

JAN 24 2007

A BILL FOR AN ACT

RELATING TO SMOKING.

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

1

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

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

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

16 (1) Beer;

17 (2) Wine;

18 (3) Alcohol; and



1 (4) Other specified liquor.

2 It shall be unlawful for any holder of a manufacturer's license
3 to have any interest whatsoever in the license or licensed
4 premises of any other licensee. This subsection shall not
5 prevent the holder of a beer class manufacturer's license under
6 this chapter or under the law of another jurisdiction from
7 maintaining any interest in the license or licensed premises of
8 a beer and wine class wholesale dealer licensee under this
9 chapter whose wholesaling is limited to beer, other than direct
10 ownership of a beer and wine class wholesale dealer's license,
11 or direct ownership of a partnership share, one or more shares
12 of stock, or similar proprietary stake in the holder of a beer
13 and wine class wholesale dealer's license.

14 (c) Class 2. Restaurant licenses.

15 (1) A license under this class shall authorize the
16 licensee to sell liquors specified in this subsection
17 for consumption on the premises; provided that a
18 restaurant licensee, with commission approval, may
19 provide off-premises catering; provided further that
20 the catering activity shall be directly related to the
21 licensee's operation as a restaurant. A licensee
22 under this class shall be issued a license according



1 to the category of establishment the licensee owns or
2 operates. The categories of establishment shall be as
3 follows:

4 (A) A standard bar; or

5 (B) A premises in which live entertainment or
6 recorded music is provided. Facilities for
7 dancing by the patrons may be permitted as
8 provided by commission rules.

9 (2) If a licensee under class 2 desires to change the
10 category of establishment the licensee owns or
11 operates, the licensee shall apply for a new license
12 applicable to the category of the licensee's
13 establishment.

14 (3) For each category of class 2 licenses there shall be
15 the following kinds:

16 (A) General (includes all liquors except alcohol);

17 (B) Beer and wine; and

18 (C) Beer.

19 Any licensee holding a different class of license on June 19,
20 1990, and who would otherwise come within this class of license
21 shall not be required to apply for a new license.



1 (d) Class 3. Wholesale dealers' licenses. A license for
2 the sale of liquors at wholesale shall authorize the licensee to
3 import and sell only to licensees or to others who are by law
4 authorized to resell but are not by law required to hold a
5 license, the liquors therein specified in quantities not less
6 than five gallons at one time if sold from or in bulk containers
7 or not less than one gallon if bottled goods; provided that
8 samples of liquor may be sold back to the manufacturer. The
9 license may authorize the licensee to sell draught beer in
10 quantities not less than five gallons at one time to any person
11 for private use and consumption if the licensee files an
12 affidavit with the commission that there is not a class 4 retail
13 dealers licensee available to sell the wholesalers brand of
14 draught beer. Under the license no liquor shall be consumed on
15 the premises except as authorized by the commission. Of this
16 class, there shall be the following kinds:

- 17 (1) General (includes all liquors except alcohol);
18 (2) Beer and wine; and
19 (3) Alcohol.

20 If any wholesale dealer solicits or takes any orders in any
21 county other than that where the dealer's place of business is
22 located, the orders may be filled only by shipment direct from



1 the county in which the wholesale dealer has the dealer's
2 license. Nothing in this subsection shall prevent a wholesaler
3 from selling liquors to post exchanges, ships service stores,
4 army or navy officers' clubs, or similar organizations located
5 on army or navy reservations, or to any vessel other than
6 vessels performing a regular water transportation service
7 between any two or more ports in the State, or to aviation
8 companies who operate an aerial transportation enterprise as a
9 common carrier, under chapter 269, engaged in regular flight
10 passenger services between any two or more airports in the State
11 for use on aircraft, or aviation companies engaged in
12 transpacific flight operations for use on aircraft outside the
13 jurisdiction of the State.

14 (e) Class 4. Retail dealers' licenses. A license to sell
15 liquors at retail or to class 10 licenses shall authorize the
16 licensee to sell the liquors therein specified in their original
17 packages. Under the license no liquor shall be consumed on the
18 premises except as authorized by the commission. Of this class,
19 there shall be the following kinds:

- 20 (1) General (includes all liquors except alcohol);
21 (2) Beer and wine; and
22 (3) Alcohol.



