
A BILL FOR AN ACT

RELATING TO LIQUOR.

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

1 SECTION 1. The purpose of this Act is to:

2 (1) Clarify ambiguous statutory language enacted by Act

3 12, Session Laws of Hawaii 2016;

4 (2) Modernize chapter 281, Hawaii Revised Statutes; and

5 (3) Enable the various county liquor commissions to

6 execute their duties in a more efficient and effective

7 manner.

8 SECTION 2. Section 281-41, Hawaii Revised Statutes, is

9 amended to read as follows:

10 "§281-41 Transfer of licenses; notice of change in

11 officers, directors, and stockholders of corporate licenses,

12 partners of a partnership license, and members or managers of a

13 limited liability company license; penalty. (a) No license

14 issued under this chapter to an original applicant or to any

15 transferee shall be transferable or be transferred within one

16 year of the issuance or transfer, except for good cause shown to

17 the satisfaction of the liquor commission. A transfer of

18 license shall be for the same class, kind, and category of



1 license. No license issued under this chapter shall be
2 transferable or be transferred except upon written application
3 to the commission by the proposed transferee, and after prior
4 inspection of the premises, reference to, and report by an
5 inspector, and a public hearing held by the commission not less
6 than fourteen days after one publication of notice thereof, but
7 without sending notice of the hearing by mail to persons being
8 the owners or lessees of real estate situated within the
9 vicinity of the premises and without the right to the owners or
10 lessees to protest the transfer of a license. Exceptions are
11 class 5 and 11 licensees who must comply with the requirements
12 as set forth in sections 281-57 to 281-60.

13 (b) A county may increase the requirements for transfers
14 of class 5, category (1)(B) and (D), and class 11 licenses by
15 ordinance designating one or more areas within the county as
16 special liquor districts and specifying the requirements
17 applicable to transfers of any of these licenses within each
18 district.

19 (c) For the purpose of this section, "special liquor
20 district" means an area designated by a county for restoration,
21 reservation, historic preservation, redevelopment, rejuvenation,



1 or residential protection, in which development is guided to
2 protect or enhance the physical and visual aspects of the area
3 for the benefit of the community as a whole.

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

13 (e) Where a license is held by a partnership, limited
14 partnership, limited liability partnership, or a limited
15 liability company, the admission or withdrawal of a partner,
16 limited partner, partner of a limited liability partnership, [or
17 a member of the] member of a member managed limited liability
18 company, or manager of a manager managed limited liability
19 company shall not be deemed a transfer of the license [held by
20 the partnership or limited liability company, but]; provided
21 that the licensee shall, [prior to such] within thirty days from



1 the date of the admission or withdrawal, so notify the
2 commission in writing, stating the name of the partner,
3 ~~[partners, member, or members who have withdrawn, if such be the~~
4 ~~case, and the name, age, and place of residence of the partner,~~
5 ~~partners, member, or members who have been admitted, if that be~~
6 ~~the case. If the commission finds a partner or a member to be~~
7 ~~an unfit or improper person to hold a license in the partner's~~
8 ~~or member's own right pursuant to section 281-45, it may revoke~~
9 ~~the license or suspend the license of the partnership or the~~
10 ~~limited liability company until the unfit or improper partner or~~
11 ~~member is removed or replaced.] member, or manager, who has been~~
12 admitted or withdrawn, and any other information as may be
13 required by the commission.

14 (f) Except as otherwise provided in this section, the same
15 procedure shall be followed in regard to the transfer of a
16 license as is prescribed by this chapter for obtaining a
17 license. Sections 281-51 to 281-60, except where inconsistent
18 with ~~[any provision hereof,]~~ this section, are ~~[hereby made]~~
19 applicable to ~~[such]~~ the transfers. The word "applicant", as
20 used in ~~[such]~~ sections~~[,]~~ 281-51 to 281-60, shall include each
21 ~~[such]~~ proposed transferee, and the words, "application for a



1 license or for the renewal of a license", as used in [~~such~~]
2 those sections, shall include an application for the transfer of
3 a license.

4 (g) Upon the hearing, the commission shall consider the
5 application and any objections to the granting thereof and hear
6 the parties in interest. It shall inquire into the propriety of
7 each transfer and determine whether the proposed transferee is a
8 fit person to hold the license. It may approve a transfer or
9 refuse to approve a transfer and the refusal by the commission
10 to approve a transfer shall be final and conclusive, unless an
11 appeal is taken as provided in chapter 91.

12 (h) If any licensee without [~~such~~] prior approval
13 transfers to any other person the licensee's business for which
14 the licensee's license was issued, either openly or under any
15 undisclosed arrangement, whereby any person, other than the
16 licensee, comes into exclusive possession or control of the
17 business or takes in any partner or associate[-] who would be
18 unfit or improper to hold a license pursuant to section 281-45,
19 the commission may in its discretion suspend or cancel the
20 license.



