

ACT 142

S.B. NO. 1560

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. Section 281-41, Hawaii Revised Statutes, is amended to read as follows:

“§281-41 Transfer of licenses; notice of change in officers, directors and stockholders of corporate licenses; penalty. No license issued under this chapter to an original applicant or to any transferee shall be transferable or be transferred within one year of such issuance or transfer except for good cause shown to the satisfaction of the liquor commission. No license issued under this chapter shall be transferable or be transferred except upon written application to the commission by the proposed transferee, and after prior inspection of the premises, reference to, and

report by an inspector, and a public hearing held by the commission not less than fourteen days after one publication of notice thereof, but without sending notice of the hearing by mail to persons being the owners or lessees of real estate situated within the vicinity of the premises and without the right to such owners or lessees to protest the transfer of a license[;]. Exceptions are class 5 and 11 licensees who must comply with the notice requirements as set forth in section 281-57. [provided that no] No class 5 or 12 license issued to a standard bar as defined in section 281-1, shall be transferable to other than a standard bar, and that such license shall be subject to revocation if the licensed premise is not retained as a standard bar except upon written application to the commission by the licensee and/or the proposed transferee, subject to sections 281-51 to 281-60.

Where a license is held by a partnership, the commission may, notwithstanding this section, transfer the license upon the death or withdrawal of a member of the partnership to any remaining partner or partners without publication of notice and without public hearing.

Where a license is held by a limited partnership, the admission or withdrawal of a limited partner shall not be deemed a transfer of the license held by the partnership, but the licensee shall, prior to such admission or withdrawal, so notify the commission in writing, stating the name of the partner or partners who have withdrawn, if such be the case, and the name, age, and place of residence of the partner or partners who have been admitted, if that be the case. If the commission finds a limited partner to be an unfit or improper person to hold a license in the limited partner's own right pursuant to section 281-45, it may revoke the license or suspend the license of the partnership until the unfit or improper partner is removed or replaced.

Except as otherwise provided in this section, the same procedure shall be followed in regard to the transfer of a license as is prescribed by this chapter for obtaining a license. Sections 281-51 to 281-60, except where inconsistent with any provision hereof, are hereby made applicable to such transfers. The word "applicant", as used in such sections, shall include each such proposed transferee, and the words, "application for a license or for the renewal of a license", as used in such sections, shall include an application for the transfer of a license.

Upon the hearing, the commission shall consider the application and any objections to the granting thereof, and hear the parties in interest. It shall inquire into the propriety of each transfer and determine whether the proposed transferee is a fit person to hold the license. It may approve a transfer or refuse to approve a transfer, and the refusal by the commission to approve a transfer shall be final and conclusive, unless an appeal is taken as provided in chapter 91.

If any licensee without such approval transfers to any other person the licensee's business for which the licensee's license was issued, either openly or under any undisclosed arrangement whereby any person other than the licensee comes into possession or control of the business, or takes in any partner or associate the commission may in its discretion suspend or cancel the license.

If the licensee is a corporation, a change in ownership of any outstanding capital stock shall not be deemed a transfer of a license; provided that in the case of a change in ownership of twenty-five per cent or more of the stock or in the case of change in ownership of any number of shares of the stock which results in the transferee thereof becoming the owner of twenty-five per cent or more of the outstanding capital stock, the corporate licensee shall, prior to the date of such transfer, apply for and secure the approval of the transfer from the commission in writing. If the commission finds that the proposed transferee is an unfit or improper person to hold a license in the proposed transferee's own right pursuant to section 281-45, it shall not approve the proposed transfer. If any transfer is made without the prior approval of the commission, the commission may in its discretion revoke or

suspend the license until it determines that the transferee is a fit and proper person, and if the commission finds that the transferee is not a fit and proper person, until a retransfer or new transfer of the capital stock is made to a fit and proper person pursuant to section 281-45. In addition, the corporate licensee shall, within thirty days from the date of election of any officer or director, notify the commission in writing of the name, age, and place of residence of such officer or director. If the commission finds the transferee, officer or director an unfit or improper person to hold a license in the transferee's, officer's, or director's own right pursuant to section 281-45, it may in its discretion revoke the license or suspend the license until a retransfer or new transfer of such capital stock is effected to a fit or proper person pursuant to section 281-45 or until the unfit or improper officer or director is removed or replaced by a fit and proper person pursuant to section 281-45.

If a licensee closes out the business for which the license is held, during the term for which the license was issued, the licensee shall, within five days from the date of closing the same, give the commission written notice thereof and surrender the licensee's license for cancellation."

SECTION 2. 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 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 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 9, 1995.)