

**CHAPTER 281**  
**INTOXICATING LIQUOR**

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## **Note**

Under Article VIII, Section 2, of the State Constitution, charter provisions relating to a county's executive, legislative and administrative structure and organization are superior to statutory provisions. And under HRS §50-10, charter provisions supersede all laws affecting the organization and government of the county which are in conflict therewith. Accordingly, the charters should be consulted to determine whether any of the provisions set out in this chapter have been superseded in whole or in part.

## **Cross References**

National Human Trafficking Resource Center hotline; posting requirement; penalty, see §371-20.

## **Case Notes**

Liquor commission may adopt administrative rules to prevent racial discrimination. 69 H. 238, 738 P.2d 1205.

Defendants' motion to dismiss complaint granted insofar as it asserted claims against the liquor commission; the commission lacked the capacity to be sued. 681 F. Supp. 2d 1209 (2009).

Plaintiff must exhaust its administrative remedy in the circuit court before it may pursue its state law claims, as required by §281-17; thus, defendants' motion to dismiss plaintiff's state law claims under the state constitution, this chapter, and the liquor commission rules, granted. 681 F. Supp. 2d 1209 (2009).

## **"PART I. GENERAL PROVISIONS**

**§281-1 Definitions.** Whenever used in this chapter, unless otherwise apparent from the context:

"Addicted to the excessive use of intoxicating liquor" refers to one who has acquired the habit of using intoxicating liquor excessively to deprive oneself of reasonable self-control, a common drunkard, or a habitual drunkard.

"Alcohol" means the product of distillation of any fermented liquid, whether rectified or not, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but not denatured or other alcohol which is considered nonpotable under the customs laws of the United States.

"Beer" means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley or other grain, malt, and hops in water.

"Club" means any organization for objects of a social, patriotic, political, or athletic nature, or the like, but not for pecuniary gain, having a regular membership to all of whom is charged monthly or quarterly dues, employing a full-time steward, and from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof. "Club" also means the establishment so operated and the premises thereof; provided the word "club" shall not apply to any organization not in existence for at least one year prior to its application for a license.

"Commission" means the liquor commission for the county within which such commission has jurisdiction under this chapter.

"Condominium hotel" means an establishment consisting of one or more buildings that includes:

- (1) Guest rooms that are apartments, as defined in section 514A-3, or units, as defined in section 514B-3, which are used to provide transient lodging for periods of less than thirty days under a written contract with the owner of the apartment or unit in the condominium hotel operation; and
- (2) Guest rooms that are units, owned or managed by the condominium hotel operator providing transient lodging for periods of less than thirty days, which are offered for adequate pay to transient guests.

A "condominium hotel" does not include a hotel that may be part of a condominium property regime established under chapter 514A or 514B, that does not have guest rooms that are separate apartments, as defined in section 514A-3, or units, as defined in section 514B-3.

"Condominium hotel operator" means any person who operates a condominium hotel, including but not limited to, a condominium hotel operator registered under section 467-30.

"County" means the county in respect of which each commission has jurisdiction under this chapter; provided that in the county of Kalawao liquor may be sold only by such persons and only under such conditions as may be permitted or prescribed from time to time by the department of health.

"Elected executive head" means the mayor of each county or the mayor's duly appointed or elected successor.

"Gross sales" means the total receipts actually received from the sale of liquor for which the license has been issued without deduction on account of the cost of property sold or expenses of any kind.

"Hotel" means an establishment consisting of one or more buildings which contain such total number of rooms as may be prescribed by the commission and in which rooms sleeping

accommodations are provided and offered for adequate pay to transient or permanent guests.

"Investigator" means any investigator of the commission in each case for the county wherein the commission has jurisdiction.

"License" means any license granted under this chapter.

"Licensee" includes also all agents, servants, and employees of the holder of a license.

"Liquor" or "intoxicating liquor" includes alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, and wine; and also includes, in addition to the foregoing, any spirituous, vinous, malt or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes.

"Liquor control adjudication board" or "board" means a board established by county charter, within a county, that shall have the jurisdiction to hear and determine complaints or violations of liquor laws and to impose penalties as may be provided in this chapter.

"Minibar" means a specified area of a hotel or condominium hotel guest room where a selection of liquors in their original package are kept for sale or consumption in the hotel or condominium hotel guest room.

"Minor" means any person below the age of twenty-one years.

"Original package" means a package or container as it existed at the time of its delivery by the manufacturer or the wholesale dealer for convenience in transportation and sale.

"Partner" means a partner in a general partnership, limited partnership, or limited liability partnership.

"Person" means and includes natural persons, associations, copartnerships, limited liability companies, and corporations, and also includes any agent, servant, and employee of such person.

"Premises" or "licensed premises" means the building and property that houses the establishment for which a license has been or is proposed to be issued; provided that in the case of class 12 hotel license, "premises" includes the hotel premises; provided further that in the case of a class 15 condominium hotel license, "premises" includes apartments, as defined in section 514A-3, or units, as defined in section 514B-3, that are used to provide transient lodging for periods of less than thirty days under a written contract with the owner or owners of each unit in, and common elements for access purposes as established by the declaration of condominium property regime

of, the condominium hotel; and provided further that if an establishment is in a retail shopping complex the businesses of which have formed a merchants association, "premises" means the establishment. As used in this definition, "establishment" means a single physical location where the selling of liquor takes place.

"Public place" means any publicly owned property or privately owned property open for public use or to which the public is invited for entertainment or business purposes.

"Regulation" means any regulation prescribed by the commission with the approval of the elected executive head of the county for carrying out this chapter.

"Restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to patrons for compensation and which has suitable kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals. Additionally, at least thirty per cent of the establishment's gross revenue must derive from the sale of foods.

"Retail licensee" means any licensee holding a class 2, class 4 through class 16, or class 18 license.

"Sell" or "to sell" includes to solicit and receive an order for; to have or keep or offer or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; to traffic in; and the word "sale" includes every act of selling as herein defined. Notwithstanding the provisions above, the delivery of liquor by a licensee's vehicle or the vehicle of a licensee's agent shall be deemed delivery for value.

"Seller" includes the agents and employees of a seller; provided that any person shall be deemed to be a seller, who in the State, whether acting as agent or representative of a nonresident principal or otherwise, solicits the placing of or takes, receives, or forwards orders for liquor to be shipped into the State from any place without the State to be delivered to customers, by direct shipment or otherwise.

"Standard bar" means any establishment licensed to sell liquor for consumption on the premises, except:

- (1) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission regulations; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules; or

- (3) Premises in which employees or entertainers consume nonalcoholic beverages while in the company of patrons or sit with patrons pursuant to commission rules.

"Under the influence of liquor" means that the person concerned has consumed intoxicating liquor sufficient to impair at the particular time under inquiry the person's normal mental faculties or ability to care for oneself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of oneself which the person would otherwise normally possess.

"Wine" means any wine coming within the definition of wine contained in the United States Revenue Act of 1918 (Act of February 24, 1919), and includes sake.

"Written" or "writing" includes printing and typewriting. [L Sp 1933, c 40, §1; RL 1935, §2570; am L 1935, c 105, §1; am L 1937, c 211, §2; RL 1945, §7221; am L 1945, c 144, §1; am L 1951, c 223, §1; am L 1955, c 263, §3; RL 1955, §159-1; am L 1957, c 321, §1(a); am L Sp 1959 2d, c 1, §19; am L 1961, c 91, §1; am L 1963, c 172, §2(a), (f); HRS §281-1; am L 1972, c 2, §5; am L 1976, c 87, §1; am L 1980, c 256, §1; gen ch 1985; am L 1986, c 342, §2; am L 1987, c 283, §70; am L 1990, c 171, §1; am L 1991, c 206, §2; am L 1992, c 207, §2; am L 1997, c 57, §1; am L 1998, c 90, §1 and c 249, §1; am L 2001, c 257, §2; am L 2007, c 53, §2; am L 2008, c 28, §22 and c 168, §1; am L 2009, c 184, §2; am L 2014, c 31, §1, c 57, §2, and c 211, §2]

#### **Revision Note**

Definition of "elected executive head" revised to conform to charter provisions.

#### **Cross References**

Courses of instruction of university, see §304A-1851.  
Liquor tax law, see chapter 244D.

#### **Attorney General Opinions**

Definition of "public place" does not require that the establishment be open to all members of the public. Att. Gen. Op. 91-01.

" **§281-2 Excepted articles; penalty.** The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to this chapter if they correspond with the following descriptions and limitations, namely:



- (1) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereinafter in force;
- (2) Medicinal preparations manufactured in accordance with formulas prescribed by The Pharmacopoeia of the United States of America or The National Formulary that are unfit for use for beverage purposes;
- (3) Patented, patent and proprietary medicines that are unfit for use for beverage purposes;
- (4) Toilet, medicinal, and antiseptic preparations and solutions, that are unfit for use for beverage purposes;
- (5) Flavoring extracts and syrups that are unfit for use as a beverage or for intoxicating beverage purposes;
- (6) Vinegar and preserved sweet cider;
- (7) A food which is a confectionery and contains alcohol of five per cent or less by weight.

Any person who manufactures any of the articles mentioned in this section may purchase and possess alcohol for that purpose, but the person shall not sell, use, or dispose of any alcohol otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any extract, syrup, or article named in paragraphs (2), (3), and (4) of this section which may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained therein and for the preservation thereof.

Any person who knowingly sells any of the articles mentioned in paragraphs (1), (2), (3), and (4) of this section for beverage purposes or any extract or syrup for intoxicating beverage purposes or who sells any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 281-102.

Whenever it is believed that any article mentioned in this section does not correspond with the descriptions and limitations herein provided, the liquor commission or any inspector or any prosecuting officer may cause an analysis thereof to be made, and if, upon such analysis, it is found that the article does not so correspond, the person who manufactures or sells the same may be prosecuted as a manufacturer or seller of liquor contrary to this chapter. [L Sp 1933, c 40, §74; RL 1935, §2642; RL 1945, §7294; RL 1955, §159-2; HRS §281-2; am L 1972, c 177, §1; gen ch 1985; am L 1988, c 402, §4]

## Cross References

Sale of confectionery with alcohol to minor, see §328-6.

" **§281-3 Illegal manufacture, importation, or sale of liquor.** It shall be unlawful for any person not having a valid license to manufacture or sell any liquor except as otherwise provided in this chapter; provided that the head of any family may produce for family use and not for sale an amount of wine not exceeding two hundred gallons a year, and an amount of beer not exceeding one hundred gallons a year.

It shall also be unlawful for any person, not having a valid wholesale license or a valid manufacturer's (including rectifier's) license, to import any liquor from without the State, except as otherwise provided in this chapter. Liquor imported into this State shall come to rest at the warehouse of the manufacturer (including rectifier) or the wholesaler importing the liquor, shall be unloaded into such warehouse, and shall be held in such warehouse for at least forty-eight hours before further sale by such manufacturer (including rectifier) or wholesaler.

It shall also be unlawful for any person to label, designate, or sell any liquor using the word "Hawaii", "Hawaiian", "Aloha State", "50th State", "Kauai", "Maui", "Oahu", or "Honolulu" unless such liquor is wholly or partially manufactured in the State, and all of the primary ingredients are wholly rectified or combined in the State of Hawaii in compliance with the Alcohol and Tobacco Tax and Trade Bureau standards.

A license shall constitute authority for the licensee to sell only the liquor thereby authorized to be sold by the licensee. [L Sp 1933, c 40, §2; RL 1935, §2571; am L 1935, c 105, §2; am L 1937, c 211, §3; RL 1945, §7222; am L 1951, c 223, §1(2); RL 1955, §159-3; am L 1963, c 50, §1; HRS §281-3; am L 1972, c 95, §1; am L 1980, c 57, §1 and c 199, §1; am L 1981, c 182, §2; am L 1982, c 76, §1; gen ch 1985; am L 1986, c 344, §12; am L 1987, c 141, §1; am L 1990, c 171, §2; am L 2009, c 184, §3]

" **§281-4 Liquor consumption on unlicensed premises prohibited, when.** (a) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are provided or brought in by patrons or guests, whether for compensation or not, or to which members of the public or members of an organization resort for food, refreshment, or entertainment and who is not a licensee of the commission under this chapter, to promote, encourage, aid,

or permit the consumption of liquor on the premises, except during the hours between 6:00 a.m. and 12:00 a.m. Any premises that desires to operate after 12:00 a.m. until 2:00 a.m. shall obtain a class 17 liquor license under section 281-31(q), and shall be subject to the requirements of this chapter and the rules adopted by the liquor commission of the county in which the premises are located during all hours of operation, except as otherwise provided by law.

(b) It shall be unlawful for any person who is present at any restaurant or other premises where food, beverages, or entertainment are sold, provided, or brought in by patrons or guests, or to which members of the public, or members of an organization, resort for food, refreshment, or entertainment, and which premises are not licensed by the commission under this chapter, to consume any liquor on the premises, except during the hours between which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located.

(c) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are provided, or brought in by patrons or guests, whether compensated or not, to sell or provide or allow the consumption of liquor to or for any of the following persons knowing that such person has, or is about to obtain, liquor for consumption by the person on the premises, to wit:

- (1) Any minor;
- (2) Any person at the time under the influence of liquor;
- (3) Any disorderly person;
- (4) Any person known to be addicted to the excessive use of liquor; or
- (5) Any person, for consumption in any vehicle on the premises;

provided that the providing of liquor to or for a minor who has or is about to obtain liquor for consumption by the minor on the premises or allowing the consumption of liquor by a minor shall not be deemed to be a violation of this subsection if, at the time, the person providing or allowing the consumption of liquor was misled by the appearance of the minor and the attending circumstances into honestly believing that such minor was of legal age and the person acted in good faith, and it shall be incumbent upon the person to prove that the person so acted in good faith.

(d) Within the meaning of this section, the word "premises" includes any vessel as well as any place, with or without a structure thereon, and the hours between which licensed premises of dispensers are permitted to be open for the

transaction of business shall be deemed to be those during which such dispensers are permitted to keep open their premises for the sale, service, and consumption of liquor, or any of them. [L 1949, c 147, §1; RL 1955, §159-4; HRS §281-4; am L 1972, c 177, §2; gen ch 1985; am L 2008, c 168, §2; am L 2010, c 198, §1]

### Case Notes

Injunction against enforcement without showing direct invasion of property right. 39 H. 23.

" **§281-5 Powdered alcohol.** (a) No person shall consume, purchase, possess, sell, offer for sale, or otherwise distribute powdered alcohol in the State.

(b) Any person who violates this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 281-102.

(c) As used in this section, "powdered alcohol" means a powdered or crystalline substance that contains any amount of alcohol for either direct use or reconstitution.

(d) This section does not apply to the use of powdered alcohol for legal commercial uses or bona fide research purposes by:

- (1) A health care provider who uses powdered alcohol for the purpose of conducting scientific research;
- (2) A state institution;
- (3) The University of Hawaii, or other accredited educational or research institution; or
- (4) A pharmaceutical or biotechnology company. [L 2015, c 186, §1]

### "PART II. LIQUOR COMMISSIONS

**§281-11 County liquor commissions and liquor control adjudication boards; qualifications; compensation.** (a) A liquor commission or liquor control adjudication board, consisting of not less than five members, no more than the minimum required for a quorum of whom shall belong to the same political party at the time of appointment, may be created for each of the counties. The elected executive head of each county may nominate, and by and with the advice and consent of the legislative body of the county, shall appoint the members of the commissions and boards. The elected executive head of each county, by and with the advice and consent of the legislative body of the county, may remove from office any of the members. The commission or board shall designate one of its members as chairperson. Each member shall be a citizen of the United

States and shall have resided in the county for which appointed for at least three years immediately preceding the date of the member's appointment.

(b) Upon the expiration of the term of each commissioner or board member, the commissioner's or board member's successor shall be appointed for a term to expire five years from the date of the expiration of the preceding term.

The tenure in office of every commissioner or board member shall be for the terms provided and until their successors are duly appointed and qualified.

Any vacancy shall be filled by appointment for the remainder of the unexpired term. No person shall be a member of any commission or board who is or becomes engaged, or is directly or indirectly interested in any business for the manufacture or sale of liquor or who advocates or is or becomes a member of, or is identified or connected with, any organization or association which advocates prohibition, or who is an elected officer of the state or county government or who presents oneself as a candidate for election to any public office during the term of the person's appointment hereunder. This provision shall be enforced by the elected executive head of the county by the removal of the disqualified member whenever such disqualifications shall appear.

