if~~
9 ~~the licensee is a~~]. A publicly-traded company, or an entity
10 ultimately solely owned by a publicly-traded company, [the
11 licensee] shall, within thirty days from the date of election of
12 any replacement of an officer designated as a primary
13 [~~decisionmaker~~] decision-maker regarding the purchase and sale
14 of liquor, notify the commission in writing of the name, age,
15 and place of residence of the [~~officers.~~] officer. If the
16 commission finds that the transferee, officer, or director,
17 notification of whom is required to be given as specified above,
18 an unfit or improper person to hold a license in the
19 transferee's, officer's, or director's own right pursuant to
20 section 281-45, it may in its discretion revoke the license or
21 suspend the license until a retransfer or new transfer of the



1 capital stock is effected to a fit or proper person pursuant to
2 section 281-45 or until the unfit or improper transferee,
3 officer, or director is removed or replaced by a fit and proper
4 person pursuant to section 281-45.

5 (j) If a licensee closes out the business for which the
6 license is held, during the term for which the license was
7 issued, the licensee shall, within five days from the date of
8 closing the same, give the commission written notice thereof and
9 surrender the licensee's license for cancellation~~(-)~~, unless the
10 licensee obtains prior approval from the commission to place its
11 license with the commission for safekeeping."

12 SECTION 3. Section 281-45, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§281-45 No license issued, when.** No license shall be
15 issued under this chapter:

16 (1) To any minor or to any person who has been convicted
17 of a felony and not pardoned, or to any other person
18 not deemed by the commission to be a fit and proper
19 person to have a license; provided that the commission
20 may grant a license under this chapter to a
21 corporation that has been convicted of a felony where



1 the commission finds that the corporation's officers
2 and shareholders of twenty-five per cent or more of
3 outstanding stock are fit and proper persons to have a
4 license;

- 5 (2) To a corporation the officers and directors of which,
6 or any of them, would be disqualified under paragraph
7 (1) from obtaining the license individually, or a
8 stockholder of which, owning or controlling twenty-
9 five per cent or more of the outstanding capital
10 stock, or to a general partnership, limited
11 partnership, limited liability partnership, or limited
12 liability company whose partner or member holding
13 twenty-five per cent or more interest of which, or any
14 of them would be disqualified under paragraph (1) from
15 obtaining the license individually; provided that for
16 publicly-traded companies or entities ultimately
17 solely owned by a publicly-traded entity, only the
18 officers and directors designated as primary decision-
19 makers shall be considered to determine
20 disqualification under paragraph (1);



- 1 (3) Unless the applicant for a license or a renewal of a
2 license, or in the case of a transfer of a license,
3 both the transferor and the transferee, present to the
4 issuing agency a tax clearance certificate from the
5 department of taxation and from the Internal Revenue
6 Service showing that the applicant or the transferor
7 and transferee do not owe the state or federal
8 governments any delinquent taxes, penalties, or
9 interest; or that the applicant, or in the case of a
10 transfer of a license, the transferor or transferee,
11 has entered into an installment plan agreement with
12 the department of taxation and the Internal Revenue
13 Service for the payment of delinquent taxes in
14 installments and that the applicant is or the
15 transferor or transferee is, in the case of a transfer
16 of a license, complying with the installment plan
17 agreement;
- 18 (4) To an applicant for a class 2, class 4 except for
19 convenience minimarts, class 5, class 6, class 11,
20 class 12, class 13, class 14, class 15, class 17, or
21 class 18 license unless the applicant for issuance of



1 a license or renewal of a license, or in the case of a
2 transfer of a license, both the transferor and the
3 transferee, present to the issuing agency proof of
4 liquor liability insurance coverage in an amount of
5 \$1,000,000; or

6 (5) To any applicant who has had any liquor license
7 revoked less than two years previous to the date of
8 the application for any like or other license under
9 this chapter."

