

ACT 344

S.B. NO. 2308-86

A Bill for an Act Relating to Liquor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 244D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§244D- Adjustment of tax rate. (a) After July 1, 1987, the tax rate for a given liquor category taxed in section 244D-4(a) shall be adjusted automatical-

ly on January 1 or July 1, as the case may be, in the following circumstances. If at the end of a six-month reporting period ending on March 31 and September 30 the department finds that:

- (1) The:
 - (A) Total gallonage for a given liquor category has not declined over the same six-month reporting period; and
 - (B) Unit price for such liquor category over such six-month reporting period has increased over the corresponding unit price over the preceding six-month reporting period; or
- (2) The:
 - (A) Total gallonage for a given liquor category has not declined over the same six-month reporting period; and
 - (B) Unit price for such liquor category over such six-month reporting period has decreased over the corresponding unit price over the preceding six-month reporting period;

then the tax rate, rounded to the nearest whole cent, for the liquor category or liquor categories shall increase or decrease, as appropriate, in the same percentage as the increase or decrease in unit price. Under no circumstances shall the tax rate for a liquor category be decreased below the tax rates established by section 244D-4(a).

The department shall make its determination no later than ninety days following the close of such six-month reporting period, shall circulate the tax rate change to each permittee, and shall publish the tax rate change in a newspaper of general circulation in the State.

The tax rate increase or decrease, as appropriate, shall be effective on the January 1 or July 1 next following such determination.

(b) After January 1, 1989, the tax rate for a given liquor category in each paragraph in section 244D-4(a) shall be adjusted automatically on January 1 or July 1, as the case may be, in the following circumstances. If at the end of a fiscal or calendar year reporting period the department finds that:

- (1) The:
 - (A) Total gallonage for a given liquor category has not declined over the same twelve-month reporting period; and
 - (B) Unit price for such liquor category over such twelve-month reporting period has increased over the corresponding unit price over the preceding twelve-month reporting period; or
- (2) The:
 - (A) Total gallonage for a given liquor category has not declined over the same twelve-month reporting period; and
 - (B) Unit price for such liquor category over such twelve-month reporting period has decreased over the corresponding unit price over the preceding twelve-month reporting period;

then the tax rate, rounded to the nearest whole cent, for the liquor category or liquor categories shall increase or decrease, as appropriate, in the same percentage as the increase or decrease in unit price. Under no circumstances shall the tax rate for a liquor category be decreased below the tax rates established by section 244D-4(a).

The department shall make its determination no later than ninety days following the close of such twelve-month reporting period, shall circulate the tax rate change to each permittee, and shall publish the tax rate change in a newspaper of general circulation in the State.

The tax rate increase or decrease, as appropriate, shall be effective on the January 1 or July 1 next following such determination.”

SECTION 2. Section 244D-1, Hawaii Revised Statutes, is amended to read as follows:

“[[]§244D-1[]] **Definitions.** Wherever used in this chapter, unless the context otherwise requires:

“Liquor commission” means the liquor commission of each county.

“Liquor law” means chapter 281.

“Liquor” and “licensed premises” shall have the same meanings as such words have as used in the liquor law.

“Dealer” means the holder of a manufacturer’s license, or a wholesaler’s license, under the liquor law.

“Permittee” means the holder of a permit provided for in section 244D-2.

“Person” means an individual, partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, trustee, or other fiduciary, or other entity.

“Wholesale price” means the total amount for which liquor is sold by a dealer, valued in money, whether or not paid, and without any deduction for cash discounts, but the amount of tax imposed by this chapter, whether or not separately charged and collected, shall be deducted in determining the wholesale price. In the case of a sale not made at wholesale, or not made by a dealer, or if the tax is upon the use, the wholesale price shall be deemed to be the average price of sales to retail dealers of like liquor, made by the taxpayer during the month preceding the accrual of the tax, or if no such sales were made during the month by the taxpayer, the average price of sales to retail dealers of like liquor made by permittees in the same county during the month preceding the accrual of the tax.