(c) The amount of compensation and reasonable expenses for travel and other costs necessarily incident to the discharge of the members' duties shall be established by each county. [L Sp 1933, c 40, §3; RL 1935, §2572; am L 1935, c 105, §3; am L 1937, c 211, §4; am L Sp 1941, c 79, §§1, 2; RL 1945, §7223; RL 1955, §159-10; am L 1963, c 172, §2(b); am L 1967, c 127, §1; HRS §281-11; gen ch 1985; am L 1988, c 383, §2; gen ch 1992; am L 1998, c 249, §2; am L 2006, c 48, §5]

" **§281-11.5 Liquor commission and board attorney.** The liquor commission or liquor control adjudication board may hire attorneys to assist it in carrying out its administrative functions under this chapter. The assistance may include providing legal advice and prosecuting and defending legal claims under this chapter or arising in connection with this chapter. [L 1988, c 383, §1; am L 1990, c 171, §3; am L 1998, c 249, §3]

" **§281-12 Commission and board office.** The council of each county shall furnish the liquor commission and the liquor control adjudication board of the county suitable quarters for its meetings, the transaction of its business, and the keeping of its records. The office of the commission and board shall at all times be open for the transaction of its business during its

prescribed business hours. [L Sp 1933, c 40, §4; RL 1935, §2573; RL 1945, §7224; RL 1955, §159-11; HRS §281-12; am L 1998, c 249, §4]

#### **Cross References**

Office hours, see §78-1.6.

" **§281-13 Meetings.** Meetings of the liquor commission or the liquor control adjudication board may be held at any time and as often from time to time as the commission or board deems necessary for the proper transaction of its business, upon call of the chairperson or by any other two members of the commission or board. The administrator shall give notice of the meetings as the commission or board may prescribe to the several members, and give any other notice thereof directed by the commission or board.

A majority of all the members of the commission or board shall constitute a quorum for the transaction of business, but the affirmative vote of a majority of all of the members shall be necessary to determine any matter before it. [L Sp 1933, c 40, §5; RL 1935, §2574; RL 1945, §7225; am L 1951, c 223, §1(3); RL 1955, §159-12; HRS §281-13; am L 1990, c 171, §4; gen ch 1992; am L 1998, c 249, §5]

#### **Cross References**

Meetings and records of public agencies, requirements concerning, see chapter 92.

" **§281-14 Records.** The liquor commission and liquor control adjudication board shall ensure that complete records are kept of all commission and board meetings, proceedings, and acts with reference to all business pertaining to licenses issued, suspended, and revoked, moneys received as license fees and otherwise, and disbursements by the commission or board or under its authority. Unless otherwise prohibited by law, these records shall be open for examination by the public. The records may be destroyed as provided in section 46-43. [L Sp 1933, c 40, §6; RL 1935, §2575; am L Sp 1941, c 89, §1(a); RL 1945, §7226; RL 1955, §159-13; HRS §281-14; am L 1976, c 55, §1; am L 1990, c 171, §5; am L 1998, c 249, §6]

#### **Cross References**

Meetings and records of public agencies, requirements concerning, see chapter 92.

" **§281-15 Reports, accounts, audit.** On or before September 30 of each year the chairperson of the liquor commission shall submit to the elected executive head of the county a full report upon the business and operations of the commission during the preceding year, which year shall be coterminous with the fiscal year of the county, with such other matters of information and comment as the elected executive head may deem appropriate. The elected executive head shall furnish copies thereof to the legislative body of the county and to the fiscal officer of the county.

The accounts of the commissions for the several counties shall be regularly examined by the fiscal officer who shall report thereon in writing to the legislative body of the several counties. [L Sp 1933, c 40, §7; RL 1935, §2576; RL 1945, §7227; RL 1955, §159-14; am L 1963, c 172, §2(c); am L 1967, c 171, §1; HRS §281-15; gen ch 1993]

" **§281-16 County liquor commission and liquor control adjudication board funds; disposition of realization; payment of expenses.** All fees and other moneys collected or received by each liquor commission or liquor control adjudication board under this chapter shall be paid not less than weekly into the general fund of the respective county or a special fund as provided by ordinance. All expenses of the commission or board, including any expenses and compensation of its members and expenses and salaries of its subordinates, shall be paid in the manner provided by ordinance. [L Sp 1933, c 40, §19; RL 1935, §2588; am L 1937, c 211, §11; RL 1945, §7240; RL 1955, §159-15; am L 1959, c 265, §9(d); am L 1963, c 78, §1 and c 172, §2(d); HRS §281-16; am L 1981, c 108, §1; am L 1998, c 249, §7]

" **§281-17 Jurisdiction and powers.** (a) [*Repeal and reenactment on May 5, 2017. L 2012, c 297, §4.*] The liquor commission, within its own county, shall have the jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any license for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures, sells, or purchases any liquor without being authorized pursuant to this chapter; provided that in counties that have established by charter a liquor control adjudication board, the board shall have the jurisdiction, power, authority, and discretion to hear and determine administrative complaints of the director regarding violations of the liquor laws of the State or of the

- rules of the liquor commission, and impose penalties for violations thereof as may be provided by law;
- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education; provided that any educational program shall be limited to the commission staff, commissioners, liquor control adjudication board members, and licensees and their employees, and shall be financed through the money collected from the assessment of fines against licensees; provided that fine moneys, not to exceed ten per cent a year of fines accumulated, may be used to fund public liquor-related educational or enforcement programs;
  - (4) From time to time to make, amend, and repeal rules, not inconsistent with this chapter, as in the judgment of the commission are deemed appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent, by order, under the direction or supervision of, or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;
  - (5) Subject to chapter 76, to appoint and remove an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require, prescribe their duties and fix their compensation, and engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer;
  - (6) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
  - (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;



- (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;
- (9) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
- (10) To investigate violations of this chapter, chapter 244D and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution and, where appropriate, the director of taxation to hear and determine complaints against any licensee; provided that a liquor commission in a county with a population of seven hundred thousand or greater may establish a pilot program that employs both a dBA and a dBC sound level measurement system for the purpose of community noise control; provided further that the dBC sound level measurements shall be in accordance with the following maximum permissible sound levels in dBC:
  - (A) Zoning districts that include all areas equivalent to lands zoned residential, conservation, preservation, public space, open space, or similar type shall have a maximum dBC sound level of fifty-five from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of forty-five from 10:00 p.m. to 7:00 a.m.;
  - (B) Zoning districts that include all areas equivalent to lands zoned for multi-family dwellings, apartment, business, commercial, hotel, resort, or similar type shall have a maximum dBC sound level of sixty from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of fifty from 10:00 p.m. to 7:00 a.m.; and
  - (C) Zoning districts that include all areas equivalent to lands zoned in agriculture, country, industrial, or similar type shall have a maximum dBC sound level of seventy from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of seventy from 10:00 p.m. to 7:00 a.m.;

- (11) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of licenses;
- (12) To prescribe, by rule, the term of any license or solicitor's and representative's permit authorized by this chapter, the annual or prorated amount, the manner of payment of fees for the licenses and permits, and the amount of filing fees;
- (13) To prescribe, by rule, regulations on dancing in licensed premises; and
- (14) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.

(b) Subject only to this chapter, the commission or board and each member thereof shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining the witnesses as are possessed by a circuit court, except that the commission or board and each member thereof shall not be bound by the strict legal rules of evidence. In addition, the commission or board shall have the power to require the production of, and to examine any books, papers, and records of any licensee which may pertain to the licensee's business under the license or which may pertain to a matter at a hearing before the commission or board or to an investigation by the commission or board.

The exercise by the commission or board of the power, authority, and discretion vested in it pursuant to this chapter shall be final and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in this chapter or chapter 91. [L Sp 1933, c 40, §8; RL 1935, §2577; am L 1935, c 105, §§4, 5; am L 1937, c 211, §5; am L Sp 1941, c 41, §2; RL 1945, §7228; RL 1955, §159-16; am L 1961, c 92, §1; am L 1963, c 172, §2(e); am L 1965, c 31, §1(3) and c 96, §96; HRS §281-17; am L 1969, c 225, §1(a), (b); am L 1973, c 31, §21; am L 1985, c 109, §1; am L 1986, c 344, §13; am L 1987, c 223, §1; am L 1990, c 171, §6; am L 1998, c 249, §8; am L 2000, c 253, §150; am L 2002, c 111, §3; am L 2003, c 3, §8 and c 69, §4; am L 2009, c 184, §4; am L 2012, c 297, §2; am L 2015, c 136, §1]

#### **Note**

The 2015 amendment is exempt from the repeal and reenactment condition of L 2012, c 297, §4. L 2015, c 136, §4.

## Cross References

Criminal history record checks, see §846-2.7.  
Review, see §§91-14, 281-92.

## Case Notes

Plaintiff must exhaust its administrative remedy in the circuit court before it may pursue its state law claims, as required by this section; thus, defendants' motion to dismiss plaintiff's state law claims under the state constitution, chapter 281, and the liquor commission rules, granted. 681 F. Supp. 2d 1209 (2009).

Commission action, reviewability. 40 H. 485.

Provisions of this section inconsistent with county charter provisions are superseded. 59 H. 65, 576 P.2d 1029.

Section grants very broad authority to county liquor commission to adopt rules to abolish racially discriminatory practices by liquor licensees. 69 H. 238, 738 P.2d 1205.

### " §281-17.5 Fees; justified, method of change, limitation.

(a) Any liquor license fee or any increase in an existing liquor license fee sought to be implemented by any commission shall have, as its justification, a direct and proportionate relationship to costs and expenses of the commission in its control, supervision, or regulation of the manufacture, importation, and sale of liquors, or otherwise directly relate to actual costs and expenses of administration of the commission as is set forth in this chapter.

(b) Any such liquor license fees or any moneys collected or received by any liquor commission under this chapter may only be used for costs and expenses directly relating to operational and administrative costs actually incurred by the liquor commission collecting or receiving such liquor license fees or moneys. Such fees or moneys shall not be used for any costs or expenses other than those directly relating to its operation and administration, except as otherwise provided by law.

(c) Any increase in the liquor license fee structure shall only be initiated by the liquor commission seeking the change with the approval of the county's legislative body and mayor.

(d) Any liquor commission seeking a change in liquor license fee structure shall notify all licensees under this chapter affected by the change of the proposed change and shall notify each such licensee of the outcome and resolution of the change.

(e) Any liquor commission which currently receives a license fee from a licensee in excess of the amount prescribed

by this section shall immediately revise its liquor license fee structure to conform with the requirements of this section. Any funds in excess of twenty per cent of the commission's current budget shall be returned or credited annually to existing licensees. [L 1980, c 304, §2; am L 1987, c 252, §2; am L 1996, c 96, §1; am L 1997, c 5, §1; am L 2008, c 168, §3]

### **Attorney General Opinions**

Term "funds" in subsection (e) synonymous with "fees". Att. Gen. Op. 92-02.

" **§281-18 REPEALED.** L 1979, c 192, §1.

" **§281-19 Hearings, attendance, examinations.** If any person subpoenaed as a witness to attend before the liquor commission or liquor control adjudication board, or to produce any books, papers, or records called for by the process of the commission or board, fails or refuses to respond thereto, or refuses to answer questions propounded by any member of the commission or board or its counsel material to the matter pending before the commission or board, the circuit court of the circuit within which the licensed premises involved are situated, upon request of the commission or board, shall have power to compel obedience to any process of the commission or board and require the witness to answer questions put to the witness, and to punish, as a contempt of the court, any refusal to comply therewith without good cause shown therefor.

False swearing by any witness before the commission or board, shall constitute perjury and be punished as such, and whenever the commission or board is satisfied that a witness has sworn falsely in any hearing or investigation before the commission or board, it shall report the same to the prosecuting officer for prosecution. [L Sp 1933, c 40, §9; RL 1935, §2578; RL 1945, §7229; RL 1955, §159-18; HRS §281-19; gen ch 1985; am L 1998, c 249, §9]

" **§281-20 General right of inspection.** Any investigator may, at all times, without notice and without any search warrant or other legal process, visit and have immediate access to every part of the premises of every licensee for the purpose of making any examination or inspection thereof or inquiry into the books and records therein, to ascertain whether all of the conditions of the license and all provisions of this chapter and chapter 244D are being complied with by the licensee. [L Sp 1933, c 40, §10; RL 1935, §2579; RL 1945, §7230; RL 1955, §159-19; HRS §281-20; am L 1986, c 344, §14; am L 1990, c 171, §7]

" **§281-21 Service of subpoenas by investigators, police officers, or other law enforcement officers; witnesses' fees.**

Any investigator, police officer, or other law enforcement officer may serve any subpoena issued by the liquor commission, liquor control adjudication board, or administrator.

Every witness attending or testifying at any hearing of the commission or board in response to a subpoena issued by it or the administrator shall be paid as provided for in section 621-7. If a witness is subpoenaed by direction of the commission, board, or administrator, the witness' fees shall be paid out of any funds which may be set aside for the expenses of the commission or board and, if the witness is subpoenaed on behalf of any interested party, the witness' fees shall be paid by that party. [L 1941, c 105, §1; RL 1945, §7231; RL 1955, §159-20; am L 1967, c 104, §1; HRS §281-21; gen ch 1985; am L 1990, c 171, §8; am L 1998, c 249, §10; am L 2008, c 168, §4]

" **§281-22 Political activities of commission employees.** (a)

A commission employee may support, advocate, or aid in the election or defeat of any candidate for public office, or run for public office; provided the employee:

- (1) Notifies the commission in writing of the employee's intent to support, advocate, or aid in the election or defeat of a candidate for public office; and
- (2) If a candidate for public office, takes a leave of absence in accordance with section 78-23 for a period beginning prior to the initiation of political activities related to the candidacy and ending the day following the general election for the office.

(b) Notwithstanding chapter 11 or any other law to the contrary, no commission employee shall solicit or receive contributions, or receive or transfer money or anything of value from a licensee for the purpose of supporting, advocating, or aiding in the election or defeat of a candidate for public office. Violation of this subsection shall be:

- (1) Punishable by summary dismissal of the employee; and
- (2) Subject to fines in accordance with section 11-410. [L 2002, c 111, §1; am L 2009, c 184, §5; am L 2010, c 211, §6]

**"PART III. LICENSES AND PERMITS, GENERAL PROVISIONS**

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

(b) Class 1. Manufacturer license. A license for the manufacture of liquor shall authorize the licensee to:

- (1) Manufacture the liquor therein specified;
- (2) Sell it in original packages to any wholesaler who holds a license to resell it; and
- (3) Sell beer, wine, or other specified liquor manufactured or distilled on the licensee's premises from fruits or other products grown in the State, in any quantity:
  - (A) At wholesale in original packages to any person who holds a license to resell it; and
  - (B) To any person for private use and consumption.

Under this license, no liquor shall be consumed on the premises, except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) Beer;
- (2) Wine;
- (3) Alcohol; and
- (4) Other specified liquor.

It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a wholesale dealer licensee under this chapter.

(c) Class 2. Restaurant license.

- (1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering of food and liquor; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider for off-premises consumption; provided that the licensee has the appropriate kind of license pursuant to paragraph (3); and provided further that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one-half gallon. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishment shall be as follows:
  - (A) A standard bar; or

- (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.
- (2) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
- (3) Of this class, there shall be the following kinds:
  - (A) General (includes all liquor except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.

Notwithstanding section 281-57, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding a class 5 dispenser license who meets the requirements of a class 2 license.

(d) Class 3. Wholesale dealer license. A license for the sale of liquor at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell the liquor specified by the license but are not by law required to hold a license; provided that a class 3 licensee may sell samples of liquor back to the manufacturer. Under a class 3 license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.

If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer holds the dealer license. Nothing in this subsection shall prevent a wholesaler from selling liquor to post exchanges, ships' service stores, army or navy officers' clubs, or similar organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise subject to chapter 269 and engaged in regular flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

(e) Class 4. Retail dealer license. A license to sell liquor at retail or to class 10 licensees shall authorize the

licensee to sell the liquor therein specified in their original packages. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider in non-original packages; provided that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one half-gallon. Under a class 4 license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.
- (f) Class 5. Dispenser license.

- (1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:

- (A) A standard bar;
- (B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;
- (C) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by commission rules; or
- (D) Premises in which employees or entertainers are compensated to sit with patrons, regardless of whether the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons pursuant to commission rules.

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

- (3) Of this class, there shall be the following kinds:
  - (A) General (includes all liquor except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.

(g) Class 6. Club license. A club license shall be general only but shall exclude alcohol and shall authorize the



licensee to sell liquor to members of the club and to guests of the club enjoying the privileges of membership for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor owned by the member for the member's own personal use and not to be sold that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public only pursuant to commission rules.

The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(h) Class 8. Transient vessel license. A general license may be granted to the owner of any vessel for the sale of liquor other than alcohol on board the vessel while en route within the jurisdictional limits of the State and within any port of the State. Sales shall be made only for consumption by passengers and their guests on board the vessel. The license shall be issuable in each county where the sales are to be made; provided that the application for the license may be made by any agent representing the owner.

