



GOV. MSG. NO. 848

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 300 SD2 HD2 CD1

On July 15, 2009, Senate Bill No. 300, entitled "A Bill for an Act Relating to Intoxicating Liquor" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to require restaurants, retailers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, and condominium hotels to maintain liquor liability coverage in an amount of \$1,000,000. In addition, this bill prohibits the county liquor commissions from issuing, renewing, or transferring a liquor license unless the applicant can show proof of the mandated insurance coverage.

I understand the intent of this legislation and support efforts to encourage responsible business practices. When tragedy occurs, those who have taken proactive measures to protect themselves should not be burdened disproportionately because others were less responsible.

This bill raises concerns because it has the potential to put some small establishments out of business. There is reason to believe that smaller liquor establishments are either unaware of the requirements of this legislation or unable to afford the mandated coverage. Many of the businesses in this situation are owned and operated by immigrants who are non-native English speakers.

In addition, I am concerned about the immediacy of the bill's July 1, 2009 effective date. This effective date provides no grace period for businesses to learn about the bill, contact an insurance company, negotiate a quote, secure a policy, and generate the necessary funds that would be needed to comply. My office has been working with the Executive Directors of the Liquor Commissions of the four counties to allow for a reasonable period of time for liquor establishments to comply before instituting punitive actions against these businesses.

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Finally, it should be noted that insurance mandates do not address the root of the problem. Until people take personal responsibility for their actions and change their behavior, we will continue to see deaths on our roads as a result of drinking and driving. Unfortunately, no amount of money can bring back a loved one lost because of another person's irresponsible behavior. We must all work hard to address this issue in our communities and among our family and friends if we want to affect real change.

For the foregoing reasons, I allowed Senate Bill No. 300 to become law as Act 177, effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a stylized flourish at the end.

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO INTOXICATING LIQUOR.

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

1 SECTION 1. Section 281-31, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§281-31 Licenses, classes.** (a) Licenses may be granted
4 by the liquor commission as provided in this section.

5 (b) Class 1. Manufacturer license. A license for the
6 manufacture of liquor shall authorize the licensee to
7 manufacture the liquor therein specified and to sell it at
8 wholesale in original packages to any person who holds a license
9 to resell it and to sell draught beer or wine manufactured from
10 grapes or other fruits grown in the State in any quantity to any
11 person for private use and consumption. Under this license, no
12 liquor shall be consumed on the premises except as authorized by
13 the commission. Of this class, there shall be the following
14 kinds:

- 15 (1) Beer;
- 16 (2) Wine;
- 17 (3) Alcohol; and



1 (4) Other specified liquor.

2 It shall be unlawful for any holder of a manufacturer
3 license to have any interest whatsoever in the license or
4 licensed premises of any other licensee. This subsection shall
5 not prevent the holder of a manufacturer license under this
6 chapter or under the law of another jurisdiction from
7 maintaining any interest in the license or licensed premises of
8 a wholesale dealer licensee under this chapter.

9 (c) Class 2. Restaurant license.

10 (1) A license under this class shall authorize the
11 licensee to sell liquor specified in this subsection
12 for consumption on the premises; provided that a
13 restaurant licensee, with commission approval, may
14 provide off-premises catering of food and liquor;
15 provided further that the catering activity shall be
16 directly related to the licensee's operation as a
17 restaurant. A licensee under this class shall be
18 issued a license according to the category of
19 establishment the licensee owns or operates. The
20 categories of establishment shall be as follows:

21 (A) A standard bar; or



1 (B) Premises in which live entertainment or recorded
2 music is provided. Facilities for dancing by the
3 patrons may be permitted as provided by
4 commission rules.

5 (2) If a licensee under class 2 desires to change the
6 category of establishment the licensee owns or
7 operates, the licensee shall apply for a new license
8 applicable to the category of the licensee's
9 establishment.

10 (3) Of this class, there shall be the following kinds:

11 (A) General (includes all liquor except alcohol);

12 (B) Beer and wine; and

13 (C) Beer.

