

ACT 171

S.B. NO. 2549

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. Section 281-1, Hawaii Revised Statutes, is amended to read as follows:

“§281-1 Definitions. Whenever used in this chapter, unless otherwise apparent from the context:

“Addicted to the excessive use of intoxicating liquor” refers to one who has acquired the habit of using intoxicating liquor excessively to deprive oneself of reasonable self-control, a common drunkard, or a habitual drunkard.

“Alcohol” means the product of distillation of any fermented liquid, whether rectified or not, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but not denatured or other alcohol which is considered nonpotable under the customs laws of the United States.

“Beer” means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley or other grain, malt, and hops in water.

“Club” means any organization for objects of a social, patriotic, political, or athletic nature, or the like, but not for pecuniary gain, having a regular membership to all of whom is charged monthly or quarterly dues, employing a full-time steward, and from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof. “Club” also means the establishment so operated and the premises thereof; provided the word “club” shall not apply to any organization not in existence for at least one year prior to its application for a license.

“Commission” means the liquor commission for the county within which such commission has jurisdiction under this chapter.

“County” means the county in respect of which each commission has jurisdiction under this chapter; provided that in the county of Kalawao liquor may be sold only by such persons and only under such conditions as may be permitted or prescribed from time to time by the department of health.

“Elected executive head” means the mayor of each county or the mayor’s duly appointed or elected successor.

“Gross sales” means the total receipts actually received from the sale of liquor for which the license has been issued without deduction on account of the cost of property sold or expenses of any kind.

“Hotel” means an establishment consisting of one or more buildings which contain (1) such total number of rooms as may be prescribed by the commission and in which rooms sleeping accommodations are provided and offered for adequate pay to transient or permanent guests; and (2) a suitable and adequate kitchen and dining room, where meals are regularly prepared and served to hotel guests and other customers.

[“Inspector”] “Investigator” means any [inspector] investigator of the commission in each case for the county wherein the commission has jurisdiction.

“License” means any license granted under this chapter.

“Licensee” includes also all agents, servants, and employees of the holder of a license.

“Liquor” or “intoxicating liquor” includes alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, and wine; and also includes, in addition to the foregoing, any spirituous, vinous, malt or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes.

“Minibar” means a specified area of a hotel guest room where a selection of liquors in their original package are kept for sale or consumption in the hotel guest room.

“Minor” means any person below the age of twenty-one years.

“Original package” means a package or container as it existed at the time of its delivery by the manufacturer or the wholesale dealer for convenience in transportation and sale.

“Person” means and includes natural persons, associations, copartnerships, and corporations, and also includes any agent, servant, and employee of such person.

“Premises” or “licensed premises” means the premises in respect of which a license has been or is proposed to be issued.

“Public place” means any publicly owned property or privately owned property open for public use or to which the public is invited for entertainment or business purposes.

“Regulation” means any regulation prescribed by the commission with the approval of the elected executive head of the county for carrying out this chapter.

“Restaurant” means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to patrons for compensation and which has suitable kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals. Additionally, at least thirty per cent of the establishment’s gross revenue must derive from the sale of foods.

“Retail licensee” means any licensee holding a class 2 or class 4 through class 13 license.

“Sell” or “to sell” includes to solicit and receive an order for; to have or keep or offer or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; to traffic in; and the word “sale” includes every act of selling as herein defined. Notwithstanding the provisions above, the delivery of liquor by a licensee’s vehicle or the vehicle of a licensee’s agent shall be deemed delivery for value.

“Seller” includes the agents and employees of a seller; provided that any person shall be deemed to be a seller, who in the State, whether acting as agent or representative of a nonresident principal or otherwise, solicits the placing of or takes, receives, or forwards orders for liquor to be shipped into the State from any place without the State to be delivered to customers, by direct shipment or otherwise.

“Standard bar” means any establishment licensed to sell liquor for consumption on the premises, except:

- (1) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission regulations; or
- (2) Premises in which live [or recorded music is played and with facilities for dancing by the patrons are provided; or] entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules; or
- (3) Premises in which employees or entertainers consume nonalcoholic beverages while in the company of patrons or sit with patrons[.] pursuant to commission rules.

“Under the influence of liquor” means that the person concerned has consumed intoxicating liquor sufficient to impair at the particular time under inquiry the person’s normal mental faculties or ability to care for oneself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of oneself which the person would otherwise normally possess.

“Wine” means any wine coming within the definition of wine contained in the United States Revenue Act of 1918 (Act of February 24, 1919), and includes sake.

“Written” or “writing” includes printing and typewriting.”

SECTION 2. 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] or sell 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 manufacturer (including rectifier) or the wholesaler importing the liquor, shall be unloaded into such warehouse, and shall be held in such warehouse for at least forty-eight hours before further sale by such manufacturer (including rectifier) or 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[.], and all of the primary ingredients are wholly rectified or combined in the State of Hawaii in compliance with the Bureau of Alcohol, Tobacco and Firearms standards.

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

SECTION 3. Section 281-11.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§281-11.5]]~~ Liquor commission attorney. The liquor commission may hire [county] attorneys to assist it in carrying out its administrative functions under this chapter. The assistance may include providing legal advice and prosecuting and defending legal claims under this chapter or arising in connection with this chapter.”

SECTION 4. Section 281-13, Hawaii Revised Statutes, is amended to read as follows:

“**§281-13 Meetings.** Meetings of the liquor commission may be held at any time and as often from time to time as the commission deems necessary for the proper transaction of its business, upon call of the chairman or by any other two members of the commission. The [secretary] administrator shall give [such] notice of such meetings as the commission may prescribe to the several members, and give any other notice thereof directed by the commission.

A majority of all the members of the commission shall constitute a quorum for the transaction of business, but the affirmative vote of a majority of all of the members shall be necessary to determine any matter before it.”