(i) Class 9. Tour or cruise vessel license. A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor other than alcohol on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the county where the license has been issued. The license shall be issuable in the county where the home port of the vessel is situated. If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the State, it shall constitute a violation of this chapter.

The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(j) Class 10. Special license. A special license may be granted for the sale of liquor for a period not to exceed three days and pursuant to commission rule may be approved by the administrator for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any

registered educational or charitable nonprofit organization may sell liquors in their original packages for off-premises consumption. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
- (2) Beer and wine; and
- (3) Beer.

Liquor sold under a class 10 license shall be consumed on the premises.

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

- (1) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or
- (2) A cabaret license that, pursuant to rules adopted by the liquor commission, permits professional entertainment by persons who perform or entertain unclothed.

A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000. A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except upon approval by the liquor commission and pursuant to rules adopted by the commission. Notwithstanding any rule of the liquor commission to the contrary, cabarets in resort areas may be opened for the transaction of business until 4 a.m. throughout the entire week.

(1) Class 12. Hotel license. A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquor except alcohol for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service.

Procedures such as room service, self-service no-host minibars or similar service in guest rooms, and service at

parties in areas that are the property of and contiguous to the hotel are permitted with commission approval.

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

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

Any licensee holding a class 12 license on May 1, 2007 who would otherwise qualify for a class 15 license may apply to the liquor commission of the county in which the licensee is seeking a change in liquor license for a change to a class 15 license; provided that the licensee shall not be subject to the requirements of section 281-54 and sections 281-57 to 281-60.

If a licensee holding a class 12 license on May 1, 2007 applies for a change to a class 15 license, the respective liquor commission shall hold a public hearing upon notice. On the day of hearing or any adjournment thereof, the liquor commission shall consider the application, accept all written or oral testimony for or against the application, and render its decision granting or refusing the application. If the application is denied, the class 12 license shall continue in effect in accordance with law.

(m) Class 13. Caterer license. A general license may be granted to any applicant who serves food as part of their operation for the sale of liquor other than alcohol while performing food catering functions off the premises.

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

(n) Class 14. Brewpub license. A brewpub licensee:

- (1) May sell malt beverages manufactured on the licensee's premises for consumption on the premises;
- (2) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;
- (3) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows:

- (A) A standard bar; or
  - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
- (4) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and sell malt beverages manufactured on the licensee's premises or purchased from a class 1 manufacturer licensee, a class 3 wholesale dealer licensee, a class 14 brewpub licensee, or a class 18 small craft producer pub licensee to consumers in growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass, ceramic, or metal container, not to exceed one half-gallon, which shall be securely sealed;
- (5) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption;
- (6) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages;
- (7) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by county regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees; and
- (8) May conduct the activities under paragraphs (1) to (7) at one location other than the licensee's premises; provided that:
- (A) The manufacturing takes place in Hawaii; and

(B) The other location is properly licensed under the same ownership.

(o) Class 15. Condominium hotel license. A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquor except alcohol for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering; provided further that the catering activity is directly related to the licensee's operation as a condominium hotel.

Procedures such as room service, self-service no-host minibars or similar service in apartments, and service at private parties in areas that are the property of and contiguous to the condominium hotel are permitted with commission approval.

A condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail dealer license.

Any licensee who would otherwise meet the criteria for the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.

- (p) Class 16. Winery license. A winery licensee:
- (1) Shall manufacture not more than twenty thousand barrels of wine on the licensee's premises during the license year;
  - (2) May sell wine manufactured on the licensee's premises for consumption on the premises;
  - (3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;
  - (4) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises in winery-sealed kegs and magnums to consumers for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container not to exceed one half-gallon, which may be securely sealed;
  - (5) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption;
  - (6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; and

- (7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, and class 18 small craft producer pub licensees pursuant to conditions imposed by county planning and public works departments and rules governing class 3 wholesale dealer licensees.

(q) Class 17. Bring-your-own-beverage license. In counties having a population in excess of 500,000, there is established a class 17 license; provided that in a county having a population of 500,000 or less, the respective commission may establish a class 17 license to which this subsection shall apply.

- (1) A general license of this class shall authorize the licensee to permit patrons to bring their own liquors for consumption on the premises between the hours of 6:00 a.m. to 2:00 a.m. the following day. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:

- (A) Premises in which recorded music and live entertainment, including karaoke, are provided;  
or  
(B) Premises in which recorded music and live entertainment, including karaoke and dancing, are provided.

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

- (3) A licensee under this class shall not be subject to liquor commission rules relating to percentage fees.

(r) Class 18. Small craft producer pub license. A small craft producer pub licensee:

- (1) Shall manufacture not more than:  
(A) Sixty thousand barrels of malt beverages;  
(B) Twenty thousand barrels of wine; or

- (C) Seven thousand five hundred barrels of alcohol on the licensee's premises during the license year; provided that for purposes of this paragraph, "barrel" means a container not exceeding thirty-one gallons or wine gallons of liquor;
- (2) May sell malt beverages, wine, or alcohol manufactured on the licensee's premises for consumption on the premises;
  - (3) May sell malt beverages, wine, or alcohol manufactured by the licensee in producer-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;
  - (4) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows:
    - (A) A standard bar; or
    - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
  - (5) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in producer-sealed kegs and sell malt beverages manufactured on the licensee's premises or purchased from a class 1 manufacturer licensee, a class 3 wholesale dealer licensee, a class 14 brewpub licensee, or a class 18 small craft producer pub licensee to consumers in growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass, ceramic, or metal container, not to exceed one half-gallon, which shall be securely sealed;
  - (6) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, or alcohol manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed:
    - (A) One gallon per container for malt beverages and wine; and
    - (B) One liter for alcohol; andare securely sealed on the licensee's premises to consumers for off-premises consumption;
  - (7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages, wine, and alcohol;

- (8) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, and alcohol manufactured on the licensee's premises in producer-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by county regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees; and
- (9) May conduct the activities under paragraphs (1) to (8) at one location other than the licensee's premises; provided that:
- (A) The manufacturing takes place in Hawaii; and
  - (B) The other location is properly licensed under the same ownership.

(s) Restaurants, retail dealers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, condominium hotels, bring-your-own-beverage establishments, and small craft producer pubs licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, class 15, class 17, and class 18 shall maintain at all times liquor liability insurance coverage in an amount not less than \$1,000,000; provided that convenience minimarts holding a class 4 license shall not be required to maintain liquor liability insurance coverage in that amount. Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours. In the event of a licensee's failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

(t) It shall be unlawful for any retail licensee except a class 10 licensee to purchase or acquire liquor from any person other than a wholesaler licensed pursuant to this chapter, except as otherwise provided in this section.

(u) Any provision to the contrary notwithstanding, a patron may remove from any class of licensed premises any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee engaged in meal



service for consumption with a meal; provided that it is recorked or resealed in its original container.

(v) Sections 281-57 to 281-60 shall not apply to classes 8, 9, 10, and 13. [L Sp 1933, c 40, §11; RL 1935, §2580; am L 1935, c 105, §§6 to 8; am L 1937, c 211, §6; am L 1939, c 71, §§1, 2 and c 205, pt of §1; RL 1945, §7232; am L 1947, c 148, §1; am L 1955, c 263, §2; RL 1955, §159-30; am L 1961, c 89, §1 and c 90, §1; am L 1965, c 181, §1; am L 1967, c 172, §1; HRS §281-31; am L 1969, c 133, §1 and c 198, §1; am L 1970, c 5, §2; am L 1976, c 87, §2; am L 1978, c 25, §1; am L 1980, c 199, §2; am L 1981, c 60, §1; am L 1982, c 183, §1; am L 1983, c 292, §1; am L 1984, c 269, §1; gen ch 1985; am L 1988, c 383, §3; am L 1990, c 171, §9; am L 1991, c 196, §1; am L 1994, c 174, §2; am L 1995, c 38, §2; am L 1996, c 55, §1; am L 1997, c 57, §2; am L 1998, c 75, §2; am L 1999, c 69, §1; am L 2001, c 55, §11; am L 2002, c 16, §12 and c 49, §2; am L 2004, c 200, §1; am L 2005, c 145, §1; am L 2007, c 53, §§3, 7; am L 2008, c 163, §1 and c 168, §5; am L 2009, c 177, §1 and c 184, §6; am L 2010, c 198, §2; am L 2011, c 138, §1; am L 2012, c 302, §1; am L 2014, c 211, §3; am L 2015, c 227, §1]

#### **Revision Note**

"May 1, 2007," substituted for "the effective date of this Act".

#### **Cross References**

Class 5 or class 11 liquor licensee; National Human Trafficking Resource Center hotline; posting requirement; penalty, see §371-20.

#### **Case Notes**

Cited: 35 H. 788, 790.

" **§281-32 Licenses, temporary.** A temporary license of any class and kind specified in section 281-31 may be granted under the following conditions:

- (1) The premises shall have been operated under a license of the same class, kind, and category issued by the liquor commission at least one year immediately prior to the date of filing of the application for a temporary license, except as otherwise approved by the commission;
- (2) The license of the same class, kind, and category then in effect for the premises shall be surrendered in

such manner and at such time as the commission shall direct;

- (3) The applicant for a temporary license shall have filed with the commission an application for a license of the same class, kind, and category currently or previously in effect for the premises;
- (4) The application for a temporary license shall be accompanied by a license fee in such amount as may be prescribed by the commission. If the application is denied or withdrawn, the fee which accompanied the application shall become a realization of the county;
- (5) A temporary license shall be for a period of not in excess of one hundred and twenty days. The license may be renewed at the discretion of the commission for not more than one additional one hundred twenty-day period upon payment of such additional fee as may be prescribed by the commission and upon compliance with all conditions required in this section and section 281-31. When a temporary license has expired and no permanent license has been issued, the sale and service of liquor shall cease until the permanent license is issued; provided that, when applicable, the license shall be properly renewed;
- (6) A temporary license shall authorize the licensee to purchase liquor only by payment in currency, check, or certified check for the liquor before or at the time of delivery of the liquor to the licensee, except as otherwise provided by commission rule; and
- (7) Sections 281-52 and 281-54 and sections 281-56 to 281-61 shall not apply to any application for a temporary license. [L 1967, c 105, §1; HRS §281-32; am L 1972, c 177, §3; gen ch 1985; am L 1988, c 383, §4; am L 2008, c 168, §6]

" **§281-32.3 REPEALED.** L 2008, c 168, §18.

" **§281-32.5 Permits for trade shows or other exhibitions.**  
Notwithstanding any other provision to the contrary, any trade exhibitor, trade organization or other exhibitor shall apply to the liquor commission or agency administrator for the issuance of a permit, without hearings, fees, notarizing of documents, submission of floor plans, and other requirements, to receive liquor from within or outside the State for display and sampling on a not-for-sale basis at trade exhibitions, shows or other exhibitions, subject to such terms and conditions as may be set by the commission. [L 1979, c 37, §1; am L 1990, c 171, §11; am L 1991, c 236, §3]

" **§281-33 Special powers, privileges, and rights.** The following special powers, privileges, and rights are hereby granted, anything in this chapter to the contrary notwithstanding:

- (1) Any person arriving in the State may bring with the person for private use and consumption and not for resale, any liquor not exceeding one gallon, and two cases of beer not exceeding six gallons without securing a license;
- (2) Any religious organization may import or receive into the State sacramental wine for use in the religious rites of the religious organization without securing a license;
- (3) Any consul general, consul, or vice-consul of any foreign country may import or receive into the State, for private use and consumption, any liquor without securing a license. [L 1939, c 205, pt of §1; RL 1945, §7234; RL 1955, §159-32; HRS §281-33; am L 1978, c 27, §1; gen ch 1985]

" **§281-33.1 Individual permits to receive shipments of liquor.** (a) Notwithstanding any other provisions of law, any unlicensed adult person may apply to the liquor commission and be issued, for a nominal fee, except as hereinafter provided, a permit to receive a single shipment of liquor from outside the State, not to exceed five gallons, (19 liters), for use and consumption by the applicant and the applicant's household and not for sale in any form.

(b) In the case of a shipment that the applicant shows is an unsolicited gift, the quantities permitted to be received under subsection (a) shall be limited to 3.2 gallons (12 liters) in total of all kinds of liquor.

(c) In the case of a shipment in respect of which the applicant shows to the liquor commission that the liquor was prior to the date of the application the personal property of the applicant, formed a part of the applicant's household goods, was used and stored outside the State, and was originally acquired (or made by the applicant) outside the State, the quantity of wine, or other liquor capable of aging and originating from grapes or other fruit, which shall be permitted to be received under subsection (a) may exceed the limit there stated if the commission finds that it is reasonable to do so consistent with the intent of this statute to allow persons taking up residency in the State the free movement of their household goods into this State.

(d) In the case of a shipment of wine or beer that is otherwise available in the State, the permit shall not be issued unless the applicant pays a fee equal to the tax that would be imposed by section 244D-4 upon the use of liquor having a wholesale price equal to the price paid or to be paid by the applicant for the wine or beer being shipped, and such fee shall be in lieu of the imposition by section 244D-4 of any tax upon the use of the wine or beer.

(e) Except in the case of applications meeting the requirements of subsection (b), (c), or (d), the permit shall not be issued unless the applicant demonstrates to the satisfaction of the liquor commission that each of the brands to be brought in under the permit is otherwise unavailable in the State.

(f) No more than one permit may be issued pursuant to subsection (a) in respect of any one household in any calendar year, and each applicant shall be required to affirm, under penalty of perjury, that no member of the applicant's household has previously received such a permit in the applicable calendar year.

(g) All such applications and shipments shall be in accordance with regulations promulgated by the liquor commission.

(h) A common carrier to whom the permit is presented is authorized to make delivery of the described shipment to the person named in the permit. Delivery of such a shipment pursuant to the permit shall not be deemed to constitute a sale in this State.

(i) An unlicensed adult shall not be required to obtain a permit under this section to receive shipments of liquor pursuant to section 281-33.6. [L 1976, c 190, §2; am L 1984, c 269, §2; am L 1985, c 16, §10; gen ch 1985; am L 2003, c 153, §1; am L 2006, c 227, §2]

" **§281-33.5 REPEALED.** L 2006, c 227, §3.

" **§281-33.6 Direct shipment of wine by wineries.** (a) Any person holding:

(1) A general excise tax license from the department of taxation; and

(2) Either:

(A) A class 1, class 16, or class 18 license to manufacture wine under section 281-31; or

(B) A license to manufacture wine issued by another state,

may pay any applicable fees and obtain a direct wine shipper permit from the liquor commission of the county to which the

wine will be shipped authorizing the holder to directly ship wine to persons in the county pursuant to this section.

(b) The holder of a direct wine shipper permit may sell and annually ship to any person twenty-one years of age or older in the county that issued the permit, no more than six nine-liter cases of wine per household for personal use only and not for resale, and shall:

- (1) Ship wine directly to the person only in containers that are conspicuously labeled with the words:  
"CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY.";
- (2) Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment;
- (3) Report no later than January 31 of each year to the liquor commission in each county where a direct wine shipper permit is held, the total amount of wine shipped to persons in the county during the preceding calendar year;
- (4) Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a direct wine shipper permit shall be deemed to be wine sold in the State; and
- (5) Be subject to audit by the liquor commission of each county in which a permit is held.

(c) The holder of a license to manufacture wine issued by another state may annually renew a direct wine shipper permit by providing the liquor commission that issued the permit with a copy of the license and paying all required fees. The holder of a class 1, class 16, or class 18 license to manufacture wine under section 281-31 may renew a direct wine shipper permit concurrently with the class 1 license by complying with all applicable laws and paying all required fees.

(d) The sale and shipment of wine directly to a person in this State by a person that does not possess a valid direct wine shipper permit is prohibited. Knowingly violating this law is a misdemeanor.

(e) The liquor [commission] in each county may adopt rules and regulations necessary to carry out the intent and purpose of this section. [L 2006, c 227, §1; am L 2008, c 163, §2; am L 2014, c 211, §4]

" **§281-34 Sham operation under club license; supervision.** Whenever the liquor commission is of the opinion that any holder of a club license is not conducting the business under such license in good faith, or that the premises thereof are not continuously kept suitably arranged, furnished, equipped, and

actually and reputedly operated as a club, or that the apparent or claimed manner of operation of the club as such is only nominal or pretended or amounts to a sham or subterfuge under which liquor is being sold as the principal object of the club, the license may be summarily suspended pending a hearing why it should not be revoked. [L Sp 1933, c 40, §14; RL 1935, §2583; am L 1937, c 211, §9; RL 1945, §7235; RL 1955, §159-33; HRS §281-34]

" **§281-35 Special conditions; club licenses.** No liquor shall be sold under a club license to any person not a member of the club nor a guest thereof enjoying the privileges of membership, but a member or a guest enjoying the privileges of membership may purchase liquor for consumption on the premises by the person's own guests.

