

ACT 168

H.B. NO. 2253

A Bill for an Act Relating to Amending or Repealing Various Provisions of Chapter 281, Hawaii Revised Statutes, Intoxicating Liquor, for the Purpose of Clarifying Language, Correcting Errors, and Deleting Unnecessary and Obsolete Provisions.

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

SECTION 1. Section 281-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Partner” means a partner in a general partnership, limited partnership, or limited liability partnership.”

SECTION 2. Section 281-4, Hawaii Revised Statutes, is amended to read as follows:

“§281-4 Liquor consumption on unlicensed premises prohibited, when. (a) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are ~~[sold or]~~ provided ~~[for compensation],~~ or brought in by patrons or guests, whether for compensation or not, or to which members of the public, or members of an organization, resort for food, refreshment, or entertainment, and who is not a licensee of the commission under this chapter, 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.

(b) It shall be unlawful for any person who is present at any restaurant or other premises where food, beverages, or entertainment are sold ~~[or]~~, provided ~~[for compensation],~~ or brought in by patrons or guests, or to which members of the public, or members of an organization, resort for food, refreshment, or entertainment, and which premises are not licensed by the commission under this chapter, to consume any 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.

(c) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are ~~[sold or]~~ provided ~~[for compensation],~~ or brought in by patrons or guests, whether compensated or not, to sell or provide ~~[any food]~~ or ~~[beverages]~~ allow the consumption of liquor to or for any of the following persons knowing that such person has, or is about to obtain, liquor for consumption by the person on the premises, to wit:

- (1) Any minor~~[-];~~
- (2) Any person at the time under the influence of liquor~~[-];~~
- (3) Any disorderly person~~[-];~~
- (4) Any person known to be addicted to the excessive use of liquor~~[-];~~ or
- (5) Any person, for consumption in any vehicle on the premises;

provided that the ~~[sale of or the]~~ providing of ~~[food or beverages]~~ liquor to or for a minor who has or is about to obtain liquor for consumption by the minor on the premises or allowing the consumption of liquor by a minor shall not be deemed to be a violation of this subsection if, at the time, the person ~~[so selling or]~~ providing ~~[food]~~ or ~~[beverages]~~ allowing the consumption of liquor was misled by the appearance of the minor and the attending circumstances into honestly believing that such minor was of legal age and the person acted in good faith, and it shall be incumbent upon the person to prove that the person so acted in good faith.

(d) Within the meaning of this section, the word “premises” includes any vessel as well as any place, with or without a structure thereon, and the hours between which licensed premises of dispensers are permitted to be open for the transaction of business shall be deemed to be those during which such dispensers are permitted to keep open their premises for the sale, service, and consumption of liquor, or any of them.”

SECTION 3. Section 281-17.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any such liquor license fees or any moneys collected or received by any liquor commission under this chapter may only be used for costs and expenses directly relating to operational and administrative costs actually incurred by the liquor commission collecting or receiving such liquor license fees or moneys. Such fees or

moneys shall not be used for any costs or expenses other than those directly relating to its operation and administration[-], except as otherwise provided by law.”

SECTION 4. Section 281-21, Hawaii Revised Statutes, is amended to read as follows:

“§281-21 Service of subpoenas by investigators, police officers, or other law enforcement officers; witnesses’ fees. Any investigator, police officer, or other law enforcement officer may serve any subpoena issued by the liquor commission [ø], liquor control adjudication board[-], or administrator.

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

SECTION 5. 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’ 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] 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 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[;] of food and liquor; 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) 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[{}].
- (3) ~~[For each category of class 2 licenses,]~~ Of this class, there shall be the following kinds:
 - (A) General (includes all liquors except alcohol);
 - (B) Beer and wine; and
 - (C) Beer.

~~[Any] Notwithstanding section 281-57, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding a [different class of] class 5 dispenser 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.] who meets the requirements of a class 2 license.~~

(d) Class 3. Wholesale dealers' 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~~ 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]~~ 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' 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' 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) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;
 - (C) 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) 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,]~~ Of this class, there shall be the following kinds:
- (A) General (includes all liquors except alcohol);
 - (B) Beer and wine; and
 - (C) Beer.

(g) Class 6. Club 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. A club licensee shall be authorized to host charitable functions that are open to the general public only pursuant to commission rules.

The categories of establishment shall be as follows:

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

~~[(h) Class 7. Vessel 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) (h) Class 8. Transient vessel 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] en route within the jurisdictional limits of the state and within any port of the [State.] 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)]~~ (i) Class 9. Tour or cruise vessel 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,] 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,] state, unless otherwise approved by the county where the license has been issued. ~~[If the vessel has a home port in the State, the]~~ 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,] state, it shall constitute a violation of this chapter.

