

STAND. COM. REP. NO. 320

Honolulu, Hawaii

FEB 20 2009

RE: S.B. No. 300  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam:

Your Committee on Transportation, International and Intergovernmental Affairs, to which was referred S.B. No. 300 entitled:

"A BILL FOR AN ACT RELATING TO INTOXICATING LIQUOR,"

begs leave to report as follows:

The purpose of this measure is to require:

- (1) The holder of a Class 5 liquor dispenser license to carry liability insurance as a condition of acquiring and renewing a license; and
- (2) Liquor liability insurers to notify the county liquor commissions upon a termination, rejection, or nonrenewal of a licensee's coverage.

Your Committee received testimony in support of this measure from TS Restaurants. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that liquor licensees have a high exposure to potential lawsuits for personal injuries for the serving of liquor to patrons who may excessively imbibe and then cause an accident to a third party. The provision of general liability insurance would mitigate such exposure.

Your Committee notes the testimony to the effect that the cost of liquor liability insurance may be prohibitive for many

2009-1316 SSCR SMA.doc

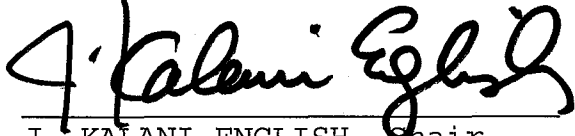


smaller establishments. Your Committee defers to the Committee on Commerce and Consumer Protection to address this issue.

Your Committee has amended this measure by changing the article and part of the Insurance Code in which the new law is to be situated and making technical, nonsubstantive amendments.

As affirmed by the record of votes of the members of your Committee on Transportation, International and Intergovernmental Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 300, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 300, S.D. 1, and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on  
behalf of the members of the  
Committee on Transportation,  
International and  
Intergovernmental Affairs,

  
J. KALANI ENGLISH, Chair





**Report Title:**

Intoxicating Liquor; Liquor Licenses

**Description:**

Requires liquor licenses to carry liability insurance as a condition of acquiring and renewing a license. Requires liquor liability insurers to notify the county liquor commissions upon a termination, rejection, or nonrenewal of a licensee's coverage. (SD1)

---

---

# A BILL FOR AN ACT

RELATING TO INTOXICATING LIQUOR.

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

1           SECTION 1. Chapter 431, article 10, part II, Hawaii  
2 Revised Statutes, is amended by adding a new section to be  
3 appropriately designated and to read as follows:  
4           "§431:10-       General casualty insurers; coverage for class  
5 5 liquor dispensers; duty to inform. Any insurer authorized to  
6 transact general casualty insurance who terminates or refuses to  
7 renew a policy of liquor liability insurance for any liquor  
8 licensee, except manufacturers and wholesalers, shall notify the  
9 liquor commission of the county within thirty days prior to the  
10 expiration of the insurance on the holder of the policy, in  
11 which the holder of or applicant for a class 5 dispenser's  
12 license conducts or proposes to conduct business as a class 5  
13 dispenser."

14           SECTION 2. Section 281-31, Hawaii Revised Statutes, is  
15 amended by amending subsection (f) to read as follows:

16           "(f) Class 5. Dispenser license.

- 1           (1) A license under this class shall authorize the  
2           licensee to sell liquor specified in this subsection  
3           for consumption on the premises. A licensee under  
4           this class shall be issued a license according to the  
5           category of establishment the licensee owns or  
6           operates. The categories of establishments shall be  
7           as follows:
- 8           (A) A standard bar;
- 9           (B) Premises in which a person performs or entertains  
10          unclothed or in attire restricted to use by  
11          entertainers pursuant to commission rules;
- 12          (C) Premises in which live entertainment or recorded  
13          music is provided; provided that facilities for  
14          dancing by the patrons may be permitted as  
15          provided by commission rules; or
- 16          (D) Premises in which employees or entertainers are  
17          compensated to sit with patrons, regardless of  
18          whether the employees or entertainers are  
19          consuming nonalcoholic beverages while in the  
20          company of the patrons pursuant to commission  
21          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) Of this class, there shall be the following kinds:

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

8           (B) Beer and wine; and

9           (C) Beer.

10          (4) The licensee shall maintain at all times liquor  
11          liability insurance coverage in an amount to be  
12          determined every two years pursuant to commission  
13          rules; provided that the commission shall not set the  
14          amount at less than \$1,000,000. Proof of coverage  
15          shall be kept on the premises and shall be made  
16          available for inspection by the commission at any time  
17          during the licensee's regular business hours. Failure  
18          to obtain or maintain coverage at any time shall cause  
19          the commission to refuse to issue or renew a license,  
20          or suspend, or terminate the license, as appropriate.  
21          No license shall be granted, reinstated, or renewed

1           until after the required insurance coverage is  
2           obtained."

