

JAN 18 2019

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# A BILL FOR AN ACT

RELATING TO LIQUOR.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that an ongoing problem  
2 in several communities across the State is the sale of liquor by  
3 unlicensed operators or entities that are not under the  
4 jurisdiction of the liquor control agencies. Liquor control  
5 agencies are restricted from executing compliance checks on  
6 establishments without liquor licenses. The reportedly  
7 widespread unlicensed sale of liquor on private properties  
8 within the State, if true, undermines the mission of liquor  
9 control agencies to control the sale of liquor.

10           The legislature also finds that on November 1, 2017, the  
11 Honolulu city council expressed the will of the people through  
12 the unanimous adoption of Resolution 17-280, CD1, entitled  
13 "Requesting the Hawaii State Legislature to increase the penalty  
14 for the unlicensed manufacture or sale of liquor to a felony and  
15 to add the crime to the class of organized criminal activities  
16 under Hawaii Revised Statutes Chapter 842."



1           The resolution states, "because these unlicensed operators  
2 and establishments are operating without regulation, they draw  
3 crowds and attract other illegal activity that poses health,  
4 safety, and community concerns, as evidenced by the recent fatal  
5 shooting at a well-known, but unlicensed, bar establishment that  
6 has been in operation for a number of years . . . "

7           Under existing law, the penalty for the misdemeanor offense  
8 of unlicensed manufacture or sale of liquor is a fine of not  
9 more than \$2,000, imprisonment for not more than one year, or  
10 both. The intent of this Act is to deter future illegal liquor  
11 sales, not occurring under the oversight of liquor control  
12 agencies, by increasing the consequences of subsequent  
13 conviction and to allow greater latitude to judges in their  
14 sentencing options.

15           The purpose of this Act is to increase the penalty for the  
16 unlicensed sale of liquor and add the crime to the definitions  
17 of "organized crime" and "racketeering activity" while also  
18 establishing an affirmative defense for those operating in good  
19 faith who reasonably believe that their actions were in  
20 accordance with the law.



1 SECTION 2. Section 281-101, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§281-101 [~~Manufacture or sale without license,~~]

4 Unlicensed manufacture or sale of liquor; penalty. (a) If any  
5 person, acting in person or by or through any agent, servant, or  
6 employee, manufactures [~~or sells~~] any liquor, either directly or  
7 indirectly, or upon any pretense or by any subterfuge, except as  
8 authorized pursuant to this chapter, the person shall be fined  
9 not more than \$2,000 or imprisoned not more than one year, or  
10 both.

11 (b) If any person, acting in person or by or through any  
12 agent, servant, or employee, sells any liquor, either directly  
13 or indirectly, or upon any pretense or by any subterfuge, except  
14 as authorized pursuant to this chapter, the person shall be  
15 guilty of a class C felony.

16 (c) It is an affirmative defense to prosecution under this  
17 section that the defendant acted under good faith and a  
18 reasonable belief that the sale of liquor was authorized  
19 pursuant to this chapter."

20 SECTION 3. Section 712A-4, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           **"§712A-4 Covered offenses.** Offenses for which property is  
2 subject to forfeiture under this chapter are:

- 3           (a) All offenses that specifically authorize forfeiture;  
4           (b) Murder, kidnapping, labor trafficking, unlicensed sale  
5                 of liquor, gambling, criminal property damage,  
6                 robbery, bribery, extortion, theft, unauthorized entry  
7                 into motor vehicle, burglary, money laundering,  
8                 trademark counterfeiting, insurance fraud, promoting a  
9                 dangerous, harmful, or detrimental drug, commercial  
10                promotion of marijuana, methamphetamine trafficking,  
11                manufacturing of a controlled substance with a child  
12                present, promoting child abuse, promoting  
13                prostitution, sex trafficking, solicitation of a minor  
14                for prostitution, habitual solicitation of  
15                prostitution, or electronic enticement of a child that  
16                is chargeable as a felony offense under state law;  
17           (c) The manufacture, sale, or distribution of a controlled  
18                substance in violation of chapter 329, promoting  
19                detrimental drugs or intoxicating compounds, promoting  
20                pornography, promoting pornography for minors, or  
21                solicitation of prostitution near schools or public



1 parks, which is chargeable as a felony or misdemeanor  
2 offense, but not as a petty misdemeanor, under state  
3 law; and

4 (d) The attempt, conspiracy, solicitation, coercion, or  
5 intimidation of another to commit any offense for  
6 which property is subject to forfeiture."

7 SECTION 4. Section 842-1, Hawaii Revised Statutes, is  
8 amended as follows:

9 1. By amending the definition of "organized crime" to  
10 read:

11 "Organized crime" means any combination or conspiracy to  
12 engage in criminal activity as a significant source of income or  
13 livelihood, or to violate, aid, or abet the violation of  
14 criminal laws relating to prostitution, gambling, loan sharking,  
15 drug abuse, illegal drug distribution, counterfeiting,  
16 extortion, labor trafficking, unlicensed sale of liquor, or  
17 corruption of law enforcement officers or other public officers  
18 or employers."

19 2. By amending the definition of "racketeering activity"  
20 to read:



1 "Racketeering activity" means any act or threat involving  
 2 but not limited to murder, kidnapping, gambling, criminal  
 3 property damage, robbery, bribery, extortion, labor trafficking,  
 4 unlicensed sale of liquor, theft, or prostitution, or any  
 5 dealing in narcotic or other dangerous drugs that is chargeable  
 6 as a crime under state law and punishable by imprisonment for  
 7 more than one year."

8 SECTION 5. This Act does not affect rights and duties that  
 9 matured, penalties that were incurred, and proceedings that were  
 10 begun before its effective date.

11 SECTION 6. Statutory material to be repealed is bracketed  
 12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:



*Michelle Tidani*  
*Assembly*  
*SSS*

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S.B. NO. 638

*Alvarez*



# S.B. NO. 638

**Report Title:**

Unlicensed Manufacture or Sale of Liquor; Penalty; Organized Crime; Racketeering Activity

**Description:**

Adds unlicensed sale of liquor as an offense for which property is subject to forfeiture and increases the grade of the offense to a class C felony. Provides an affirmative defense. Amends definitions of "organized crime" and "racketeering activity" to include the unlicensed sale of liquor.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