10 SECTION 4. Section 281-53, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§281-53 Application; penalty for false statements.** Every
13 application for a license or for the renewal of a license or for
14 the transfer of a license shall be in writing, signed and,
15 except for the renewal of a license, verified by the oath of the
16 applicant, or in the case of a corporation or unincorporated
17 association by the proper officer or officers thereof, or if a
18 partnership by a general partner thereof, or if a limited
19 liability partnership by a partner thereof, or if a member
20 managed limited liability company by a member thereof, or if a
21 manager managed limited liability company by a manager thereof,



1 made before any official authorized by law to administer oaths,
2 and shall be addressed to the liquor commission, and set forth:

- 3 (1) The full name, age, and place of residence of the
4 applicant; if a copartnership, the names, ages, and
5 respective places of residence of all the partners; if
6 a limited liability company, its full name and the
7 names of all its members; if a corporation or joint-
8 stock company, its full name and the names of its
9 officers and directors, and the names of all
10 stockholders owning twenty-five per cent or more of
11 the outstanding capital stock; if a publicly-traded
12 company, or an entity ultimately solely owned by a
13 publicly-traded company, the names of the officers
14 designated as the primary [~~decisionmakers~~] decision-
15 makers regarding the purchase and sale of liquor; and
16 if any other association of individuals, the names,
17 ages, and respective places of residence of its
18 officers and the number of its members;
- 19 (2) A particular description of the place or premises
20 where the proposed license is to be exercised, so that



1 the exact location and extent thereof may be clearly
2 and definitely determined therefrom;

- 3 (3) The class and kind of license applied for; and
4 (4) Any other matter or information pertinent to the
5 subject matter which may be required by the rules of
6 the commission.

7 If any false statement is knowingly made in any application
8 which is verified by oath, the applicant, and in the case of the
9 application being made by a corporation, limited liability
10 company, association, or club, the persons signing the
11 application, shall be guilty of perjury, and shall be subject to
12 the penalties prescribed by law for such offense. If any false
13 statement is knowingly made in any application which is not
14 verified by oath, the person or persons signing the application
15 shall be guilty of a misdemeanor and upon conviction thereof
16 shall be punished as in section 281-102 provided."

17 SECTION 5. Section 281-53.5, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The respective county liquor commissions may request
20 a criminal history record check of an applicant for a liquor
21 license in accordance with section 846-2.7[-], provided that



1 neither a criminal history record check nor compliance with
2 section (a)(1), (a)(2), (b)(1), (b)(2), or (b)(3) shall be
3 required for the officers and directors of publicly-traded
4 companies or entities ultimately solely owned by a publicly-
5 traded entity, who are not designated as primary decision-makers
6 regarding the sale or purchase of liquor. The criminal history
7 record check, at a minimum, shall require the applicant to
8 disclose whether:

- 9 (1) The applicant has been convicted in any jurisdiction
10 of a crime that would tend to indicate the applicant
11 may be unsuited for obtaining a liquor license; and
12 (2) The judgment of conviction has not been vacated.

13 For the purpose of this section, the criminal history
14 disclosure made by the applicant may be verified by the liquor
15 commission by means of information obtained through the Hawaii
16 criminal justice data center. The applicant shall provide the
17 Hawaii criminal justice data center with personal identifying
18 information which shall include but not be limited to the
19 applicant's name, social security number, date of birth, and
20 gender. This information shall be secured only for the purpose



1 of conducting the criminal history record check authorized by
2 this section."

3 SECTION 6. Section 281-96, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§281-96 Cancellation.** If the use of the premises covered
6 by any license becomes lost to the licensee by reason of being
7 sold under foreclosure proceedings, or a civil execution, or
8 other legal process, or for any other cause, which shall force a
9 cessation of the business of the licensee thereon under the
10 license (other than by a revocation or suspension of the
11 licensee's license), the liquor commission may cancel or suspend
12 the license[-] unless the liquor commission has approved the
13 safekeeping of the license pursuant to section 281-41(j)."

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect upon its approval.
17

INTRODUCED BY: *(ai) Gall*
Will you
Don't let
Ron E. Ad



S.B. NO. 1291

Report Title:

Liquor License; Liquor Commission

Description:

Amends statutory language on liquor license application and operating procedures for clarity.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