The liquor commission may by rule require the keeping and posting of lists of the members of a club, and the keeping and production of records as to membership and the registration of guests enjoying the privileges of membership.

No liquor shall be sold or kept for sale at any club except by the club itself pursuant to its license. If any liquor is sold or kept on the club premises for sale or barter by any member, employee, or person other than the club itself, the club shall be deemed to be selling without a license. [L Sp 1933, c 40, §16; RL 1935, §2585; RL 1945, §7237; RL 1955, §159-34; HRS §281-35; am L 1990, c 171, §12; am L 2006, c 44, §1; am L 2008, c 168, §7]

" **[§281-35.5] Special conditions; condominium hotel licenses.** A condominium hotel operator shall submit to the commission a copy of the information on the initial application for registration of the condominium hotel operator approved by the real estate commission pursuant to section 467-30, if the condominium hotel operator is required to be registered with the real estate commission. The condominium hotel operator shall maintain for inspection at the condominium hotel by any authorized employee of the commission a list of the units being utilized for transient lodgings from time to time as part of the condominium hotel. [L 2007, c 53, §1]

" **§281-36 REPEALED.** L 1997, c 34, §1.

" **§281-37 Sales of alcohol.** No alcohol shall be sold, bartered, or otherwise furnished by any person whether holding a license to manufacture or sell the same under this chapter or not, except to a person holding a license to resell the same, or

to a person holding a purchase permit from the liquor commission to purchase the same.

Permits to purchase alcohol may be issued by the commission, without fee or charge therefor, to any person holding a license under the laws of the State to sell poisonous drugs, or to any person who in the opinion of the commission requires the use thereof for pharmaceutical or other purposes in the bona fide treatment of patients of such person, or for rubbing, cleansing, or as a preservative, or for any bona fide scientific purpose, but in no case for use for beverage purposes.

On every sale of alcohol the seller, after first being satisfied that the person presenting a permit is the person therein named, shall make a record on the permit and sign the same showing the name of the purchaser, the date, the quantity sold, and the purpose declared as to the intended use thereof. The seller shall also keep a separate record of the same matters. If in any permit there is a prescribed limit as to the quantity purchasable thereunder at any one time or in the aggregate in any given period of time, the permit shall not be honored beyond its terms.

The commission, by rules and regulations, where deemed appropriate, may provide for the sale of alcohol upon prescriptions of duly licensed physicians in lieu of the permits above mentioned. [L Sp 1933, c 40, §17; RL 1935, §2586; RL 1945, §7238; RL 1955, §159-36; HRS §281-37; gen ch 1985; am L 1986, c 339, §29]

" **§281-38 Conditions of licenses.** Every license issued under this chapter shall contain the condition that it is subject to this chapter and any other laws applicable to the business of the licensee, whether in existence at the time of issue of such license or enacted or amended from time to time thereafter, and to all applicable rules and regulations of the liquor commission as the same may exist or be adopted or changed from time to time. [L Sp 1933, c 40, §20; RL 1935, §2589; RL 1945, §7241; RL 1955, §159-38; HRS §281-38]

" **§281-39 Place of business; exception; solicitors' and representatives' permits.** (a) A license issued under this chapter shall authorize the doing of the business licensed only at the place described in the license, which shall be known as the licensed premises, except:

- (1) In case of a removal with the prior written consent of the liquor commission indorsed on the license, or outside warehousing which may be located off the

licensed premises with prior written consent of the liquor commission; and

- (2) That the units that are used to provide transient lodging under a class 15 license may change from time to time; provided that the condominium hotel operator shall submit quarterly to the commission the list of units being utilized as part of the condominium hotel and maintains a current list pursuant to section 281-35.5 at a condominium hotel for inspection by any authorized employee of the commission.

(b) Except for a condominium hotel operator under a class 15 license, no change of premises under any issued license shall be allowed unless the doing of business on the new premises is authorized in the same manner as provided by this chapter for approval of any original premises; provided that the holder of any manufacturer's license or a wholesale dealer's license issued by the commission of any county may, through authorized solicitors or representatives, solicit and take orders for direct shipment of liquor in permitted quantities in any other county.

(c) Any person desiring to act as the authorized solicitor or representative of a manufacturer or wholesale dealer in any county shall make application to the commission of such county in which the person proposes to act for a permit to act as such.

(d) The application shall state the name of the applicant, the applicant's age, residence, and place of business, the name and address of the manufacturer or wholesale dealer the applicant represents and shall be accompanied by a statement from the manufacturer or wholesale dealer to the effect that the applicant has been appointed as its solicitor or representative. All sales and all orders taken for liquor by any such solicitor or representative shall be subject to the rules and regulations of the commission for the county within which the sales are made or orders taken. No solicitor or representative shall be permitted to have, own, or control any liquor for sale. [L Sp 1933, c 40, §21; RL 1935, §2590; am L 1939, c 205, pt of §1; RL 1945, §7242; RL 1955, §159-39; am L 1957, c 321, §1(c); am L 1965, c 31, §1(5); HRS §281-39; am L 1969, c 225, §1(c); am L 1972, c 177, §4; am L 1979, c 4, §1; gen ch 1985; am L 2007, c 53, §4; am L 2008, c 168, §8]

" **§281-39.5 Liquor license prohibited; where.** (a) The liquor commission or agency of each county may deny or restrict the issuance of a liquor license for on-site sale and consumption by the drink to any applicant whose establishment is or would be located within five hundred feet of a public or private elementary, intermediate, or high school, or public



playground utilized extensively by minors, as determined by the liquor commission of each county; provided that the liquor commission or agency of each county shall deny the issuance of a liquor license if forty per cent of the:

- (1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or
- (2) Owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked;

have duly filed or caused to be filed their protests against granting the license. The distance of five hundred feet shall be measured from the boundary of the school or public playground to the boundary of the applicant's premises. Public or private beaches, and public or private day care centers located in or adjacent to commercial areas shall not be deemed schools or public playgrounds for purposes of this section. The provisions of this section shall not apply to establishments located within areas designated by the appropriate counties for resort purposes, or to hotel or condominium hotel liquor license applicants.

(b) This section shall apply only to the issuance of new liquor licenses for on-site sale and consumption by the drink and not to any renewal of such licenses. [L 1991, c 236, §2; am L 2001, c 257, §3; am L 2007, c 53, §5]

" **§281-40 Unlicensed liquor.** No licensee shall have or keep any liquor whatever, for sale or consumption, on or in connection with the licensee's licensed premises except as authorized by the licensee's license. Any unauthorized liquor found thereon shall be subject to summary seizure, confiscation, and forfeiture, and may be disposed of as hereinafter provided. [L Sp 1933, c 40, §22; RL 1935, §2591; RL 1945, §7243; RL 1955, §159-40; HRS §281-40; gen ch 1985]

" **§281-41 Transfer of licenses; notice of change in officers, directors, and stockholders of corporate licenses, partners of a partnership license, and members of a limited liability company license; penalty.** (a) No license issued under this chapter to an original applicant or to any transferee shall be transferable or be transferred within one year of the issuance or transfer, except for good cause shown to the satisfaction of the liquor commission. A transfer of license shall be for the same class, kind, and category of license. No license issued under this chapter shall be transferable or be transferred except upon written application to the commission by

the proposed transferee, and after prior inspection of the premises, reference to, and report by an inspector, and a public hearing held by the commission not less than fourteen days after one publication of notice thereof, but without sending notice of the hearing by mail to persons being the owners or lessees of real estate situated within the vicinity of the premises and without the right to the owners or lessees to protest the transfer of a license. Exceptions are class 5 and 11 licensees who must comply with the requirements as set forth in sections 281-57 to 281-60.

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

(c) For the purpose of this section, "special liquor district" means an area designated by a county for restoration, reservation, historic preservation, redevelopment, rejuvenation, or residential protection, in which development is guided to protect or enhance the physical and visual aspects of the area for the benefit of the community as a whole.

(d) Where a license is held by a partnership, the commission may, notwithstanding this section, approve the transfer of the partnership interest upon the death or withdrawal of a member of the partnership to any remaining partner or partners without publication of notice at a public hearing.

(e) Where a license is held by a partnership, limited partnership, limited liability partnership, or a limited liability company, the admission or withdrawal of a limited partner, partner of a limited liability partnership, or a member of the limited liability company shall not be deemed a transfer of the license held by the partnership or limited liability company, but the licensee shall, prior to such admission or withdrawal, so notify the commission in writing, stating the name of the partner, partners, member, or members who have withdrawn, if such be the case, and the name, age, and place of residence of the partner, partners, member, or members who have been admitted, if that be the case. If the commission finds a partner or a member to be an unfit or improper person to hold a license in the partner's or member's own right pursuant to section 281-45, it may revoke the license or suspend the license of the partnership or the limited liability company until the unfit or improper partner or member is removed or replaced.

(f) Except as otherwise provided in this section, the same procedure shall be followed in regard to the transfer of a

license as is prescribed by this chapter for obtaining a license. Sections 281-51 to 281-60, except where inconsistent with any provision hereof, are hereby made applicable to such transfers. The word "applicant", as used in such sections, shall include each such proposed transferee, and the words, "application for a license or for the renewal of a license", as used in such sections, shall include an application for the transfer of a license.

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

(h) If any licensee without such approval transfers to any other person the licensee's business for which the licensee's license was issued, either openly or under any undisclosed arrangement, whereby any person, other than the licensee, comes into possession or control of the business or takes in any partner or associate, the commission may in its discretion suspend or cancel the license.

(i) If the licensee is a corporation, a change in ownership of any outstanding capital stock shall not be deemed a transfer of a license; provided that in the case of a change in ownership of twenty-five per cent or more of the stock or in the case of change in ownership of any number of shares of the stock that results in the transferee thereof becoming the owner of twenty-five per cent or more of the outstanding voting capital stock, the corporate licensee shall, prior to the date of the transfer, apply for and secure the approval of the transfer from the commission in writing. If the commission finds that the proposed transferee is an unfit or improper person to hold a license in the proposed transferee's own right pursuant to section 281-45, it shall not approve the proposed transfer. If any transfer is made without the prior approval of the commission, the commission may in its discretion revoke or suspend the license until it determines that the transferee is a fit and proper person, and if the commission finds that the transferee is not a fit and proper person, until a retransfer or new transfer of the capital stock is made to a fit and proper person pursuant to section 281-45. In addition, the corporate licensee shall, within thirty days from the date of election of any officer or director, notify the commission in writing of the name, age, and place of residence of the officer or director; provided that if the licensee is a publicly-traded company, or

an entity ultimately solely owned by a publicly-traded company, the licensee shall, within thirty days from the date of election of any replacement of an officer designated as a primary decisionmaker regarding the purchase and sale of liquor, notify the commission in writing of the name, age, and place of residence of the officers. If the commission finds the transferee, officer, or director an unfit or improper person to hold a license in the transferee's, officer's, or director's own right pursuant to section 281-45, it may in its discretion revoke the license or suspend the license until a retransfer or new transfer of the capital stock is effected to a fit or proper person pursuant to section 281-45 or until the unfit or improper transferee, officer, or director is removed or replaced by a fit and proper person pursuant to section 281-45.

(j) If a licensee closes out the business for which the license is held, during the term for which the license was issued, the licensee shall, within five days from the date of closing the same, give the commission written notice thereof and surrender the licensee's license for cancellation.

(k) The conversion of an entity into any other form of entity or the merger of any entity with any other entity shall not be deemed a transfer of the license; provided that the licensee, prior to the date of the conversion or merger, shall apply for and secure the approval of the commission without any requirement for publication of notice. The foregoing shall not preclude compliance with subsection (d) upon a change in any of the partners or members, or with subsection (i) upon change of any shareholders, officers, or directors of any entity occurring concurrently with a conversion or merger.

As used in this subsection, "entity" means a corporation, partnership, limited partnership, limited liability partnership, or limited liability company. [L Sp 1933, c 40, §23; RL 1945, §7244; am L 1949, c 301, §1(c); am L 1951, c 223, §1(4); RL 1955, §159-41; am L 1957, c 321, §1(d); am L 1965, c 96, §97; am L 1967, c 119, §1; HRS §281-41; am L 1969, c 207, §1; am L 1971, c 76, §1; am L 1972, c 96, §1; am L 1980, c 256, §2; gen ch 1985; am L 1995, c 142, §1; am L 1998, c 90, §3; am L 2001, c 257, §4; am L 2002, c 120, §2; am L 2006, c 44, §2; am L 2009, c 184, §7; am L 2016, c 12, §1]

" **§281-42 Manufacturers and wholesale dealers, special restrictions.** (a) It shall be unlawful for any person holding a manufacturer's license or a wholesale dealer's license to induce the purchases of a retail licensee by:

- (1) Acquiring or holding any interest in any license of a retail licensee;

- (2) Acquiring any interest in the real or personal property owned, occupied, or used by a retail licensee in the conduct of its business, unless the holding of such interest is permitted under the regulations of the liquor commission or statement thereof has been filed with the commission and has not been disapproved by it;
  - (3) Furnishing, giving, renting, lending, or selling to a retail licensee any equipment, fixtures, signs, supplies, money, services or other thing of value, subject to the exceptions contained in Subpart D of the "tied house" regulations of the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department, 27 Code of Federal Regulations Part 6 (1988) as the same may change from time to time;
  - (4) Paying or crediting a retail licensee for any advertising, display or distribution service, whether or not the advertising, display or distribution service received is commensurate with the amount paid by the retail licensee; provided that this paragraph shall not prohibit representatives of manufacturers and wholesalers from creating and maintaining displays and point of purchase sales materials, or from stocking shelves and cold boxes;
  - (5) Guaranteeing any loan or the repayment of any financial obligation of a retail licensee;
  - (6) Extending credit to the retail licensee for a period of time in excess of thirty days from the date of invoice;
  - (7) Requiring a retail licensee to take and dispose of any quota of liquor; or
  - (8) Requiring a retail licensee to purchase one product in order to purchase another product. This includes combination sales if one or more products may be purchased only in combination with other products and not individually, provided that a manufacturer or wholesale dealer is not prohibited from selling at a special combination price, two or more kinds or brands of products to a retail licensee, if (A) the retail licensee has an option of purchasing either product at the usual price, and (B) the retail licensee is not required to purchase any product it does not want.
- (b) It shall be unlawful for any person holding a manufacturer's or wholesale dealer's license:
- (1) To sell any liquor at wholesale prices without invoicing the vendee's license number, except where the vendee, although authorized to resell, is not

- required by law to hold a license, in which case the invoice shall fully indicate the vendee's identity; or
- (2) To sell any liquor, except for cash or by receiving payment in advance of delivery, to any retail licensee who has not paid in full for all previous purchases of liquor from such manufacturer or wholesaler by the expiration of the thirtieth day from the date of the invoice for such liquor.

(c) In construing subsection (a), the courts and the liquor commission shall follow the rules, regulations, and decisions of the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department and the federal courts in interpreting section 5(b) of the Federal Alcohol Administration Act, as the same may be changed from time to time. [L Sp 1933, c 40, §24; RL 1935, §2593; am L 1937, c 211, §12; am L 1939, c 205, pt of §1; RL 1945, §7245; am L 1949, c 301, §1(d); am L 1951, c 223, §1(5); RL 1955, §159-42; HRS §281-42; am L 1971, c 175, §1; gen ch 1985; am L 1990, c 171, §13]

" **§281-43 REPEALED.** L 1979, c 192, §3.

" **§281-44 Advertisements and signs upon licensed premises.**

(a) All licensed premises shall post a sign in or about the premises containing and notifying all customers and other persons of the possible sanctions that may be imposed for operating a vehicle under the influence of an intoxicant under sections 291E-41 and 291E-61. The sign shall be conspicuously positioned in order to be seen by an ordinarily observant person.