“Sale” means any transfer of title or possession, or both, exchange or barter, in any manner or by any means whatsoever, for a consideration.

“Use” means any use, whether such use is of such nature as to cause the property to be appreciably consumed or not, or the keeping of such property for such use or for sale, and shall include the exercise of any right or power over tangible personal property incident to the ownership of that property.]

“Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

“Beer” means any alcoholic beverage obtained by the fermentation or any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine, or cooler beverage.

“Cooler beverage” means either (1) a wine cooler containing wine and more than fifteen per cent added natural or artificial blending material, such as fruit juices, flavors, flavorings, or adjuncts, water (plain, carbonated, or sparkling), colorings, or preservatives, and which contains less than seven per cent of alcohol by volume; or (2) a malt beverage cooler containing beer and added natural or artificial blending material such as fruit juices, flavors, flavorings, colorings, or preservatives, and which contains less than seven per cent of alcohol by volume.

“Dealer” means the holder of a manufacturer’s license, or a wholesaler’s license, under the liquor law.

“Distilled spirits” means an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof, but does not include beer, draft beer, cooler beverage, or wine.

"Draft beer" means beer in an individual container of seven gallons or more.

"Gallon" or "wine gallon" means that liquid measure containing one hundred twenty-eight fluid ounces (3.7854 liters).

"Licensed premises" shall have the same meaning as the term is used in chapter 281.

"Liquor" has the same meaning as set forth in section 281-1 and includes alcohol, and the liquor categories: beer, draft beer, cooler beverage, distilled spirits, and wine.

"Liquor commission" or "commission" means the liquor commission of each county.

"Liquor law" means chapter 281.

"Permittee" means the holder of a permit provided for in section 244D-2.

"Person" means an individual, partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, trustee, or other fiduciary, or other entity.

"Sale" means any transfer of title or possession, or both, exchange or barter, in any manner or by any means whatsoever, for a consideration.

"Sparkling wine" means champagne and any other effervescent wine charged with more than 0.392 grams of carbon dioxide per 100 milliliters of wine, whether artificially or as a result of secondary fermentation of wine within the container.

"Still wine" means any nonsparkling wine and shall include those wines containing not more than 0.392 grams of carbon dioxide per 100 milliliters of wine.

"Unit price" for a liquor category taxed under this chapter shall be equal to the total dollar volume of taxable sales, exclusive of all federal and state excise taxes, reported for such liquor category, divided by the total gallons of taxable sales reported for such liquor category over the same period.

"Use" means any use, whether such use is of such nature as to cause the property to be appreciably consumed or not, or the keeping of such property for such use or for sale, and shall include the exercise of any right or power over tangible personal property incident to the ownership of that property.

"Wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which contains not more than twenty-four per cent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine, but does not include cooler beverage."

SECTION 3. Section 244D-3, Hawaii Revised Statutes, is amended to read as follows:

"[]§244D-3[] Cooperation between department and liquor commission. The department of taxation and the liquor commission, if the commission exercises its authority under this chapter, shall cooperate in the enforcement of this chapter.

The department shall notify the proper liquor commission of the name and address of every permittee whose permit has been revoked, and any license issued to the permittee under the liquor law thereupon shall be deemed forfeited.

The department may notify the proper liquor commission of the name and address of every person who has failed to file a return required, or to pay

any tax prescribed, or to secure a permit, or to perform any other duty or act imposed under this chapter, and such liquor commission shall thereupon suspend any license which may have been issued to any such person under the liquor law until such time as such person complies with this chapter.

The liquor commission, if the commission exercises its authority under this chapter, shall provide to the department the results of any examination the commission has undertaken pursuant to section 244D-10 and shall, upon request, furnish to the department any information in its possession relative to any person having a license issued by it, and its records shall be open to examination by the department."

