

ACT 184

H.B. NO. 1465

A Bill for an Act Relating to Liquor.

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

SECTION 1. The purpose of this Act is to:

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- (1) Clarify ambiguous statutory language enacted by Act 12, Session Laws of Hawaii 2016;
- (2) Modernize chapter 281, Hawaii Revised Statutes; and
- (3) Enable the various county liquor commissions to execute their duties in a more efficient and effective manner.

SECTION 2. Section 281-41, Hawaii Revised Statutes, is amended to read as follows:

“§281-41 Transfer of licenses; notice of change in officers, directors, and stockholders of corporate licenses, partners of a partnership license, and members or managers 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 requirements as set forth in sections 281-57 to 281-60.

(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.

(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.

(d) Where a license is held by a partnership, the commission may, notwithstanding any other provision of this section, approve the transfer of the partnership interest ~~[upon the death or withdrawal of a member of the partnership to any remaining partner or partners without publication of notice at a public hearing.]~~ without publication of notice at a public hearing, to any remaining partner or partners, upon the death or withdrawal of a partner of the partnership, or to a trust of which the partner is the trustee.

(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 partner, limited partner, partner of a limited liability partnership, [or a member of the] member of a member managed limited liability company, or manager of a manager managed limited liability company shall not be deemed a transfer of the license ~~[held by the partnership or limited liability company, but]; provided that the licensee shall, [prior to such] within thirty days from the date of the 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 partner or a member to be an unfit or improper person to hold a license in the 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.] member, or manager, who has been admitted or withdrawn, and any other information as may be required by the commission.

(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,] this section, are [hereby made] applicable to [such] the transfers. The word "applicant", as used in [such] sections[,] 281-51 to 281-60, shall include each [such] proposed transferee, and the words, "application for a license or for the renewal of a license", as used in [such] those sections, shall include an application for the transfer of a license.

(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.

(h) If any licensee without [such] prior 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 exclusive possession or control of the business or takes in any partner or associate[,] who would be unfit or improper to hold a license pursuant to section 281-45, the commission may in its discretion suspend or cancel the license.

(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 voting capital 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 voting capital stock, the corporate licensee shall, [~~prior to~~] within thirty days of 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, if not a publicly-traded company, or an entity ultimately solely owned by a publicly-traded company, 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[; ~~provided that if the licensee is a~~]. A publicly-traded company, or an entity ultimately solely owned by a publicly-traded company, [the licensee] shall, within thirty days from the date of election of any replacement of an officer designated as a primary [decisionmaker] decision-maker regarding the purchase and sale of liquor, notify the commission in writing of the name, age, and place of residence of the [officers.] officer. If the commission finds that the transferee, officer, or director, for whom notification is required to be given as specified in this subsection, is an unfit or improper person to hold a license in the transferee's, officer's, or director's own right pursuant to

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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.

(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~~[-]~~, unless the licensee obtains prior approval from the commission to place its license with the commission for safekeeping. For the purposes of this subsection, "safekeeping" means the holding of a liquor license at the commission office while the licensee is not operating.

(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 (e)¹ 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.

(l) Any officer or director not designated as a primary decision-maker shall be prohibited from coercing, pressuring, or otherwise unduly influencing the decision of a designated primary decision-maker to engage in any unlawful activity relating to the purchase and sale of liquor. If the commission finds that coercion, pressure, or other undue influence has been placed on a primary decision-maker by any officer or director who is not a designated primary decision-maker, the commission may in its discretion suspend or cancel the license."

SECTION 3. 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, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided 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 corporation's officers and shareholders of twenty-five per cent or more of outstanding stock are fit and proper persons 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; provided that for publicly-traded companies or entities ultimately solely owned by a publicly-traded company, only the of-

ficers and directors designated as primary decision-makers shall be considered to determine disqualification under paragraph (1):

- (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 tax clearance certificate from the department 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; provided that when the applicant or the transferor or transferee, in the case of a transfer of a license, is validly challenging a tax assessment, penalty, or other proceeding that prevents the issuance of a signed certificate from the appropriate federal or state tax agency, the commission shall issue a license that is valid for the period of time necessary to resolve the challenge:
- (4) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, class 17, or class 18 license unless the applicant for issuance of a license or 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 proof of liquor liability insurance coverage in an amount of \$1,000,000; or
- (5) 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 4. Section 281-53, Hawaii Revised Statutes, is amended to read as follows:

“§281-53 Application; penalty for false statements. Every application for a license or for the renewal of a license or for the transfer of a license shall be in writing, signed and, except for the renewal of a license, verified by the oath of the applicant, or in the case of a corporation or unincorporated association by the proper officer or officers thereof, or if a partnership by a general partner thereof, or if a limited liability partnership by a partner thereof, or if a member managed limited liability company by a member thereof, or if a manager managed limited liability company by a manager 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; if a publicly-traded company, or an entity ultimately solely owned by a publicly-traded company, the names of the officers designated as the primary ~~decisionmakers~~ decision-makers regarding the purchase and sale of liquor; 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 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 5. Section 281-53.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The respective county liquor commissions may request a criminal history record check of an applicant for a liquor license in accordance with section 846-2.7[-]; provided that neither a criminal history record check nor compliance with this section shall be required for the officers and directors of publicly-traded companies or entities ultimately solely owned by a publicly-traded company, who are not designated as primary decision-makers regarding the sale or purchase of liquor. The criminal history record check, at a minimum, shall require the applicant to disclose whether:

- (1) The applicant has been convicted in any jurisdiction of a crime that would tend to indicate the applicant may be unsuited for obtaining a liquor license; and
- (2) The judgment of conviction has not been vacated.

For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the liquor commission by means of information obtained through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information which shall include but not be limited to the applicant's name, social security number, date of birth, and gender. This information shall be secured only for the purpose of conducting the criminal history record check authorized by this section."

SECTION 6. Section 281-96, Hawaii Revised Statutes, is amended to read as follows:

"§281-96 Cancellation. If the use of the premises covered by any license becomes lost to the licensee by reason of being sold under foreclosure proceedings, or a civil execution, or other legal process, or for any other cause, which shall force a cessation of the business of the licensee thereon under the license (other than by a revocation or suspension of the licensee's license), the liquor commission may cancel or suspend the license[-] unless the liquor commission has approved the safekeeping of the license pursuant to section 281-41(j)."

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

SECTION 8. This Act shall take effect upon its approval.
(Approved July 11, 2017.)

Note

1. Prior to amendment "(d)" appeared here.