The categories of establishment shall be as follows:

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

~~[(k)]~~ (j) Class 10. 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,]~~ and pursuant to commission rule may be approved by the administrator for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquors in their original packages for off-premises consumption. 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)]~~ (k) 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 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)]~~ (l) Class 12. Hotel 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~~;~~ of

food and liquor, if the catering activity is directly related to the licensee's [operation as a hotel.] food service.

Procedures such as room service, self-service (no-host), minibars or similar service in guest rooms, 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.

Any licensee holding a class 12 license on [F]May 1, 2007,[H] 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.

If a licensee holding a class 12 license on [F]May 1, 2007,[H] 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.

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

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)~~ (n) Class 14. Brewpub 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, which [may] shall 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, 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; and
- (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, 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, 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 1 manufacturer’s licensees and 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)]~~ (o) 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.

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

~~[(q)]~~ (p) 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.

~~[(r)]~~ (q) 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, 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, class 14, or class 15 license engaged in meal service.

~~[(s)]~~ (r) Sections 281-57 to 281-60 shall not apply to classes ~~[7]~~ 8 through 10 and 13.”

SECTION 6. Section 281-32, Hawaii Revised Statutes, is amended to read as follows:

“**§281-32 Licenses, temporary.** A temporary license of any class and kind specified in section 281-31 may be granted under the following conditions[-];

- (1) The premises shall have been operated under a license of the same class [~~and~~], kind, and category issued by the liquor commission at least one year immediately prior to the date of filing of the application for a temporary license[-], except as otherwise approved by the commission;
- (2) The license of the same class [~~and~~], kind, and category then in effect for the premises shall be surrendered in such manner and at such time as the commission shall direct[-];
- (3) The applicant for a temporary license shall have filed with the commission an application for a license of the same class [~~and~~], kind, and category currently or previously [~~then~~] in effect for the premises[-];
- (4) The application for a temporary license shall be accompanied by a license fee in such amount as may be prescribed by the commission. If the application is denied or withdrawn, the fee which accompanied the application shall [~~be refunded in full.~~] become a realization of the county;
- (5) A temporary license shall be for a period of not in excess of one hundred and twenty days. The license may be renewed at the discretion of the commission for not more than one additional [~~sixty-day~~] one hundred twenty-day period upon payment of such additional fee as may be prescribed by the commission and upon compliance with all conditions required in this section and section 281-31. When a temporary license has expired and no permanent license has been issued, the sale and service of liquor shall cease until the permanent license is issued; provided that, when applicable, the license shall be properly renewed;
- (6) A temporary license shall authorize the licensee to purchase liquor only by payment in currency, check, or certified check for the liquor before or at the time of delivery of the liquor to the licensee[-], except as otherwise provided by commission rule; and
- (7) Sections 281-52 and 281-54 and sections 281-56 to 281-61 shall not apply to any application for a temporary license.”

SECTION 7. 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 member of the club nor a guest thereof enjoying the [~~privilege~~] privileges of membership, but a member or a guest enjoying the privileges of membership may purchase liquor for consumption on the premises by the person’s own guests.

The liquor commission may by [~~regulations~~] rule 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 8. Section 281-39, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 manu-

facturer'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]~~ of liquor in permitted quantities in any other county."

SECTION 9. Section 281-45, Hawaii Revised Statutes, is amended to read as follows:

"§281-45 No license issued, when. 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, or to a general partnership, limited partnership, limited liability partnership, or limited liability company whose partner or member holding twenty-five per cent or more interest of which, or any of them would be disqualified under ~~[that]~~ paragraph (1) from obtaining the license individually;
- (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, present to the issuing agency a signed certificate from the director of taxation and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the state or federal governments any delinquent taxes, penalties, or interest; or
- (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 10. Section 281-52, Hawaii Revised Statutes, is amended to read as follows:

"§281-52 Public hearing. No license shall be granted except after a public hearing by the liquor commission upon notice as prescribed in this chapter; provided that ~~[section]~~ sections 281-57 to 281-60 shall not apply to the holder of a restaurant general license, a wholesale general license, ~~[or]~~ a retail general license, or a dispenser's general license, who applies for a different kind of license within the class of the holder's existing license, on the same premises, or to the holder of a cabaret license who applies for a dispenser license of any kind, on the same premises, or to the holder of a dispenser's beer and wine license who applies for dispenser's beer license, on the same premises, or to a licensee whose licensed premises have been demolished and replaced by another building on the same premises and who applies for the same or lesser kind of the same class of liquor license previously held by the licensee on said premises."

SECTION 11. 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 partnership by a 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; 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 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 12. 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, or class 10, such report shall ~~[show:]~~ include:

- (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~~] that 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~~] with a population of [~~500,000~~] five hundred thousand residents or more, the report shall specify the possible adverse effects the premises, after licensing, may have on the surrounding community."

