

JAN 20 2017

A BILL FOR AN ACT

RELATING TO INTOXICATING LIQUOR.

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

1 SECTION 1. Section 281-17, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The liquor commission, within its own county, shall
4 have the jurisdiction, power, authority, and discretion, subject
5 only to this chapter:

6 (1) To grant, refuse, suspend, and revoke any license for
7 the manufacture, importation, and sale of liquors;

8 (2) To take appropriate action against a person who,
9 directly or indirectly, manufactures, sells, or
10 purchases any liquor without being authorized pursuant
11 to this chapter; provided that in counties that have
12 established by charter a liquor control adjudication
13 board, the board shall have the jurisdiction, power,
14 authority, and discretion to hear and determine
15 administrative complaints of the director regarding
16 violations of the liquor laws of the State or of the



1 rules of the liquor commission, and impose penalties
2 for violations thereof as may be provided by law;

3 (3) To control, supervise, and regulate the manufacture,
4 importation, and sale of liquors by investigation,
5 enforcement, and education; provided that any
6 educational program shall be limited to the commission
7 staff, commissioners, liquor control adjudication
8 board members, and licensees and their employees, and
9 shall be financed through the money collected from the
10 assessment of fines against licensees; provided that
11 fine moneys, not to exceed ten per cent a year of
12 fines accumulated, may be used to fund public liquor-
13 related educational or enforcement programs;

14 (4) From time to time to make, amend, and repeal rules,
15 not inconsistent with this chapter, as in the judgment
16 of the commission are deemed appropriate for carrying
17 out this chapter and for the efficient administration
18 thereof, and the proper conduct of the business of all
19 licensees, including every matter or thing required to
20 be done or which may be done with the approval or
21 consent, by order, under the direction or supervision



1 of, or as prescribed by the commission; which rules,
2 when adopted as provided in chapter 91 shall have the
3 force and effect of law;

- 4 (5) [~~Subject to chapter 76, to~~] To appoint and remove an
5 administrator, subject to the advice and consent of
6 the legislative body of the county, who may also be
7 appointed an investigator and who shall be responsible
8 for the operations and activities of the staff. The
9 administrator may hire and remove hearing officers,
10 investigators, and clerical or other assistants as its
11 business may from time to time require, prescribe
12 their duties and fix their compensation, and engage
13 the services of experts and persons engaged in the
14 practice of a profession, if deemed expedient. Every
15 investigator, within the scope of the investigator's
16 duties, shall have the powers of a police officer;
- 17 (6) To limit the number of licenses of any class or kind
18 within the county, or the number of licenses of any
19 class or kind to do business in any given locality,
20 when in the judgment of the commission such
21 limitations are in the public interest;



- 1 (7) To prescribe the nature of the proof to be furnished,
2 the notices to be given, and the conditions to be met
3 or observed in case of the issuance of a duplicate
4 license in place of one alleged to have been lost or
5 destroyed, including a requirement of any indemnity
6 deemed appropriate to the case;
- 7 (8) To fix the hours between which licensed premises of
8 any class or classes may regularly be open for the
9 transaction of business, which shall be uniform
10 throughout the county as to each class respectively;
- 11 (9) To prescribe all forms to be used for the purposes of
12 this chapter not otherwise provided for in this
13 chapter, and the character and manner of keeping of
14 books, records, and accounts to be kept by licensees
15 in any matter pertaining to their business;
- 16 (10) To investigate violations of this chapter, chapter
17 244D and, notwithstanding any law to the contrary,
18 violations of the applicable department of health's
19 allowable noise levels, through its investigators or
20 otherwise, to include covert operations, and to report
21 violations to the prosecuting officer for prosecution



1 and, where appropriate, the director of taxation to
2 hear and determine complaints against any licensee;
3 provided that a liquor commission in a county with a
4 population of seven hundred thousand or greater may
5 establish a pilot program that employs both a dBA and
6 a dBC sound level measurement system for the purpose
7 of community noise control; provided further that the
8 dBC sound level measurements shall be in accordance
9 with the following maximum permissible sound levels in
10 dBC:

11 (A) Zoning districts that include all areas
12 equivalent to lands zoned residential,
13 conservation, preservation, public space, open
14 space, or similar type shall have a maximum dBC
15 sound level of fifty-five from 7:00 a.m. to 10:00
16 p.m. and a maximum dBC level of forty-five from
17 10:00 p.m. to 7:00 a.m.;

18 (B) Zoning districts that include all areas
19 equivalent to lands zoned for multi-family
20 dwellings, apartment, business, commercial,
21 hotel, resort, or similar type shall have a



1 maximum dBC sound level of sixty from 7:00 a.m.
2 to 10:00 p.m. and a maximum dBC level of fifty
3 from 10:00 p.m. to 7:00 a.m.; and

4 (C) Zoning districts that include all areas
5 equivalent to lands zoned in agriculture,
6 country, industrial, or similar type shall have a
7 maximum dBC sound level of seventy from 7:00 a.m.
8 to 10:00 p.m. and a maximum dBC level of seventy
9 from 10:00 p.m. to 7:00 a.m.;

10 (11) To prescribe, by rule, the terms, conditions, and
11 circumstances under which persons or any class of
12 persons may be employed by holders of licenses;

13 (12) To prescribe, by rule, the term of any license or
14 solicitor's and representative's permit authorized by
15 this chapter, the annual or prorated amount, the
16 manner of payment of fees for the licenses and
17 permits, and the amount of filing fees;

18 (13) To prescribe, by rule, regulations on dancing in
19 licensed premises; and



1 (14) To prescribe, by rule, the circumstances and penalty
2 for the unauthorized manufacturing or selling of any
3 liquor."

4 SECTION 2. Section 281-45, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§281-45 No license issued, when.** No license shall be
7 issued under this chapter:

8 (1) To any minor or to any person who has been convicted
9 of a felony and not pardoned, or to any other person
10 not deemed by the commission to be a fit and proper
11 person to have a license; provided that the commission
12 may grant a license under this chapter to a
13 corporation that has been convicted of a felony where
14 the commission finds that the corporation's officers
15 and shareholders of twenty-five per cent or more of
16 outstanding stock are fit and proper persons to have a
17 license;

18 (2) To a corporation the officers and directors of which,
19 or any of them, would be disqualified under paragraph
20 (1) from obtaining the license individually, or a
21 stockholder of which, owning or controlling twenty-



1 five per cent or more of the outstanding capital
2 stock, or to a general partnership, limited
3 partnership, limited liability partnership, or limited
4 liability company whose partner or member holding
5 twenty-five per cent or more interest of which, or any
6 of them would be disqualified under paragraph (1) from
7 obtaining the license individually;

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



1 transferor or transferee is, in the case of a transfer
2 of a license, complying with the installment plan
3 agreement; provided that when the applicant or the
4 transferor or transferee, in the case of a transfer of
5 a license, is actively challenging a tax assessment,
6 penalty, or other proceeding that prevents the
7 issuance of a signed certificate from the appropriate
8 federal or state tax agency, the commission may issue
9 a temporary license in accordance with section 281-32;

- 10 (4) To an applicant for a class 2, class 4 except for
11 convenience minimarts, class 5, class 6, class 11,
12 class 12, class 13, class 14, class 15, class 17, or
13 class 18 license unless the applicant for issuance of
14 a license or renewal of a license, or in the case of a
15 transfer of a license, both the transferor and the
16 transferee, present to the issuing agency proof of
17 liquor liability insurance coverage in an amount of
18 \$1,000,000; or
- 19 (5) To any applicant who has had any liquor license
20 revoked less than two years previous to the date of



1 the application for any like or other license under
2 this chapter."