SECTION 5. Section 281-14, Hawaii Revised Statutes, is amended to read as follows:

“**§281-14 Records.** The liquor commission shall ensure that complete records are kept of all commission meetings, proceedings, and acts with reference to all business pertaining to licenses issued, suspended, and revoked, moneys received as license fees and otherwise, and disbursements by the commission or under its authority[, and]. Unless otherwise prohibited by law, these records shall be open for examination by the public. The records may be destroyed as provided in section 46-43.”

SECTION 6. 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 take appropriate action against a person who, directly or indirectly, manufactures or sells any liquor without being authorized pursuant to this chapter;
- (2) (3) 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)] (4) 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)] (5) Subject to chapters 76 and 77, to appoint and remove [a secretary (who may also be appointed an inspector), and such inspectors] an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, 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,] investigator, within the scope of the [inspector's] investigator'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)] (6) 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)] (7) 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)] (8) 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)] (9) 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)] (10) To investigate violations of this chapter [and], chapter 244D[,] and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its [inspectors] investigators 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 inves-

tigate 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)] (11) 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)] (12) 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[.];
- [(12)]' (13) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.

[The] Subject only to this chapter, 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[.], except that the commission and each member thereof shall not be bound by the strict legal rules of evidence. In addition, the commission shall have the power to require the production of, and to examine any books, papers, and records of any licensee which may pertain to the licensee's business under the license or which may pertain to a matter at a hearing before the commission or to an investigation by the commission.

The exercise by the commission of the power, authority, and discretion [in it so] vested in it pursuant to this chapter 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 7. 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] Any investigator 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 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 8. Section 281-21, Hawaii Revised Statutes, is amended to read as follows:

"§281-21 Service of subpoenas by [inspectors] investigators, police officers, or other law enforcement officers; witnesses' fees. Any [inspector] investigator, police officer, or other law enforcement officer may serve any subpoena issued by the liquor commission.

Every witness attending or testifying at any hearing of the commission in response to a subpoena issued by it shall be paid as provided for in section 621-7. If a witness is subpoenaed by direction of the commission, the witness' fees shall be paid out of any funds which may be set aside for the expenses of the commission and, if the witness is subpoenaed on behalf of any interested party, the witness' fees shall be paid by such party."

SECTION 9. Section 281-31, Hawaii Revised Statutes, is amended to read as follows:

“§281-31 Licenses, classes. (a) Licenses may be granted by the liquor commission as provided in this section.

(b) Class 1. Manufacturers’ licenses. A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell the same at wholesale in original packages to any person who holds a license to resell the same, and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption. Under this license no liquor shall be consumed on the premises except as authorized by the commission. Of this class there shall be the following kinds:

- (1) Beer;
- (2) Wine;
- [(3) Wine manufactured from grapes or other fruits grown in the State;
- (4)] (3) Alcohol;
- [(5)] (4) Other specified liquor.

It shall be unlawful for any holder of a manufacturer’s license to have any interest whatsoever in the license or licensed premises of any other licensee.

(c) Class 2. Restaurant licenses. A license under this class shall authorize the licensee to sell liquors herein specified for consumption on the premises, except that a restaurant licensee may, with commission approval, provide off premises catering; provided that such catering activity is directly related to the licensee’s operation as a restaurant. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) A premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee’s establishment.

For each category of class 2 licenses there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine;
- (3) Beer.

Any licensee holding a different class of license on the effective date of this amendment and who would otherwise come within this class of license shall not be required to apply for a new license.

[(c)] (d) Class 3. Wholesale dealers’ licenses. A license for the sale of liquors at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell but are not by law required to hold a license, the liquors therein specified in quantities not less than five gallons at one time if sold from or in bulk containers or not less than one gallon if bottled goods; provided that samples of liquor may be sold back to the manufacturer. The license may authorize the licensee to sell draught beer in quantities not less than five gallons at one time to any person for private use and consumption if the licensee files an affidavit with the commission that there is not a class 4 retail dealers license available to sell the wholesalers brand of draught beer. Under the license no liquor shall be consumed on the premises except as authorized by the commission. Of this class there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine;
- (3) Alcohol.

If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer has the dealer's license. Nothing herein shall prevent a wholesaler from selling liquors to post exchanges, ships service stores, army or navy officers' clubs, or like organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise as a common carrier, under chapter 269, engaged in regular flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

[(d)] (e) Class 4. Retail dealers' licenses. A license to sell liquors at retail or to class 10 licenses, shall authorize the licensee to sell the liquors therein specified in their original packages. Under the license no liquor shall be consumed on the premises except as authorized by the commission. Of this class there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine;
- (3) Alcohol.

[(e)] (f) Class 5. Dispensers' licenses. A license under this class shall authorize the licensee to sell liquors herein specified for consumption on the premises. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:

- (1) A standard bar;
- (2) A premise in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;
- (3) A premise in which live [or recorded music is played and in which facilities for dancing by the patrons are provided; or] entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules; or
- (4) A premise in which employees or entertainers are compensated to sit with patrons whether or not the employees or entertainers are consuming nonalcoholic beverages while in the company of such patrons[.] pursuant to commission rules.

If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

For each category of class 5 licenses there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine;
- (3) Beer.

[(f)] (g) Class 6. Club licenses. A club license shall be general only (but excluding alcohol) and shall authorize the licensee to sell liquors to members of the club and to guests [thereof] of the club enjoying the privileges of membership, for consumption only on the premises kept and operated by the club, and shall also authorize any [bona fide] club member to keep in the member's private locker on the premises a reasonable quantity of liquor, if owned by the member, for the member's own personal use and not to be sold, and which may be consumed only on the premises.

