

ACT 223

S.B. NO. 1024

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. 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 of 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, to include covert operations, 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 2. Section 281-45, Hawaii Revised Statutes, is amended to read as follows:

"§281-45 Reasons for refusal. (a) The commission may refuse to grant a license under this chapter:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license;
- (2) To a corporation the officers and directors of which, or any of them, would be disqualified under paragraph (1) of this section from obtaining the license individually, or a stockholder of

which, owning or controlling twenty-five per cent or more of the outstanding capital stock would be disqualified under such paragraph (1) from obtaining the license individually[;].

(b) No license shall be issued under this chapter:

- [(3)] (1) Unless the applicant for a license, or a renewal[,] of a license, or in the case of a transfer of a license, both the transferor and the transferee presents to the issuing agency, a signed certificate from the director of taxation and from the Internal Revenue Service showing that the applicant and the transferor or transferee does not owe the state or federal governments any delinquent taxes, penalties, or interest;
- [(4)] (2) To any applicant who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under this chapter."

SECTION 3. Section 281-91, Hawaii Revised Statutes, is amended to read as follows:

"§281-91 Revocation or suspension of license; hearing. The liquor commission may revoke any license at any time issued, or suspend the right of the licensee to use the licensee's license, or assess and collect a penalty, or reprimand the licensee, either for the violation of any condition of the license or of any provisions of this chapter or of any rule or regulation applicable thereto, or upon the conviction at law of the licensee of any violation of this chapter or of any other law relative to the licensee's license or the proper exercise thereof, or of any violation of law in any other respect on account whereof the commission may deem the licensee to be an unfit or improper person to hold a license, or for any other cause deemed sufficient by the commission.

In every case where it is proposed to revoke or suspend the exercise of any license or assess and collect a penalty for any cause other than a conviction at law of the licensee as above specified, the licensee shall be entitled to notice and hearing in conformity with chapter 91, the notice to be given at least five days before the hearing, except that any special license shall be subject to summary revocation for any violation of or evidence of intent to violate the proper exercise thereof, without hearing before the commission; provided that the exercise of a license shall in no case be suspended or revoked for any violation (other than a conviction at law of the licensee as above specified) based upon the personal observation of any inspector, unless written notice of the violation charged to have occurred shall have been given to the licensee within ten working days after the alleged violation occurred, and the licensee shall have been given a hearing upon the charge not more than [sixty] ninety nor less than five days after the giving of notice of the alleged violation.

At the hearing, before final action is taken by the commission, the licensee shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present any facts showing that the alleged cause or causes for the proposed action do not exist, or any reasons why no penalty should be imposed. The testimony taken at the hearing shall be under oath and recorded stenographically, or by machine, but the parties shall not be bound by the strict rules of evidence; certified copies of any transcript and of any other record made of or at the hearing shall be furnished to the licensee upon the licensee's request and at the licensee's expense.

Any order of revocation or suspension or reprimand imposed by the commission upon the licensee shall be in addition to any penalty that might

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be imposed upon the licensee upon the licensee's conviction at law for any violation of this chapter. No licensee shall be subject to both the penalty assessed and collected by the commission and to revocation or suspension of license. The amount of penalty assessed and collected by the commission from any licensee for any particular offense shall not exceed the sum of [\$500] \$2,000.

Whenever the service of any order or notice shall be required by this section such service shall be made in the following manner: in the case of any violation based upon the personal observation of any inspector, a written notice of the violation, signed by the inspector observing the violation charged to have occurred shall be given to the licensee or the licensee's registered manager in active charge of the premises within ten working days after the alleged violation occurred, or by serving a certified copy of the notice or order upon the holder of the license wherever the holder may be found in the circuit wherein the holder is licensed, or, if the holder cannot be found after diligent search, by leaving a certified copy thereof at the holder's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; and if the holder of the license cannot be found after diligent search, and service cannot be made, then service may be made by posting a certified copy of the notice or order in a conspicuous place on the licensed premises and depositing another certified copy thereof in the registered mail of the United States post office, postage prepaid, addressed to the holder of the license at the holder's last known residence address; provided that in the case of a licensed corporation or unincorporated association service may be made upon any officer thereof."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 22, 1987.)