

## ACT 66

H.B. NO. 136

A Bill for an Act Relating to Liquor Licenses.

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

SECTION 1. Section 281-41, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (e) to read:

“(e) Where a license is held by a partnership, limited partnership, or limited liability partnership, [~~or a limited liability company;~~] the admission or withdrawal of a partner, limited partner, or partner of a limited liability partnership [~~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; provided that the licensee shall, within thirty days from the date of the admission or withdrawal, so notify the commission in writing, stating the name of the partner, [~~member, or manager;~~] limited partner, or partner of a limited liability partnership who has been admitted or withdrawn, and any other information as may be required by the commission. If the commission finds that the partner or limited partner for whom notification is required as specified in this subsection does not meet statutory requirements to hold a license in the partner’s or limited partner’s own right pursuant to section 281-45, it may, in its discretion, revoke the license or suspend the license until the partner or limited partner is removed or replaced by a partner or limited partner who meets the statutory requirements to hold a license pursuant to section 281-45.”

2. By amending subsections (h) and (i) to read:

“(h) If any licensee without prior approval, approval of a temporary license, or approval of a management agreement 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~~] not meet statutory requirements to hold a license pursuant to section 281-45, the commission may in its discretion suspend or cancel the license. For purposes of this subsection, “management agreement” means a written agreement under which a licensee allows a manager to manage and operate the licensee’s business on behalf of the licensee.

(i) If the licensee is a corporation[.] or limited liability company, a change in ownership of any outstanding capital stock or membership interest 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 membership interest or in the case of change in ownership of any number of shares of the stock or membership interest that results in the transferee thereof becoming the owner of twenty-five per cent or more of the outstanding voting capital stock[,] or membership interest, the corporate or limited liability company licensee shall, within thirty days of the date of the transfer, apply for the approval of the transfer from the commission in writing. If the commission finds that the transferee ~~[is an unfit or improper person]~~ does not meet statutory requirements to hold a license in the transferee's own right pursuant to section 281-45, it shall not approve the transfer. If any transfer is made without the 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,]~~ meets the statutory requirements to hold a license, and if the commission finds that the transferee ~~[is not a fit and proper person,]~~ does not meet the statutory requirements to hold a license, until a retransfer or new transfer of the capital stock or membership interest is made to a ~~[fit and proper]~~ person who meets the statutory requirements to hold a license pursuant to section 281-45. In addition, the corporate or limited liability company 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 or admission of any officer ~~[øf]~~, director, manager, or member, notify the commission in writing of the name, age, and place of residence of the officer ~~[øf]~~, director~~[-]~~, manager, or member, and any other information as may be required by the commission. A publicly-traded corporation or limited liability company, or ~~[an entity]~~ a corporation or limited liability company ultimately solely owned by a publicly-traded company, shall, within thirty days from the date of election or admission of any replacement of an officer, director, manager, or member designated as a primary decision-maker regarding the purchase and sale of liquor, notify the commission in writing of the name, age, and place of residence of the officer~~[-]~~, director, manager, or member. If the commission finds that the ~~[transferee,]~~ officer, ~~[øf]~~ director, manager, or member for whom notification is required to be given as specified in this subsection, ~~[is an unfit or improper person]~~ does not meet statutory requirements to hold a license in the ~~[transferee's,]~~ officer's, ~~[øf]~~ director's, manager's, or member'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,]~~ the officer, [øf] director, manager, or member is removed or replaced by a ~~[fit and proper]~~ person who meets statutory requirements to hold a license pursuant to section 281-45."

3. By amending subsections (k) and (l) to read:

"(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]~~ within thirty days 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) upon a change in any of the partners ~~[øf members,]~~ or with subsection (i) upon change of any shareholders, officers, ~~[øf]~~ directors, managers, or members 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 ~~[øf]~~, director, partner, limited partner, manager, or member 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, manager, or member who is not a designated primary decision-maker, the commission may in its discretion suspend or cancel the license.”

SECTION 2. 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 or limited liability company that has been convicted of a felony where the commission finds that the corporation’s officers ~~[and]~~, directors, and shareholders of twenty-five per cent or more of outstanding stock ~~[are fit and proper persons to have a license;]~~ meet the statutory requirements to hold 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 corporations and limited liability companies or ~~[entities]~~ corporations or limited liability companies ultimately solely owned by a publicly-traded company, only the officers ~~[and]~~, directors, managers, or members 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 showing that the applicant or the transferor and transferee do not owe the state government 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 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

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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 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 5. This Act shall take effect on January 5, 2022.

(Approved June 23, 2021.)