SECTION 4. Section 244D-4, Hawaii Revised Statutes, is amended to read as follows:

"[[§244D-4[]] Tax; limitations. (a) Every person who sells or uses any liquor not taxable under this chapter, in respect of the transaction by which such person or his vendor acquired such liquor, shall pay an excise tax which is hereby imposed[, equal to twenty per cent of the wholesale price of the liquor so sold or used; provided that the tax] at the following rates for the various liquor categories defined in section 244D-1:

- (1) \$5.20 per wine gallon on distilled spirits;
- (2) \$2.00 per wine gallon on sparkling wine;
- (3) \$1.30 per wine gallon on still wine;
- (4) \$.81 per wine gallon on cooler beverages;
- (5) \$.81 per wine gallon on beer other than draft beer;
- (6) \$.50 per wine gallon on draft beer;

and at a proportionate rate for any other quantity so sold or used.

(b) The tax levied pursuant to subsection (a) shall be paid only once upon the same liquor; provided further that the tax shall not apply to:

- (1) Liquor held for sale by a permittee but not yet sold;
- (2) Liquor sold by one permittee to another permittee;
- (3) Liquor [which is neither delivered in the State nor to be used in the State, or] which under the Constitution and laws of the United States cannot be legally subjected to the tax imposed by this chapter so long as and to the extent to which the State is without power to impose the tax;
- (4) Liquor sold for sacramental purposes or the use of liquor for sacramental purposes, or any liquor imported pursuant to section 281-33;
- (5) Alcohol sold pursuant to section 281-37 to a person holding a purchase permit or prescription therefor, or any sale or use of alcohol, so purchased, for other than beverage purposes."

SECTION 5. Section 244D-5, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 244D-6, Hawaii Revised Statutes, is amended to read as follows:

"[[§244D-6[]] Return, form, contents. Every taxpayer shall, on or before the last day of each month, file with the department of taxation in the taxation district in which his business premises are located, or with the department in Honolulu, a return showing all sales of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) made by him during the preceding month, showing separately the amount of the nontaxable sales, and the amount of the taxable sales, and the tax payable thereon. The return shall also show the amount of liquor by

gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) used during the preceding month which is subject to tax, and the tax payable thereon. The form of return shall be prescribed by the department and shall contain such information as it may deem necessary for the proper administration of this chapter.”

SECTION 7. Section 244D-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every dealer shall keep a record of all sales of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) made by him, in such form as the department of taxation may prescribe. Every person holding a license under the liquor law, other than a manufacturer’s or wholesaler’s license, shall keep a record of all purchases by him of liquor[,] by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a), in such form as the department may prescribe. All such records shall be offered for inspection and examination at any time upon demand by the department or commission and shall be preserved for a period of five years, except that the department may in writing consent to their destruction within such period or may require that they be kept longer.

The department may by [regulation] rule require the dealer to keep such other records as it may deem necessary for the proper enforcement of this chapter.”

SECTION 8. Section 244D-10, Hawaii Revised Statutes, is amended to read as follows:

“[]§244D-10[] Inspection. The director of taxation, the liquor commission, or [his] the duly authorized agent[,] of either the director or commission, may examine all records required to be kept under this chapter, and books, papers, and records of any person engaged in the sale of liquor to verify the accuracy of the payment of the tax imposed by this chapter and other compliance with this chapter and regulations adopted pursuant thereto. Every person in possession of such books, papers, and records and his agents and employees shall give the director, the commission, or [his] the duly authorized agent of either of them, the means, facilities, and opportunities for such examination.

The authority granted to the liquor commission under this section shall not conflict with section 231-18 and shall not extend to the inspection of any documents not directly related to this chapter.”

SECTION 9. Section 244D-13, Hawaii Revised Statutes, is amended to read as follows:

“[]§244D-13[] Other provisions applicable. All of the provisions of chapters 235 and 237 not inconsistent with this chapter and which may appropriately be applied to the taxes, persons, circumstances, and situations involved in this chapter, including (without prejudice to the generality of the foregoing) provisions as to penalties and interest, and provisions granting administrative powers to the director of taxation, and provisions for the assessment, levy, and collection of taxes, shall be applicable to the taxes imposed by this chapter, and to the assessment, levy, and collection thereof[.], except that returns, return information, or reports under this chapter and relating only to this chapter may be made known to the liquor commission by the department of taxation, if not in conflict with section 231-18.”