[(g)] (h) Class 7. Vessel licenses. A general license may be granted to the owner of any vessel performing a regular water transportation passenger service between any two or more ports in the State for the sale of liquor (other than alcohol) on board the vessel while in the waters of the State; provided such sales are made only while the vessel is en route, and only for consumption by passengers on board. If the vessel has a home port in the State the license shall be issuable in the county wherein the home port is situated, otherwise in the city and county of Honolulu. If on any vessel for which no license has been obtained under this chapter any liquor is sold or served within three miles of the shore of any island of the State the same shall constitute a violation of this chapter.

[(h)] (i) Class 8. [Additional] Transient vessel licenses. A general license may be granted to the owner of any vessel which does not fall within class 7 for the sale of liquor (other than alcohol) on board the vessel while in any port of the State. Such sales shall be made only for consumption by passengers and their guests on board such vessel. The license shall be issuable in each county where the sales are to be made and the application for the license may be made by any agent representing the owner.

[(i)] (j) Class 9. Tour or cruise vessel licenses. A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor (other than alcohol) on board the vessel while in the waters of the State; provided such sales are made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State. If the vessel has a home port in the State, the license shall be issuable in the county wherein the home port is situated, otherwise in the city and county of Honolulu. If on any vessel for which no license has been obtained under this chapter any liquor is sold or served within three miles of the shore of any island of the State, the same shall constitute a violation of this chapter.

[(j)] (k) Class 10. Special. A special license may be granted for the sale of liquor for a period not to exceed three days on any occasion and under such conditions as may be approved by the commission. Of this class there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine;
- (3) Beer.

Under such license the liquors therein specified shall be consumed on the premises.

[(k)] (l) Class 11. Cabaret license. A cabaret license shall be general only (but excluding alcohol) and shall authorize the sale of liquors for consumption on the premises. This license shall be issued only for premises where food is served, facilities for dancing by the patrons are provided, including a dance floor and [an orchestra of not less than three members, or professional entertainment] live or amplified recorded music or professional entertainment, except professional entertainment by a person who performs or entertains unclothed, is provided for the patrons[.]; provided that professional entertainment by persons who perform or entertain unclothed shall be authorized by:

- (1) A cabaret license for a premise where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990;
- (2) A cabaret license which, pursuant to rules adopted by the liquor commission, permits professional entertainment by persons who perform or entertain unclothed.

A cabaret license under (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000. A cabaret license under (1) or (2) authorizing professional entertain-

ment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except when the transferee obtains approval from the liquor commission, and pursuant to rules adopted by the commission. Notwithstanding any rule [or regulation] of the liquor commission to the contrary, cabarets in resort areas¹ may be opened for the transaction of business until 4 a.m. throughout the entire week.

[(l)] (m) Class 12. Hotel licenses. A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquors, except alcohol, for consumption on the premises; provided that the liquor commissions in each county shall adopt rules, as deemed appropriate by each respective liquor commission, restricting holders of hotel licenses in selling liquors as authorized by retail dealers' licenses.], except that a hotel licensee may, with commission approval, provide off premises catering; provided that such catering activity is directly related to the licensee's operation as a hotel.

Procedures such as room service, self-service (no-host), minibars or the like in guest rooms, and service at private parties in areas which are the property of and contiguous to the hotel are permitted with commission approval.

[(m)] (n) Class 13. Caterer license. A general license may be granted to [the owner of any catering service] any licensee who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions; provided that the sales are made only upon the premises of the patron contracting the catering services. Under this license, it shall be lawful for any caterer to promote, encourage, aid or permit the consumption of liquor on the premises, except during the hours between which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located].

No catering service for the sale of liquor [to commercial establishments] will be performed off the licensee's premises unless prior written notice of the service has been delivered to the office of the liquor commission of the county concerned. The notice shall state the date, time, and location of the proposed event].

The intent of a caterer license is to provide service to patrons at a location other than that of the caterer's premises. Use of the caterer license as a substitute for a licensed dispenser premises is prohibited.] and shall include a written statement signed by the owner or representative of the property that such function will be subject to the liquor laws and to inspection by investigators.

[(n)] (o) It shall be unlawful for any retail licensee [(Classes 4 through 13)], except a class 10 licensee, to purchase, acquire or sell liquor from any person other than a wholesaler licensed pursuant to this chapter, except as otherwise provided in this section.

Sections 281-57 to 281-61 shall not apply to classes 7 [to] through 10 and 13."

SECTION 10. Section 281-32.3, Hawaii Revised Statutes, is amended to read as follows:

"[[§281-32.3]] One-day special licenses for fundraising events[.] by not for profit organizations. Notwithstanding any other section of this chapter to the contrary, the commission shall adopt rules to streamline procedures including the waiving of hearings, fees, notarization of documents, submission of floor plans, and other requirements, to provide for the issuance of special licenses for the sale of liquor for a period not to exceed one day, for classes of fundraising events by not for profit organizations established by the commission. The

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commission shall also adopt rules to facilitate the issuance of such licenses through the mail.”

SECTION 11. Section 281-32.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§281-32.5]]~~ **Permits for trade shows.] or other exhibitions.** Notwithstanding any other provision to the contrary, any trade exhibitor [or], trade organization or other exhibitor may apply to the liquor commission administrator and be issued[, for a nominal fee,] a permit, without hearings, fees, notarizing of documents, submission of floor plans, and other requirements, to receive liquor from within or outside the State for display and sampling on a not-for-sale basis at trade exhibitions, shows or other exhibitions, subject to [the following conditions:

- (1) A bond equal to the declared value shall be posted with and payable to the liquor commission which bond would be forfeited should the exhibitor fail to comply with the terms of the permit;
- (2) All applicable state and other taxes shall be paid;
- (3) Within thirty days after the close of the exhibition the permittee will provide proof to the liquor commission that all liquor not disposed of by the end of the trade exhibition has been sold to a licensed wholesaler, destroyed under the supervision of the liquor commission or re-exported;
- (4) The value of liquor covered by the permit shall not exceed f.o.b. (free on board) \$2,000 per exhibitor;
- (5) The dispensing of not-for-sale samples by consumption shall take place only at the trade exhibition site during the hours between which licensed premises of dispensers are permitted to be opened for the transaction of business in the county where the premises are located; and
- (6) No liquor shall leave the trade exhibition site, except as provided in paragraph (3) above.] such terms and conditions as may be set by the commission.”