14 Notwithstanding section 281-57, the commission may approve at
15 one public hearing and without notice the change to a class 2
16 restaurant license of a licensee holding a class 5 dispenser
17 license who meets the requirements of a class 2 license.

18 (d) Class 3. Wholesale dealer license. A license for the
19 sale of liquor at wholesale shall authorize the licensee to
20 import and sell only to licensees, or to others who are by law
21 authorized to resell but are not by law required to hold a
22 license, the liquor therein specified; provided that samples of



1 liquor may be sold back to the manufacturer. Under the license,
2 no liquor shall be consumed on the premises except as authorized
3 by the commission. Of this class, there shall be the following
4 kinds:

- 5 (1) General (includes all liquor except alcohol);
- 6 (2) Beer and wine; and
- 7 (3) Alcohol.

8 If any wholesale dealer solicits or takes any orders in any
9 county other than that where the dealer's place of business is
10 located, the orders may be filled only by shipment direct from
11 the county in which the wholesale dealer holds the dealer
12 license. Nothing in this subsection shall prevent a wholesaler
13 from selling liquor to post exchanges, ships' service stores,
14 army or navy officers' clubs, or similar organizations located
15 on army or navy reservations, or to any vessel other than
16 vessels performing a regular water transportation service
17 between any two or more ports in the State, or to aviation
18 companies who operate an aerial transportation enterprise as a
19 common carrier, under chapter 269, engaged in regular flight
20 passenger services between any two or more airports in the State
21 for use on aircraft, or aviation companies engaged in



1 transpacific flight operations for use on aircraft outside the
2 jurisdiction of the State.

3 (e) Class 4. Retail dealer license. A license to sell
4 liquor at retail or to class 10 licenses shall authorize the
5 licensee to sell the liquor therein specified in their original
6 packages. Under the license, no liquor shall be consumed on the
7 premises except as authorized by the commission. Of this class,
8 there shall be the following kinds:

- 9 (1) General (includes all liquor except alcohol);
10 (2) Beer and wine; and
11 (3) Alcohol.

12 (f) Class 5. Dispenser license.

13 (1) A license under this class shall authorize the
14 licensee to sell liquor specified in this subsection
15 for consumption on the premises. A licensee under
16 this class shall be issued a license according to the
17 category of establishment the licensee owns or
18 operates. The categories of establishments shall be
19 as follows:

20 (A) A standard bar;



1 (B) Premises in which a person performs or entertains
2 unclothed or in attire restricted to use by
3 entertainers pursuant to commission rules;

4 (C) Premises in which live entertainment or recorded
5 music is provided; provided that facilities for
6 dancing by the patrons may be permitted as
7 provided by commission rules; or

8 (D) Premises in which employees or entertainers are
9 compensated to sit with patrons, regardless of
10 whether the employees or entertainers are
11 consuming nonalcoholic beverages while in the
12 company of the patrons pursuant to commission
13 rules.

14 (2) If a licensee under class 5 desires to change the
15 category of establishment the licensee owns or
16 operates, the licensee shall apply for a new license
17 applicable to the category of the licensee's
18 establishment.

19 (3) Of this class, there shall be the following kinds:

20 (A) General (includes all liquor except alcohol);

21 (B) Beer and wine; and

22 (C) Beer.



1 (g) Class 6. Club license. A club license shall be
2 general only (but excluding alcohol) and shall authorize the
3 licensee to sell liquor to members of the club and to guests of
4 the club enjoying the privileges of membership, for consumption
5 only on the premises kept and operated by the club; provided
6 that the license shall also authorize any club member to keep in
7 the member's private locker on the premises a reasonable
8 quantity of liquor, if owned by the member, for the member's own
9 personal use and not to be sold and that may be consumed only on
10 the premises. A club licensee shall be authorized to host
11 charitable functions that are open to the general public only
12 pursuant to commission rules.

