

**ACT 333**

**S.B. NO. 1729**

**A Bill for an Act Relating to County Licenses.**

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

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**"§46- Administrative inspections and warrants.** (a) The respective counties may conduct inspections to enforce sections 445-91 to 445-96. Each county may conduct its inspections without a warrant if the conditions enumerated in subsection (c) exist. A county shall conduct its inspection with a warrant in accordance with this section if the circumstances enumerated in subsection (c) do not exist or if specific buildings or premises to be inspected can be identified through citizen complaint or by information obtained from state agencies under section 46-. The issuance and execution of an administrative inspection warrant shall be as follows:

- (1) A judge of the circuit court, or any district judge within the judge's jurisdiction, may issue warrants for the purpose of conducting administrative inspections. The warrants shall be issued upon proper oath or affirmation showing probable cause that:
  - (A) The conditions of a license under section 445-95 have been violated; or
  - (B) A person is operating a lodging or tenement house, group home, group residence, group living arrangement, hotel, boardinghouse, or restaurant without a license;
- (2) A warrant shall issue only upon an affidavit of an individual having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that there is probable cause to believe the grounds for issuing a warrant exist, the judge shall issue a warrant identifying the area, premises, building, or records to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
  - (A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
  - (B) Be directed to a person authorized by the county to execute it;
  - (C) Command the person to whom it is directed to inspect the area, premises, building, or records identified for the purpose specified and, if appropriate, use reasonable force in conducting the inspection authorized by the warrant and direct the seizure of the property specified;
  - (D) Identify the item or types of property to be seized, if any; and
  - (E) Direct that it be served during the daylight business hours between 8:00 a.m. and 5:00 p.m. and designate the judge to whom it shall be returned;
- (3) A warrant issued pursuant to this section shall be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person

other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant; and

- (4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the issuing court.

(b) The designated representative of the county may make administrative inspections of premises in accordance with the following:

- (1) When authorized by an administrative inspection warrant issued pursuant to subsection (a) the representative, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge of the premises may enter the premises for the purpose of conducting an administrative inspection; and
- (2) When authorized by an administrative inspection warrant, the representative may inspect and copy records identifying the tenants, lodgers, or boarders of the lodging or tenement house, group home, group residence, group living arrangement, or boardinghouse.

(c) This section does not prevent entries or the inspection without a warrant of property, books, and records pursuant to an administrative subpoena issued in accordance with law:

- (1) If the owner, operator, or agent in charge of the provider premises consents;
- (2) In situations presenting imminent danger to health or safety of the occupants or customers of any lodging or tenement house, hotel, boardinghouse, or restaurant, or that of the surrounding community; or
- (3) In all other situations in which a warrant is not constitutionally required.

**§46- Cooperation by state departments.** All state departments, including the departments of social services and housing and health, shall cooperate with the counties with respect to administrative inspections conducted under section 46- , by providing information:

- (1) Regarding probable violations of the conditions of a license under section 445-95;
- (2) Regarding the probable operation of a lodging or tenement house, group home, group residence, group living arrangement, hotel, boardinghouse, or restaurant; or
- (3) That may be used to satisfy the probable cause requirement of section 46-

**§46- Definitions.** When used in this chapter, unless the context requires otherwise:

“Premises” shall include but not be limited to a lodging or tenement house, group residence, group living arrangement, hotel, boardinghouse, or restaurant as further defined in section 445-90, or any other like facility serving unsupervised or unrelated individuals.”

**SECTION 2.** Chapter 445, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§445- Exemption.** A facility owned or used by a government agency or by a non-profit agency which is registered with the department of commerce and consumer affairs and providing services by contract for a government agency, shall be exempt from this chapter.”

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SECTION 3. Section 445-90, Hawaii Revised Statutes, is amended to read as follows:

**"[§445-90] Definitions.** When used in this chapter, unless the context requires otherwise:

**"Hotel or boardinghouse"** means a building or buildings having at least ten rooms for the accommodation of guests.]

**"Boardinghouse"** means a building or buildings having at least three rooms for the accommodation of six or more unrelated persons and in which the owner or operator furnishes at least one meal per day as part of the accommodations.

**"Hotel"** means any building or portion thereof or buildings containing more than nine rooming units, in which space is let by the owner or operator to six or more unrelated persons.