1 (f) Class 5. Dispensers' licenses.
2 (1) A license under this class shall authorize the
3 licensee to sell liquors specified in this subsection
4 for consumption on the premises. A licensee under
5 this class shall be issued a license according to the
6 category of establishment the licensee owns or
7 operates. The categories of establishments shall be
8 as follows:

- 9 (A) A standard bar;
- 10 (B) A premise in which a person performs or
11 entertains unclothed or in attire restricted to
12 use by entertainers pursuant to commission rules;
- 13 (C) A premise in which live entertainment or recorded
14 music is provided; provided that facilities for
15 dancing by the patrons may be permitted as
16 provided by commission rules; or
- 17 (D) A premise in which employees or entertainers are
18 compensated to sit with patrons, regardless of
19 whether the employees or entertainers are
20 consuming nonalcoholic beverages while in the
21 company of the patrons pursuant to commission
22 rules.



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

6 (3) For each category of class 5 licenses there shall be
7 the following kinds:

- 8 (A) General (includes all liquors except alcohol);
- 9 (B) Beer and wine; and
- 10 (C) Beer.

11 (g) Class 6. Club licenses. A club license shall be
12 general only (but excluding alcohol) and shall authorize the
13 licensee to sell liquors to members of the club and to guests of
14 the club enjoying the privileges of membership, for consumption
15 only on the premises kept and operated by the club; provided
16 that the license shall also authorize any club member to keep in
17 the member's private locker on the premises a reasonable
18 quantity of liquor, if owned by the member, for the member's own
19 personal use and not to be sold and that may be consumed only on
20 the premises.

21 (h) Class 7. Vessel licenses. A general license may be
22 granted to the owner of any vessel performing a regular water



1 transportation passenger service between any two or more ports
2 in the State for the sale of liquor (other than alcohol) on
3 board the vessel while in the waters of the State; provided the
4 sales are made only while the vessel is en route and only for
5 consumption by passengers on board. If the vessel has a home
6 port in the State, the license shall be issuable in the county
7 in which the home port is situated; provided that if the
8 licensee's home port is not situated in this State, the license
9 shall be issuable in the city and county of Honolulu. If, on
10 any vessel for which no license has been obtained under this
11 chapter, any liquor is sold or served within three miles of the
12 shore of any island of the State, it shall constitute a
13 violation of this chapter.

14 (i) Class 8. Transient vessel licenses. A general
15 license may be granted to the owner of any vessel that does not
16 fall within class 7 for the sale of liquor (other than alcohol)
17 on board the vessel while in any port of the State. Sales shall
18 be made only for consumption by passengers and their guests on
19 board the vessel. The license shall be issuable in each county
20 where the sales are to be made; provided that the application
21 for the license may be made by any agent representing the owner.



1 (j) Class 9. Tour or cruise vessel licenses. A general
2 license may be granted to the owner of any tour or cruise vessel
3 for the sale of liquor (other than alcohol) on board the vessel
4 while in the waters of the State; provided that sales be made
5 only for consumption by passengers on board while the vessel is
6 in operation outside the port or dock of any island of the
7 State, unless otherwise approved by the county where the license
8 has been issued. If the vessel has a home port in the State,
9 the license shall be issuable in the county wherein the home
10 port is situated; provided that if the licensee's home port is
11 not situated in this State, the license shall be issuable in the
12 city and county of Honolulu. If, on any vessel for which no
13 license has been obtained under this chapter, any liquor is sold
14 or served within three miles of the shore of any island of the
15 State, it shall constitute a violation of this chapter.

16 (k) Class 10. Special. A special license may be granted
17 for the sale of liquor for a period not to exceed three days on
18 any occasion and under any conditions as may be approved by the
19 commission. Of this class, there shall be the following kinds:

- 20 (1) General (includes all liquors except alcohol);
21 (2) Beer and wine; and
22 (3) Beer.



1 Under this license, the liquors therein specified shall be
2 consumed on the premises.

3 (1) Class 11. Cabaret license. A cabaret license shall
4 be general only (but excluding alcohol) and shall authorize the
5 sale of liquors for consumption on the premises. This license
6 shall be issued only for premises where food is served,
7 facilities for dancing by the patrons are provided, including a
8 dance floor, and live or amplified recorded music or
9 professional entertainment, except professional entertainment by
10 a person who performs or entertains unclothed, is provided for
11 the patrons; provided that professional entertainment by persons
12 who perform or entertain unclothed shall be authorized by:

13 (1) A cabaret license for a premise where professional
14 entertainment by persons who perform or entertain
15 unclothed was presented on a regular and consistent
16 basis immediately prior to June 15, 1990;

17 (2) A cabaret license that, pursuant to rules adopted by
18 the liquor commission, permits professional
19 entertainment by persons who perform or entertain
20 unclothed.