SECTION 12. Section 281-35, Hawaii Revised Statutes, is amended to read as follows:

“**§281-35 Special conditions, club licenses.** No liquor shall be sold under a club license to any person not a [bona fide] member of the club nor a [bona fide] guest thereof enjoying the privilege of membership, but a member or a guest enjoying the privileges of membership may purchase liquor for consumption on the premises by [his] the person's own [bona fide] guests. No guest of a member or of a guest enjoying the privileges of membership shall purchase or be permitted to purchase liquor on the premises.

The liquor commission may by regulations require the keeping and posting of lists of the members of a club, and the keeping and production of records as to membership and the registration of guests[.] enjoying the privileges of membership.

No liquor shall be sold or kept for sale at any club except by the club itself pursuant to its license. If any liquor is sold or kept on the club premises for sale or barter by any member, employee, or person other than the club itself, the club shall be deemed to be selling without a license whether it holds its own license or not.”

SECTION 13. Section 281-42, Hawaii Revised Statutes, is amended to read as follows:

“§281-42 Manufacturers and wholesale dealers, special restrictions. (a) It shall be unlawful for any person holding a manufacturer’s license or a wholesale dealer’s license:] to induce the purchases of a retail licensee by:

- (1) To own, hold, or be or become interested in or connected with the liquor business of any other licensee who is a retail dealer or who is authorized to sell liquors for consumption on the other licensee’s premises;
- (2) To control, employ, manage, or financially assist in any manner any other licensee who is a retail dealer or who is authorized to sell liquors for consumption on the other licensee’s premises;
- (3) To hold any interest in any premises on which liquors are sold under a retail dealer’s license or for consumption on such premises unless the holding of such interest is permitted under regulations of the liquor commission or a statement thereof has been filed with the commission and has not been disapproved by it;
- (4) (1) Acquiring or holding any interest in any license of a retail licensee;
- (2) Acquiring any interest in the real or personal property owned, occupied, or used by a retail licensee in the conduct of its business, unless the holding of such interest is permitted under the regulations of the liquor commission or statement thereof has been filed with the commission and has not been disapproved by it;
- (3) Furnishing, giving, renting, lending, or selling to a retail licensee any equipment, fixtures, signs, supplies, money, services or other thing of value, subject to the exceptions contained in Subpart D of the “tied house” regulations of the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department, 27 C.F.R. Part 6 (1988) as the same may change from time to time;
- (4) Paying or crediting a retail licensee for any advertising, display or distribution service, whether or not the advertising, display or distribution service received is commensurate with the amount paid by the retail licensee; provided that this paragraph shall not prohibit representatives of manufacturers and wholesalers from creating and maintaining displays and point of purchase sales materials, or from stocking shelves and cold boxes;
- (5) Guaranteeing any loan or the repayment of any financial obligation of a retail licensee;
- (6) Extending credit to the retail licensee for a period of time in excess of thirty days from the date of invoice;
- (7) Requiring a retail licensee to take and dispose of any quota of liquor; or
- (8) Requiring a retail licensee to purchase one product in order to purchase another product. This includes combination sales if one or more products may be purchased only in combination with other products and not individually, provided that a manufacturer or wholesale dealer is not prohibited from selling at a special combination price, two or more kinds or brands of products to a retail licensee, if (i) the retail licensee has an option of purchasing either product at the usual price, and (ii) the retail licensee is not required to purchase any product it does not want.

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(b) It shall be unlawful for any person holding a manufacturer's or wholesale dealer's license:

- (1) To sell any liquor at wholesale prices without invoicing the vendee's license number, except where the vendee, although authorized to resell, is not required by law to hold a license, in which case the invoice shall fully indicate the vendee's identity[.

This section shall not be held to prohibit the granting of the credits ordinarily extended with respect to the sale of liquors by a person holding a manufacturer's or a wholesale dealer's license.]; or

- (2) To sell any liquor, except for cash or by receiving payment in advance of delivery, to any retail licensee who has not paid in full for all previous purchases of liquor from such manufacturer or wholesaler by the expiration of the thirtieth day from the date of the invoice for such liquor.

(c) In construing subsection (a), the courts and the liquor commission shall follow the rules, regulations, and decisions of the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department and the federal courts in interpreting section 5(b) of the Federal Alcohol Administration Act, as the same may be changed from time to time."

SECTION 14. Section 281-45, Hawaii Revised Statutes, is amended to read as follows:

"§281-45 [Reasons for refusal.] No license issued, when. [(a) The commission may refuse to grant a license under this chapter:] No license shall be issued under this chapter:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned[,] (except that the commission may grant a license under this chapter to a corporation that has been convicted of a felony where the commission finds that the organization's officers and shareholders of twenty-five per cent or more of outstanding stock are fit and proper persons to have a license), 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:
- (1) (3) 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;
- [(2) (4) 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 15. Section 281-53, Hawaii Revised Statutes, is amended to read as follows:

“§281-53 Application; penalty for false statements. Every application for a license or for the renewal of a license or for the transfer of a license shall be in writing, signed and, except for the renewal of a license, verified by the oath of the applicant, or in the case of a corporation or unincorporated association by the proper officer or officers thereof, or if a partnership by a [majority of the general partners] general partner thereof, made before any official authorized by law to administer oaths, and shall be addressed to the liquor commission, and set forth:

- (1) The full name, age, and place of residence of the applicant; and if a copartnership the names, ages, and respective places of residence of all the partners; if a corporation or joint-stock company, its full name and the names of its officers and directors, and the names of all stockholders owning twenty-five per cent or more of the outstanding capital stock; and if any other association of individuals, the names, ages, and respective places of residence of its officers and the number of its members;
- (2) A particular description of the place or premises where the proposed license is to be exercised, so that the exact location and extent thereof may be clearly and definitely determined therefrom;
- (3) The class and kind of license applied for;
- (4) Any other matter or information pertinent to the subject matter which may be required by the rules and regulations of the commission.