1 (i) If the licensee is a corporation, a change in
2 ownership of any outstanding capital stock shall not be deemed a
3 transfer of a license; provided that in the case of a change in
4 ownership of twenty-five per cent or more of the voting capital
5 stock or in the case of change in ownership of any number of
6 shares of the stock that results in the transferee thereof
7 becoming the owner of twenty-five per cent or more of the
8 outstanding voting capital stock, the corporate licensee shall,
9 [~~prior to~~] within thirty days of the date of the transfer, apply
10 for [~~and secure~~] the approval of the transfer from the
11 commission in writing. If the commission finds that the
12 [~~proposed~~] transferee is an unfit or improper person to hold a
13 license in the [~~proposed~~] transferee's own right pursuant to
14 section 281-45, it shall not approve the [~~proposed~~] transfer.
15 If any transfer is made without the [~~prior~~] approval of the
16 commission, the commission may in its discretion revoke or
17 suspend the license until it determines that the transferee is a
18 fit and proper person, and if the commission finds that the
19 transferee is not a fit and proper person, until a retransfer or
20 new transfer of the capital stock is made to a fit and proper
21 person pursuant to section 281-45. In addition, the corporate



1 licensee, if not a publicly-traded company, or an entity
2 ultimately solely owned by a publicly-traded company, shall,
3 within thirty days from the date of election of any officer or
4 director, notify the commission in writing of the name, age, and
5 place of residence of the officer or director [~~provided that if~~
6 ~~the licensee is a~~]. A publicly-traded company, or an entity
7 ultimately solely owned by a publicly-traded company, [the
8 licensee] shall, within thirty days from the date of election of
9 any replacement of an officer designated as a primary
10 [~~decisionmaker~~] decision-maker regarding the purchase and sale
11 of liquor, notify the commission in writing of the name, age,
12 and place of residence of the [~~officers~~] officer. If the
13 commission finds that the transferee, officer, or director, for
14 whom notification is required to be given as specified in this
15 subsection, is an unfit or improper person to hold a license in
16 the transferee's, officer's, or director's own right pursuant to
17 section 281-45, it may in its discretion revoke the license or
18 suspend the license until a retransfer or new transfer of the
19 capital stock is effected to a fit or proper person pursuant to
20 section 281-45 or until the unfit or improper transferee,



1 officer, or director is removed or replaced by a fit and proper
2 person pursuant to section 281-45.

3 (j) If a licensee closes out the business for which the
4 license is held, during the term for which the license was
5 issued, the licensee shall, within five days from the date of
6 closing the same, give the commission written notice thereof and
7 surrender the licensee's license for cancellation[-], unless the
8 licensee obtains prior approval from the commission to place its
9 license with the commission for safekeeping. For the purposes
10 of this subsection, "safekeeping" means the holding of a liquor
11 license at the commission office while the licensee is not
12 operating.

13 (k) The conversion of an entity into any other form of
14 entity or the merger of any entity with any other entity shall
15 not be deemed a transfer of the license; provided that the
16 licensee, prior to the date of the conversion or merger, shall
17 apply for and secure the approval of the commission without any
18 requirement for publication of notice. The foregoing shall not
19 preclude compliance with subsection (e) upon a change in any of
20 the partners or members, or with subsection (i) upon change of



1 any shareholders, officers, or directors of any entity occurring
2 concurrently with a conversion or merger.

3 As used in this subsection, "entity" means a corporation,
4 partnership, limited partnership, limited liability partnership,
5 or limited liability company.

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

15 SECTION 3. Section 281-45, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§281-45 No license issued, when.** No license shall be
18 issued under this chapter:

19 (1) To any minor or to any person who has been convicted
20 of a felony and not pardoned, or to any other person
21 not deemed by the commission to be a fit and proper



1 person to have a license; provided that the commission
2 may grant a license under this chapter to a
3 corporation that has been convicted of a felony where
4 the commission finds that the corporation's officers
5 and shareholders of twenty-five per cent or more of
6 outstanding stock are fit and proper persons to have a
7 license;

- 8 (2) To a corporation the officers and directors of which,
9 or any of them, would be disqualified under paragraph
10 (1) from obtaining the license individually, or a
11 stockholder of which, owning or controlling twenty-
12 five per cent or more of the outstanding capital
13 stock, or to a general partnership, limited
14 partnership, limited liability partnership, or limited
15 liability company whose partner or member holding
16 twenty-five per cent or more interest of which, or any
17 of them would be disqualified under paragraph (1) from
18 obtaining the license individually; provided that for
19 publicly-traded companies or entities ultimately
20 solely owned by a publicly-traded company, only the
21 officers and directors designated as primary decision-



