
A BILL FOR AN ACT

RELATING TO LIQUOR LICENSES.

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

1 SECTION 1. Section 281-41, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "§281-41 Transfer of licenses; notice of change in
4 officers, directors, and stockholders of corporate licenses,
5 partners of a partnership license, and members or managers of a
6 limited liability company license; penalty. (a) No license
7 issued under this chapter to an original applicant or to any
8 transferee shall be transferable or be transferred within one
9 year of the issuance or transfer, except for good cause shown to
10 the satisfaction of the liquor commission. A transfer of
11 license shall be for the same class, kind, and category of
12 license. No license issued under this chapter shall be
13 transferable or be transferred except upon written application
14 to the commission by the proposed transferee, and after prior
15 inspection of the premises, reference to, and report by an
16 inspector, and a public hearing held by the commission not less
17 than fourteen days after one publication of notice thereof, but



1 without sending notice of the hearing by mail to persons being
2 the owners or lessees of real estate situated within the
3 vicinity of the premises and without the right to the owners or
4 lessees to protest the transfer of a license. Exceptions are
5 class 5 and 11 licensees who shall comply with the requirements
6 as set forth in sections 281-57 to 281-60. Notwithstanding any
7 provision of this chapter to the contrary, a class 2 license
8 shall be transferrable; provided that the transferee certifies
9 that the transferee intends to and shall derive no less than
10 thirty per cent of the establishment's gross revenue from the
11 sale of foods.

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

18 (c) For the purpose of this section, "special liquor
19 district" means an area designated by a county for restoration,
20 reservation, historic preservation, redevelopment, rejuvenation,
21 or residential protection, in which development is guided to



1 protect or enhance the physical and visual aspects of the area
2 for the benefit of the community as a whole.

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

10 (e) Where a license is held by a partnership, limited
11 partnership, or limited liability partnership, [~~or a limited~~
12 ~~liability company,~~] the admission or withdrawal of a partner,
13 limited partner, or partner of a limited liability partnership [~~,~~
14 ~~member of a member managed limited liability company, or manager~~
15 ~~of a manager managed limited liability company]~~ shall not be
16 deemed a transfer of the license; provided that the licensee
17 shall, within thirty days from the date of the admission or
18 withdrawal, so notify the commission in writing, stating the
19 name of the partner, [~~member, or manager,~~] limited partner, or
20 partner of a limited liability partnership who has been admitted
21 or withdrawn, and any other information as may be required by



1 the commission. If the commission finds that the partner or
2 limited partner for whom notification is required as specified
3 in this subsection is an unfit or improper person to hold a
4 license in the partner's or limited partner's own right pursuant
5 to section 281-45, it may in its discretion revoke the license
6 or suspend the license until the unfit or improper partner or
7 limited partner is removed or replaced by a fit and proper
8 person pursuant to section 281-45.

9 (f) Except as otherwise provided in this section, the same
10 procedure shall be followed in regard to the transfer of a
11 license as is prescribed by this chapter for obtaining a
12 license. Sections 281-51 to 281-60, except where inconsistent
13 with this section, are applicable to the transfers. The word
14 "applicant", as used in sections 281-51 to 281-60, shall include
15 each proposed transferee, and the words, "application for a
16 license or for the renewal of a license", as used in those
17 sections, shall include an application for the transfer of a
18 license.

19 (g) Upon the hearing, the commission shall consider the
20 application and any objections to the granting thereof and hear
21 the parties in interest. It shall inquire into the propriety of



1 each transfer and determine whether the proposed transferee is a
2 fit person to hold the license. It may approve a transfer or
3 refuse to approve a transfer and the refusal by the commission
4 to approve a transfer shall be final and conclusive, unless an
5 appeal is taken as provided in chapter 91.

6 (h) If any licensee without prior approval, approval of a
7 temporary license, or approval of a management agreement
8 transfers to any other person the licensee's business for which
9 the licensee's license was issued, either openly or under any
10 undisclosed arrangement, whereby any person, other than the
11 licensee, comes into exclusive possession or control of the
12 business or takes in any partner or associate who would be unfit
13 or improper to hold a license pursuant to section 281-45, the
14 commission may in its discretion suspend or cancel the license.
15 For purposes of this subsection, "management agreement" means a
16 written agreement under which a licensee allows a manager to
17 manage and operate the licensee's business on behalf of the
18 licensee.

