

ACT 53

H.B. NO. 1018

A Bill for an Act Relating to Liquor.

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

SECTION 1. Chapter 281, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§281- Special conditions; condominium hotel licenses. A condominium hotel operator shall submit to the commission a copy of the information on the initial application for registration of the condominium hotel operator approved by the real estate commission pursuant to section 467-30, if the condominium hotel operator is required to be registered with the real estate commission. The condominium hotel operator shall maintain for inspection at the condominium hotel by any authorized employee of the commission a list of the units being utilized for transient lodgings from time to time as part of the condominium hotel.”

SECTION 2. Section 281-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

““Condominium hotel” means an establishment consisting of one or more buildings that includes:

- (1) Guest rooms that are units, as defined in section 514B-3, which are used to provide transient lodging for periods of less than thirty days under a written contract with the owner of a unit in the condominium hotel operation;
- (2) Guest rooms that are units, owned or managed by the condominium hotel operator providing transient lodging for periods of less than thirty days, which are offered for adequate pay to transient guests; and
- (3) A suitable and adequate kitchen and dining room, where meals are regularly prepared and served to guests and other customers.

A “condominium hotel” does not include a hotel that may be part of a condominium property regime established under chapter 514B, that does not have guest rooms that are separate units, as defined in section 514B-3.

“Condominium hotel operator” means any person who operates a condominium hotel, including but not limited to, a condominium hotel operator registered under section 467-30.”

2. By amending the definition of “minibar” to read:

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

3. By amending the definition of “premises” to read:

““Premises” or “licensed premises” means the building and property that houses the establishment for which a license has been or is proposed to be issued; provided that in the case of class 12 hotel license, “premises” includes the hotel premises; provided further that in the case of a class 15 condominium hotel license, “premises” includes units, as defined in section 514B-3, that are used to provide transient lodging for periods of less than thirty days under a written contract with the owner or owners of each unit in, and common elements for access purposes as established by the declaration of condominium property regime of, the condominium hotel; and provided further that if an establishment is in a retail shopping complex the businesses of which have formed a merchants association, “premises” means the establishment. As used in this definition, “establishment” means a single physical location where the selling of liquor takes place.”

SECTION 3. 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.~~] license. A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it 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) Alcohol; and
- (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. This subsection shall not prevent the holder of a beer class manufacturer’s license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a beer and wine class wholesale dealer licensee under this chapter whose wholesaling is limited to beer, other than direct ownership of a beer and wine class wholesale dealer’s license, or direct ownership of a partnership share, one or more shares of stock, or similar proprietary stake in the holder of a beer and wine class wholesale dealer’s license.

(c) Class 2. Restaurant [~~licenses.~~] license.

- (1) A license under this class shall authorize the licensee to sell liquors specified in this subsection for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering; provided further that the catering activity shall be 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:

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

- (2) 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;<sup>1</sup>
- (3) For each category of class 2 licenses, there shall be the following kinds:
  - (A) General (includes all liquors except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.

Any licensee holding a different class of license on June 19, 1990, and who would otherwise come within this class of license shall not be required to apply for a new license.

(d) Class 3. Wholesale dealers' [~~licenses.~~] license. 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 licensee 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; and
- (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 in this subsection shall prevent a wholesaler from selling liquors to post exchanges, ships service stores, army or navy officers' clubs, or similar 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,~~] 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.

(e) Class 4. Retail dealers' [~~licenses.~~] license. 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; and
- (3) Alcohol.

(f) Class 5. Dispensers' [~~licenses.~~] license.

- (1) A license under this class shall authorize the licensee to sell liquors specified in this subsection 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:
  - (A) A standard bar;

- (B) [~~A-premise~~] Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;
- (C) [~~A-premise~~] Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by commission rules; or
- (D) [~~A-premise~~] Premises in which employees or entertainers are compensated to sit with patrons, regardless of whether the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons pursuant to commission rules.

- (2) 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.
- (3) For each category of class 5 licenses, there shall be the following kinds:
  - (A) General (includes all liquors except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.

(g) Class 6. Club [~~licenses-~~] license. 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 of the club enjoying the privileges of membership, for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any 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 that may be consumed only on the premises.

(h) Class 7. Vessel [~~licenses-~~] license. 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 the 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 in which the home port is situated; provided that if the licensee's home port is not situated in this State, the license shall be issuable 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, it shall constitute a violation of this chapter.

(i) Class 8. Transient vessel [~~licenses-~~] license. A general license may be granted to the owner of any vessel that 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. Sales shall be made only for consumption by passengers and their guests on board the vessel. The license shall be issuable in each county where the sales are to be made; provided that the application for the license may be made by any agent representing the owner.

(j) Class 9. Tour or cruise vessel [~~licenses-~~] license. 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 that sales be 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, unless otherwise approved by the county where the license has been issued. If the vessel has a home port in the State, the license shall be issuable in the county wherein the home port is situated; provided that if the licensee's home port is not situated in this State, the license shall be issuable 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, it shall constitute a violation of this chapter.