13 The categories of establishment shall be as follows:

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

18 (h) Class 8. Transient vessel license. A general license
19 may be granted to the owner of any vessel for the sale of liquor
20 (other than alcohol) on board the vessel while en route within
21 the jurisdictional limits of the State and within any port of
22 the State. Sales shall be made only for consumption by



1 passengers and their guests on board the vessel. The license
2 shall be issuable in each county where the sales are to be made;
3 provided that the application for the license may be made by any
4 agent representing the owner.

5 (i) Class 9. Tour or cruise vessel license. A general
6 license may be granted to the owner of any tour or cruise vessel
7 for the sale of liquor (other than alcohol) on board the vessel
8 while in the waters of the State; provided that sales be made
9 only for consumption by passengers on board while the vessel is
10 in operation outside the port or dock of any island of the
11 State, unless otherwise approved by the county where the license
12 has been issued. The license shall be issuable in the county
13 wherein the home port is situated. If, on any vessel for which
14 no license has been obtained under this chapter, any liquor is
15 sold or served within three miles of the shore of any island of
16 the State, it shall constitute a violation of this chapter.

17 The categories of establishment shall be as follows:

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



1 (j) Class 10. Special license. A special license may be
2 granted for the sale of liquor for a period not to exceed three
3 days and pursuant to commission rule may be approved by the
4 administrator for fundraising events by nonprofit organizations,
5 political candidates, and political parties; provided that any
6 registered educational or charitable nonprofit organization may
7 sell liquors in their original packages for off-premises
8 consumption. Of this class, there shall be the following kinds:

- 9 (1) General (includes all liquor except alcohol);
- 10 (2) Beer and wine; and
- 11 (3) Beer.

12 Under this license, the liquor therein specified shall be
13 consumed on the premises.

14 (k) Class 11. Cabaret license. A cabaret license shall
15 be general only (but excluding alcohol) and shall authorize the
16 sale of liquor for consumption on the premises. This license
17 shall be issued only for premises where food is served,
18 facilities for dancing by the patrons are provided, including a
19 dance floor, and live or amplified recorded music or
20 professional entertainment, except professional entertainment by
21 a person who performs or entertains unclothed, is provided for



1 the patrons; provided that professional entertainment by persons
2 who perform or entertain unclothed shall be authorized by:

3 (1) A cabaret license for premises where professional
4 entertainment by persons who perform or entertain
5 unclothed was presented on a regular and consistent
6 basis immediately prior to June 15, 1990; or

7 (2) A cabaret license that, pursuant to rules adopted by
8 the liquor commission, permits professional
9 entertainment by persons who perform or entertain
10 unclothed.

11 A cabaret license under paragraph (1) or (2) authorizing
12 professional entertainment by persons who perform or entertain
13 unclothed shall be transferable through June 30, 2000. A
14 cabaret license under paragraph (1) or (2) authorizing
15 professional entertainment by persons who perform or entertain
16 unclothed shall not be transferable after June 30, 2000, except
17 when the transferee obtains approval from the liquor commission,
18 and pursuant to rules adopted by the commission.

19 Notwithstanding any rule of the liquor commission to the
20 contrary, cabarets in resort areas may be opened for the
21 transaction of business until 4 a.m. throughout the entire week.



1 (1) Class 12. Hotel license. A license to sell liquor in
2 a hotel shall authorize the licensee to provide entertainment
3 and dancing on the hotel premises and to sell all liquor, except
4 alcohol, for consumption on the premises; provided that a hotel
5 licensee, with commission approval, may provide off-premises
6 catering of food and liquor, if the catering activity is
7 directly related to the licensee's food service.

8 Procedures such as room service, self-service (no-host),
9 minibars or similar service in guest rooms, and service at
10 parties in areas that are the property of and contiguous to the
11 hotel, are permitted with commission approval.

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

15 If the licensee applies for a change of classification
16 prior to July 30, 1992, the licensee shall not be subject to the
17 requirements of sections 281-52, 281-54, and 281-57 through
18 281-59.

