

JAN 19 2018

A BILL FOR AN ACT

RELATING TO LIQUOR COMMISSIONS.

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

1 SECTION 1. Section 281-11, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) A liquor commission or liquor control adjudication
4 board, consisting of not less than five members, no more than
5 the minimum required for a quorum of whom shall belong to the
6 same political party at the time of appointment, may be created
7 for each of the counties. The elected executive head of each
8 county may nominate, and by and with the advice and consent of
9 the legislative body of the county, shall appoint the members of
10 the commissions and boards. The elected executive head of each
11 county, by and with the advice and consent of the legislative
12 body of the county, may remove from office any of the members.
13 The commission or board shall designate one of its members as
14 chairperson. Each member shall be a citizen of the United
15 States and shall have resided in the county for which appointed
16 for at least three years immediately preceding the date of the



1 member's appointment. Each member shall submit to an annual
 2 criminal history record check pursuant to section 281-53.5."

3 SECTION 2. Section 281-11.5, Hawaii Revised Statutes, is
 4 amended to read as follows:

5 "§281-11.5 Liquor commission and board attorney. The
 6 liquor commission or liquor control adjudication board may hire
 7 attorneys to assist it in carrying out its administrative
 8 functions under this chapter. The assistance may include
 9 providing legal advice and prosecuting and defending legal
 10 claims under this chapter or arising in connection with this
 11 chapter. Each attorney hired by the liquor commission or liquor
 12 control adjudication board shall submit to an annual criminal
 13 history record check pursuant to section 281-53.5."

14 SECTION 3. Section 281-17, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "§281-17 Jurisdiction and powers. (a) The liquor
 17 commission, within its own county, shall have the jurisdiction,
 18 power, authority, and discretion, subject only to this chapter:

19 (1) To grant, refuse, suspend, and revoke any license for
 20 the manufacture, importation, and sale of liquors;



- 1 (2) To take appropriate action against a person who,
2 directly or indirectly, manufactures, sells, or
3 purchases any liquor without being authorized pursuant
4 to this chapter; provided that in counties that have
5 established by charter a liquor control adjudication
6 board, the board shall have the jurisdiction, power,
7 authority, and discretion to hear and determine
8 administrative complaints of the director regarding
9 violations of the liquor laws of the State or of the
10 rules of the liquor commission, and impose penalties
11 for violations thereof as may be provided by law;
- 12 (3) To control, supervise, and regulate the manufacture,
13 importation, and sale of liquors by investigation,
14 enforcement, and education; provided that any
15 educational program shall be limited to the commission
16 staff, commissioners, liquor control adjudication
17 board members, and licensees and their employees, and
18 shall be financed through the money collected from the
19 assessment of fines against licensees; provided that
20 fine moneys, not to exceed ten per cent a year of



1 fines accumulated, may be used to fund public liquor-
2 related educational or enforcement programs;

3 (4) From time to time to make, amend, and repeal rules,
4 not inconsistent with this chapter, as in the judgment
5 of the commission are deemed appropriate for carrying
6 out this chapter and for the efficient administration
7 thereof, and the proper conduct of the business of all
8 licensees, including every matter or thing required to
9 be done or which may be done with the approval or
10 consent, by order, under the direction or supervision
11 of, or as prescribed by the commission; which rules,
12 when adopted as provided in chapter 91 shall have the
13 force and effect of law;

14 (5) ~~[Subject to chapter 76, to]~~ To appoint and remove an
15 administrator, who may also be appointed an
16 investigator and who shall be responsible for the
17 operations and activities of the staff. The
18 administrator may hire and remove hearing officers,
19 investigators, and clerical or other assistants as its
20 business may from time to time require, prescribe
21 their duties and fix their compensation, and engage



1 the services of experts and persons engaged in the
2 practice of a profession, if deemed expedient. Every
3 investigator, within the scope of the investigator's
4 duties, shall have the powers of a police officer;

5 (6) To limit the number of licenses of any class or kind
6 within the county, or the number of licenses of any
7 class or kind to do business in any given locality,
8 when in the judgment of the commission such
9 limitations are in the public interest;

10 (7) To prescribe the nature of the proof to be furnished,
11 the notices to be given, and the conditions to be met
12 or observed in case of the issuance of a duplicate
13 license in place of one alleged to have been lost or
14 destroyed, including a requirement of any indemnity
15 deemed appropriate to the case;

16 (8) To fix the hours between which licensed premises of
17 any class or classes may regularly be open for the
18 transaction of business, which shall be uniform
19 throughout the county as to each class respectively;

20 (9) To prescribe all forms to be used for the purposes of
21 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;

(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



1 (14) To prescribe, by rule, the circumstances and penalty
2 for the unauthorized manufacturing or selling of any
3 liquor.