**"Lodging or tenement house", "group home", "group residence", or "group living arrangement"** means any building or portion thereof containing no more than nine rooming units, in which space is let by the owner or operator to three or more unrelated persons.

**"Noisy or disorderly conduct"** has the same meaning as defined in chapter 711.

**"Restaurant"** means a building in which the principal business is the furnishing of meals for pay."

SECTION 4. Section 445-92, Hawaii Revised Statutes, is amended to read as follows:

**"§445-92 Fee[, hotel or boardinghouses].** The annual fee for a license to keep a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse shall be \$10."

SECTION 5. Section 445-94, Hawaii Revised Statutes, is amended to read as follows:

**"§445-94 [Certificate, department of health.] Certificates.** (a) No license shall be issued for a lodging or tenement house, group home, group residence, group living arrangement, hotel [or], boardinghouse, or restaurant, until the applicant secures from the department of health and presents to the treasurer a certificate setting forth that an agent of the department has examined the building or buildings, proposed to be used for such purposes, with a description thereof sufficient to identify and locate the same; and that the same are in good sanitary condition and suitable to be used for such purposes; and, if the application is for a license for a lodging or tenement house [or], group home, group residence, or group living arrangement, hotel, or boardinghouse, stating the number of persons who, by law, can be lodged therein.

(b) No initial license shall be issued for a lodging or tenement house, group home, group residence, group living arrangement, hotel, boardinghouse, or restaurant, until the applicant secures a clearance from the appropriate county agency responsible for ensuring compliance with county building and zoning codes and presents to the treasurer a certificate setting forth that an agent of the agency has examined the building or buildings, proposed to be used for such purposes, with a description thereof sufficient to identify and locate the same; and that the same are in compliance with the building and zoning codes."

SECTION 6. Section 445-95, Hawaii Revised Statutes, is amended to read as follows:

**“§445-95 Conditions of license.** A lodging or tenement house, group home, group residence, group living arrangement, hotel [or], boardinghouse, or restaurant license shall be issued upon the following express conditions, which shall be incorporated in the license:

- (1) The licensee shall not [keep a] permit noisy or disorderly conduct in the building or buildings;
- (2) No [prostitute] person engaging in acts of prostitution shall be allowed to reside therein or resort thereto;
- (3) No intoxicating liquor or other intoxicating substance shall be furnished or sold therein, except as authorized by law;
- (4) No more persons shall [at any time] be lodged therein at any time than are permitted by the license;
- (5) The building or buildings and premises licensed shall be kept in good sanitary condition, in accordance with law and with the orders of the agent of the department of health;
- (6) The police [and], agents of the licensing department, agents of the state department of health and agents of the appropriate county agencies responsible for compliance with the county's building and zoning codes shall at all times have access for purposes of inspection[; and] to enforce or administer this chapter and other applicable laws or rules;
- (7) No gaming shall be allowed[.];
- (8) The licensee, if a lodging or tenement house, group home, group residence, group living arrangement, or boardinghouse shall keep records identifying its tenants, lodgers, or boarders; and
- (9) No facility shall deliver or purport to deliver health care services or treatment unless it is licensed, certified, or contracted for by the State or other governmental agencies to do so.”

SECTION 7. Section 445-96, Hawaii Revised Statutes, is amended to read as follows:

**“§445-96 Penalty.** (a) Any person who keeps a lodging or tenement house, group home, group residence, group living arrangement, hotel [or], boardinghouse, or restaurant without a license under sections [445-91,] 445-92[,], or 445-93 as applicable shall be guilty of a misdemeanor.

(b) Any person holding a license under this chapter who violates or fails to observe any of the requirements or conditions of this chapter or of the license, shall be fined not less than \$100 nor more than \$1,000 per day of violation for each violation and the court may cancel the license.

(c) Any person who intentionally or knowingly obstructs or interferes with the progress of any authorized inspection pursuant to this chapter shall be guilty of a misdemeanor.”

SECTION 8. Section 445-91, Hawaii Revised Statutes, is repealed.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored<sup>1</sup>.

SECTION 11. This Act shall take effect upon its approval.

(Approved June 26, 1987.)

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### **. Note**

1. Edited pursuant to HRS §23G-16.5.