If any false statement is knowingly made in any application which is verified by oath, the applicant, and in the case of the application being made by a corporation, association, or club, the persons signing the application, shall be guilty of perjury, and shall be subject to the penalties prescribed by law for such offense. If any false statement is knowingly made in any application which is not verified by oath, the person or persons signing the application shall be guilty of a misdemeanor and upon conviction thereof shall be punished as in section 281-102 provided.”

SECTION 16. Section 281-55, Hawaii Revised Statutes, is amended to read as follows:

“§281-55 Reference to [inspector] investigator. Upon the filing of any application the [secretary] administrator of the liquor commission shall indorse thereon the date of filing thereof. If no patent disqualification of the applicant or certain valid objection to the granting of the application is apparent initially and if all requirements relative to the filing of the application appear to have been complied with, the application shall be referred to the [inspector] investigator for investigation.”

SECTION 17. Section 281-56, Hawaii Revised Statutes, is amended to read as follows:

“§281-56 Report by [inspector] investigator. On every application referred to the inspector under section 281-55 the [inspector] investigator shall report in writing to the liquor commission and, if the application is for a license of any class other than class 7, class 8, or class 9, such report shall show:

- (1) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions including the relationship to surrounding residences which may share a common boundary or a common structure with the premises proposed for licensing;

- (2) If the application is made by a person who has held a prior license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license;
- (3) The locality of any church, chapel, or school, if any, within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of the church, chapel or school grounds;
- (4) The number, position, and distance from the premises, in respect of which a license is applied for, of any other licensed premises of the same class in the neighborhood;
- (5) The number of licenses of the same class or kind already issued and being lawfully exercised within the county;
- (6) Whether or not in the opinion of the [inspector] investigator the applicant is a fit and proper person to have a license;
- (7) Whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not the applicant has complied with all the requirements of this chapter relative to the making and filing of the applicant's application;
- (8) Any and all other matters and things which in the judgment of the [inspector] investigator pertain to or affect the matter of the application or the issuance or the exercise of the license applied for.

A copy of the report shall be furnished to the applicant not less than forty-eight hours before any hearing is had upon the application."

SECTION 18. Section 281-57, Hawaii Revised Statutes, is amended to read as follows:

"§281-57 Notice. Upon the filing of the [inspector's] investigator's report upon any application the liquor commission may hold a preliminary hearing and upon such preliminary hearing it may deny the application. If no preliminary hearing is had or if the application is not denied upon a preliminary hearing, the commission shall fix a day for the public hearing of the application (other than an application for an alcohol license or a license in classes 7 to 10 and 13) and shall publish notice of the hearing at least once in each of two consecutive weeks (two insertions) in some newspaper published in the English language in the county (or if there be none such then in the city and county of Honolulu) having a general circulation in the county, the date of the hearing to be not less than forty-five days after the first publication. The notice shall require that all protests or objections against the issuance of the license applied for shall be filed with the [secretary] administrator of the commission at or before the time of hearing. Before making such publication the commission shall collect from the applicant the cost of making the publication or require a deposit to cover the same.

Immediately upon the commission's fixing a day for the public hearing of the application, the applicant shall mail a notice setting forth the time and place of the hearing on the application, to not less than two-thirds of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing body of the shareholders association situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment, not less than forty-five days prior to the date set for the hearing of the application; provided that before the hearing the applicant shall file with the commission an affidavit as to such mailing of notice; and provided further that in

meeting this requirement, the applicant shall mail a notice to not less than three-fourths of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of one hundred feet from the nearest point of the premises as provided in this section. Notice by mail may be addressed to the last known address of the person concerned or to the address as shown in the last tax return filed by the person or the person's agent or representative. In addition, for each condominium project and cooperative apartment within the affected area, one notice of the hearing shall be sent by mail addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium or cooperative apartment involved. For purposes of this section, notice to one co-owner and one co-lessee shall be sufficient notice to all co-owners and all co-lessees, excepting that one notice shall be sent to each individual unit of a cooperative apartment as provided in this section."

SECTION 19. Section 281-59, Hawaii Revised Statutes, is amended to read as follows:

"§281-59 Hearing. Upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application and any protests and objections to the granting thereof, and hear the parties in interest, and shall within fifteen days thereafter give its decision granting or refusing the application; provided that if a majority of the registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked or a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked have duly filed or caused to be filed their protests against the granting of the license upon the original application, or if there appears any other disqualification under this chapter, the application shall be refused. Otherwise the commission may in its discretion grant or refuse the same. The commission may also, with like discretion, grant a license to one person in preference to another, without reference to any priority in the order of filing of the applications; and may of its own motion, or on the suggestion of any member, or of the [inspector] investigator take notice of any matter or thing which in the opinion of a majority of its members would be a sufficient objection to the granting of a license; but in such case if the objection is one to which the applicant should be given a reasonable time to answer, a continuance may be granted in the discretion of the commission; provided that in any case where any person affected by such decision petitions the commission for a rehearing of the application and on oath alleges facts and grounds for consideration which were not formerly presented or considered, or any other matter of fact which in the judgment of the commission seems sufficient to warrant a rehearing, such rehearing may be granted by the commission in its discretion. When a rehearing is allowed notice shall be given to the applicant and to the applicant's opponents, by publication or otherwise as the commission shall direct."

SECTION 20. Section 281-60, Hawaii Revised Statutes, is amended to read as follows:

"§281-60 Further application. [If] Except as provided for in section 281-13, if any applicant has at any time been refused a license, no further application shall be considered for one year from such refusal."