19 Any licensee holding a class 12 license on May 1, 2007, and
20 who would otherwise come within this class of license may apply
21 to the liquor commission in which the licensee is seeking a
22 change in liquor license for a change to a class 15 license;



1 provided that the licensee shall not be subject to the
2 requirements of section 281-54 and sections 281-57 to 281-60.

3 If a licensee holding a class 12 license on May 1, 2007,
4 applies for a change to a class 15 license, the respective
5 liquor commission shall hold a public hearing upon notice, and
6 upon the day of hearing, or any adjournment thereof, the liquor
7 commission shall consider the application, accept all written or
8 oral testimony for or against the application, and render its
9 decision granting or refusing the application. If the
10 application is denied, the class 12 license shall continue in
11 effect in accordance with law.

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

16 No catering service for the sale of liquor shall be
17 performed off the licensee's premises, unless prior written
18 notice of the service has been delivered to the office of the
19 liquor commission of the county concerned. The notice shall
20 state the date, time, and location of the proposed event and
21 shall include a written statement signed by the owner or



1 representative of the property that the function will be subject
2 to the liquor laws and to inspection by investigators.

3 (n) Class 14. Brewpub license. A brewpub licensee:

4 (1) Shall manufacture not more than ten thousand barrels
5 of malt beverages on the licensee's premises during
6 the license year;

7 (2) May sell malt beverages manufactured on the licensee's
8 premises for consumption on the premises;

9 (3) May sell malt beverages manufactured by the licensee
10 in brewery-sealed packages to class 3 wholesale dealer
11 licensees pursuant to conditions imposed by county
12 planning and public works departments;

13 (4) May sell intoxicating liquor, purchased from a class 1
14 manufacturer licensee, or a class 3 wholesale dealer
15 licensee, to consumers for consumption on the
16 licensee's premises. The categories of establishments
17 shall be as follows:

18 (A) A standard bar; or

19 (B) Premises in which live entertainment or recorded
20 music is provided. Facilities for dancing by the
21 patrons may be permitted as provided by
22 commission rules;



- 1 (5) May sell malt beverages manufactured on the licensee's
2 premises to consumers in brewery-sealed kegs and
3 growlers for off-premises consumption; provided that
4 for purposes of this paragraph, "growler" means a
5 glass container, not to exceed one half-gallon, which
6 shall be securely sealed;
- 7 (6) May sell malt beverages manufactured on the licensee's
8 premises to consumers, in recyclable containers that
9 may be provided by the licensee or by the consumer,
10 not to exceed one gallon per container, which are
11 securely sealed on the licensee's premises, for off-
12 premises consumption;
- 13 (7) Shall comply with all regulations pertaining to class
14 4 retail dealer licensees when engaging in the retail
15 sale of malt beverages; and
- 16 (8) May sell malt beverages manufactured on the licensee's
17 premises in brewery-sealed containers directly to
18 class 2 restaurant licensees, class 3 wholesale dealer
19 licensees, class 4 retail dealer licensees, class 5
20 dispenser licensees, class 6 club licensees, class 8
21 transient vessel licensees, class 9 tour or cruise
22 vessel licensees, class 10 special licensees, class 11



1 cabaret licensees, class 12 hotel licensees, class 13
2 caterer licensees, and class 15 condominium hotel
3 licensees, pursuant to conditions imposed by county
4 regulations governing class 1 [manufacturer] licensees
5 and class 3 wholesale dealer licensees.

6 (o) Class 15. Condominium hotel license. A license to
7 sell liquor in a condominium hotel shall authorize the licensee
8 to provide entertainment and dancing on the condominium hotel
9 premises and to sell all liquor, except alcohol, for consumption
10 on the premises; provided that a condominium hotel licensee,
11 with commission approval, may provide off-premises catering;
12 provided further that the catering activity is directly related
13 to the licensee's operation as a condominium hotel.