(k) Class 10. ~~[Special.]~~ Special license. A special license may be granted for the sale of liquor for a period not to exceed three days on any occasion and under any 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; and
- (3) Beer.

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

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

A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000. A cabaret license under paragraph (1) or (2) authorizing professional entertainment 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 of the liquor commission to the contrary, cabarets in resort areas may be opened for the transaction of business until 4 a.m. throughout the entire week.

(m) Class 12. Hotel ~~[license.]~~ license. 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 a hotel licensee, with commission approval, may provide off-premises catering; ~~provided that~~, if the catering activity is directly related to the licensee's operation as a hotel.

Procedures such as room service, self-service (no-host), minibars or similar service in guest rooms,<sup>2</sup> and service at private parties in areas that are the property of and contiguous to the hotel, are permitted with commission approval.

Any licensee who would otherwise fall within the hotel license class but holds a different class of license may be required to apply for a hotel license.

If the licensee applies for a change of classification prior to July 30, 1992, the licensee shall not be subject to the requirements of sections 281-52, 281-54, and 281-57 through 281-59.

(n) Class 13. Caterer license. A general license may be granted to any licensee who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions.

No catering service for the sale of liquor shall 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 and shall include a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.

- (o) Class 14. Brewpub [~~licenses-~~] license. A brewpub licensee:
  - (1) Shall manufacture not more than ten thousand barrels of malt beverages on the licensee's premises during the license year;
  - (2) May sell malt beverages manufactured on the licensee's premises for consumption on the premises;
  - (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3, wholesale dealer licensees pursuant to conditions imposed by county planning and public works departments;
  - (4) May sell intoxicating liquor, purchased from a class 1, manufacturer licensee, or a class 3, wholesale dealer's licensee, to consumers for consumption on the licensee's premises; provided that the premises is owned and operated by the licensee. The categories of establishments shall be as follows:
    - (A) A standard bar; or
    - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
  - (5) May sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass container, not to exceed one half-gallon, [~~that~~] which may be securely sealed;
  - (6) May sell malt beverages manufactured on the licensee's premises to consumers, in recyclable containers that may be provided by the licensee or by the consumer, not to exceed one gallon per container, [~~that~~] which are securely sealed on the licensee's premises, for off-premises consumption;
  - (7) Shall comply with all regulations pertaining to class 4 retail licensees when engaging in the retail sale of malt beverages;
  - (8) May sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispensers' licensees, class 6 club licensees, class 7, 8, and 9 vessel licensees, transient vessel licensees, tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, [~~and~~] class 13 caterer licensees, and class 15 condominium hotel license, pursuant to conditions imposed by county planning and public works departments and regulations governing class 3 wholesale dealers licensees; and
  - (9) May conduct the activities described in paragraphs (1) through (8) at one location other than the licensee's premises; provided that the manufacturing takes place in Hawaii; and provided further the other location is properly licensed by the same ownership.

(p) Class 15. Condominium hotel license. A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquors, except alcohol, for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering; provided further that the catering activity is directly related to the licensee's operation as a condominium hotel.

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

A condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail dealer's license.

~~[(p)]~~ (q) It shall be unlawful for any retail licensee, 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.

~~[(q)]~~ (r) Any provision to the contrary notwithstanding, at the discretion of the county liquor commission, permission may be granted to a bona fide hotel, restaurant, or club licensed under class 2, class 6, class 11, class 12, ~~[(or)]~~ class 14, or class 15 to allow a patron to remove from the licensed premises any portion of wine that was purchased for consumption with a meal; provided that it is recorked or resealed in its original container. This subsection applies only to a valid holder of a class 2, class 6, class 11, class 12, ~~[(or)]~~ class 14, or class 15 license engaged in meal service.

~~[(r)]~~ (s) Sections 281-57 to ~~[281-64]~~ 281-60 shall not apply to classes 7 through 10 and 13."

SECTION 4. Section 281-39, Hawaii Revised Statutes, is amended to read as follows:

**"§281-39 Place of business; exception; solicitors' and representatives' permits.** (a) A license issued under this chapter shall authorize the doing of the business licensed only at the place described in the license, which shall be known as the licensed premises, except ~~[(in)]~~:

(1) In case of a removal with the prior written consent of the liquor commission indorsed on the license, or outside warehousing which may be located off the licensed premises with prior written consent of the liquor commission[-]; and

(2) That the units that are used to provide transient lodging under a class 15 license may change from time to time; provided that the condominium hotel operator shall submit quarterly to the commission the list of units being utilized as part of the condominium hotel and maintains a current list pursuant to section 281- at a condominium hotel for inspection by any authorized employee of the commission.

