

ACT 184

S.B. NO. 470

A Bill for an Act Relating to Liquor.

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

SECTION 1. Section 231-28, Hawaii Revised Statutes, is amended to read as follows:

“§231-28 Tax clearance before procuring liquor licenses. No liquor licenses shall be issued or renewed unless the applicant therefor shall present to the issuing agency, a certificate signed by the director of taxation, showing that the

applicant does not owe the State any delinquent taxes, penalties, or interest[-]; or that the applicant has entered into and is complying with an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments.”

SECTION 2. Section 281-1, Hawaii Revised Statutes, is amended by amending the definition of “retail licensee” to read as follows:

““Retail licensee” means any licensee holding a class 2 or class 4 through class [14] 16 license.”

SECTION 3. Section 281-3, Hawaii Revised Statutes, is amended to read as follows:

“§281-3 Illegal manufacture, importation, or sale of liquor. It shall be unlawful for any person not having a valid license to manufacture or sell any liquor except as otherwise provided in this chapter; provided that the head of any family may produce for family use and not for sale an amount of wine not exceeding two hundred gallons a year, and an amount of beer not exceeding one hundred gallons a year.

It shall also be unlawful for any person, not having a valid wholesale license or a valid manufacturer’s (including rectifier’s) license, to import any liquor from without the State, except as otherwise provided in this chapter. Liquor imported into this State shall come to rest at the warehouse of the manufacturer (including rectifier) or the wholesaler importing the liquor, shall be unloaded into such warehouse, and shall be held in such warehouse for at least forty-eight hours before further sale by such manufacturer (including rectifier) or wholesaler.

It shall also be unlawful for any person to label, designate, or sell any liquor using the word “Hawaii”, “Hawaiian”, “Aloha State”, “50th State”, “Kauai”, “Maui”, “Oahu”, or “Honolulu” unless such liquor is wholly or partially manufactured in the State, and all of the primary ingredients are wholly rectified or combined in the State of Hawaii in compliance with the [~~Bureau of Alcohol, Tobacco and Firearms~~] Alcohol and Tobacco Tax and Trade Bureau standards.

A license shall constitute authority for the licensee to sell only the liquor thereby authorized to be sold by the licensee.”

SECTION 4. Section 281-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures, sells, or purchases any liquor without being authorized pursuant to this chapter; provided that in counties which have established by charter a liquor control adjudication board, the board shall have the jurisdiction, power, authority, and discretion to hear and determine administrative complaints of the director regarding violations of the liquor laws of the State or of the rules of the liquor commission, and impose penalties for violations thereof as may be provided by law;
- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education;

provided that any educational program shall be limited to the commission staff, commissioners, liquor control adjudication board members, licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees; provided that fine moneys, not to exceed ten per cent a year of fines accumulated, may be used to fund public liquor related educational or enforcement programs;

- (4) From time to time to make, amend, and repeal such rules, not inconsistent with this chapter, as in the judgment of the commission seem appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;
- (5) Subject to chapter 76, to appoint and remove an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer;
- (6) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
- (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;
- (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;
- (9) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
- (10) To investigate violations of this chapter, chapter 244D and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution and, where appropriate, the director of taxation to hear and determine complaints against any licensee;
- (11) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of licenses;
- (12) To prescribe, by rule, the term of any license or solicitor's and representative's permit authorized by this chapter, the annual or prorated

- amount, the manner of payment of fees for the licenses and permits, and the amount of filing fees; and
- (13) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.”

SECTION 5. Section 281-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A commission employee may support, advocate, or aid in the election or defeat of any candidate for public office, or run for public office; provided the employee:

- (1) Notifies the commission in writing of the employee’s intent to support, advocate, or aid in the election or defeat of a candidate for public office; and
- (2) If a candidate for public office, takes a leave of absence in accordance with ~~[chapter 79]~~ section 78-23 for a period beginning prior to the initiation of political activities related to the candidacy and ending the day following the general election for the office.”

SECTION 6. Section 281-31, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (n) to read:

“(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 the county ~~[planning and public works departments;]~~ by ordinance or rule;
- (4) May sell intoxicating liquor, purchased from a class 1 manufacturer licensee, or a class 3 wholesale dealer licensee, to consumers for consumption on the licensee’s premises. 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 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 dealer 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 dispenser licensees, class 6 club licensees, class 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 licensees, pursuant to conditions imposed by county regulations governing class 1 ~~[[manufacturer]]~~ licensees and class 3 wholesale dealer licensees.”