SECTION 21. Section 281-61, Hawaii Revised Statutes, is amended to read as follows:

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“**§281-61 Renewals.** Other than for good cause the renewal of an existing license shall be granted upon the filing of an application; provided that if complaints from the public [and], reports from the commission’s [inspectors] investigators, and the adjudications of the commission indicate that noise created by patrons departing from the premises disturbs residents on the street or of the neighborhood in which the premises are located, or that noise from the premises or adjacent related outdoor areas such as parking lots or lanais exceed standards contained in state or county noise or vibration codes and intrudes into nearby residential units, the commission may withhold the issuance of a renewed license until corrective measures meeting the commission’s approval are taken.”

SECTION 22. Section 281-75, Hawaii Revised Statutes, is amended to read as follows:

“**§281-75 Analyses.** Whenever the liquor commission or [any member or inspector] investigator thereof has reason to believe or suspect, on complaint or otherwise, that any liquor being manufactured or which is possessed or kept for sale by any licensee is or may be impure or adulterated or otherwise not conformable to any lawful requirement, the commission or [any member or inspector] investigator thereof or other person authorized in writing by the commission or by the [inspector] investigator may secure a sample thereof for analysis. Upon such sample being obtained, as though by ostensible purchase or otherwise, the person procuring the same shall immediately disclose to the licensee the person’s office or authority and purpose, and in case the procurer is a person other than [a member of] the commission or the [inspector] investigator the procurer shall then deliver to the licensee a copy of the written order for the procurement of the sample. The bottle or other container containing the sample shall then and there be sealed by the procurer thereof before being taken from the premises of the licensee and the licensee may also attach the licensee’s seal thereto.

The [inspector] investigator shall cause the sample so obtained to be immediately delivered with the seal or seals unbroken to the state department of health or some competent analyst employed by the commission who shall make an analysis of the liquor and shall send a certified report thereof to the [inspector] investigator,¹ who shall immediately file the same with the [secretary of the commission.] commission’s administrator.

If the sample analyzed is found pure and unadulterated and conformable with all legal requirements for such liquor, the certificate referred to in the preceding paragraph shall so state, and the commission shall pay to the licensee a sum equal to the value of the sample, and if requested by the licensee the [secretary] administrator shall furnish the licensee a copy of the analysis.

If the certificate of analysis shows the sample to be impure or adulterated or contrary to any legal requirement the licensee shall be prosecuted for selling, or offering for sale, or furnishing forbidden liquor in violation of this chapter.”

SECTION 23. Section 281-76, Hawaii Revised Statutes, is amended to read as follows:

“**§281-76 Tampering with samples; penalty.** Any person who tampers with any sample of liquor taken for analysis under this chapter shall be fined not more than [\$500] \$2,000 or imprisoned not more than one year, or both.”

SECTION 24. Section 281-77, Hawaii Revised Statutes, is amended to read as follows:

“§281-77 Refusal of samples; penalty. Any licensee who refuses to deliver or accede to the taking of any sample of liquor for analysis upon disclosure of the procurer’s authority as provided by section 281-75 shall be fined not more than [\$500] \$2,000.”

SECTION 25. Section 281-78, Hawaii Revised Statutes, is amended to read as follows:

“§281-78 Prohibitions. [(a) At no time under any circumstances, except as permitted in section 291-3.4, shall any liquor:

(1) Be consumed on any public highway or any public sidewalk;] (a) No person shall, except as permitted in section 291-3.4, consume any liquor on any public highway or any public sidewalk.

(b) At no time under any circumstances shall any licensee or its employee:

[(2) Be sold or furnished by any licensee to:]

(1) Sell or furnish any liquor to:

(A) Any minor,

(B) Any person at the time under the influence of liquor,

(C) Any person known to the licensee to be addicted to the excessive use of intoxicating liquor, or

(D) Any person for consumption in any vehicle which is licensed to travel on public highways;

Provided that the sale of liquor to a minor shall not be deemed to be a violation of this subsection if, in making the sale the licensee was misled by the appearance of the minor and the attending circumstances into honestly believing that such minor was of legal age and the licensee acted in good faith, and it shall be incumbent upon the licensee to prove that the licensee so acted in good faith;

[(3) Be] (2) Permit any liquor to be consumed on the premises of [a] the licensee or on any premises connected therewith, whether there purchased or not, except as permitted by the terms of [the] its license;

[(4) Be] (3) Permit any liquor to be sold or served by any person eighteen to twenty years of age except in licensed establishments where selling or serving the intoxicating liquor is part of the minor’s employment, and where there is proper supervision of such minor employees to ensure that the minors shall not consume the intoxicating liquor;

[(5) Be] (4) Permit any liquor to be sold or served by any person below the age of eighteen upon any licensed premises, except in such individually specified licensed establishments found to be otherwise suitable by the liquor commission in which an approved program of job training and employment for dining room waiters and waitresses is being conducted in cooperation with the University of Hawaii, the state community college system, or a federally sponsored manpower development and training program, under arrangements which ensure proper control and supervision of employees[.];

[(b) At no time under any circumstances shall any licensee:

[(5) Knowingly permit any person under the influence of liquor or disorderly person to be or remain in or on the licensed premises;

[(2)] (6) Fail immediately to prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any person on the premises;

[(3)] (7) Sell any draught beer unless upon the faucet, spigot, or outlet wherefrom the beer is drawn there is attached a clear and legible

notice, placard, or marker which shall in the English language indicate and declare the name or brand adopted by the manufacturer of the draught beer, so situated as to be clearly legible for a distance of at least ten feet from the spigot, faucet, or outlet, to a purchaser with normal vision;

- (4) (8) Receive from a person, as payment or as a consideration for liquor, any personal or household goods, including clothing and food, or any implements of trade. Any person violating this paragraph shall be guilty of a misdemeanor and upon conviction shall be punished as provided for in section 281-102.

