
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 in Act 12,

3 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 license; notice of change in

11 officers, directors, and stockholders of corporate license,

12 partners of a partnership license, and members of a limited

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

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

15 shall be transferable or be transferred within one year of the

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

17 satisfaction of the liquor commission. A transfer of license



1 shall be for the same class, kind, and category of license. No
2 license issued under this chapter shall be transferable or be
3 transferred except upon written application to the commission by
4 the proposed transferee, and after prior inspection of the
5 premises, reference to, and report by an inspector, and a public
6 hearing held by the commission not less than fourteen days after
7 one publication of notice thereof, but without sending notice of
8 the hearing by mail to persons being the owners or lessees of
9 real estate situated within the vicinity of the premises and
10 without the right to the owners or lessees to protest the
11 transfer of a license. Exceptions are class 5 and 11 licensees
12 who must comply with the requirements as set forth in sections
13 281-57 to 281-60.

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

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



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

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

14 (e) Where a license is held by a partnership, limited
15 partnership, limited liability partnership, or a limited
16 liability company, the admission or withdrawal of a partner,
17 limited partner, partner of a limited liability partnership, [~~or~~
18 ~~a member of the]~~ member of a member managed limited liability
19 company, or manager of a manager managed limited liability
20 company shall not be deemed a transfer of the license [~~held by~~
21 ~~the partnership or limited liability company, but~~]; provided



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

15 (f) Except as otherwise provided in this section, the same
16 procedure shall be followed in regard to the transfer of a
17 license as is prescribed by this chapter for obtaining a
18 license. Sections 281-51 to 281-60, except where inconsistent
19 with [~~any provision hereof,~~] this section, are [~~hereby made~~
20 applicable to [~~such~~] the transfers. The word "applicant", as
21 used in [~~such~~] sections[~~7~~] 281-51 to 281-60, shall include each



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

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

13 (h) If any licensee without [~~such~~] prior approval
14 transfers to any other person the licensee's business for which
15 the licensee's license was issued, either openly or under any
16 undisclosed arrangement, whereby any person, other than the
17 licensee, comes into exclusive possession or control of the
18 business or takes in any partner or associate, who would be
19 unfit or improper to hold a license pursuant to section 281-45,
20 the commission may in its discretion suspend or cancel the
21 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 above, is
15 an unfit or improper person to hold a license in the
16 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 (d) 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 in any decision regarding the purchase
10 and sale of liquor. If the commission finds that coercion,
11 pressure, or other unduly influence has been placed on a primary
12 decision-maker by any officer or director who is not a
13 designated primary decision-maker, the commission may in its
14 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 entity, 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;
20 (4) To an applicant for a class 2, class 4 except for
21 convenience minimarts, class 5, class 6, class 11,



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

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

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

14 "§281-53 Application; penalty for false statements. Every
 15 application for a license or for the renewal of a license or for
 16 the transfer of a license shall be in writing, signed and,
 17 except for the renewal of a license, verified by the oath of the
 18 applicant, or in the case of a corporation or unincorporated
 19 association by the proper officer or officers thereof, or if a
 20 partnership by a general partner thereof, or if a limited
 21 liability partnership by a partner thereof, or if a member



1 managed limited liability company by a member thereof, or if a
2 manager managed limited liability company by a manager thereof,
3 made before any official authorized by law to administer oaths,
4 and shall be addressed to the liquor commission, and set forth:

5 (1) The full name, age, and place of residence of the
6 applicant; if a copartnership, the names, ages, and
7 respective places of residence of all the partners; if
8 a limited liability company, its full name and the
9 names of all its members; if a corporation or joint-
10 stock company, its full name and the names of its
11 officers and directors, and the names of all
12 stockholders owning twenty-five per cent or more of
13 the outstanding capital stock; if a publicly-traded
14 company, or an entity ultimately solely owned by a
15 publicly-traded company, the names of the officers
16 designated as the primary [~~decisionmakers~~] decision-
17 makers regarding the purchase and sale of liquor; and
18 if any other association of individuals, the names,
19 ages, and respective places of residence of its
20 officers and the number of its members;



- 1 (2) A particular description of the place or premises
- 2 where the proposed license is to be exercised, so that
- 3 the exact location and extent thereof may be clearly
- 4 and definitely determined therefrom;
- 5 (3) The class and kind of license applied for; and
- 6 (4) Any other matter or information pertinent to the
- 7 subject matter which may be required by the rules of
- 8 the commission.

9 If any false statement is knowingly made in any application
10 which is verified by oath, the applicant, and in the case of the
11 application being made by a corporation, limited liability
12 company, association, or club, the persons signing the
13 application, shall be guilty of perjury, and shall be subject to
14 the penalties prescribed by law for such offense. If any false
15 statement is knowingly made in any application which is not
16 verified by oath, the person or persons signing the application
17 shall be guilty of a misdemeanor and upon conviction thereof
18 shall be punished as in section 281-102 provided."

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



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

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

15 For the purpose of this section, the criminal history
16 disclosure made by the applicant may be verified by the liquor
17 commission by means of information obtained through the Hawaii
18 criminal justice data center. The applicant shall provide the
19 Hawaii criminal justice data center with personal identifying
20 information which shall include but not be limited to the
21 applicant's name, social security number, date of birth, and



1 gender. This information shall be secured only for the purpose
2 of conducting the criminal history record check authorized by
3 this section."

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

6 "§281-96 Cancellation. If the use of the premises covered
7 by any license becomes lost to the licensee by reason of being
8 sold under foreclosure proceedings, or a civil execution, or
9 other legal process, or for any other cause, which shall force a
10 cessation of the business of the licensee thereon under the
11 license (other than by a revocation or suspension of the
12 licensee's license), the liquor commission may cancel or suspend
13 the license[-] unless the liquor commission has approved the
14 safekeeping of the license pursuant to section 281-41(j)."

15 SECTION 7. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 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 HD1)

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