21 A cabaret license under paragraph (1) or (2) authorizing
22 professional entertainment by persons who perform or entertain



1 unclothed shall be transferable through June 30, 2000. A
2 cabaret license under paragraph (1) or (2) authorizing
3 professional entertainment by persons who perform or entertain
4 unclothed shall not be transferable after June 30, 2000, except
5 when the transferee obtains approval from the liquor commission,
6 and pursuant to rules adopted by the commission.

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

10 (m) Class 12. Hotel licenses. A license to sell liquor
11 in a hotel shall authorize the licensee to provide entertainment
12 and dancing on the hotel premises and to sell all liquors,
13 except alcohol, for consumption on the premises; provided that a
14 hotel licensee, with commission approval, may provide off-
15 premises catering; provided that the catering activity is
16 directly related to the licensee's operation as a hotel.

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



1 Any licensee who would otherwise fall within the hotel
2 license class but holds a different class of license may be
3 required to apply for a hotel license.

4 If the licensee applies for a change of classification
5 prior to July 30, 1992, the licensee shall not be subject to the
6 requirements of sections 281-52, 281-54, and 281-57 through 281-
7 59.

8 (n) Class 13. Caterer license. A general license may be
9 granted to any licensee who serves food as part of their
10 operation for the sale of liquor (other than alcohol) while
11 performing food catering functions.

12 No catering service for the sale of liquor shall be
13 performed off the licensee's premises, unless prior written
14 notice of the service has been delivered to the office of the
15 liquor commission of the county concerned. The notice shall
16 state the date, time, and location of the proposed event and
17 shall include a written statement signed by the owner or
18 representative of the property that the function will be subject
19 to the liquor laws and to inspection by investigators.

20 (o) Class 14. Brewpub licenses. A brewpub licensee:



- 1 (1) Shall manufacture not more than ten thousand barrels
2 of malt beverages on the licensee's premises during
3 the license year;
- 4 (2) May sell malt beverages manufactured on the licensee's
5 premises for consumption on the premises;
- 6 (3) May sell malt beverages manufactured by the licensee
7 in brewery-sealed packages to class 3, wholesale
8 dealer licensees pursuant to conditions imposed by
9 county planning and public works departments;
- 10 (4) May sell intoxicating liquor, purchased from a class
11 1, manufacturer licensee, or a class 3, wholesale
12 dealer's licensee, to consumers for consumption on the
13 licensee's premises; provided that the premises is
14 owned and operated by the licensee. The categories of
15 establishments shall be as follows:
- 16 (A) A standard bar; or
- 17 (B) Premises in which live entertainment or recorded
18 music is provided. Facilities for dancing by the
19 patrons may be permitted as provided by
20 commission rules;
- 21 (5) May sell malt beverages manufactured on the licensee's
22 premises to consumers in brewery-sealed kegs and



1 growlers for off-premises consumption; provided that
2 for purposes of this paragraph, "growler" means a
3 glass container, not to exceed one half-gallon, that
4 may be securely sealed;

5 (6) May sell malt beverages manufactured on the licensee's
6 premises to consumers, in recyclable containers that
7 may be provided by the licensee or by the consumer,
8 not to exceed one gallon per container, that are
9 securely sealed on the licensee's premises, for off-
10 premises consumption;

11 (7) Shall comply with all regulations pertaining to class
12 4 retail licensees when engaging in the retail sale of
13 malt beverages;

14 (8) May sell malt beverages manufactured on the licensee's
15 premises in brewery-sealed containers directly to
16 class 2 restaurant licensees, class 3 wholesale dealer
17 licensees, class 4 retail dealer licensees, class 5
18 dispensers' licensees, class 6 club licensees, class
19 7, 8, and 9 vessel licensees, transient vessel
20 licensees, tour or cruise vessel licensees, class 10
21 special licensees, class 11 cabaret licensees, class
22 12 hotel licensees, and class 13 caterer licensees,



1 pursuant to conditions imposed by county planning and
2 public works departments and regulations governing
3 class 3 wholesale dealers licensees; and

4 (9) May conduct the activities described in paragraphs (1)
5 through (8) at one location other than the licensee's
6 premises; provided that the manufacturing takes place
7 in Hawaii; and provided further the other location is
8 properly licensed by the same ownership.

9 (p) Class 15. Smoking establishment dispensers' licenses.

10 A license under this class shall authorize the licensee to sell
11 liquors for consumption in enclosed premises in which smoking,
12 as defined in section 328J-1, and excepted in section 328J-7 is
13 allowed. A licensee under this class shall be issued a license
14 according to the category of establishment the licensee owns or
15 operates. The categories of establishments shall be as follows:

16 (1) A standard bar;

17 (2) A premise in which live entertainment or recorded
18 music is provided. Facilities for dancing by the
19 patrons may be permitted as provided by commission
20 rules.