SECTION 10. Section 244D-16, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any person who fails or refuses to permit the examination of any book, paper, account, record, or property by the director, the commission, or [his] the authorized agent[,] of either of them, as required by this chapter, and any person who fails, neglects, or refuses to comply with or violates the rules and regulations prescribed, adopted, and promulgated by the director under this chapter, shall be fined not more than \$500, or imprisoned not more than six months, or both.”

SECTION 11. Section 237-25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any provision of law to the contrary notwithstanding, there shall be exempted from, and excluded from the measures of, the taxes imposed by chapters 237[, 244D,] and 245 all sales, and the gross proceeds of all sales of:

- (1) Intoxicating liquor, as defined in chapter 281, hereafter sold by any person licensed under chapter 281 to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or [chapter] 244D but not including national banks), or to any organization to which such sale is permitted by the proviso of “Class 3” of section 281-31, located on any army, navy, or air force reservation, but the person making the sale shall nevertheless, within the meaning of chapters 237, 244D, and 281 be deemed to be a licensed seller.
- (2) Tobacco products, as defined in chapter 245, sold by any person licensed under the chapter to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or [chapter] 245 but not including national banks), but the person making the sale shall nevertheless, within the meaning of chapters 237 and 245, be deemed to be a licensed seller.
- (3) Other tangible personal property hereafter sold by any person licensed under this chapter to the United States (including any agency or instrumentality thereof but not including national banks), but the person making such sale shall nevertheless, within the meaning of this chapter, be deemed a licensed seller.
- (4) When the amount of property sold by a licensee turns upon the amount of the property sold through a vending machine or similar device to the customer using the device, there shall not be deemed to have occurred any sale covered by an exemption under paragraph (1), (2), or (3).”

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

“**§281-3 Illegal manufacture, importation, or sale of liquor.** It shall be unlawful for any person not having a valid license to manufacture, sell, offer, expose, or keep for sale any liquor except as otherwise provided in this chapter; provided that the head of any family may produce for family use and not for sale an amount of wine not exceeding two hundred gallons a year, and an amount of beer not exceeding one hundred gallons a year.

It shall also be unlawful for any person, not having a valid wholesale license [or a valid manufacturer’s (including rectifier’s) license,] to import any

liquor from without the State, except as otherwise provided in this chapter. Liquor imported into this State shall come to rest at the warehouse of the wholesaler importing the liquor [and], shall be unloaded into such warehouse, and shall be held in such warehouse for at least forty-eight hours before further sale by such wholesaler.

It shall also be unlawful for any person to label, designate, or sell any liquor using the word "Hawaii", "Hawaiian", "Aloha State", "50th State", "Kauai", "Maui", "Oahu", or "Honolulu" unless such liquor is wholly or partially manufactured in the State.

A license shall constitute authority for the licensee to sell only the liquor thereby authorized to be sold by him."

SECTION 13. Section 281-17, Hawaii Revised Statutes, is amended to read as follows:

"§281-17 Jurisdiction and powers. The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education; provided that any educational program shall be limited to licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees;
- (3) From time to time to make, amend, and repeal such rules, not inconsistent with this chapter, as in the judgment of the commission seem appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;
- (4) Subject to chapters 76 and 77, to appoint and remove a secretary (who may also be appointed an inspector), and such inspectors and clerical or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every inspector, within the scope of the inspector's duties, shall have the powers of a police officer. No employee of any commission, aside from exercising the right to vote, shall support, advocate, or aid in the election or defeat of any candidate for public office, and upon satisfactory proof of such prohibited activity the offender shall be summarily dismissed;
- (5) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
- (6) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement for any indemnity deemed appropriate to the case;