SECTION 26. Section 281-79, Hawaii Revised Statutes, is amended to read as follows:

“§281-79 Entry for examination; obstructing liquor commission operations; penalty. Every [inspector] investigator 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] investigator or officer, or any person called by the investigator or officer to the investigator’s or officer’s aid, is threatened with the use of violence, force, or physical interference or obstacle, or is hindered, obstructed, or prevented by any licensee [or], the licensee’s employees, or any other person from entering into any such premises, or whenever any [such] investigator or officer is by any licensee [or], the licensee’s employees, or any other person opposed, obstructed, or molested in the performance of the officer’s duty in any respect, the licensee [and every], the licensee’s employee, or any other person [who has assisted the licensee in the offense,] shall be fined not more than [\$1,000] \$2,000 or imprisoned not more than one year, or both.

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

SECTION 27. Section 281-80, Hawaii Revised Statutes, is amended to read as follows:

“§281-80 Arrest. Any [inspector] investigator or police officer who observes any violation by any person of this chapter or of any rule or regulation of the liquor commission, [shall] may forthwith arrest the person without a warrant. Whenever any violation of this chapter or of the regulations of the commission occurs in the presence of any licensee, or any [inspector] investigator or police officer, upon request of the licensee the police officer or [inspector] investigator may assist the licensee in arresting any patron for violation thereof.”

SECTION 28. Section 281-85, Hawaii Revised Statutes, is amended to read as follows:

“§281-85 Prize, gift, premium, and other inducement. (a) [It] Unless otherwise provided by this chapter, it shall be unlawful for any person to offer or [give] to provide any intoxicating liquor as a prize or inducement at any [store, shooting gallery, theater, carnival, circus, bazaar, game, or entertainment, or at any] public amusement, [or other public place or any] public gathering[.] or place open to the public.

(b) It shall be unlawful for any person acting as agent or representative of a nonresident principal or for any licensee directly or indirectly, or through any subsidiary or affiliate, to give any premium or free goods of intoxicating liquor or other merchandise in connection with the sale of any intoxicating liquor; or to give any premium or free goods of intoxicating liquor in connection with the sale of other merchandise.

(c) No retail dealer and no licensee who is authorized to sell liquor for consumption on the licensee’s premises shall solicit or accept, either directly or indirectly, a premium or free goods of any nature in connection with the retail dealer’s or licensee’s purchase of liquor from a manufacturer or wholesale dealer.”

SECTION 29. 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] in a court of 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 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.

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Any order of revocation [or], suspension [or], fine, or reprimand imposed by the commission upon the licensee shall be in addition to any penalty that might 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 \$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] investigator,¹ 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] certified 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 partnership or licensed corporation or unincorporated association service may be made upon any partner or officer thereof."

SECTION 30. Section 281-96, Hawaii Revised Statutes, is amended to read as follows:

"§281-96 Cancellation. If the use of the premises covered by any license becomes lost to the licensee by reason of being sold under foreclosure proceedings, or a civil execution, or other legal process, or for any other cause, which shall force a cessation of the business of the licensee thereon under the license (other than by a revocation or suspension of the licensee's license), [and no proper permission is obtained by the licensee to continue the licensee's business under the license at some other place,] the liquor commission may cancel or suspend the license."

SECTION 31. Section 281-101, Hawaii Revised Statutes, is amended to read as follows:

"§281-101 Manufacture or sale without license; penalty. If any person, acting in person or by or through any agent, servant, or employee, manufactures[, sells, or offers or exposes or keeps for sale] or sells any liquor, either directly or indirectly, or upon any pretense or by any subterfuge, except as authorized pursuant to this chapter, the person shall be fined not more than [\$1,000] \$2,000 or imprisoned not more than one year, or both."

SECTION 32. Section 281-102, Hawaii Revised Statutes, is amended to read as follows:

"§281-102 Other offenses; penalty. If any person violates this chapter or any rule or regulation in effect by authority of this chapter, whether in con-

nection therewith a penalty is referred to or not, for which violation no penalty is specifically prescribed, the person shall be imprisoned not more than six months or fined not more than [\$500,] \$1,000, or both.”

SECTION 33. Section 281-104, Hawaii Revised Statutes, is amended to read as follows:

“§281-104 [Inspectors] Investigators,¹ employees, counsel for. Whenever any [inspector] investigator or other employee of the liquor commission shall be prosecuted for any crime or sued in any civil cause for acts done in the performance of the [inspector’s] investigator’s or employee’s duty as such [inspector] investigator or employee, the [inspector] investigator or employee shall be represented and defended (1) in any such criminal proceeding by an attorney to be employed and paid by the commission and (2) in any such civil cause by the corporation counsel or county attorney, of the county in which the [inspector] investigator or employee is serving or if permitted under the appropriate county charter, by an outside attorney to be employed and paid for by the commission.”

SECTION 34. Section 281-105, Hawaii Revised Statutes, is amended to read as follows:

“§281-105 Determination whether acts were in scope of duty. The determination of whether the acts of an [inspector] investigator or other employee of the liquor commission, when the [inspector] investigator or other employee is being prosecuted or sued, were done in the performance of the [inspector’s] investigator’s or other employee’s duty, so as to entitle the [inspector] investigator or other employee to be represented by the county attorney or corporation counsel of the county or city and county of the commission in question, or by an attorney employed and paid by the commission shall be made by the commission of the county after consultation with the county attorney or corporation counsel who may make a recommendation to the commission in respect thereof if the county attorney or corporation counsel so desires, and such determination shall be conclusive for such purpose only.”