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

4 (4) A premise in which employees or entertainers are
5 compensated to sit with patrons, regardless of whether
6 the employees or entertainers are consuming
7 nonalcoholic beverages while in the company of the
8 patrons pursuant to commission rules.

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

13 [~~(q)~~] (r) Any provision to the contrary notwithstanding,
14 at the discretion of the county liquor commission, permission
15 may be granted to a bona fide hotel, restaurant, or club
16 licensed under class 2, class 6, class 11, class 12, or class 14
17 to allow a patron to remove from the licensed premises any
18 portion of wine that was purchased for consumption with a meal;
19 provided that it is recorked or resealed in its original
20 container. This subsection applies only to a valid holder of a
21 class 2, class 6, class 11, class 12, or class 14 license
22 engaged in meal service.



1 [~~s~~] (r) Sections 281-57 to 281-61 shall not apply to
2 classes 7 through 10 and 13. "

3 SECTION 2. Section 328J-1, Hawaii Revised Statutes, is
4 amended by amending the definitions of "bar" and "restaurant" to
5 read as follows:

6 "'Bar" means an establishment that is devoted to the
7 serving of alcoholic beverages for consumption by guests on the
8 premises regardless of whether food is served, including but not
9 limited to taverns, cocktail lounges, and cabarets, including
10 outdoor areas of bars~~[-]~~; provided that establishments operating
11 with a class 15 license issued under section 281-31 shall not be
12 included.

13 "Restaurant" means an eating establishment, including but
14 not limited to coffee shops, cafeterias, sandwich stands, and
15 private and public school cafeterias, which gives or offers for
16 sale food to the public, guests, or employees, as well as
17 kitchens and catering facilities in which food is prepared on
18 the premises for serving elsewhere~~[-]~~; provided that
19 establishments operating with a class 15 license issued under
20 section 281-31 shall not be included. The term "restaurant"
21 includes a bar area within the restaurant and outdoor areas of
22 restaurants."



1 SECTION 3. Section 328J-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§328J-7[+] **Exceptions.** Notwithstanding any other
4 provision of this chapter to the contrary, the following areas
5 shall be exempt from the provisions of sections 328J-3, 328J-4,
6 and 328J-5:

- 7 (1) Private residences, except when used as a licensed
8 child care, adult day care, or health care facility;
- 9 (2) Hotel and motel rooms that are rented to guests and
10 are designated as smoking rooms; provided that not
11 more than twenty per cent of rooms rented to guests in
12 a hotel or motel may be so designated. All smoking
13 rooms on the same floor shall be contiguous and smoke
14 from these rooms shall not infiltrate into areas where
15 smoking is prohibited under this chapter. The status
16 of rooms as smoking or nonsmoking may not be changed,
17 except to add additional nonsmoking rooms;
- 18 (3) Retail tobacco stores; provided that smoke from these
19 places shall not infiltrate into areas where smoking
20 is prohibited under this chapter;



1 (4) Establishments operating with a class 15 smoking
2 establishment dispensers' license issued under section
3 281-31;

4 [~~4~~] (5) Private and semiprivate rooms in nursing homes
5 and long-term care facilities that are occupied by one
6 or more persons, all of whom are smokers and have
7 requested in writing to be placed in a room where
8 smoking is permitted; provided that smoke from these
9 places shall not infiltrate into areas where smoking
10 is prohibited under this chapter;

11 [~~5~~] (6) Outdoor areas of places of employment except
12 those covered by the provisions of sections 328J-3 and
13 328J-5;

14 [~~6~~] (7) All areas covered by this chapter when smoking is
15 part of a production being filmed; and

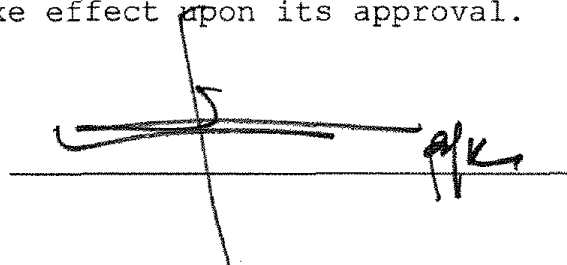
16 [~~7~~] (8) State correctional facilities."

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

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

20

INTRODUCED BY:





Report Title:

Smoking

Description:

Establishes a Class 15, smoking establishment dispensers' license under the liquor law and allows smoking in the enclosed premises of establishments issued a Class 15 license. Exempts class 15 from restricted smoking areas.