(b) The liquor commission may prescribe the character and extent of all other advertisements, posters, or signs which may be posted or maintained in or about the licensed premises. [L Sp 1933, c 40, §25; RL 1935, §2594; am L 1937, c 211, §13; RL 1945, §7246; am L 1949, c 301, §1(e); RL 1955, §159-44; HRS §281-44; am L 1977, c 121, §1; am L 1984, c 143, §1; am L 2001, c 157, §5]

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

- (1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may grant a license under this chapter to a corporation that has been convicted of a felony where the commission finds that the corporation's officers and shareholders of twenty-five per cent or more of

outstanding stock are fit and proper persons to have a license;

- (2) To a corporation the officers and directors of which, or any of them, would be disqualified under paragraph (1) from obtaining the license individually, or a stockholder of which, owning or controlling twenty-five per cent or more of the outstanding capital stock, or to a general partnership, limited partnership, limited liability partnership, or limited liability company whose partner or member holding twenty-five per cent or more interest of which, or any of them would be disqualified under paragraph (1) from obtaining the license individually;
- (3) Unless the applicant for a license or a renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency a tax clearance certificate from the department of taxation and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the state or federal governments any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation and the Internal Revenue Service for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement;
- (4) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, class 17, or class 18 license unless the applicant for issuance of a license or renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of \$1,000,000; or
- (5) To any applicant who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under this chapter. [L Sp 1933, c 40, §26; RL 1935, §2595; RL 1945, §7247; RL 1955, §159-45; am L 1957, c 293, §1 and c 321, §1(e); am L 1965, c 121, §1; HRS §281-45; am L 1982, c 65, §1; am L 1985, c 155, §2; am L 1987, c 223, §2; am L 1990, c 171, §14; am L 1991, c 101,

§1; am L 2008, c 168, §9; am L 2009, c 177, §2 and c 184, §8; am L 2010, c 198, §3; am L 2014, c 211, §5; am L 2016, c 12, §2]

### **Cross References**

Criminal history record checks, see §846-2.7.  
Effect of conviction of a crime, see §831-3.1.

### **Attorney General Opinions**

Taxpayer's agreement to pay its delinquent taxes, pursuant to a payment schedule, does not satisfy the requirements for liquor license renewal under this section and §231-28. Att. Gen. Op. 95-1.

" **§281-46 Pool buying.** (a) No holder of a wholesale dealer's or manufacturer's license shall refuse to sell liquor to two or more licensees pursuant to any pool buying agreement between the licensees which has been filed with the commission having jurisdiction over the licensees; provided that:

- (1) The pool buying agreement is in writing and designates one of the licensees as the agent of the others for the purpose of pool buying;
- (2) Any order for pool buying from the holder of a manufacturer's or wholesale dealer's license shall be placed by the agent and payment for that order shall be made by the agent;
- (3) The holder of a manufacturer's or wholesale dealer's license in selling to the agent shall follow invoice, record keeping, and delivery procedures which are in compliance with this chapter and the rules of the commission of each county having jurisdiction over the seller; and
- (4) Each pool buying transaction shall be completed on the day transacted, and where the pool buying agreement is between or among licensees from different counties, the transaction shall be deemed completed when the product has been delivered to a freight forwarder, water carrier or private trucking firm for delivery to the licensees.

(b) As used in this section, "pool buying" means two or more licensees sharing the cost of a single purchase of liquor.

(c) Nothing in this section shall be deemed to exempt any licensee entering into any pool buying agreement from any antitrust laws. [L 1980, c 21, §1; am L 1983, c 229, §1]



" **§281-47 Standard bar; music and dancing available.** Any standard bar establishment may provide facilities for dancing by patrons, including a dance floor and live or recorded music, if the establishment is located in a commercial district and obtains the approval of the commission to provide such services on a one time trial basis not to exceed ninety days; provided that the music and dancing shall be allowed only during the trial period. [L 1983, c 292, §2; am L 1984, c 269, §3]

**"PART IV. PROCEDURE FOR OBTAINING LICENSE**

**§281-51 Prior inspection.** No license shall be issued under this chapter unless and until the liquor commission has caused to be made a thorough inspection of the premises upon which the proposed business is to be conducted and is satisfied as to its fitness and that all other general conditions and proposed methods of operation under the license are such as are suitable for carrying on the business in a reputable way. "In a reputable way" includes among other considerations operating in such a manner that activities within the premises or in such adjacent related outdoor areas such as parking lots or lanais will not create noise in excess of standards contained in state or county noise or vibration codes which intrudes into nearby residential units. [L Sp 1933, c 40, §27; RL 1935, §2596; RL 1945, §7248; RL 1955, §159-50; HRS 281-51; am L 1975, c 55, §2]

" **§281-52 Public hearing.** No license shall be granted except after a public hearing by the liquor commission upon notice as prescribed in this chapter; provided that sections 281-57 to 281-60 shall not apply to the holder of a restaurant general license, a wholesale general license, a retail general license, or a dispenser's general license, who applies for a different kind of license within the class of the holder's existing license, on the same premises, or to the holder of a cabaret license who applies for a dispenser license of any kind, on the same premises, or to the holder of a dispenser's beer and wine license who applies for dispenser's beer license, on the same premises, or to a licensee whose licensed premises have been demolished and replaced by another building on the same premises and who applies for the same or lesser kind of the same class of liquor license previously held by the licensee on said premises. [L Sp 1933, c 40, §28; RL 1935, §2597; am L 1939, c 205, pt of §1; RL 1945, §7249; RL 1955, §159-51; am L 1967, c 62, §1; HRS §281-52; am L 1969, c 197, §1; am L 1972, c 149, §1; gen ch 1985; am L 2008, c 168, §10]

## Case Notes

Where a public hearing pertaining to the issuance of a liquor license was statutorily required under §281-57 and this section, and petitioner's legal rights, duties, and privileges were determined based on the public hearing regarding the decision to grant or deny a liquor license to petitioner, the public hearing was a "contested case" hearing governed by chapter 91; thus, (1) petitioner was entitled to judicial review under §91-14, (2) §91-11 applied to proceedings on petitioner's application for liquor license, and (3) the liquor commission did not comply with §91-11. 118 H. 320, 189 P.3d 432 (2008).

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

- (1) The full name, age, and place of residence of the applicant; if a copartnership, the names, ages, and respective places of residence of all the partners; if a limited liability company, its full name and the names of all its members; if a corporation or joint-stock company, its full name and the names of its officers and directors, and the names of all stockholders owning twenty-five per cent or more of the outstanding capital stock; if a publicly-traded company, or an entity ultimately solely owned by a publicly-traded company, the names of the officers designated as the primary decisionmakers regarding the purchase and sale of liquor; and if any other association of individuals, the names, ages, and respective places of residence of its officers and the number of its members;
- (2) A particular description of the place or premises where the proposed license is to be exercised, so that the exact location and extent thereof may be clearly and definitely determined therefrom;
- (3) The class and kind of license applied for; and

- (4) Any other matter or information pertinent to the subject matter which may be required by the rules of the commission.

If any false statement is knowingly made in any application which is verified by oath, the applicant, and in the case of the application being made by a corporation, limited liability company, association, or club, the persons signing the application, shall be guilty of perjury, and shall be subject to the penalties prescribed by law for such offense. If any false statement is knowingly made in any application which is not verified by oath, the person or persons signing the application shall be guilty of a misdemeanor and upon conviction thereof shall be punished as in section 281-102 provided. [L Sp 1933, c 40, §29; RL 1935, §2598; am L 1937, c 211, §14; RL 1945, §7250; RL 1955, §159-52; am L 1957, c 321, §1(f); am L 1959, c 100, §1; am L 1967, c 167, §1; HRS §281-53; am L 1972, c 177, §5; am L 1990, c 171, §15; am L 1998, c 90, §4; am L 2008, c 168, §11; am L 2016, c 12, §3]

" **[§281-53.5] County liquor commissions; criminal history record check.** (a) The respective county liquor commissions may request a criminal history record check of an applicant for a liquor license in accordance with section 846-2.7. The criminal history record check, at a minimum, shall require the applicant to disclose whether:

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

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

- (b) The applicant shall submit to the liquor commission:
- (1) A statement signed under penalty of law as to whether the applicant has ever been convicted of a crime other than a minor traffic violation;
  - (2) Written consent to request and obtain criminal history record information for verification; and
  - (3) Permission to be fingerprinted.

(c) The liquor commission shall obtain criminal history record information through the Hawaii criminal justice data center on the applicant. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to applicable federal laws and regulations currently or hereafter in effect. [L 2003, c 95, §3]

" **§281-54 Filing fees with application.** A filing fee in such amount as shall be established by the respective liquor commission shall be paid with any application for an initial issuance of a license or for a transfer of a license.

Where a license is granted, the filing fee deposited with the application shall become part payment of the fee required for such license. Where an application is denied or withdrawn, the filing fee paid shall become a realization of the county. [L 1951, c 223, §1(7); RL 1955, §159-53; am L 1965, c 31, §1(4) and c 181, §1; HRS §281-54; am L 1988, c 383, §5]

" **§281-55 Reference to investigator.** Upon the filing of any application the administrator of the liquor commission shall indorse thereon the date of filing thereof. If no patent disqualification of the applicant or certain valid objection to the granting of the application is apparent initially and if all requirements relative to the filing of the application appear to have been complied with, the application shall be referred to the investigator for investigation. [L Sp 1933, c 40, §30; RL 1935, §2599; RL 1945, §7251; RL 1955, §159-54; HRS §281-55; am L 1975, c 55, §3; am L 1990, c 171, §16]

" **§281-56 Report by investigator.** (a) On every application referred to the investigator under section 281-55, the investigator shall report in writing to the liquor commission and, if the application is for a license of any class other than class 8, class 9, or class 10, such report shall include:

- (1) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions, including the relationship to surrounding residences which may share a common boundary or a common structure with the premises proposed for licensing;
- (2) If the application is made by a person who has held a prior license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license;
- (3) The locality of any church, chapel, or school, if any, within a distance of five hundred feet from the

nearest point of the premises for which the license is asked to the nearest point of the church, chapel, or school grounds;

- (4) The number, position, and distance from the premises, in respect of which a license is applied for, of any other licensed premises of the same class in the neighborhood;
- (5) The number of licenses of the same class or kind already issued and being lawfully exercised within the county;
- (6) Whether or not in the opinion of the investigator the applicant is a fit and proper person to have a license;
- (7) Whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not the applicant has complied with all the requirements of this chapter relative to the making and filing of the applicant's application;
- (8) For the next application for a license that was previously denied, refused, or withdrawn, evidence, to be provided by the applicant, of a substantial change in the circumstances that caused the previous denial, refusal, or withdrawal; and
- (9) Any and all other matters and things, that in the judgment of the investigator pertain to or affect the matter of the application, or the issuance or the exercise of the license applied for; provided that when the license application is for premises within a county with a population of five hundred thousand residents or more, the report shall specify the possible adverse effects the premises, after licensing, may have on the surrounding community.

(b) A copy of the report shall be furnished to the applicant not less than forty-eight hours before any hearing is had upon the application. Upon written request, a copy of the report shall be furnished to any requester.

(c) The applicant and any protester may challenge findings contained in the investigator's report before or at any hearing on the application. [L Sp 1933, c 40, §31; RL 1935, §2600; am L 1937, c 211, §15; am L 1939, c 205, pt of §1; am L Sp 1941, c 89, §1(c); RL 1945, §7252; am L 1945, c 217, §1; RL 1955, §159-55; HRS §281-56; am L 1971, c 113, §1; am L 1975, c 55, §4; gen ch 1985; am L 1990, c 171, §17; am L 2001, c 257, §5; am L 2002, c 120, §3; am L 2008, c 168, §12]

## **Cross References**

Zero tolerance policy for drugs and weapons, see §302A-1134.6.

" **§281-57 Preliminary hearing; notice of public hearing.**

(a) Upon the filing of the investigator's report upon any application the liquor commission may hold a preliminary hearing and upon such preliminary hearing it may deny the application. A notice of preliminary hearing on a previously denied, refused, or withdrawn application shall be given seven days before the preliminary hearing to any person who submitted a written request for notice.

(b) If no preliminary hearing is had or if the application is not denied upon a preliminary hearing, the commission shall fix a day for the public hearing of the application (other than an application for an alcohol license or a license in classes 8 to 10 and 13) and shall give public notice of the hearing at least once in each of two consecutive weeks, in the county, the date of the hearing to be not less than forty-five days after the first notice. The notice shall require that all protests or objections against the issuance of the license applied for shall be filed with the administrator of the commission at or before the time of hearing. Before giving the notice the commission shall collect from the applicant the cost of giving the public notice or require a deposit to cover the same.

(c) Immediately upon the commission's fixing a day for the public hearing of the application, the applicant shall mail a notice setting forth the time and place of the hearing on the application to each of the following:

- (1) Not less than two-thirds of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing body of the shareholders association situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment; provided that in meeting this requirement, the applicant shall mail a notice to not less than three-fourths of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of one hundred feet from the nearest point of the premises for which the license is asked. Notice by mail may be addressed to the last known address of the person concerned or to the address as

shown in the current real property tax record of the person or the person's agent or representative;

- (2) In counties with a population of five hundred thousand or more, not less than two-thirds of the registered voters residing within, and small businesses situated within, a distance of five hundred feet from the nearest point of the premises for which the license is asked; provided that in meeting this requirement, the applicant shall mail notices to not less than three-fourths of the registered voters residing within, and small businesses situated within, a distance of one hundred feet from the nearest point of the premises for which the license is asked. This paragraph shall not apply to applications for class 2, class 4, class 12, and class 15 licenses. A notice sent pursuant to this paragraph shall be addressed to the "occupant" of the residential unit or small business; and
- (3) For each condominium project and cooperative apartment within the five hundred-foot area, one notice of the hearing shall be sent by mail addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium or cooperative apartment involved.

The notices required under this subsection shall be mailed at least forty-five days prior to the date set for the hearing. No promotional information shall be allowed on, or accompany the notice. Before the hearing, and within seven business days of having mailed the notices, the applicant shall file with the commission an affidavit that the notices have been mailed in compliance with this subsection. In addition to the affidavit (which shall be made available within the same seven-business-day period with proof of having mailed the notices), the applicant shall include both a master list of one hundred per cent of addressees and addresses required by paragraphs (1), (2), and (3), and another mailing list consisting of the portion of addressees and their respective addresses who were mailed the notice purposely needed to meet the requirements of paragraphs (1), (2), and (3). The affidavit, master list, and mailing list shall be made available within seven business days (of the mailing of the notice by the applicant) by the commission for public review upon request. For purposes of this section, "master list" means every owner and lessee who would otherwise be required to receive notice of the public hearing according to the requirement of paragraphs (1), (2), and (3), even if they were not actually included in the two-third or three-fourths requirement (as the case may be) of paragraph (1) or (2), and every condominium project and cooperative apartment qualifying

in paragraph (3). When the requirements of this section have not been met, the commission may cancel the hearing or continue the public hearing subject to the provisions of this section.

(d) For purposes of this section, notice to one co-owner and one co-lessee of real estate shall be sufficient notice to all co-owners and all co-lessees of that real estate; and one notice is sufficient to an owner or lessee of multiple parcels; except that one notice shall be sent to each individual unit of a cooperative apartment as provided in this section. [L Sp 1933, c 40, §32; RL 1935, §2601; am L 1935, c 105, §11; RL 1945, §7253; RL 1955, §159-56; am L 1965, c 181, §1 and c 258, §1; HRS §281-57; am L 1975, c 55, §5; am L 1979, c 105, §27; am L 1980, c 256, §3; am L 1982, c 39, §1 and c 296, §1; am L 1984, c 123, §1 and c 269, §4; gen ch 1985; am L 1990, c 171, §18; am L 1994, c 227, §1; am L 1998, c 2, §83; am L 2001, c 257, §6; am L 2007, c 53, §6; am L 2008, c 168, §13; am L 2009, c 184, §9]

### Case Notes

State and county entities, as owners of real property, are included as owners for both notice and protest purposes as set forth under this section and §281-59. 111 H. 234, 140 P.3d 1014.

For purposes of conducting a public hearing on a liquor license application, the notice provisions of this section control over those in §91-9.5. 118 H. 320, 189 P.3d 432 (2008).

Where a public hearing pertaining to the issuance of a liquor license was statutorily required under §281-52 and this section, and petitioner's legal rights, duties, and privileges were determined based on the public hearing regarding the decision to grant or deny a liquor license to petitioner, the public hearing was a "contested case" hearing governed by chapter 91; thus, (1) petitioner was entitled to judicial review under §91-14, (2) §91-11 applied to proceedings on petitioner's application for liquor license, and (3) the liquor commission did not comply with §91-11. 118 H. 320, 189 P.3d 432 (2008).