3 SECTION 3. Section 281-51, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§281-51 Prior inspection.** No license shall be issued
6 under this chapter unless and until the liquor commission has
7 caused to be made a thorough inspection of the premises upon
8 which the proposed business is to be conducted and is satisfied
9 as to its fitness and that all other general conditions and
10 proposed methods of operation under the license are such as are
11 suitable for carrying on the business in a reputable way. "In a
12 reputable way" shall have the same meaning as defined under
13 rules adopted by the commission pursuant to chapter 91 and
14 includes, among other considerations, operating in such a manner
15 that activities within the premises or in such adjacent related
16 outdoor areas, such as parking lots or lanais, will not create
17 noise in excess of standards contained in state or county noise
18 or vibration codes [which] that intrudes into nearby residential
19 units."

20 SECTION 4. Section 281-53.5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "[+]§281-53.5[+] County liquor commissions; criminal
2 history record check. (a) The respective county liquor
3 commissions may request a criminal history record check of an
4 applicant for a liquor license in accordance with section
5 846-2.7. The criminal history record check, at a minimum, shall
6 require the applicant to disclose whether:

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

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

21 (b) The applicant shall submit to the liquor commission:



1 (1) A statement signed under penalty of law as to whether
2 the applicant has ever been convicted of a crime other
3 than a minor traffic violation;

4 (2) Written consent to request and obtain criminal history
5 record information for verification; and

6 (3) Permission to be fingerprinted.

7 (c) The liquor commission shall obtain criminal history
8 record information through the Hawaii criminal justice data
9 center on the applicant. The information obtained shall be used
10 exclusively for the stated purpose for which it was obtained and
11 shall be subject to applicable federal laws and regulations
12 currently or hereafter in effect.

13 (d) For the purposes of this section, if an applicant is a
14 corporation or other entity, only the following individual
15 persons shall be subject to criminal history record checks
16 pursuant to this section:

17 (1) Persons who hold at least twenty-five per cent control
18 over the corporation or other entity; and

19 (2) Individual persons with management or operational
20 authority over liquor-related operations.



1 The commission may request an applicant to disclose whether any
2 other individuals associated with the corporation or other
3 entity has been convicted of a felony."

4 SECTION 5. Section 281-104, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§281-104 Investigators, employees, counsel for.** Whenever
7 any investigator or other employee of the liquor commission
8 shall be prosecuted for any crime or sued in any civil cause for
9 acts done in the performance of the investigator's or employee's
10 duty as such investigator or employee, the investigator or
11 employee [~~shall~~] may be represented and defended [~~(1) in any~~
12 ~~such~~] :

- 13 (1) In a criminal proceeding, by an attorney to be
14 employed and paid by the commission; and
15 (2) [~~in any such~~] In a civil cause, by the corporation
16 counsel [~~or county attorney,~~] of the county in which
17 the investigator or employee is serving or, if
18 permitted under the appropriate county charter, by an
19 outside attorney to be employed and paid for by the
20 commission."



S.B. NO. 278

1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval;
4 provided that the amendments made to section 281-17(a), Hawaii
5 Revised Statutes, by section 1 of this Act shall not be repealed
6 when that subsection is reenacted on May 5, 2017, pursuant to
7 Act 297, Session Laws of Hawaii 2012.

8

INTRODUCED BY: ~~SEN. SCOTT LEE~~
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S.B. NO. 278

Report Title:

Liquor Commission; Administrator; Tax Clearance Challenges; Temporary License; Criminal History Record Checks; Legal Representation of Investigator or Other Employee of a Liquor Commission

Description:

Exempts the appointment and removal of an administrator of a liquor commission from civil service laws and requires the appointment to be subject to the advice and consent of the legislative body of the county. Allows the commission to issue a temporary license when the applicant or the transferor or transferee, in the case of a transfer of a license, is actively challenging a tax assessment, penalty, or other proceeding that prevents the issuance of a signed certificate from the appropriate federal or state tax agency. Limits the criminal history record check requirements for applicants of liquor licenses who are corporations or other entity to those persons with management or operational authority over the liquor-related operations. Allows, rather than requires, any investigator or other employee of the liquor commission to be represented and defended in any criminal or civil cause of action arising out of an action done as part of the investigator's or other employee's duty by certain specified counsel.

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