SECTION 35. Section 281-108, Hawaii Revised Statutes, is amended to read as follows:

“§281-108 Search warrants; seizure. If any person makes complaint, supported by oath, before any district or circuit judge, setting forth facts sufficient to show probable cause that any liquor is being manufactured or kept or deposited for sale or distribution contrary to law within the judge’s jurisdiction in any house, premises, or place, or that any such liquor is lodged or contained in any vehicle for transportation by land, water, or air, the judge shall issue a warrant, directed to any sheriff, chief of police, [or] police officer, or investigator, commanding the sheriff, chief of police, [or] police officer, or investigator to search the premises, place, or vehicle described in the complaint. If any intoxicating liquor is found therein under circumstances warranting the belief of the officer that it is being manufactured or is intended for sale or distribution contrary to law, the officer acting under the warrant shall seize and convey the liquor and any land vehicle in which the same is found to some place of security and keep the same until final action is had thereon. When, in case of any entry, it is found that liquor is there being manufactured contrary to this

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chapter the officer may likewise seize and convey the same to some place of security and keep it until final action is had thereon.”

SECTION 36. Section 281-109, Hawaii Revised Statutes, is amended to read as follows:

“§281-109 Seizure without warrant. (a) If any [inspector] investigator or police officer has information which causes the [inspector] investigator or police officer to believe that liquor is kept or deposited in any place mentioned in section 281-108, except a dwelling house, or is kept or concealed in any conveyance, container, baggage, or clothing which is in course of transportation along any highway, for sale or distribution contrary to law, and if the [inspector] investigator or police officer has reason to believe that the delay which would be necessitated by the procurement of a search warrant would result in the loss, destruction, or concealment of the evidence of the violation of law, the [inspector] investigator or police officer may forthwith, without such warrant, search the suspected place, vehicle, or container; and if the [inspector] investigator or police officer there finds liquor and other evidence under circumstances warranting the belief that it is intended for sale or distribution contrary to law, the [inspector] investigator or police officer shall seize and convey the same, including any vehicle in which the same is found, to some place of security, and keep the same until final action is had thereon. The investigator or police officer shall forthwith, after the seizure, make written complaint under oath, setting forth the facts before a judge having competent jurisdiction.

(b) Any evidence seized and conveyed may be kept until final action is had thereof. Should the introduction of a copy or picture of the seized evidence be permitted under the Hawaii Rules of Evidence, the original evidence may be returned to the appropriate party after such evidence is copied or photographed.”

SECTION 37. Section 281-110, Hawaii Revised Statutes, is amended to read as follows:

“§281-110 Arrest; abettors. The owner, keeper, and any person having the custody of any liquor or property seized as provided in sections 281-108 and 281-109 shall be forthwith arrested without necessity of warrant and brought before the judge having jurisdiction in the premises. If the owner or keeper of the liquor seized is unknown to the investigator or police officer making the seizure, or if no person is found in the apparent possession or custody of the same, the investigator or police officer may arrest and bring before the court the owner or occupant of the building, place, or premises, or the driver, operator, or other person in charge of the conveyance in which the liquor is found, if such person is known or can be ascertained. Any person who has knowingly engaged in, aided, assisted, or abetted the manufacture, obtaining, keeping, or sale of such liquor contrary to law, or has been privy thereto, or has knowingly permitted the use of any place, building, premises, or conveyance for such unlawful purpose, shall be guilty of a misdemeanor and be punished as provided in section 281-102.”

SECTION 38. Section 281-111, Hawaii Revised Statutes, is amended to read as follows:

“§281-111 Condemnation of property or liquor; disposition. Any still, plant, or other equipment shown to have been used for the manufacture of liquor in violation of this chapter and any liquor manufactured or sold in violation of

this chapter shall be subject to summary seizure as herein provided or to subsequent seizure, and may be condemned and adjudged forfeited to the State, in addition to any penalty separately provided for the violation, the same to be enforced by appropriate legal proceedings in the name of the State. All such property and liquor so condemned and forfeited may be ordered by the court having jurisdiction (1) to be wholly or partially destroyed, or (2) to be sold, wholly or partially, for the account of the county wherein the same were seized; provided that the court may order any such liquor, if suitable, to be delivered to the department of health for distribution to any public institution for use therein for medicinal purposes. The order of the court with respect to such property or liquor shall be effectively executed by the sheriff or the sheriff's deputy, or by the chief of police or the chief of police's deputy, or by any police officer, or by the commission's administrator, or by any investigator, within such time as may be fixed in the order but not exceeding sixty days. If any person, whether or not an officer or employee of the State or any county, takes, disposes of, or uses in any manner or to any extent, any of such property or liquor otherwise than as herein provided, the person shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 281-102."

SECTION 39. Chapter 281, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§281- Hearing, illegal manufacture, importation, or sale of liquor. The liquor commission may assess and collect a penalty, or reprimand a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto.

In every case where the administrator elects to conduct proceedings under this section where it is proposed to assess and collect a penalty from a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto, such person shall be entitled to notice and hearing in conformity with chapter 91.

At the hearing, before final action is taken by the commission, the person shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present facts showing that the alleged cause or causes for the proposed action do not exist, or any reason 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 such person upon that person's request and at that person's expense.

Any order, reprimand, or penalty imposed by the commission upon a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto shall be in addition to any penalty that might be imposed upon that person's conviction in a court of law for any violation of this chapter. The amount of penalty assessed and collected by the commission from any person under this section for not having a valid license to manufacture or sell any liquor shall not exceed the sum of \$2,000 for each charge.

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 investigator, a written notice of the violation shall be given to the person charged with a violation within a reasonable period of time after the alleged violation occurred, the person charged shall be requested to acknowledge receipt of the alleged vio-

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lation, or, if the person cannot be found after diligent search, by leaving a certified copy thereof at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; and if the person cannot be found after diligent search, and service cannot be made, then service may be made by depositing another certified copy thereof in the certified mail of the United States post office, postage prepaid, addressed to the person at the person's last known residence address; provided, that in the case of a partnership, corporation or unincorporated association, service may be made upon any partner or officer thereof."

SECTION 40. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 41. This Act shall take effect upon its approval.

(Approved June 19, 1990.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.