SECTION 13. Section 281-57, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

"(b) 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] § 8 to 10 and 13) and shall give public notice of the hearing at least once in each of two consecutive weeks, in the county, the date of the hearing to be not less than forty-five days after the first notice. The notice shall require that all protests or objections against the issuance of the license applied for shall be filed with the administrator of the commission at or before the time of hearing. Before giving the notice the commission shall collect from the applicant the cost of giving the public notice or require a deposit to cover the same.

(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~~] five hundred 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 436K-1, a condominium hotel, a restaurant, or a convenience store.]~~ applications for class 2, class 4, class 12, and class 15 licenses. 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 business 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]~~ seven-business-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 business 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.]~~ When the requirements of this section have not been met, the commission may cancel the hearing or continue the public hearing subject to the provisions of section 281-57 and this section.

(d) For purposes of this section, notice to one co-owner and one co-lessee of real estate shall be sufficient notice to all co-owners and all co-lessees of that real estate; and one notice is sufficient to an owner or lessee of multiple parcels; except that one notice shall be sent to each individual unit of a cooperative apartment as provided in this section.”

SECTION 14. Section 281-58, Hawaii Revised Statutes, is amended to read as follows:

“§281-58 Protests. Protests against the granting of a license may be filed by any person. Protests against the granting of a license upon such application, which qualifies for an automatic refusal pursuant to section 281-39.5 or 281-59, may be so filed by any registered voter for the area within five hundred feet of the nearest point at which the applicant proposes to establish or continue the applicant’s business under the license applied for, or by any owner or lessee of record of real estate or by any owner of record of a share in a cooperative apartment 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.”

SECTION 15. Section 281-59, Hawaii Revised Statutes, is amended¹ amending subsections (a) and (b) to read as follows:

“(a) 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. The liquor commission shall accept all written or oral testimony for or against the application whether the application is denied, refused, or withdrawn. Within fifteen days after the hearing, or within thirty days thereafter if in its discretion the commission extends the fifteen days to thirty days, and gives public notice of same, the commission shall give its decision granting or refusing the application; provided that if a majority 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 the granting of the license, 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.

For purposes of defining “a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment”, each property counts only once[-]; provided that roadways shall not be included. A protest submitted by the majority of the co-owners or the majority of the co-lessees of a property shall constitute a protest by all the owners or lessees of record of that property. [Owners] A protest filed by owners or lessees who own more than one property [~~may count~~] shall be counted for each property.

(b) The liquor commission shall make available to the applicant and any protester for review before the public hearing, the protest list of those persons who filed a protest or objection to the application; provided that the applicant shall not use the protest list to attempt to influence in any way any protester to withdraw the protest or objection. All applicants and protesters may submit corrections, additions, and subtractions to the master list and the protest list at the public hearing[-]; provided that additions or corrections to the voter registration list shall be certified by the clerk of the county. The liquor commission shall rule on proposed corrections, additions, and subtractions and give reasons for the ruling.”

SECTION 16. Section 281-61, Hawaii Revised Statutes, is amended to read as follows:

“**§281-61 Renewals.** (a) Other than for good cause, the renewal of an existing license shall be granted upon the filing of an application; provided that if:

- (1) Complaints from the public;
- (2) Reports from the commission’s investigators; or
- (3) Adjudications of the commission or the liquor control adjudication board,

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 [~~under the licensee’s control~~] such as parking lots or lanais exceed standards contained in state or county noise codes [~~and~~] or intrudes into nearby residential units, the commission may deny the renewal application or withhold the issuance of a renewed license until corrective measures meeting the commission’s approval are taken.

(b) The commission[;] or board, pursuant to section 281-17, at the time of renewal or at any time, may revoke, suspend, or place conditions or restrictions on any

license issued under this chapter for the purpose of preventing activities within the licensed premises or adjacent areas [~~under the licensee's control~~] that are potentially injurious to the health, safety, and welfare of the public and neighborhood including but not limited to criminal activity, including assault, drug dealing, drug use, or prostitution, upon [~~petition of the administrator of the appropriate county agency,~~] proper notice to the licensee, and a hearing before the commission pursuant to chapter 91.”

SECTION 17. Section 281-62, Hawaii Revised Statutes, is amended to read as follows:

“§281-62 Reduction or increase in area of licensed premises. The liquor commission may, in its discretion, permit the reduction or the increase in the area of the licensed premises of any licensee[-] without publication of notice at a public hearing; provided that, where an increase in premises may significantly impact the public, the commission may require hearings pursuant to sections 281-39.5 and 281-57 to 281-60. Whenever any reduction or increase is permitted, the same shall be endorsed in some appropriate manner upon the license.”

SECTION 18. Section 281-32.3, Hawaii Revised Statutes, is repealed.

SECTION 19. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 20. This Act shall take effect on July 1, 2008.

(Approved June 12, 2008.)

Notes

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