" **§281-58 Protests.** Protests against the granting of a license may be filed by any person. Protests against the granting of a license upon such application, which qualifies for an automatic refusal pursuant to section 281-39.5 or 281-59, may be so filed by any registered voter for the area within five hundred feet of the nearest point at which the applicant proposes to establish or continue the applicant's business under the license applied for, or by any owner or lessee of record of real estate or by any owner of record of a share in a cooperative apartment situated within a distance of five hundred



feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment. [L Sp 1933, c 40, §33; RL 1935, §2602; RL 1945, §7254; RL 1955, §159-57; HRS §281-58; am L 1972, c 177, §6; am L 1984, c 123, §2; gen ch 1985; am L 2008, c 168, §14]

" **§281-59 Hearing; rehearing.** (a) Upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application and any protests and objections to the granting thereof, and hear the parties in interest. The liquor commission shall accept all written or oral testimony for or against the application whether the application is denied, refused, or withdrawn. Within ninety days after the hearing, or within one hundred twenty days thereafter if in its discretion the commission extends the ninety days to one hundred twenty days, and gives public notice of same, the commission shall give its decision granting or refusing the application; provided that if a majority of the:

- (1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or
- (2) Owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked,

have duly filed or caused to be filed their protests against the granting of the license, or if there appears any other disqualification under this chapter, the application shall be refused. Otherwise, the commission may in its discretion grant or refuse the same.

For purposes of defining "a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment", each property counts only once; provided that roadways shall not be included. A protest submitted by the majority of the co-owners or the majority of the co-lessees of a property shall constitute a protest by all the owners or lessees of record of that property. A protest filed by owners or lessees who own more than one property shall be counted for each property.

(b) The liquor commission shall make available to the applicant and any protester for review before the public hearing, the protest list of those persons who filed a protest or objection to the application; provided that the applicant shall not use the protest list to attempt to influence in any way any protester to withdraw the protest or objection. All applicants and protesters may submit corrections, additions, and subtractions to the master list and the protest list at the

public hearing; provided that additions or corrections to the voter registration list shall be certified by the clerk of the county. The liquor commission shall rule on proposed corrections, additions, and subtractions and give reasons for the ruling.

(c) The commission may also, with like discretion:

- (1) Grant a license to one person in preference to another, without reference to any priority in the order of filing of the applications; and
- (2) Of its own motion, or on the suggestion of any member, or of the investigator take notice of any matter or thing which in the opinion of a majority of its members would be a sufficient objection to the granting of a license; but in such case if the objection is one to which the applicant should be given a reasonable time to answer, a continuance may be granted in the discretion of the commission;

provided that in any case where any person affected by such decision petitions the commission for a rehearing of the application and on oath alleges facts and grounds for consideration which were not formerly presented or considered, or any other matter of fact which in the judgment of the commission seems sufficient to warrant a rehearing, such rehearing may be granted by the commission in its discretion upon the publication of notice of rehearing at least seven days before the date of the rehearing. When a rehearing is allowed notice shall be given to the applicant and to the applicant's opponents, by publication or otherwise as the commission shall direct. [L Sp 1933, c 40, §34; RL 1935, §2603; RL 1945, §7255; RL 1955, §159-58; am L 1957, c 321, §1(g); HRS §281-59; am L 1972, c 177, §7; am L 1984, c 123, §3; gen ch 1985; am L 1990, c 171, §19; am L 1995, c 142, §2; am L 2001, c 257, §7; am L 2008, c 168, §15; am L 2009, c 184, §10]

### **Cross References**

Administrative hearings, see chapter 91.

### **Case Notes**

Based on a plain and unambiguous reading of this section, a majority of co-owners or co-lessees must register a protest in order for that property to be counted as one protest vote; thus, even if commission were to have counted the two protest votes that were disallowed, the two added votes would not have resulted in a majority vote nullifying the liquor license application. 111 H. 234, 140 P.3d 1014.

State and county entities, as owners of real property, are included as owners for both notice and protest purposes as set forth under §281-57 and this section. 111 H. 234, 140 P.3d 1014.

The State and county governments fall within the definition of "owner of record" under this section as property owners of real estate. 111 H. 234, 140 P.3d 1014.

As it is possible to give effect to §91-11 and this section insofar as a public hearing on a license application must be regarded as a contested case subject to the requirements of chapter 91, this section does not conflict with §91-11. 118 H. 320, 189 P.3d 432 (2008).

Public hearings on liquor license applications held by the liquor commission are contested case hearings such that §91-11 requires any commissioner who is not present at any stage of the public hearing to become familiar with the record before voting on a liquor license application, unless the application is automatically rejected pursuant to subsection (a). 118 H. 320, 189 P.3d 432 (2008).

The liquor commission's failure to comply with §91-11, requiring that all commissioners personally consider the entire record before voting on a liquor license application, was not a "failure to act" such as would trigger the automatic approval provision of §91-13.5 where the liquor commission voted, albeit ineffectively, within the fifteen day period prescribed by this section. 118 H. 320, 189 P.3d 432 (2008).

" **§281-60 Further application.** (a) Except as provided for in section 281-13, if an applicant has at any time been denied or refused a license, no further application from the applicant pertaining to the same premises or building location shall be considered for one year from the denial or refusal.

(b) If an application pertaining to a particular premises or building location is denied, refused, or withdrawn, the next application from any applicant for that premises or building location shall include a report prepared by the applicant evidencing a substantial change in the circumstances that caused the previous denial, refusal, or withdrawal. The commission shall deny the application at the preliminary hearing unless the applicant submits evidence of a substantial change in the circumstances that previously caused the denial, refusal, or withdrawal of an application pertaining to that premises or building location. The commission may consider the following factors in deciding whether to grant an application pertaining to a premises or building location for which an application has previously been denied, refused, or withdrawn:

- (1) Whether a majority of the registered voters residing within five hundred feet of the nearest point of the premises or building location for which the license is asked, or a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises or building location for which the license is asked, no longer oppose the granting of the license;
- (2) Whether plans for the construction, building design, use, or operation of the proposed establishment have been altered such that they will not conflict with the character of the surrounding area. In evaluating the character of an area for the purposes of this section, the commission may consider the following factors:
  - (A) The usual and existing types of business, residential, and recreational uses and activities within the area;
  - (B) The proximity of residential areas;
  - (C) The population density of the area;
  - (D) The typical or ambient noise levels of the area;
  - (E) The motor vehicle traffic volume, congestion, and noise; and
  - (F) Any other factors that the commission finds relevant;
- (3) Whether the neighborhood board for the area where the premises is located has rendered a decision on the granting of the license;
- (4) Whether the applicant is a fit and proper person to have a license; and
- (5) Any other considerations deemed by the commission to affect the matter of the application, the issuance, or the exercise of the license applied for. [L Sp 1933, c 40, §35; RL 1935, §2604; RL 1945, §7256; am L 1951, c 223, §1(8); RL 1955, §159-59; HRS §281-60; gen ch 1985; am L 1986, c 67, §1; am L 1990, c 171, §20; am L 1996, c 62, §2; am L 2001, c 257, §8]

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

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

indicate that noise created by patrons departing from the premises disturbs residents on the street or of the neighborhood

in which the premises are located, or that noise from the premises or adjacent related outdoor areas such as parking lots or lanais exceed standards contained in state or county noise codes or intrudes into nearby residential units, the commission may deny the renewal application or withhold the issuance of a renewed license until corrective measures meeting the commission's approval are taken.

(b) The commission or board, pursuant to section 281-17, at the time of renewal or at any time, may revoke, suspend, or place conditions or restrictions on any license issued under this chapter for the purpose of preventing activities within the licensed premises or adjacent areas that are potentially injurious to the health, safety, and welfare of the public and neighborhood including but not limited to criminal activity, including assault, drug dealing, drug use, or prostitution, upon proper notice to the licensee, and a hearing before the commission pursuant to chapter 91.

(c) The commission or board shall deny renewal of a class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, class 15, class 17, or class 18 license if the applicant for renewal fails to present proof of the liquor liability insurance required by section 281-31(s). [L Sp 1933, c 40, §36; RL 1935, §2605; am L 1935, c 105, §12; am L 1937, c 211, §16; am L 1939, c 205, pt of §1; am L Sp 1941, c 89, §1(c); RL 1945, §7257; RL 1955, §159-60; HRS §281-61; am L 1975, c 55, §6; am L 1987, c 256, §1; am L 1990, c 171, §21; am L 1995, c 192, §1; am L 1999, c 39, §1; am L 2008, c 168, §16; am L 2009, c 177, §3; am L 2010, c 198, §4; am L 2014, c 211, §6]

" **§281-62 Reduction or increase in area of licensed premises.** The liquor commission may, in its discretion, permit the reduction or the increase in the area of the licensed premises of any licensee without publication of notice at a public hearing; provided that, where an increase in premises may significantly impact the public, the commission may require hearings pursuant to sections 281-39.5 and 281-57 to 281-60. Whenever any reduction or increase is permitted, the same shall be endorsed in some appropriate manner upon the license. [L 1937, c 211, §17; am L 1939, c 205, pt of §1; RL 1945, §7258; RL 1955, §159-61; HRS §281-62; am L 2008, c 168, §17]

#### "PART V. DUTIES OF AND SUPERVISION OVER LICENSEE

**§281-71 Posting of license.** Every license issued and in effect under this chapter shall at all times be conspicuously posted and exposed to view, convenient for inspection, on the licensed premises. For failure thereof the license may be

suspended or revoked by the liquor commission or liquor control adjudication board. [L Sp 1933, c 40, §37; RL 1935, §2606; RL 1945, §7259; RL 1955, §159-70; HRS §281-71; am L 1998, c 249, §11]

" **§281-72 Condition of premises.** All premises licensed or proposed to be licensed shall be constructed, arranged, furnished, equipped, maintained, and operated in such manner as may be prescribed by the liquor commission. [L Sp 1933, c 40, §38; RL 1935, §2607; RL 1945, §7260; RL 1955, §159-71; HRS §281-72]

" **§281-73 Quality of liquor; penalty.** No liquor at any time manufactured or sold in the State shall be other than of a pure quality, according to any applicable legal standard therefor under the laws of the United States, unadulterated with any mixture of noxious, deleterious, or poisonous substance.

Any person who manufactures or sells any liquor of a quality or character contrary to this section, shall be guilty of a misdemeanor and upon conviction shall be punished as in section 281-102 provided. [L Sp 1933, c 40, §39; RL 1935, §2608; RL 1945, §7261; RL 1955, §159-72; HRS §281-73]

#### **Cross References**

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§281-74 Labels on containers.** All persons manufacturing any liquor for sale under this chapter shall securely and permanently attach to every container thereof, as the same is manufactured, a label stating the name of the manufacturer or, in lieu thereof, if the manufacturer does business under another name, stating such name, and stating the kind and quantity of liquor contained therein. Every container containing liquor for sale by any person holding a wholesale or retail license shall have securely and permanently attached to it such a label. In addition to the foregoing requirements, all such labels shall conform in all respects to the then existing federal laws and regulations regarding such labels.

Before attaching any label containing the name by which the manufacturer does business, in lieu of the manufacturer's name, the manufacturer shall first register such business name under chapter 482. The manufacturer shall furnish to the liquor commission written confirmation of such registration and such other information as may be deemed necessary or appropriate by the liquor commission to enable it to establish and maintain

records to properly identify the manufacturer, its name or names by which it does business and the liquor manufactured. The records so established and maintained shall be available for public inspection. [L Sp 1933, c 40, §40; RL 1935, §2609; am L 1937, c 211, §18; RL 1945, §7262; RL 1955, §159-73; am L 1965, c 94, §1; HRS §281-74; gen ch 1985]

" **§281-75 Analyses.** Whenever the liquor commission or investigator thereof has reason to believe or suspect, on complaint or otherwise, that any liquor being manufactured or which is possessed or kept for sale by any licensee is or may be impure or adulterated or otherwise not conformable to any lawful requirement, the commission or investigator thereof or other person authorized in writing by the commission or by the investigator may secure a sample thereof for analysis. Upon such sample being obtained, as though by ostensible purchase or otherwise, the person procuring the same shall immediately disclose to the licensee the person's office or authority and purpose, and in case the procurer is a person other than the commission or the investigator the procurer shall then deliver to the licensee a copy of the written order for the procurement of the sample. The bottle or other container containing the sample shall then and there be sealed by the procurer thereof before being taken from the premises of the licensee and the licensee may also attach the licensee's seal thereto.

The investigator shall cause the sample so obtained to be immediately delivered with the seal or seals unbroken to the state department of health or some competent analyst employed by the commission who shall make an analysis of the liquor and shall send a certified report thereof to the investigator, who shall immediately file the same with the commission's administrator.

If the sample analyzed is found pure and unadulterated and conformable with all legal requirements for such liquor, the certificate referred to in the preceding paragraph shall so state, and the commission shall pay to the licensee a sum equal to the value of the sample, and if requested by the licensee the administrator shall furnish the licensee a copy of the analysis.

If the certificate of analysis shows the sample to be impure or adulterated or contrary to any legal requirement the licensee shall be prosecuted for selling, or offering for sale, or furnishing forbidden liquor in violation of this chapter. [L Sp 1933, c 40, §41; RL 1935, §2610; RL 1945, §7263; RL 1955, §159-74; am L Sp 1959 2d, c 1, §19; HRS §281-75; gen ch 1985; am L 1990, c 171, §22]

" **§281-76 Tampering with samples; penalty.** Any person who tampers with any sample of liquor taken for analysis under this chapter shall be fined not more than \$2,000 or imprisoned not more than one year, or both. [L Sp 1933, c 40, §42; RL 1935, §2611; RL 1945, §7264; RL 1955, §159-75; HRS §281-76; am L 1990, c 171, §23]

" **§281-77 Refusal of samples; penalty.** Any licensee who refuses to deliver or accede to the taking of any sample of liquor for analysis upon disclosure of the procurer's authority as provided by section 281-75 shall be fined not more than \$2,000. [L Sp 1933, c 40, §43; RL 1935, §2612; RL 1945, §7265; RL 1955, §159-76; HRS §281-77; am L 1990, c 171, §24]

" **§281-78 Prohibitions.** (a) No person shall:

- (1) Consume any liquor on any public highway, except as permitted in section 291-3.4;
- (2) Consume any liquor on any public sidewalk, including any sidewalk within a public housing project;
- (3) Consume any liquor on any common area of a public housing project; or
- (4) Possess or keep, while on any sidewalk or common area within a public housing project, any bottle, can, or other receptacle containing any intoxicating liquor that has been opened, that has a broken seal, or the contents of which have been partially removed.

For purposes of this subsection:

"Common area" means roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits of the building or buildings, basements, yards, gardens, recreational facilities, parking areas, storage spaces, and other parts of the project normally in common use or other areas designated by the Hawaii public housing authority.

"Public housing project" means any state or federal public housing project as defined in section 356D-1 or 356D-91 or a state low-income housing project as defined in section 356D-51.

(b) At no time under any circumstances shall any licensee or its employee:

- (1) Sell, serve, or furnish any liquor to, or allow the consumption of any liquor by:
  - (A) Any minor;
  - (B) Any person at the time under the influence of liquor;
  - (C) Any person known to the licensee to be addicted to the excessive use of intoxicating liquor; or
  - (D) Any person for consumption in any vehicle that is licensed to travel on public highways;



provided that the consumption or sale of liquor to a minor shall not be deemed to be a violation of this subsection if, in making the sale or allowing the consumption of any liquor by a minor, the licensee was misled by the appearance of the minor and the attending circumstances into honestly believing that the minor was of legal age and the licensee acted in good faith; and provided further that it shall be incumbent upon the licensee to prove that the licensee so acted in good faith;

- (2) Permit any liquor to be consumed on the premises of the licensee or on any premises connected therewith, whether there purchased or not, except as permitted by the terms of its license;
- (3) Permit any liquor to be sold or served by any person eighteen to twenty years of age except in licensed establishments where selling or serving the intoxicating liquor is part of the minor's employment, and where there is proper supervision of these minor employees to ensure that the minors shall not consume the intoxicating liquor;
- (4) Permit any liquor to be sold or served by any person below the age of eighteen years upon any licensed premises, except in individually specified licensed establishments found to be otherwise suitable by the liquor commission in which an approved program of job training and employment for dining room waiters and waitresses is being conducted in cooperation with the University of Hawaii, the state community college system, or a federally sponsored personnel development and training program, under arrangements that ensure proper control and supervision of employees;
- (5) Knowingly permit any person under the influence of liquor or disorderly person to be or remain in or on the licensed premises;
- (6) Fail to timely prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any person on the premises;
- (7) Sell any draught beer unless upon the faucet, spigot, or outlet wherefrom the beer is drawn there is attached a clear and legible notice, placard, or marker which in the English language indicates and declares the name or brand adopted by the manufacturer of the draught beer, so situated as to be clearly legible for a distance of at least ten feet from the spigot, faucet, or outlet, to a purchaser with normal vision; or

- (8) Receive from a person, as payment or as a consideration for liquor, any personal or household goods, including clothing and food, or any implements of trade. Any person violating this paragraph shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 281-102. [L Sp 1933, c 40, §48; RL 1935, §2617; am L 1935, c 105, §§13, 14, 15; am L 1937, c 211, §19; am L Sp 1941, c 89, §1(d); RL 1945, §7266; am L 1951, c 223, §1(9); RL 1955, §159-77; am L 1957, c 274, §1; am L 1967, c 184, §1; HRS §281-78; am L 1969, c 228, §1; am L 1976, c 3, §1; gen ch 1985; am L 1986, c 342, §3; am L 1987, c 283, §70; am L 1988, c 350, §1 and c 383, §6; am L 1990, c 171, §25; am L 1991, c 206, §2; am L 1992, c 207, §2; am L 1996, c 101, §1; am L 2008, c 34, §1; am L 2012, c 88, §2; am L 2013, c 150, §1]

### **Law Journals and Reviews**

Tort Law--Bertelmann v. Taas Associates: Limits on Dram Shop Liability; Barring Recovery of Bar Patrons, Their Estates and Survivors. 11 UH L. Rev. 277.

