

ACT 90

S.B. NO. 2132

A Bill for an Act Relating to Liquor Licenses.

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

SECTION 1. Section 281-1, Hawaii Revised Statutes, is amended by amending the definition of “person” to read as follows:

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

SECTION 2. 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] nonprofit organizations established by the commission. The commission shall also adopt rules to facilitate the issuance of such licenses through the mail.

Any registered educational or charitable nonprofit organization may sell liquors in their original packages for off-premises consumption for fundraising events allowed in this section, in accordance with rules adopted by the commission pursuant to chapter 91.”

SECTION 3. 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[;], partners of a partnership license, and members of a limited liability company license; 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. 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] premises 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[,] or a limited liability company, the admission or withdrawal of a limited partner or a member of the limited liability company shall not be deemed a transfer of the license held by the partnership[,] or limited liability company, but the licensee shall, prior to such admission or withdrawal, so notify the commission in writing, stating the name of the partner, [or] partners, member, or members who have withdrawn, if such be the case, and the name, age, and place of residence of the partner, [or] partners, member, or members who have been admitted, if that be the case. If the commission finds a limited partner or a member to be an unfit or improper person to hold a license in the limited partner's or member's own right pursuant to section 281-45, it may revoke the license or suspend the license of the partnership or the limited liability company until the unfit or improper partner or member 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 4. 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 general partner thereof, or if a limited liability company by a member 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 limited liability company, its full name and the names of all its members; 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; and
- (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, limited liability company, association, or club, the persons signing the applica-

tion, 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 5. 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 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.

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

Any order of revocation, suspension, 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 investigator, a written notice of the violation shall be given to the licensee or the licensee's registered manager in active charge of the premises, 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 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, or limited liability company, service may be made upon any partner, [or] officer, or member thereof."

SECTION 6. Section 281-101.4, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~281-101.4] 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 violation, 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, or limited liability company, service may be made upon any partner, [or] officer, or member thereof."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

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SECTION 8. This Act shall take effect upon its approval.

(Approved May 26, 1998.)