1 makers shall be considered to determine
2 disqualification under paragraph (1);

3 (3) Unless the applicant for a license or a renewal of a
4 license, or in the case of a transfer of a license,
5 both the transferor and the transferee, present to the
6 issuing agency a tax clearance certificate from the
7 department of taxation and from the Internal Revenue
8 Service showing that the applicant or the transferor
9 and transferee do not owe the state or federal
10 governments any delinquent taxes, penalties, or
11 interest; or that the applicant, or in the case of a
12 transfer of a license, the transferor or transferee,
13 has entered into an installment plan agreement with
14 the department of taxation and the Internal Revenue
15 Service for the payment of delinquent taxes in
16 installments and that the applicant is or the
17 transferor or transferee is, in the case of a transfer
18 of a license, complying with the installment plan
19 agreement; provided that when the applicant or the
20 transferor or transferee, in the case of a transfer of
21 a license, is validly challenging a tax assessment,



1 penalty, or other proceeding that prevents the
2 issuance of a signed certificate from the appropriate
3 federal or state tax agency, the commission shall
4 issue a license that is valid for the period of time
5 necessary to resolve the challenge;

6 (4) To an applicant for a class 2, class 4 except for
7 convenience minimarts, class 5, class 6, class 11,
8 class 12, class 13, class 14, class 15, class 17, or
9 class 18 license unless the applicant for issuance of
10 a license or renewal of a license, or in the case of a
11 transfer of a license, both the transferor and the
12 transferee, present to the issuing agency proof of
13 liquor liability insurance coverage in an amount of
14 \$1,000,000; or

15 (5) To any applicant who has had any liquor license
16 revoked less than two years previous to the date of
17 the application for any like or other license under
18 this chapter."

19 SECTION 4. Section 281-53, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§281-53 **Application; penalty for false statements.** Every
2 application for a license or for the renewal of a license or for
3 the transfer of a license shall be in writing, signed and,
4 except for the renewal of a license, verified by the oath of the
5 applicant, or in the case of a corporation or unincorporated
6 association by the proper officer or officers thereof, or if a
7 partnership by a general partner thereof, or if a limited
8 liability partnership by a partner thereof, or if a member
9 managed limited liability company by a member thereof, or if a
10 manager managed limited liability company by a manager thereof,
11 made before any official authorized by law to administer oaths,
12 and shall be addressed to the liquor commission, and set forth:

13 (1) The full name, age, and place of residence of the
14 applicant; if a copartnership, the names, ages, and
15 respective places of residence of all the partners; if
16 a limited liability company, its full name and the
17 names of all its members; if a corporation or joint-
18 stock company, its full name and the names of its
19 officers and directors, and the names of all
20 stockholders owning twenty-five per cent or more of
21 the outstanding capital stock; if a publicly-traded



- 1 company, or an entity ultimately solely owned by a
2 publicly-traded company, the names of the officers
3 designated as the primary [~~decisionmakers~~] decision-
4 makers regarding the purchase and sale of liquor; and
5 if any other association of individuals, the names,
6 ages, and respective places of residence of its
7 officers and the number of its members;
- 8 (2) A particular description of the place or premises
9 where the proposed license is to be exercised, so that
10 the exact location and extent thereof may be clearly
11 and definitely determined therefrom;
- 12 (3) The class and kind of license applied for; and
13 (4) Any other matter or information pertinent to the
14 subject matter which may be required by the rules of
15 the commission.

16 If any false statement is knowingly made in any application
17 which is verified by oath, the applicant, and in the case of the
18 application being made by a corporation, limited liability
19 company, association, or club, the persons signing the
20 application, shall be guilty of perjury, and shall be subject to
21 the penalties prescribed by law for such offense. If any false



1 statement is knowingly made in any application which is not
2 verified by oath, the person or persons signing the application
3 shall be guilty of a misdemeanor and upon conviction thereof
4 shall be punished as in section 281-102 provided."

5 SECTION 5. Section 281-53.5, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

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

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



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

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

13 "§281-96 Cancellation. If the use of the premises covered
14 by any license becomes lost to the licensee by reason of being
15 sold under foreclosure proceedings, or a civil execution, or
16 other legal process, or for any other cause, which shall force a
17 cessation of the business of the licensee thereon under the
18 license (other than by a revocation or suspension of the
19 licensee's license), the liquor commission may cancel or suspend
20 the license[-] unless the liquor commission has approved the
21 safekeeping of the license pursuant to section 281-41(j)."



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 8. This Act shall take effect upon its approval.



Report Title:

Liquor License; Liquor Commission

Description:

Amends statutory language on liquor license application and operating procedures for clarity. (HB1465 CD1)

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