Tort and Insurance "Reform" in a Common Law Court. 14 UH L. Rev. 55.

Johnston v. KFC National Management Co.: Employer Social-Host Liability for Torts of Intoxicated Employees. 14 UH L. Rev. 829.

Reyes v. Kuboyama: Vendor Liability for the Sale of Intoxicating Liquor to Minors under a Common Law Negligence Theory. 17 UH L. Rev. 355.

### **Case Notes**

Licensee was under duty to take action against intoxicated person. 690 F. Supp. 910.

Person injured by intoxicated driver may recover from tavern that supplied liquor to the driver in violation of subsection (a)(2)(B). 62 H. 131, 612 P.2d 533.

Liquor consumer injured because of intoxication does not have cause of action against liquor seller for violating this section. 69 H. 95, 735 P.2d 930.

Minors voluntarily consuming alcohol are precluded from suing the commercial liquor supplier. 71 H. 524, 797 P.2d 51.

Subsection (a)(2)(A) (1989) imposes a duty to innocent third parties upon a liquor licensee who sells alcohol to a minor; the duty includes the situation where an innocent third party has been injured by an intoxicated minor other than the minor to

whom liquor was sold, subject to determinations by the trier of fact on the issue of reasonable foreseeability. 76 H. 137, 870 P.2d 1281.

Patron was under the influence of liquor and disorderly; patron was a participant in altercation with defendant, and was not within class of persons protected by liquor licensing statutes; thus, court did not err in refusing to give certain instruction or to quote subsection (b)(2) in other instruction. 10 H. App. 331, 871 P.2d 1235.

Mentioned: 9 H. App. 490, 851 P.2d 332.

" **[\$281-78.5] Practices to promote excessive consumption of liquor; prohibited.** (a) No person licensed to sell liquor for consumption on the premises shall engage in practices which promote excessive consumption of liquor.

(b) The liquor commission shall adopt rules pursuant to chapter 91 to prohibit specific liquor promotion practices which promote excessive consumption of liquor.

(c) Any person who violates this section or any rule adopted by the commission pursuant to this chapter shall be guilty of a violation for each separate offense. Each date of violation shall constitute a separate offense. [L 1987, c 137, §1]

" **§281-79 Entry for examination; obstructing liquor commission operations; penalty.** Every investigator shall, and any officer having police power may, at all reasonable times, and at any time whatsoever if there is any reasonable ground for suspicion that the conditions of any license are being violated, without warrant enter into and upon any licensed premises and inspect the same and every part thereof, and any books or records therein, to ascertain whether or not all conditions of the license and all provisions of this chapter and chapter 244D are being complied with by the licensee.

If any investigator or officer, or any person called by the investigator or officer to the investigator's or officer's aid, is threatened with the use of violence, force, or physical interference or obstacle, or is hindered, obstructed, or prevented by any licensee, the licensee's employees, or any other person from entering into any such premises, or whenever any investigator or officer is by any licensee, the licensee's employees, or any other person opposed, obstructed, or molested in the performance of the officer's duty in any respect, the licensee, the licensee's employee, or any other person shall be fined not more than \$2,000 or imprisoned not more than one year, or both.

Whenever any investigator or officer, having demanded admittance into any licensed premises and declared the investigator's or officer's name and office, is not admitted by the licensee or the person in charge of the premises, it shall be lawful for the investigator or officer to forcibly and in any manner to break into and enter the premises. [L Sp 1933, c 40, §49; RL 1935, §2618; RL 1945, §7267; RL 1955, §159-78; HRS §281-79; gen ch 1985; am L 1986, c 344, §15; am L 1990, c 171, §26]

" **§281-80 Arrest.** Any investigator or police officer who observes any violation by any person of this chapter or of any rule or regulation of the liquor commission, may forthwith arrest the person without a warrant. Whenever any violation of this chapter or of the regulations of the commission occurs in the presence of any licensee, or any investigator or police officer, upon request of the licensee the police officer or investigator may assist the licensee in arresting any patron for violation thereof. [L Sp 1933, c 40, §50; RL 1935, §2619; am L 1939, c 205, pt of §1; RL 1945, §7268; RL 1955, §159-79; HRS §281-80; am L 1990, c 171, §27]

" **§281-81 REPEALED.** L 1988, c 383, §7.

" **§281-82 No action for debt.** No person except a licensed manufacturer or licensed wholesale or retail dealer or his heirs, personal representatives, trustees, or assigns with respect to sales regularly made under his license shall recover by any process of law any debt or demand on account of the sale on credit of any liquor, nor on any note or like obligation given in payment for liquor. [L Sp 1933, c 40, §52; RL 1935, §2621; RL 1945, §7270; RL 1955, §159-81; HRS §281-82; am L 1976, c 200, pt of §1]

" **§281-83 REPEALED.** L 1986, c 344, §16; L 1989, c 149, §1.

" **§281-84 Exclusion of intoxicated person from premises; penalty.** Every person who, being under the influence of liquor, enters any premises licensed for the sale of liquor, or being under the influence of liquor there remains after having been requested by the licensee or any person in the licensee's employ to leave the premises, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as in section 281-102 provided. [L Sp 1933, c 40, §53; RL 1935, §2622; RL 1945, §7272; RL 1955, §159-83; HRS §281-84; gen ch 1985]

## Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§281-85 Prize, gift, premium, and other inducement.** (a) Unless otherwise provided by this chapter, it shall be unlawful for any person to offer or to provide any intoxicating liquor as a prize or inducement at any public amusement, public gathering or place open to the public.

(b) It shall be unlawful for any person acting as agent or representative of a nonresident principal or for any licensee directly or indirectly, or through any subsidiary or affiliate, to give any premium or free goods of intoxicating liquor or other merchandise in connection with the sale of any intoxicating liquor; or to offer or to provide any premium or free goods of intoxicating liquor in connection with the sale of other merchandise.

(c) No retail dealer and no licensee who is authorized to sell liquor for consumption on the licensee's premises shall solicit or accept, either directly or indirectly, a premium or free goods of any nature in connection with the retail dealer's or licensee's purchase of liquor from a manufacturer or wholesale dealer. [L 1937, c 211, §20; RL 1945, §7274; am L 1951, c 223, §1(11); RL 1955, §159-84; HRS §281-85; am L 1971, c 122, §1; gen ch 1985; am L 1990, c 171, §28; am L 2009, c 184, §11]

## "PART VI. REVOCATION OF LICENSE

**§281-91 Revocation or suspension of license; hearing.** The liquor commission or liquor control adjudication board may revoke any license at any time issued, or suspend the right of the licensee to use the licensee's license, or assess and collect a penalty, or reprimand the licensee, either for the violation of any condition of the license or of any provisions of this chapter or of any rule or regulation applicable thereto, or upon the conviction in a court of law of the licensee of any violation of this chapter or of any other law relative to the licensee's license or the proper exercise thereof, or of any violation of law in any other respect on account whereof the commission or board may deem the licensee to be an unfit or improper person to hold a license, or for any other cause deemed sufficient by the commission or board.

In every case where it is proposed to revoke or suspend the exercise of any license or assess and collect a penalty for any cause other than a conviction at law of the licensee as above

specified, the licensee shall be entitled to notice and hearing in conformity with chapter 91, the notice to be given at least five days before the hearing, except that any special license shall be subject to summary revocation for any violation of or evidence of intent to violate the proper exercise thereof, without hearing before the commission or board.

At the hearing, before final action is taken by the commission or board, the licensee shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present any facts showing that the alleged cause or causes for the proposed action do not exist, or any reasons why no penalty should be imposed. The testimony taken at the hearing shall be under oath and recorded stenographically, or by machine, but the parties shall not be bound by the strict rules of evidence; certified copies of any transcript and of any other record made of or at the hearing shall be furnished to the licensee upon the licensee's request and at the licensee's expense.

Any order of revocation, suspension, fine, or reprimand imposed by the commission or board upon the licensee shall be in addition to any penalty that might be imposed upon the licensee upon the licensee's conviction at law for any violation of this chapter. No licensee shall be subject to both the penalty assessed and collected by the commission or board and to revocation or suspension of license. The amount of penalty assessed and collected by the commission or board from any licensee for any particular offense shall not exceed the sum of \$2,000.

Whenever the service of any order or notice shall be required by this section, the service shall be made in the following manner: in the case of any violation based upon the personal observation of any investigator, a written notice of the violation shall be given to the licensee or the licensee's registered manager in active charge of the premises, or by serving a certified copy of the notice or order upon the holder of the license wherever the holder may be found in the circuit wherein the holder is licensed, or, if the holder cannot be found after diligent search, by leaving a certified copy thereof at the holder's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; and if the holder of the license cannot be found after diligent search, and service cannot be made, then service may be made by posting a certified copy of the notice or order in a conspicuous place on the licensed premises and depositing another certified copy thereof in the certified mail of the United States post office, postage prepaid, addressed to the holder of the license at the holder's last known residence address; provided that in the case

of a partnership, corporation, unincorporated association, or limited liability company, service may be made upon any partner, officer, or member thereof. [L Sp 1933, c 40, §55; RL 1935, §2624; am L Sp 1941, c 89, §1(f); RL 1945, §7275; am L 1949, c 314, §1; RL 1955, §159-90; am L 1957, c 321, §1(h); am L 1965, c 96, §98; HRS §281-91; am L 1976, c 87, §5; gen ch 1985; am L 1987, c 223, §3; am L 1990, c 171, §29; am L 1998, c 90, §5 and c 249, §12]

" **§281-92 Appeals.** Any licensee aggrieved by any order assessing or providing for the collection of a penalty, or by any order suspending or revoking any license, may appeal therefrom in the manner provided in chapter 91 to the circuit court of the circuit in which the liquor commission or liquor control adjudication board making the order has jurisdiction and the judgment of the court shall be subject to review, subject to chapter 602, in the manner provided for civil appeals from the circuit courts. [L Sp 1941, c 41, §1; RL 1945, §7276; am L 1951, c 280, §1; RL 1955, §159-91; am L 1965, c 96, §99; HRS §281-92; am L 1979, c 149, §2; am L 1980, c 232, §11; am L 1998, c 249, §13; am L 2004, c 202, §35; am L 2006, c 94, §1; am L 2010, c 109, §1]

### Rules of Court

Appeal to circuit court, see HRCF rule 72; appeals, see Hawaii Rules of Appellate Procedure.

" **§281-93 Reports to prosecuting officers.** When the revocation or suspension of any license is by reason of any violation of law the liquor commission or the administrator shall report the facts to the prosecuting officer for prosecution. [L Sp 1933, c 40, §56; RL 1935, §2625; RL 1945, §7277; RL 1955, §159-92; HRS §281-93; am L 1998, c 249, §14]

" **§281-94 Forfeiture of fee paid.** If any license is revoked or canceled by the liquor commission or liquor control adjudication board, the fee paid for the license or any unexpended portion thereof shall be forfeited to the county. [L Sp 1933, c 40, §57; RL 1935, §2626; RL 1945, §7278; RL 1955, §159-93; HRS §281-94; am L 1998, c 249, §15; am L 2006, c 44, §3]

" **§281-95 Bankruptcy, insolvency, death.** If a licensee becomes a legally adjudicated bankrupt, or makes an assignment for the benefit of the licensee's creditors, or dies, before the expiration of the term of the licensee's license, the licensee's

trustee in bankruptcy, assignee, or personal representative, as the case may be, may, with the consent of the liquor commission, continue to exercise the license for the purpose of closing the affairs of the estate; but if not so continued within forty-five days the commission shall cancel the license.

If a mortgage on the premises covered by a license is foreclosed before the expiration of the term of the license, the mortgagee, or the mortgagee's authorized representative or a duly appointed commissioner of sale may, with the consent of the commission, continue to exercise the license or continue it in effect for the purpose of completing a sale of the premises under the foreclosure proceedings. Notwithstanding any rule or regulation of the commission to the contrary, the payment of any renewal fee for a license issued for the premises involved in foreclosure proceedings or additional fee accrued on the basis of gross sales made under such a license may be withheld until sale of the premises has been completed. [L Sp 1933, c 40, §58; RL 1935, §2627; RL 1945, §7279; RL 1955, §159-94; am L 1959, c 207, §1; HRS §281-95; am L 1976, c 87, §6 and c 200, pt of §1; gen ch 1985]

" **§281-96 Cancellation.** If the use of the premises covered by any license becomes lost to the licensee by reason of being sold under foreclosure proceedings, or a civil execution, or other legal process, or for any other cause, which shall force a cessation of the business of the licensee thereon under the license (other than by a revocation or suspension of the licensee's license), the liquor commission may cancel or suspend the license. [L Sp 1933, c 40, §59; RL 1935, §2628; RL 1945, §7280; RL 1955, §159-95; HRS §281-96; am L 1976, c 87, §7; gen ch 1985; am L 1990, c 171, §30]

" **§281-97 When sale without license authorized.** In case a license is revoked or canceled or not renewed, the licensee may with the permission of and upon the conditions set by the liquor commission sell intoxicating liquors then in the licensee's possession within sixty days, or within such additional time allowed by the commission, unless under this chapter the same are seized or forfeited.

Any bank, trust company, or financial institution owning or possessing intoxicating liquor which was acquired by the bank, trust company, or financial institution in the ordinary course of its business, may sell the intoxicating liquor with the permission of and upon conditions set by the commission.

Any person acting as personal representative, or guardian of a licensee's estate, or any receiver, assignee for benefit of creditors, trustee in bankruptcy, may sell the stock of



intoxicating liquor with the permission of and upon conditions set by the commission, except as otherwise provided in this chapter.

Any insurance company, or any common carrier acting as an insurer for losses to persons shipping intoxicating liquor, may take possession of and sell the intoxicating liquor, the containers of which have been damaged by fire or otherwise, with the permission of and upon conditions set by the commission.

Any person in possession of a stock of lawfully acquired intoxicating liquor under a foreclosure proceeding, proceedings for enforcement of a lien, civil execution, or under any other proceeding or process, may sell such intoxicating liquor with the permission of and upon conditions set by the commission. [L Sp 1933, c 40, §60; RL 1935, §2629; RL 1945, §7281; am L 1951, c 223, §1(12); RL 1955, §159-96; HRS §281-97; am L 1972, c 177, 8; am L 1976, c 200, pt of §1; gen ch 1985]

## "PART VII. GENERAL VIOLATIONS AND PROSECUTIONS

**§281-101 Manufacture or sale without license; penalty.** If any person, acting in person or by or through any agent, servant, or employee, manufactures or sells any liquor, either directly or indirectly, or upon any pretense or by any subterfuge, except as authorized pursuant to this chapter, the person shall be fined not more than \$2,000 or imprisoned not more than one year, or both. [L Sp 1933, c 40, §62; RL 1935, §2630; RL 1945, §7282; RL 1955, §159-100; HRS §281-101; gen ch 1985; am L 1990, c 171, §31]

### Case Notes

Sale without a license. 37 H. 1.

" **§281-101.4 Hearing, illegal manufacture, importation, or sale of liquor.** The liquor commission or liquor control adjudication board may assess and collect a penalty, or reprimand a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto.

In every case where the administrator elects to conduct proceedings under this section where it is proposed to assess and collect a penalty from a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto, that person shall be entitled to notice and hearing in conformity with chapter 91.

At the hearing, before final action is taken by the commission or board, the person shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present facts showing that the alleged cause or causes for the proposed action do not exist, or any reason why no penalty should be imposed. The testimony taken at the hearing shall be under oath and recorded stenographically, or by machine, but the parties shall not be bound by the strict rules of evidence; certified copies of any transcript and of any other record made of or at the hearing shall be furnished to a person upon that person's request and at that person's expense.

Any order, reprimand, or penalty imposed by the commission or board upon a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto shall be in addition to any penalty that might be imposed upon that person's conviction in a court of law for any violation of this chapter. The amount of penalty assessed and collected by the commission or board from any person under this section for not having a valid license to manufacture or sell any liquor shall not exceed the sum of \$2,000 for each charge.