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

17 ~~[The exercise by the commission or board of the power,~~
18 ~~authority, and discretion vested in it pursuant to this chapter~~
19 ~~shall be final and shall not be reviewable by or appealable to~~
20 ~~any court or tribunal, except as otherwise provided in this~~



1 ~~chapter or chapter 91.]~~ A final decision by the commission
2 shall be subject to review under chapter 91."

3 SECTION 4. Section 281-53.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§281-53.5 County liquor commissions; criminal history
6 record check. (a) [The] Each member of the respective county
7 liquor commissions and each attorney hired by the liquor
8 commissions shall submit to an annual criminal history record
9 check, and the respective county liquor commissions may request
10 a criminal history record check of an applicant for a liquor
11 license in accordance with section 846-2.7; provided that
12 neither a criminal history record check nor compliance with this
13 section shall be required for the officers and directors of
14 publicly-traded companies or entities ultimately solely owned by
15 a publicly-traded company, who are not designated as primary
16 decision-makers regarding the sale or purchase of liquor. The
17 criminal history record check, at a minimum, shall require the
18 member, attorney, or applicant to disclose whether:

19 (1) The member, attorney, or applicant has been convicted
20 in any jurisdiction of a crime that would tend to
21 indicate the member, attorney, or applicant may be



1 unsuited [~~for obtaining~~] to serve on the liquor
2 commission, serve the liquor commission, or obtain a
3 liquor license[~~+~~], respectively; and

4 (2) The judgment of conviction has not been vacated.

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

16 (b) The member, attorney, or applicant shall submit to the
17 liquor commission:

18 (1) A statement signed under penalty of law as to whether
19 the member, attorney, or applicant has ever been
20 convicted of a crime other than a minor traffic
21 violation;



1 (2) Written consent to request and obtain criminal history
2 record information for verification; and

3 (3) Permission to be fingerprinted.

4 (c) The liquor commission shall obtain criminal history
5 record information through the Hawaii criminal justice data
6 center on the member, attorney, or applicant. The information
7 obtained shall be used exclusively for the stated purpose for
8 which it was obtained and shall be subject to applicable federal
9 laws and regulations currently or hereafter in effect."

10 SECTION 5. Section 846-2.7, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) Criminal history record checks may be conducted by:

13 (1) The department of health or its designee on operators
14 of adult foster homes for individuals with
15 developmental disabilities or developmental
16 disabilities domiciliary homes and their employees, as
17 provided by section 321-15.2;

18 (2) The department of health or its designee on
19 prospective employees, persons seeking to serve as
20 providers, or subcontractors in positions that place
21 them in direct contact with clients when providing



1 non-witnessed direct mental health or health care
2 services as provided by section 321-171.5;

3 (3) The department of health or its designee on all
4 applicants for licensure or certification for,
5 operators for, prospective employees, adult
6 volunteers, and all adults, except adults in care, at
7 healthcare facilities as defined in section 321-15.2;

8 (4) The department of education on employees, prospective
9 employees, and teacher trainees in any public school
10 in positions that necessitate close proximity to
11 children as provided by section 302A-601.5;

12 (5) The counties on employees and prospective employees
13 who may be in positions that place them in close
14 proximity to children in recreation or child care
15 programs and services;

16 (6) The county liquor commissions on members of the
17 commissions and applicants for liquor licenses as
18 provided by section 281-53.5[+] and on attorneys hired
19 by the liquor commission or liquor control
20 adjudicatory board as provided by section 281-11.5;



- 1 (7) The county liquor commissions on employees and
2 prospective employees involved in liquor
3 administration, law enforcement, and liquor control
4 investigations;
- 5 (8) The department of human services on operators and
6 employees of child caring institutions, child placing
7 organizations, and foster boarding homes as provided
8 by section 346-17;
- 9 (9) The department of human services on prospective
10 adoptive parents as established under section
11 346-19.7;
- 12 (10) The department of human services or its designee on
13 applicants to operate child care facilities, household
14 members of the applicant, prospective employees of the
15 applicant, and new employees and household members of
16 the provider after registration or licensure as
17 provided by section 346-154, and persons subject to
18 section 346-152.5;
- 19 (11) The department of human services on persons exempt
20 pursuant to section 346-152 to be eligible to provide