19 (i) If the licensee is a corporation^[7] or limited
20 liability company, a change in ownership of any outstanding
21 capital stock or membership interest shall not be deemed a



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



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1 company, or an entity ultimately solely owned by a publicly-
2 traded company, shall, within thirty days from the date of
3 election or admission of any officer [~~or~~], director, manager, or
4 member, notify the commission in writing of the name, age, and
5 place of residence of the officer [~~or~~], director[-], manager, or
6 member, and any other information as may be required by the
7 commission. A publicly-traded corporation or limited liability
8 company, or [an entity] a corporation or limited liability
9 company ultimately solely owned by a publicly-traded company,
10 shall, within thirty days from the date of election or admission
11 of any replacement of an officer, director, manager, or member
12 designated as a primary decision-maker regarding the purchase
13 and sale of liquor, notify the commission in writing of the
14 name, age, and place of residence of the officer[-], director,
15 manager, or member. If the commission finds that the
16 [~~transferee-~~] officer, [~~or~~] director, manager, or member for
17 whom notification is required to be given as specified in this
18 subsection, is an unfit or improper person to hold a license in
19 the [~~transferee's-~~] officer's, [~~or~~] director's, manager's, or
20 member's own right pursuant to section 281-45, it may in its
21 discretion revoke the license or suspend the license until [a



1 ~~retransfer or new transfer of the capital stock is effected to a~~
2 ~~fit or proper person pursuant to section 281-45 or until] the~~
3 unfit or improper [~~transferee,~~] officer, [~~or~~] director, manager,
4 or member is removed or replaced by a fit and proper person
5 pursuant to section 281-45.

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

16 (k) The conversion of an entity into any other form of
17 entity or the merger of any entity with any other entity shall
18 not be deemed a transfer of the license; provided that the
19 licensee, [~~prior to the date~~] within thirty days of the
20 conversion or merger, shall apply for and secure the approval of
21 the commission without any requirement for publication of



1 notice. The foregoing shall not preclude compliance with
2 subsection (e) upon a change in any of the partners [~~or~~
3 ~~members,~~] or with subsection (i) upon change of any
4 shareholders, officers, [~~or~~] directors, managers, or members of
5 any entity occurring concurrently with a conversion or merger.

6 As used in this subsection, "entity" means a corporation,
7 partnership, limited partnership, limited liability partnership,
8 or limited liability company.

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

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



1 "§281-45 No license issued, when. No license shall be
2 issued under this chapter:

3 (1) To any minor or to any person who has been convicted
4 of a felony and not pardoned, or to any other person
5 not deemed by the commission to be a fit and proper
6 person to have a license; provided that the commission
7 may grant a license under this chapter to a
8 corporation or limited liability company that has been
9 convicted of a felony where the commission finds that
10 the corporation's officers [~~and~~], directors, and
11 shareholders of twenty-five per cent or more of
12 outstanding stock or a limited liability company's
13 managers and members holding twenty-five per cent or
14 more of the membership interests are fit and proper
15 persons to have a license;

16 (2) To a corporation the officers and directors of which,
17 or any of them, would be disqualified under paragraph
18 (1) from obtaining the license individually, or a
19 stockholder of which, owning or controlling twenty-
20 five per cent or more of the outstanding capital
21 stock, or to a general partnership, limited



1 partnership, limited liability partnership, or limited
2 liability company whose partner or member holding
3 twenty-five per cent or more interest of which, or any
4 of them would be disqualified under paragraph (1) from
5 obtaining the license individually; provided that for
6 publicly-traded corporations and limited liability
7 companies or [entities] corporations or limited
8 liability companies ultimately solely owned by a
9 publicly-traded company, only the officers [and],
10 directors, managers, or members designated as primary
11 decision-makers shall be considered to determine
12 disqualification under paragraph (1);

- 13 (3) Unless the applicant for a license or a renewal of a
14 license, or in the case of a transfer of a license,
15 both the transferor and the transferee, present to the
16 issuing agency a tax clearance certificate from the
17 department of taxation showing that the applicant or
18 the transferor and transferee do not owe the state
19 government any delinquent taxes, penalties, or
20 interest; or that the applicant, or in the case of a
21 transfer of a license, the transferor or transferee,



1 has entered into an installment plan agreement with
2 the department of taxation for the payment of
3 delinquent taxes in installments and that the
4 applicant is or the transferor or transferee is, in
5 the case of a transfer of a license, complying with
6 the installment plan agreement; provided that when the
7 applicant or the transferor or transferee, in the case
8 of a transfer of a license, is validly challenging a
9 tax assessment, penalty, or other proceeding that
10 prevents the issuance of a signed certificate from the
11 appropriate federal or state tax agency, the
12 commission shall issue a license that is valid for the
13 period of time necessary to resolve the challenge;

- 14 (4) To an applicant for a class 2, class 4 except for
15 convenience minimarts, class 5, class 6, class 11,
16 class 12, class 13, class 14, class 15, class 17, or
17 class 18 license unless the applicant for issuance of
18 a license or renewal of a license, or in the case of a
19 transfer of a license, both the transferor and the
20 transferee, present to the issuing agency proof of



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1 liquor liability insurance coverage in an amount of
2 \$1,000,000; or

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

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

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

12 SECTION 5. This Act shall take effect upon its approval.

13

INTRODUCED BY:  (BR)

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Report Title:

Liquor Licensing; Transfer of Licenses; Limited Liability
Companies

Description:

Applies liquor licensing provisions related to the transfer of
licenses and the denial of licenses to limited liability
companies.

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