Whenever the service of any order or notice shall be required by this section, the service shall be made in the following manner: in the case of any violation based upon the personal observation of any investigator, a written notice of the violation shall be given to the person charged with a violation within a reasonable period of time after the alleged violation occurred, the person charged shall be requested to acknowledge receipt of the alleged violation, or, if the person cannot be found after diligent search, by leaving a certified copy thereof at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; and if the person cannot be found after diligent search, and service cannot be made, then service may be made by depositing another certified copy thereof in the certified mail of the United States post office, postage prepaid, addressed to the person at the person's last known residence address; provided, that in the case of a partnership, corporation, unincorporated association, or limited liability company, service may be made upon any partner, officer, or member thereof. [L 1990, c 171, §39; am L 1998, c 90, §6 and c 249, §16]

" **§281-101.5 Prohibitions involving minors; penalty.** (a) Any adult who provides or purchases liquor for consumption or use by a person under twenty-one years of age shall be guilty of the offense under section 712-1250.5.

(b) No minor shall consume or purchase liquor and no minor shall consume or have liquor in the minor's possession or custody in any public place, public gathering, or public amusement, at any public beach or public park, or in any motor vehicle on a public highway; provided that notwithstanding any other law to the contrary, this subsection shall not apply to:

- (1) Possession or custody of liquor by a minor in the course of delivery, pursuant to the direction of the minor's employer lawfully engaged in business necessitating the delivery;
- (2) Possession, custody, or consumption of liquor by a minor in connection with the minor's authorized participation in religious ceremonies requiring such possession, custody, or consumption; or
- (3) Any person between the ages of eighteen and twenty, who is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health to determine the level of incidence of liquor sales to minors.

(c) No minor shall falsify any identification or use any false identification or identification of another person or of a fictitious person for the purpose of buying or attempting to buy liquor or for the purpose of obtaining employment to sell or serve liquor on licensed premises.

(d) Any person under age eighteen who violates this section shall be subject to the jurisdiction of the family court. Any person age eighteen to twenty-one who violates subsection (b) or (c) shall be guilty of a petty misdemeanor. The court shall order that any person under twenty-one years of age found to be in violation of this section shall have, in addition to any other disposition or sentencing provision permitted by law, the person's license to operate a motor vehicle, or the person's ability to obtain a license to operate a motor vehicle, suspended as follows:

- (1) For licensed drivers, the driver's license shall be suspended for not less than one hundred and eighty days with exceptions to allow, at the discretion of the sentencing court, driving to and from school, school-sponsored activities, and employment;
- (2) For persons with a provisional license, the provisional license shall be suspended for not less than one hundred and eighty days with exceptions to allow, at the discretion of the sentencing court, driving to and from school, school-sponsored activities, and employment;
- (3) For persons with an instruction permit, the instruction permit shall be suspended for not less

than one hundred and eighty days with exceptions to allow, at the discretion of the sentencing court, driving to and from school, school-sponsored activities, and employment; or

- (4) For persons not licensed to drive, eligibility to obtain a driver's license, provisional license, or instruction permit shall be suspended until the age of seventeen or for one hundred and eighty days, at the discretion of the court; and
- (5) Chapter 571 notwithstanding, in any case where a person under the age of eighteen violates this section, the family court judge may suspend the driver's license, provisional license, or instruction permit, or suspend the eligibility to obtain a driver's license, provisional license, or instruction permit in accordance with this section;

provided that the requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under paragraphs (1) and (2). In addition, all persons whether or not licensed, found to be in violation of this section shall be sentenced to seventy-five hours of community service work, and an eight to twelve hour program of alcohol education and counseling the costs of which shall be borne by the offender or the offender's parent or guardian.

(e) As used in this section, "consume" or "consumption" includes the ingestion of liquor. [L 1971, c 79, §1; gen ch 1985; am L 1987, c 207, §1; am L 1999, c 228, §1; am L 2003, c 69, §2; am L 2006, c 202, §2 and c 203, §1]

#### **Cross References**

Overdose prevention; limited immunity, see §329-43.6.

Sale of confectionery with alcohol to minor, see §328-6.

#### **Case Notes**

There was substantial circumstantial evidence to show that defendant had consumed liquor and to support defendant's conviction for under age consumption of liquor under subsection (b) where both the school principal and vice-principal testified that they smelled alcohol emanating from defendant, officer testified that officer smelled alcohol on defendant's breath and possibly emanating from defendant's pores, indicating to officer that defendant had ingested alcohol, and officer observed defendant's unsteadiness and belligerent and defiant behavior. 122 H. 347 (App.), 226 P.3d 517 (2010).

" **§281-102 Other offenses; penalty.** If any person violates this chapter or any rule or regulation in effect by authority of this chapter, whether in connection therewith a penalty is referred to or not, for which violation no penalty is specifically prescribed, the person shall be imprisoned not more than six months or fined not more than \$1,000, or both. [L Sp 1933, c 40, §63; RL 1935, §2631; am L Sp 1941, c 89, §1(g); RL 1945, §7283; RL 1955, §159-101; am L 1957, c 164, §1; HRS §281-102; am L 1971, c 79, §2; gen ch 1985; am L 1990, c 171, §32]

" **§281-102.5 Purchasing from other than primary source of supply; penalty.** (a) No licensee authorized to import liquor into this State shall order, purchase, or receive liquor for resale unless the licensee orders, purchases or receives it from the primary source of supply for the brand of liquor sought to be sold. No licensee authorized to import liquor into this State may sell liquor purchased or received by the licensee to any person if the liquor has not been purchased or received by the licensee from the primary source of supply.

(b) No supplier shall solicit, accept or fill any order for any liquor from any licensee authorized to import liquor into this State unless the supplier is the primary source of supply for the brand of liquor sold or sought to be sold.

(c) The commission or board shall revoke for a period of not less than six months the license of any manufacturer, rectifier, wholesaler, retailer, or other licensee who violates, directly or indirectly, the provisions of this section. The penalty prescribed in this section is cumulative and in addition to any other penalties prescribed in this chapter.

(d) For purposes of this section, "primary source of supply" means:

- (1) The manufacturer of the liquor, if the liquor can be secured directly from the manufacturer by United States wholesalers, or
- (2) The rectifier, the owner of the liquor at the time it becomes a marketable product, the bottler, the importer, or the exclusive agent of any such person, who, if the liquor cannot be secured from the manufacturer by United States wholesalers, is the source closest to the manufacturer in the chain of distribution from whom the product can be secured by the United States wholesalers. [L 1983, c 293, §1; am L 1998, c 249, §17]

" **§281-103 REPEALED.** L 1988, c 383, §8.

" **§281-104 Investigators, employees, counsel for.** Whenever any investigator or other employee of the liquor commission shall be prosecuted for any crime or sued in any civil cause for acts done in the performance of the investigator's or employee's duty as such investigator or employee, the investigator or employee shall be represented and defended (1) in any such criminal proceeding by an attorney to be employed and paid by the commission and (2) in any such civil cause by the corporation counsel or county attorney, of the county in which the investigator or employee is serving or if permitted under the appropriate county charter, by an outside attorney to be employed and paid for by the commission. [L 1957, c 321, pt of §1; Supp, §159-102.01; HRS §281-104; gen ch 1985; am L 1990, c 171, §33]

" **§281-105 Determination whether acts were in scope of duty.** The determination of whether the acts of an investigator or other employee of the liquor commission, when the investigator or other employee is being prosecuted or sued, were done in the performance of the investigator's or other employee's duty, so as to entitle the investigator or other employee to be represented by the county attorney or corporation counsel of the county or city and county of the commission in question, or by an attorney employed and paid by the commission shall be made by the commission of the county after consultation with the county attorney or corporation counsel who may make a recommendation to the commission in respect thereof if the county attorney or corporation counsel so desires, and such determination shall be conclusive for such purpose only. [L 1957, c 321, pt of §1; Supp, §159-102.02; HRS §281-105; gen ch 1985; am L 1990, c 171, §34]

#### **Revision Note**

The second reference to "county attorney or corporation counsel" was substituted for the words "county or city and county attorney" to conform to county charters.

" **§281-106 Prosecutions not to exclude other remedies affecting license or goods.** The provisions in this chapter for the imposition upon any licensee of the penalties by fine or imprisonment for any violation of this chapter or of any rule or regulation made hereunder having the force of law shall be in addition to and independent of any other right of the liquor commission or the liquor control adjudication board under this chapter to effect a suspension or revocation of the license of the licensee and shall also be in addition to and independent of

any proceeding to effect the forfeiture of any liquor or other property belonging to the licensee as contemplated by this chapter. [L Sp 1933, c 40, §65; RL 1935, §2633; RL 1945, §7285; RL 1955, §159-103; HRS §281-106; am L 1998, c 249, §18]

" **§281-107 Presumptive evidence.** In any prosecution under this chapter, the fact that any person engaged in any kind of business holds or is required to hold, a license from the government of the United States to manufacture or sell intoxicating liquors or that the person has or keeps in or about the person's place of business or is required to have or keep in or about the person's place of business, a receipt or a stamp showing payment of a special tax levied under the laws of the United States upon the business of manufacturing or selling intoxicating liquors shall be held and deemed competent evidence that such person is manufacturing or selling such liquors or is keeping the same for sale. [L Sp 1933, c 40, §66; RL 1935, §2634; RL 1945, §7286; RL 1955, §159-104; HRS §281-107; gen ch 1985; am L 1987, c 144, §1]

" **§281-108 Search warrants; seizure.** If any person makes complaint, supported by oath, before any district or circuit judge, setting forth facts sufficient to show probable cause that any liquor is being manufactured or kept or deposited for sale or distribution contrary to law within the judge's jurisdiction in any house, premises, or place, or that any such liquor is lodged or contained in any vehicle for transportation by land, water, or air, the judge shall issue a warrant, directed to any sheriff, chief of police, police officer, or investigator, commanding the sheriff, chief of police, police officer, or investigator to search the premises, place, or vehicle described in the complaint. If any intoxicating liquor is found therein under circumstances warranting the belief of the officer that it is being manufactured or is intended for sale or distribution contrary to law, the officer acting under the warrant shall seize and convey the liquor and any land vehicle in which the same is found to some place of security and keep the same until final action is had thereon. When, in case of any entry, it is found that liquor is there being manufactured contrary to this chapter the officer may likewise seize and convey the same to some place of security and keep it until final action is had thereon. [L Sp 1933, c 40, §67; RL 1935, §2635; RL 1945, §7287; RL 1955, §159-105; HRS §281-108; am L 1970, c 188, §39; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 171, §35 and c 281, §11]

### Revision Note

"District or circuit judge" substituted for "magistrate or judge" and further reference to "magistrate" deleted pursuant to L 1970, c 188.

### Cross References

Arrests, search warrants, see chapter 803.

### Rules of Court

Search warrants, see HRPP rule 41.

" **§281-109 Seizure without warrant.** (a) If any investigator or police officer has information which causes the investigator or police officer to believe that liquor is kept or deposited in any place mentioned in section 281-108, except a dwelling house, or is kept or concealed in any conveyance, container, baggage, or clothing which is in course of transportation along any highway, for sale or distribution contrary to law, and if the investigator or police officer has reason to believe that the delay which would be necessitated by the procurement of a search warrant would result in the loss, destruction, or concealment of the evidence of the violation of law, the investigator or police officer may forthwith, without such warrant, search the suspected place, vehicle, or container; and if the investigator or police officer there finds liquor and other evidence under circumstances warranting the belief that it is intended for sale or distribution contrary to law, the investigator or police officer shall seize and convey the same, including any vehicle in which the same is found, to some place of security, and keep the same until final action is had thereon. The investigator or police officer shall forthwith, after the seizure, make written complaint under oath, setting forth the facts before a judge having competent jurisdiction.

(b) Any evidence seized and conveyed may be kept until final action is had thereof. Should the introduction of a copy or picture of the seized evidence be permitted under the Hawaii rules of evidence, the original evidence may be returned to the appropriate party after such evidence is copied or photographed. [L Sp 1933, c 40, §68; RL 1935, §2636; RL 1945, §7288; RL 1955, §159-106; HRS §281-109; am L 1970, c 188, §39; gen ch 1985; am L 1990, c 171, §36]



## Cross References

Arrests, search warrants, see chapter 803.

## Rules of Court

Search and seizure, see HRP rule 41.

## Case Notes

Arrest and seizure of a still in operation without warrant upon recognition of odor of mash did not constitute unreasonable search and seizure. 28 H. 173.

" **§281-110 Arrest; abettors.** The owner, keeper, and any person having the custody of any liquor or property seized as provided in sections 281-108 and 281-109 shall be forthwith arrested without necessity of warrant and brought before the judge having jurisdiction in the premises. If the owner or keeper of the liquor seized is unknown to the investigator or police officer making the seizure, or if no person is found in the apparent possession or custody of the same, the investigator or police officer may arrest and bring before the court the owner or occupant of the building, place, or premises, or the driver, operator, or other person in charge of the conveyance in which the liquor is found, if such person is known or can be ascertained. Any person who has knowingly engaged in, aided, assisted, or abetted the manufacture, obtaining, keeping, or sale of such liquor contrary to law, or has been privy thereto, or has knowingly permitted the use of any place, building, premises, or conveyance for such unlawful purpose, shall be guilty of a misdemeanor and be punished as provided in section 281-102. [L Sp 1933, c 40, §69; RL 1935, §2637; RL 1945, §7289; RL 1955, §159-107; HRS §281-110; am L 1970, c 188, §39; am L 1990, c 171, §37]

" **§281-111 Condemnation of property or liquor; disposition.** Any still, plant, or other equipment shown to have been used for the manufacture of liquor in violation of this chapter and any liquor manufactured or sold in violation of this chapter shall be subject to summary seizure as herein provided or to subsequent seizure, and may be condemned and adjudged forfeited to the State, in addition to any penalty separately provided for the violation, the same to be enforced by appropriate legal proceedings in the name of the State. All such property and liquor so condemned and forfeited may be ordered by the court having jurisdiction (1) to be wholly or partially destroyed, or

(2) to be sold, wholly or partially, for the account of the county wherein the same were seized; provided that the court may order any such liquor, if suitable, to be delivered to the department of health for distribution to any public institution for use therein for medicinal purposes. The order of the court with respect to such property or liquor shall be effectively executed by the sheriff or the sheriff's deputy, or by the chief of police or the chief of police's deputy, or by any police officer, or by the commission's administrator, or by any investigator, within such time as may be fixed in the order but not exceeding sixty days. If any person, whether or not an officer or employee of the State or any county, takes, disposes of, or uses in any manner or to any extent, any of such property or liquor otherwise than as herein provided, the person shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 281-102. [L Sp 1933, c 40, §70; RL 1935, §2638; RL 1945, §7290; RL 1955, §159-108; am L Sp 1959 2d, c 1, §19; HRS §281-111; am L 1970, c 188, §39; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 171, §38 and c 281, §11]

" **§281-112 REPEALED.** L 1988, c 383, §9.

" **§281-113 Claims.** If the owner or possessor of any property or liquor seized under this chapter appears and makes claim to the same, the owner or possessor shall file with the court, before whom the proceedings are pending, the owner's or possessor's claim in writing, setting forth the owner's or possessor's interest therein, and the reason why it should not be adjudged forfeited. The owner or possessor shall also give bond in favor of the State sufficient in amount and sureties, approved by such court, conditioned that such claim will be diligently prosecuted and that if it is decided against the owner or possessor the owner or possessor will pay the costs awarded against the owner or possessor. If the judgment is against the claimant, the property and liquor and all containers thereof shall be adjudged forfeited and disposed of as provided in this chapter and judgment shall be rendered against the claimant for all costs of the proceedings incurred after the filing of the claimant's claim. [L Sp 1933, c 40, §72; RL 1935, §2641; RL 1945, §7292; RL 1955, §159-110; HRS §281-113; am L 1970, c 188, §39; gen ch 1985]

" **§281-114 Appeals.** An appeal shall be allowed to any claimant of property or liquor seized as aforesaid from the judgment of the court in the same manner as appeals are allowed in other cases before such tribunals. If the claimant fails to appear and prosecute diligently the claimant's appeal, or fails

to secure a reversal of the judgment in the appellate court, the judgment appealed from shall be carried out. [L Sp 1933, c 40, §73; RL 1935, §2642; RL 1945, §7293; RL 1955, §159-111; HRS §281-114; am L 1970, c 188, §39; gen ch 1985]

**"PART VIII. PRICE DISCRIMINATION IN SUPPLYING LIQUOR--REPEALED**

**§§281-121 to 124 REPEALED. L 1988, c 314, §1.**