14 Procedures such as room service, self-service (no-host),
15 minibars or similar service in apartments, and service at
16 private parties in areas that are the property of and contiguous
17 to the condominium hotel, are permitted with commission
18 approval.

19 A condominium hotel licensee shall not sell liquor in the
20 manner authorized by a class 4 retail [dealer] license.

21 Any licensee who would otherwise fall within the
22 condominium hotel license class but holds a different class of



1 license may be required to apply for a condominium hotel
2 license.

3 [H] (p) [H] Class 16. Winery license. A winery licensee:

4 (1) Shall manufacture not more than ten thousand barrels
5 of wine on the licensee's premises during the license
6 year;

7 (2) May sell wine manufactured on the licensee's premises
8 for consumption on the premises;

9 (3) May sell wine manufactured by the licensee in winery-
10 sealed packages to class 3 wholesale dealer licensees
11 pursuant to conditions imposed by county planning and
12 public works departments;

13 (4) May sell wine manufactured on the licensee's premises
14 to consumers in winery-sealed kegs and magnums for
15 off-premises consumption; provided that for purposes
16 of this paragraph, "magnum" means a glass container,
17 not to exceed one half-gallon, which may be securely
18 sealed;

19 (5) May sell wine manufactured on the licensee's premises
20 to consumers, in recyclable containers that may be
21 provided by the licensee or by the consumer, not to
22 exceed one gallon per container, which are securely



1 sealed on the licensee's premises, for off-premises
2 consumption;

3 (6) Shall comply with all rules pertaining to class 4
4 retail dealer licensees when engaging in the retail
5 sale of wine;

6 (7) May sell wine manufactured on the licensee's premises
7 in winery-sealed containers directly to class 2
8 restaurant licensees, class 3 wholesale dealer
9 licensees, class 4 retail dealer licensees, class 5
10 dispenser licensees, class 6 club licensees, class 7
11 vessel licensees, class 8 transient vessel licensees,
12 class 9 tour or cruise vessel licensees, class 10
13 special licensees, class 11 cabaret licensees, class
14 12 hotel licensees, class 13 caterer licensees, class
15 14 brewpub licensees, and class 15 condominium hotel
16 licensees, pursuant to conditions imposed by county
17 planning and public works departments and rules
18 governing class 3 wholesale dealer licensees; and

19 (8) May conduct the activities described in paragraphs (1)
20 through (7) at locations other than the licensee's
21 premises; provided that the manufacturing takes place



1 in Hawaii; and provided further that the other
2 locations are properly licensed by the same ownership.
3 ~~(q)~~ Restaurants, retailers, dispensers, clubs, cabarets,
4 hotels, caterers, brewpubs, and condominium hotels licensed
5 under class 2, class 4, class 5, class 6, class 11, class 12,
6 class 13, class 14, and class 15 shall maintain at all times
7 liquor liability insurance coverage in an amount of \$1,000,000.
8 Proof of coverage shall be kept on the premises and shall be
9 made available for inspection by the commission at any time
10 during the licensee's regular business hours. In the event of a
11 licensee's failure to obtain or maintain the required coverage,
12 the commission shall refuse to issue or renew a license, or
13 shall suspend or terminate the license as appropriate. No
14 license shall be granted, reinstated, or renewed until after the
15 required insurance coverage is obtained.

16 ~~[(q)]~~ (r) It shall be unlawful for any retail licensee,
17 except a class 10 licensee, to purchase, acquire, or sell liquor
18 from any person other than a wholesaler licensed pursuant to
19 this chapter, except as otherwise provided in this section.

20 ~~[(r)]~~ (s) Any provision to the contrary notwithstanding,
21 at the discretion of the county liquor commission, permission
22 may be granted to a bona fide hotel, restaurant, or club



1 licensed under class 2, class 6, class 11, class 12, class 14,
2 class 15, or class 16 to allow a patron to remove from the
3 licensed premises any portion of wine that was purchased for
4 consumption with a meal; provided that it is recorked or
5 resealed in its original container. This subsection applies
6 only to a valid holder of a class 2, class 6, class 11, class
7 12, class 14, class 15, or class 16 license engaged in meal
8 service.