2. By amending subsection (p) to read:

“(p) ~~[[~~ Class 16. Winery license. A winery licensee:

- (1) Shall manufacture not more than ten thousand barrels of wine on the licensee’s premises during the license year;
- (2) May sell wine manufactured on the licensee’s premises for consumption on the premises;
- (3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county [planning and public works departments;] by ordinance or rule;
- (4) May sell wine manufactured on the licensee’s premises to consumers in winery-sealed kegs and magnums for off-premises consumption; provided that for purposes of this paragraph, “magnum” means a glass container, not to exceed one half-gallon, which may be securely sealed;
- (5) May sell wine 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;
- (6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; and
- (7) May sell wine manufactured on the licensee’s premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, ~~[class 7 vessel licensees,]~~ class 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, class 14 brewpub licensees, and class 15 condominium hotel licensees, pursuant to conditions imposed by county planning and public works departments and rules governing class 3 wholesale dealer licensees~~]; and~~
- (8) ~~May conduct the activities described in paragraphs (1) through (7) at locations other than the licensee’s premises; provided that the manufacturing takes place in Hawaii; and provided further that the other locations are properly licensed by the same ownership].”~~

SECTION 7. 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 the issuance or transfer, except for good cause shown to the satisfaction of the liquor commission. A transfer of license shall be for the same class, kind, and category of license. 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 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.~~] sections 281-57 to 281-60.

~~[(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 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 or the proposed transferee, subject to sections 281-51 to 281-60.~~

~~(e)]~~ (b) A county may increase the requirements for transfers of class 5, category ~~[(1)]~~ (B) and (D), 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)]~~ (c) For the purpose of this section, "special liquor district" means an area designated by a county for restoration, reservation, historic preservation, redevelopment, 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)]~~ (d) Where a license is held by a partnership, the commission may, notwithstanding this section, approve the transfer of the [license] partnership interest upon the death or withdrawal of a member of the partnership to any remaining partner or partners without publication of notice [~~and without~~] at a public hearing.

~~[(f)]~~ (e) Where a license is held by a partnership, limited partnership, limited liability partnership, or a limited liability company, the admission or withdrawal of a limited partner, partner of a limited liability partnership, 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)]~~ (f) 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)]~~ (g) 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.

~~[(g)]~~ (h) 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.

~~[(f)]~~ (i) 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 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 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 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 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)]~~ (j) 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.

(k) The conversion of an entity into any other form of entity or the merger of any entity with any other entity shall not be deemed a transfer of the license; provided that the licensee, prior to the date of the conversion or merger, shall apply for and secure the approval of the commission without any requirement for publication of notice. The foregoing shall not preclude compliance with subsection (d) upon a change in any of the partners or members, or with subsection (i) upon change of any shareholders, officers, or directors of any entity occurring concurrently with a conversion or merger.

As used in this subsection, “entity” means a corporation, partnership, limited partnership, limited liability partnership, or limited liability company.”

SECTION 8. 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) 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 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 that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation and the Internal Revenue Service for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement; 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 9. 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]~~ current real property tax record of the person or the person's agent or representative;
- (2) In counties with a population of 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 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-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). 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 []this section[]."

SECTION 10. Section 281-59, Hawaii Revised Statutes, is amended by amending subsection (a) 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]~~ ninety days after the hearing, or within ~~[thirty]~~ one hundred twenty days thereafter if in its discretion the commission extends the ~~[fifteen]~~ ninety days to ~~[thirty]~~ one hundred twenty 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 ap-

plication 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. A protest filed by owners or lessees who own more than one property shall be counted for each property.”

SECTION 11. Section 281-85, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It shall be unlawful for any person acting as agent or representative of a nonresident principal or for any licensee directly or indirectly, or through any subsidiary or affiliate, to give any premium or free goods of intoxicating liquor or other merchandise in connection with the sale of any intoxicating liquor; or to ~~give~~ offer or to provide any premium or free goods of intoxicating liquor in connection with the sale of other merchandise.”

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Became law on July 15, 2009, without the governor's signature, pursuant to Art. III, §16, State Constitution.)