- (7) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;
- (8) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
- (9) To investigate violations of this chapter[,] and chapter 244D, through its inspectors or otherwise, and to report such violations to the prosecuting officer for prosecution[;] and, where appropriate, the director of taxation; to hear and determine complaints against any licensee; to subpoena and examine witnesses under oath and require the production of, and examine any of the books, papers, and records of any licensee which may pertain to the licensee's business under the license or which shall or may pertain to any matter at any hearing or investigation by or before the commission. Each member of the commission may investigate any matter of which the commission may take cognizance, and take testimony in the same manner as any court and neither the commission nor any member shall be bound by the strict legal rules of evidence;
- (10) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of dispensers' and cabaret licenses;
- (11) To prescribe, by rule, the term of any license or solicitor's and representative's permit authorized by this chapter, the annual or prorated amount and the manner of payment of fees for such licenses and permits, and the amount of filing fees.

The commission and each member thereof shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses[,] and the production of documentary evidence, and examining the witnesses as are possessed by a circuit court.

The exercise by the commission of the power, authority, and discretion in it so vested shall be final in each case and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in this chapter or chapter 91."

SECTION 14. Section 281-20, Hawaii Revised Statutes, is amended to read as follows:

"§281-20 General right of inspection. Each member of the liquor commission and its inspectors may, at all times, without notice and without any search warrant or other legal process, visit and have immediate access to every part of the premises of every licensee for the purpose of making any examination or inspection thereof or inquiry into the books and records [pertaining thereto and the manner of conduct of business under the license.] therein, to ascertain whether all of the conditions of the license and all provisions of this chapter and chapter 244D are being complied with by the licensee."

SECTION 15. Section 281-79, Hawaii Revised Statutes, is amended to read as follows:

"§281-79 Entry for examination; penalty. Every inspector shall, and any member of the liquor commission or any officer having police power may, at all reasonable times, and at any time whatsoever if there is any reasonable ground

for suspicion that the conditions of any license are being violated, without warrant enter into and upon any licensed premises and inspect the same and every part thereof, and any books or records therein, to ascertain whether or not all conditions of the license and all provisions of this chapter and chapter 244D are being complied with[.] by the licensee.

If any such officer, or any person called by him to his aid, is hindered, obstructed, or prevented by any licensee or his employees from entering into any such premises, or whenever any such officer is by any licensee or his employees opposed, obstructed, or molested in the performance of his duty in any respect, the licensee and every person who has assisted him in the offense, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Whenever any such officer, having demanded admittance into any licensed premises and declared his name and office, is not admitted by the licensee or the person in charge of the premises, it shall be lawful for the officer forcibly and in any manner to break into and enter the premises.”

SECTION 16. Section 281-83, Hawaii Revised Statutes, is repealed.

SECTION 17. The department of taxation shall study and analyze the effect of this Act on the operations of the department and the revenues of the State. The department shall report to the legislature at least ten days before the convening of the regular sessions of 1987, 1988, and 1989 on its findings and shall submit such recommendations or legislation as may be necessary.

SECTION 18. Every person required to report under chapter 244D, Hawaii Revised Statutes, shall report by gallonage and dollar volume all sales of liquor after March 31, 1986, by each liquor category defined in section 244D-1, Hawaii Revised Statutes, and taxed under section 244D-4(a), Hawaii Revised Statutes.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 20. This Act shall take effect upon its approval; provided that the tax imposed under section 244D-4, Hawaii Revised Statutes, as amended by this Act shall apply to the sale of liquor made after June 30, 1986; provided further that on July 1, 1989, sections 1, 2, 4, 5, 6, 7, 11, 16, and 18 of this Act shall be repealed, and sections 244D-1, 244D-4, 244D-5, 244D-6, 244D-9, 237-25, and 281-83, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act.

(Approved June 13, 1986.)

Note

1. Edited pursuant to HRS §23G-16.5.