

## ACT 120

S.B. NO. 2934

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. The legislature finds that residential communities should have the right to influence decisions regarding liquor-serving establishments operating in their neighborhoods. So often a single entrepreneur's right to operate a business interferes with the rights of thousands to the "quiet enjoyment" of their homes. In addition, the deterioration of long-established residential neighborhoods due to businesses that attract property crime, disruptive behavior, vice, graffiti, and other demoralizing and economically destructive influences is prevalent in every city. Honolulu is particularly affected by this trend.

The purpose of this Act is to strengthen the rights of the community regarding the licensing of liquor establishments.

SECTION 2. 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.** (a) No license issued under this chapter to an original applicant or to any transferee shall be transferable or be transferred within one year of [sueh] the 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 [sueh] the 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.

(b) 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[<sub>s</sub>] and that such license shall be subject to revocation if the licensed premises is not retained as a standard bar except upon written application to the commission by the licensee ~~and/or~~ or the proposed transferee, subject to sections 281-51 to 281-60.

(c) A county may increase the requirements for transfers of class 5, category (2) and (4), and class 11 licenses by ordinance designating one or more areas within the county as special liquor districts and specifying the requirements applicable to transfers of any of these licenses within each district.

(d) For the purpose of this section, “special liquor district” means an area designated by a county for restoration, reservation, historic preservation, redevelopment, [or] rejuvenation, or residential protection, in which development is guided to protect or enhance the physical and visual aspects of the area for the benefit of the community as a whole.

(e) 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.

(f) 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, partners, member, or members who have withdrawn, if such be the case, and the name, age, and place of residence of the partner, 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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] that 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] the 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] the 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] the capital stock is effected to a fit or proper person pursuant to section 281-45 or until the unfit or improper transferee, officer, or director is removed or replaced by a fit and proper person pursuant to section 281-45.

(k) 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 3. Section 281-56, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) On every application referred to the investigator under section 281-55, the 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 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) For the next application for a license that was previously denied, refused, or withdrawn, evidence, to be provided by the applicant, of a substantial change in the circumstances that caused the previous denial, refusal, or withdrawal; and
- (9) Any and all other matters and things, which in the judgment of the investigator pertain to or affect the matter of the application, or the issuance or the exercise of the license applied for[-]; provided that when the license application is for premises within a county encompassing a population of 500,000 residents or more, the report shall specify the

possible adverse effects the premises, after licensing, may have on the surrounding community.’

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

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

(Approved May 31, 2002.)