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

5           "**§281-45 No license issued, when.** No license shall be  
6 issued under this chapter:

7           (1) To any minor or to any person who has been convicted  
8           of a felony and not pardoned (except that the  
9           commission may grant a license under this chapter to a  
10           corporation that has been convicted of a felony where  
11           the commission finds that the organization's officers  
12           and shareholders of twenty-five per cent or more of  
13           outstanding stock are fit and proper persons to have a  
14           license), or to any other person not deemed by the  
15           commission to be a fit and proper person to have a  
16           license;

17           (2) To a corporation the officers and directors of which,  
18           or any of them, would be disqualified under paragraph  
19           (1) from obtaining the license individually, or a  
20           stockholder of which, owning or controlling twenty-  
21           five per cent or more of the outstanding capital  
22           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;

6 (3) Unless the applicant for a license or a renewal of a  
7 license, or in the case of a transfer of a license,  
8 both the transferor and the transferee, present to the  
9 issuing agency a signed certificate from the director  
10 of taxation and from the Internal Revenue Service  
11 showing that the applicant or the transferor and  
12 transferee do not owe the state or federal governments  
13 any delinquent taxes, penalties, or interest; or

14 (4) To an applicant for a class 5 dispenser license,  
15 unless the applicant for a license or a renewal of a  
16 license, or in the case of a transfer of a license,  
17 both the transferor and the transferee, present to the  
18 issuing agency proof of liquor liability insurance  
19 coverage in an amount set by the issuing agency which  
20 shall be not less than \$1,000,000; or

21 [~~(4)~~] (5) To any applicant who has had any liquor license  
22 revoked less than two years previous to the date of

1           the application for any like or other license under  
2           this chapter."

3           SECTION 4. Section 281-61, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "**§281-61 Renewals.** (a) Other than for good cause, the  
6 renewal of an existing license shall be granted upon the filing  
7 of an application; provided that if:

- 8           (1) Complaints from the public;
- 9           (2) Reports from the commission's investigators; or
- 10          (3) Adjudications of the commission or the liquor control  
11           adjudication board,

12 indicate that noise created by patrons departing from the  
13 premises disturbs residents on the street or of the neighborhood  
14 in which the premises are located, or that noise from the  
15 premises or adjacent related outdoor areas such as parking lots  
16 or lanais exceed standards contained in state or county noise  
17 codes or intrudes into nearby residential units, the commission  
18 may deny the renewal application or withhold the issuance of a  
19 renewed license until corrective measures meeting the  
20 commission's approval are taken.

21          (b) The commission or board, pursuant to section 281-17,  
22 at the time of renewal or at any time, may revoke, suspend, or

1 place conditions or restrictions on any license issued under  
2 this chapter for the purpose of preventing activities within the  
3 licensed premises or adjacent areas that are potentially  
4 injurious to the health, safety, and welfare of the public and  
5 neighborhood including but not limited to criminal activity,  
6 including assault, drug dealing, drug use, or prostitution, upon  
7 proper notice to the licensee, and a hearing before the  
8 commission pursuant to chapter 91.

9 (c) The commission or board, shall deny renewal of a class  
10 5 dispenser license if the licensee fails to obtain or maintain  
11 at all times liquor liability insurance coverage as required by  
12 section 281-31(f). The amount of insurance coverage required  
13 shall be determined by commission rules; provided that the  
14 commission shall not set the amount at less than \$1,000,000.  
15 The commission shall review and may amend the amount of coverage  
16 required at least every two years."

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

20 SECTION 6. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

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



**TS RESTAURANTS**  
HAWAII AND CALIFORNIA

February 26, 2009

Senator Rosalyn Baker, Chair  
Committee on Commerce and Consumer Protection  
Hearing: Tuesday, March 3, 2009

RE: SB 300--Relating to Intoxicating Liquor

Dear Madam Chair:

Thank you very much for moving this bill forward. T S Restaurants is in favor of this bill with minor revisions.

The bill provides general civic protection in three different ways when requiring most classes of licensees to carry liquor liability insurance:

- 1) The Bill protects the citizen or the general public who is involved in an accident with an intoxicated person when there is a connection under Hawaii Dram Shop Law to the establishment that served the individual. The Dram Shop Laws cover joint and several liability for all establishments that fall into a chain of serving and responsibility. This Bill guarantees that funds would be available for settlement proportionately from the responsible parties.
- 2) The Bill protects other licensees that have served responsibly and with care but may have a minor contributory role in serving an individual under the Hawaii Dram Shop Laws. With this Bill in place, one entity only becomes responsible for their propionate share of a settlement.
- 3) It is the right thing for the licensee to carry this insurance and it protects them from personal exposure.

The corrective language needed is that SB300 S.D.1 specifically states coverage is required for class 5 dispensers only. The bill should include:

Class 2	Restaurant Licenses;
Class 4	Retail Dealers Licenses;
Class 5	Dispensers Licenses;
Class 6	Club Licenses;
Class 11	Cabaret Licenses;
Class 12	Hotel Licenses;
Class 13	Caterer Licenses; and
Class 14	Brewpub Licenses



**TS RESTAURANTS**  
HAWAII AND CALIFORNIA

as the identified classes requiring liquor liability insurance. Therefore the drafting attorney will have to review each section of the bill and add the classes noted above correctly.

Thank you for working diligently on this bill. I am available if I can be a help in any way.

Sincerely,

Richard J. Moon  
Vice President  
T S Restaurants of Hawaii and California  
2535 Kekaa Drive C-2,  
Lahaina, HI 96761  
1-808-667-4820 Direct  
1-808-667-4822 FAX  
[dickie@tsrestaurants.com](mailto:dickie@tsrestaurants.com)