9 ~~[(s)]~~ (t) Sections 281-57 to 281-60 shall not apply to
10 classes 8 through 10 and 13."

11 SECTION 2. Section 281-45, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§281-45 No license issued, when.** No license shall be
14 issued under this chapter:

- 15 (1) To any minor or to any person who has been convicted
16 of a felony and not pardoned (except that the
17 commission may grant a license under this chapter to a
18 corporation that has been convicted of a felony where
19 the commission finds that the organization's officers
20 and shareholders of twenty-five per cent or more of
21 outstanding stock are fit and proper persons to have a
22 license), or to any other person not deemed by the



1 commission to be a fit and proper person to have a
2 license;

3 (2) To a corporation the officers and directors of which,
4 or any of them, would be disqualified under paragraph
5 (1) from obtaining the license individually, or a
6 stockholder of which, owning or controlling twenty-
7 five per cent or more of the outstanding capital
8 stock, or to a general partnership, limited
9 partnership, limited liability partnership, or limited
10 liability company whose partner or member holding
11 twenty-five per cent or more interest of which, or any
12 of them would be disqualified under paragraph (1) from
13 obtaining the license individually;

14 (3) Unless the applicant for a license or a renewal of a
15 license, or in the case of a transfer of a license,
16 both the transferor and the transferee, present to the
17 issuing agency a signed certificate from the director
18 of taxation and from the Internal Revenue Service
19 showing that the applicant or the transferor and
20 transferee do not owe the state or federal governments
21 any delinquent taxes, penalties, or interest; [e]



1 (4) To an applicant for a class 2, class 4, class 5, class
 2 6, class 11, class 12, class 13, class 14, or class 15
 3 license, unless the applicant for issuance of a
 4 license or renewal of a license, or in the case of a
 5 transfer of a license, both the transferor and the
 6 transferee, present to the issuing agency proof of
 7 liquor liability insurance coverage in an amount of
 8 \$1,000,000; or

9 [~~4~~] (5) To any applicant who has had any liquor license
 10 revoked less than two years previous to the date of
 11 the application for any like or other license under
 12 this chapter."

13 SECTION 3. Section 281-61, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "**§281-61 Renewals.** (a) Other than for good cause, the
 16 renewal of an existing license shall be granted upon the filing
 17 of an application; provided that if:

- 18 (1) Complaints from the public;
- 19 (2) Reports from the commission's investigators; or
- 20 (3) Adjudications of the commission or the liquor control
- 21 adjudication board,



1 indicate that noise created by patrons departing from the
2 premises disturbs residents on the street or of the neighborhood
3 in which the premises are located, or that noise from the
4 premises or adjacent related outdoor areas such as parking lots
5 or lanais exceed standards contained in state or county noise
6 codes or intrudes into nearby residential units, the commission
7 may deny the renewal application or withhold the issuance of a
8 renewed license until corrective measures meeting the
9 commission's approval are taken.

10 (b) The commission or board, pursuant to section 281-17,
11 at the time of renewal or at any time, may revoke, suspend, or
12 place conditions or restrictions on any license issued under
13 this chapter for the purpose of preventing activities within the
14 licensed premises or adjacent areas that are potentially
15 injurious to the health, safety, and welfare of the public and
16 neighborhood including but not limited to criminal activity,
17 including assault, drug dealing, drug use, or prostitution, upon
18 proper notice to the licensee, and a hearing before the
19 commission pursuant to chapter 91.

20 (c) The commission or board shall deny renewal of a class
21 2, class 4, class 5, class 6, class 11, class 12, class 13,
22 class 14, or class 15 license if the applicant for renewal fails



1 to present proof of the liquor liability insurance required by
2 section 281-31(q)."

3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect on July 1, 2009.

APPROVED this day of , 2009

GOVERNOR OF THE STATE OF HAWAII