1 child care and receive child care subsidies as
2 provided by section 346-152.5;

3 (12) The department of health on operators and employees of
4 home and community-based case management agencies and
5 operators and other adults, except for adults in care,
6 residing in community care foster family homes as
7 provided by section 321-15.2;

8 (13) The department of human services on staff members of
9 the Hawaii youth correctional facility as provided by
10 section 352-5.5;

11 (14) The department of human services on employees,
12 prospective employees, and volunteers of contracted
13 providers and subcontractors in positions that place
14 them in close proximity to youth when providing
15 services on behalf of the office or the Hawaii youth
16 correctional facility as provided by section 352D-4.3;

17 (15) The judiciary on employees and applicants at detention
18 and shelter facilities as provided by section 571-34;

19 (16) The department of public safety on employees and
20 prospective employees who are directly involved with
21 the treatment and care of persons committed to a



1 correctional facility or who possess police powers
2 including the power of arrest as provided by section
3 353C-5;

4 (17) The board of private detectives and guards on
5 applicants for private detective or private guard
6 licensure as provided by section 463-9;

7 (18) Private schools and designated organizations on
8 employees and prospective employees who may be in
9 positions that necessitate close proximity to
10 children; provided that private schools and designated
11 organizations receive only indications of the states
12 from which the national criminal history record
13 information was provided pursuant to section 302C-1;

14 (19) The public library system on employees and prospective
15 employees whose positions place them in close
16 proximity to children as provided by section
17 302A-601.5;

18 (20) The State or any of its branches, political
19 subdivisions, or agencies on applicants and employees
20 holding a position that has the same type of contact
21 with children, vulnerable adults, or persons committed



1 to a correctional facility as other public employees
2 who hold positions that are authorized by law to
3 require criminal history record checks as a condition
4 of employment as provided by section 78-2.7;

5 (21) The department of health on licensed adult day care
6 center operators, employees, new employees,
7 subcontracted service providers and their employees,
8 and adult volunteers as provided by section 321-15.2;

9 (22) The department of human services on purchase of
10 service contracted and subcontracted service providers
11 and their employees serving clients of the adult
12 protective and community services branch, as provided
13 by section 346-97;

14 (23) The department of human services on foster grandparent
15 program, senior companion program, and respite
16 companion program participants as provided by section
17 346-97;

18 (24) The department of human services on contracted and
19 subcontracted service providers and their current and
20 prospective employees that provide home and community-
21 based services under section 1915(c) of the Social



1 Security Act, title 42 United States Code section
2 1396n(c), or under any other applicable section or
3 sections of the Social Security Act for the purposes
4 of providing home and community-based services, as
5 provided by section 346-97;

6 (25) The department of commerce and consumer affairs on
7 proposed directors and executive officers of a bank,
8 savings bank, savings and loan association, trust
9 company, and depository financial services loan
10 company as provided by section 412:3-201;

11 (26) The department of commerce and consumer affairs on
12 proposed directors and executive officers of a
13 nondepository financial services loan company as
14 provided by section 412:3-301;

15 (27) The department of commerce and consumer affairs on the
16 original chartering applicants and proposed executive
17 officers of a credit union as provided by section
18 412:10-103;

19 (28) The department of commerce and consumer affairs on:

20 (A) Each principal of every non-corporate applicant
21 for a money transmitter license;



(B) Each person who upon approval of an application by a corporate applicant for a money transmitter license will be a principal of the licensee; and

(C) Each person who upon approval of an application requesting approval of a proposed change in control of licensee will be a principal of the licensee,

as provided by sections 489D-9 and 489D-15;

(29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;

(30) The Hawaii health systems corporation on:

(A) Employees;

(B) Applicants seeking employment;

(C) Current or prospective members of the corporation board or regional system board; or

(D) Current or prospective volunteers, providers, or contractors,

in any of the corporation's health facilities as provided by section 323F-5.5;

(31) The department of commerce and consumer affairs on:



- 1 (A) An applicant for a mortgage loan originator
- 2 license, or license renewal; and
- 3 (B) Each control person, executive officer, director,
- 4 general partner, and managing member of an
- 5 applicant for a mortgage loan originator company
- 6 license or license renewal,
- 7 as provided by chapter 454F;
- 8 (32) The state public charter school commission or public
- 9 charter schools on employees, teacher trainees,
- 10 prospective employees, and prospective teacher
- 11 trainees in any public charter school for any position
- 12 that places them in close proximity to children, as
- 13 provided in section 302D-33;
- 14 (33) The counties on prospective employees who work with
- 15 children, vulnerable adults, or senior citizens in
- 16 community-based programs;
- 17 (34) The counties on prospective employees for fire
- 18 department positions which involve contact with
- 19 children or vulnerable adults;



1 (35) The counties on prospective employees for emergency
2 medical services positions which involve contact with
3 children or vulnerable adults;

4 (36) The counties on prospective employees for emergency
5 management positions and community volunteers whose
6 responsibilities involve planning and executing
7 homeland security measures including viewing,
8 handling, and engaging in law enforcement or
9 classified meetings and assisting vulnerable citizens
10 during emergencies or crises;

11 (37) The State and counties on employees, prospective
12 employees, volunteers, and contractors whose position
13 responsibilities require unescorted access to secured
14 areas and equipment related to a traffic management
15 center;

16 (38) The State and counties on employees and prospective
17 employees whose positions involve the handling or use
18 of firearms for other than law enforcement purposes;

19 (39) The State and counties on current and prospective
20 systems analysts and others involved in an agency's
21 information technology operation whose position



responsibilities provide them with access to
proprietary, confidential, or sensitive information;

(40) The department of commerce and consumer affairs on:

(A) Applicants for real estate appraiser licensure or
certification as provided by chapter 466K;

(B) Each person who owns more than ten per cent of an
appraisal management company who is applying for
registration as an appraisal management company,
as provided by section 466L-7; and

(C) Each of the controlling persons of an applicant
for registration as an appraisal management
company, as provided by section 466L-7;

(41) The department of health or its designee on all
license applicants, licensees, employees, contractors,
and prospective employees of medical cannabis
dispensaries, and individuals permitted to enter and
remain in medical cannabis dispensary facilities as
provided under sections 329D-15(a)(4) and
329D-16(a)(3);

(42) The department of commerce and consumer affairs on
applicants for nurse licensure or license renewal,



1 reactivation, or restoration as provided by sections
2 457-7, 457-8, 457-8.5, and 457-9;

3 (43) The county police departments on applicants for
4 permits to acquire firearms pursuant to section 134-2
5 and on individuals registering their firearms pursuant
6 to section 134-3;

7 (44) The department of commerce and consumer affairs on:

8 (A) Each of the controlling persons of the applicant
9 for licensure as an escrow depository, and each
10 of the officers, directors, and principals who
11 will be in charge of the escrow depository's
12 activities upon licensure; and

13 (B) Each of the controlling persons of an applicant
14 for proposed change in control of an escrow
15 depository licensee, and each of the officers,
16 directors, and principals who will be in charge
17 of the licensee's activities upon approval of
18 such application,

19 as provided by chapter 449;

20 (45) The department of taxation on current or prospective
21 employees or contractors who have access to federal



1 tax information in order to comply with requirements
2 of federal law, regulation, or procedure, as provided
3 by section 231-1.6;

4 (46) The department of labor and industrial relations on
5 current or prospective employees or contractors who
6 have access to federal tax information in order to
7 comply with requirements of federal law, regulation,
8 or procedure, as provided by section 383-110;

9 (47) The department of human services on current or
10 prospective employees or contractors who have access
11 to federal tax information in order to comply with
12 requirements of federal law, regulation, or procedure,
13 as provided by section 346-2.5;

14 (48) The child support enforcement agency on current or
15 prospective employees, or contractors who have access
16 to federal tax information in order to comply with
17 federal law, regulation, or procedure, as provided by
18 section 576D-11.5; and

19 (49) Any other organization, entity, or the State, its
20 branches, political subdivisions, or agencies as may
21 be authorized by state law."



S.B. NO. 2548

1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.
4

INTRODUCED BY:

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S.B. NO. 2548

Report Title:

Liquor Commission; Criminal History Record Checks

Description:

Requires members of the county liquor commissions and liquor control adjudication boards to submit to annual criminal history record checks. Requires attorneys hired by the liquor commission or liquor control adjudication board to submit to annual criminal background checks. Removes the requirement that the liquor commission appoints and removes an administrator subject to the civil service laws. Makes final decisions by the liquor commission reviewable under chapter 91, Hawaii Revised Statutes.

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