~~[(No)]~~ (b) Except for a condominium hotel operator under a class 15 license, no change of premises under any issued license shall be allowed unless the doing of business on the new premises is authorized in the same manner as provided by this chapter for approval of any original premises; provided that the holder of any manufacturer's license or a wholesale dealer's license issued by the commission of any county may, through authorized solicitors or representatives, solicit and take orders for direct shipment for liquor in permitted quantities in any other county.

(c) Any person desiring to act as the authorized solicitor or representative of a manufacturer or wholesale dealer in any county shall make application to the commission of such county in which the person proposes to act for a permit to act as such.

(d) The application shall state the name of the applicant, the applicant's age, residence, and place of business, the name and address of the manufacturer or wholesale dealer the applicant represents and shall be accompanied by a statement from the manufacturer or wholesale dealer to the effect that the applicant has been appointed as its solicitor or representative. All sales and all orders taken for liquor by any such solicitor or representative shall be subject to the rules and regulations of the commission for the county within which the sales are made or orders taken. No ~~[(such)]~~ solicitor or representative shall be permitted to have, own, or control any liquor for sale."

SECTION 5. Section 281-39.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The liquor commission or agency of each county may deny or restrict the issuance of a liquor license for on-site sale and consumption by the drink to any applicant whose establishment is or would be located within five hundred feet of a public or private elementary, intermediate, or high school, or public playground utilized extensively by minors, as determined by the liquor commission of each county; provided that the liquor commission or agency of each county shall deny the issuance of a liquor license if forty per cent of the:

- (1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or
- (2) 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 granting the license. The distance of five hundred feet shall be measured from the boundary of the school or public playground to the boundary of the applicant’s premises. Public or private beaches, and public or private day care centers located in or adjacent to commercial areas shall not be deemed schools or public playgrounds for purposes of this section. The provisions of this section shall not apply to establishments located within areas designated by the appropriate counties for resort purposes, or to hotel or condominium hotel liquor license applicants.”

SECTION 6. Section 281-57, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) 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 each of the following:

- (1) 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; provided 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 for which the license is asked. 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;
- (2) In counties with a population of two hundred-fifty thousand or more, not less than two-thirds of the registered voters residing within, and small businesses situated within, a distance of five hundred feet from the nearest point of the premises for which the license is asked; provided that in meeting this requirement, the applicant shall mail notices to not less than three-fourths of the registered voters residing within, and small businesses situated within, a distance of one hundred feet from the nearest point of the premises for which the license is asked. This paragraph shall not apply to any applicant that is a hotel as defined in section 486K-1, a condominium hotel, a restaurant, or a convenience store. A notice sent pursuant to this paragraph shall be addressed to the “occupant” of the residential unit or small business; and



- (3) For each condominium project and cooperative apartment within the five hundred-foot 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.

The notices required under this subsection shall be mailed at least forty-five days prior to the date set for the hearing. No promotional information shall be allowed on, or accompany the notice. Before the hearing, and within seven days of having mailed the notices, the applicant shall file with the commission an affidavit that the notices have been mailed in compliance with this subsection. In addition to the affidavit (which shall be made available within the same seven-day period with proof of having mailed the notices), the applicant shall include both a master list of one hundred per cent of addressees and addresses required by paragraphs (1), (2), and (3), and another mailing list consisting of the portion of addressees and their respective addresses who were mailed the notice purposely needed to meet the requirements of paragraphs (1), (2), and (3). The affidavit, master list, and mailing list shall be made available within seven days (of the mailing of the notice by the applicant) by the commission for public review upon request. For purposes of this section "master list" means every owner and lessee who would otherwise be required to receive notice of the public hearing according to the requirement of paragraphs (1), (2), and (3), even if they were not actually included in the two-third or three-fourths requirement (as the case may be) of paragraph (1) or (2), and every condominium project and cooperative apartment qualifying in paragraph (3). The commission shall cancel the hearing if not receiving the affidavit prior to the hearing or if discovering that the affidavit is false."

SECTION 7. (a) Any licensee holding a class 12 license on the effective date of this Act and who would otherwise come within this class of license may apply to the liquor commission in which the licensee is seeking a change in liquor license for a change to a class 15 license; provided that the licensee shall not be subject to the requirements of section 281-54 and sections 281-57 to 281-60, Hawaii Revised Statutes.

(b) If a licensee holding a class 12 license on the effective date of this Act applies for a change to a class 15 license, the respective liquor commission shall hold a public hearing upon notice, and upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application, accept all written or oral testimony for or against the application, and render its decision granting or refusing the application. If the application is denied, the class 12 license shall continue in effect in accordance with law.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>3</sup>

SECTION 9. This Act shall take effect upon its approval.

(Approved May 1, 2007.)

#### Notes

1. Prior to amendment a period appeared here. Semicolon should be underscored.
2. Comma should be underscored.
3. Edited pursuant to HRS §23G-16.5.