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S.B. NO. 2703-76

A Bill for an Act Relating to Intoxicating Liquor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Hotel” means an establishment consisting of one or more buildings which contain (1) 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; and (2) a suitable and adequate kitchen and dining room, where meals are regularly prepared and served to hotel guests and other customers.”

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

“**Sec. 281-31 Licenses, classes.** Licenses may be granted by the liquor commission as follows:

Class 1. **Manufacturers’ licenses.** A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell the same at wholesale in original packages to any person who holds a license to resell the same, and to sell draught beer in any quantity 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) Wine manufactured from grapes or other fruits grown in the State;
- (4) Alcohol;
- (5) Other specified liquor.

It shall be unlawful for any holder of a manufacturer's license to have any interest whatsoever in the license or licensed premises of any other licensee.

Class 3. Wholesale dealers' licenses. A license for the sale of liquors at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell but are not by law required to hold a license, the liquors therein specified in quantities not less than five gallons at one time if sold from or in bulk containers or not less than one gallon if bottled goods. The license shall authorize the licensee to sell draught beer in quantities not less than five gallons at one time to any person for private use and consumption. Under the 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 liquors except alcohol);
- (2) Beer and wine;
- (3) Alcohol.

If any wholesale dealer solicits or takes any orders in any county other than that where his place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer has his license, or by direct shipment from outside the State on indent orders. Nothing herein shall prevent a wholesaler from selling liquors to post exchanges, ships service stores, army or navy officers' clubs, or like 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 as a common carrier, under chapter 269, 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.

Class 4. Retail dealers' licenses. A license to sell liquors at retail shall authorize the licensee to sell the liquors therein specified in their original packages. Under the 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 liquors except alcohol);
- (2) Beer and wine;
- (3) Alcohol.

Class 5. Dispensers' licenses. A dispenser's license shall authorize the licensee to sell liquors therein specified for consumption on the premises. Of this class there shall be the following kinds:

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

Class 6. Club licenses. A club license shall be general only (but excluding alcohol) and shall authorize the licensee to sell liquors to members of the club and to guests thereof enjoying the privileges of membership, for consumption only on the premises kept and operated by the club, and shall also authorize any bona fide

club member to keep in his private locker on the premises a reasonable quantity of liquor, if owned by himself, for his own personal use and not to be sold, and which may be consumed only on the premises.

Class 7. Vessel licenses. A general license may be granted to the owner of any vessel performing a regular water transportation passenger service between any two or more ports in the State for the sale of liquor (other than alcohol) on board the vessel while in the waters of the State; provided such sales are made only while the vessel is en route, and only for consumption by passengers on board. If the vessel has a home port in the State the license shall be issuable in the county wherein the home port is situated, otherwise in the city and county of Honolulu. 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 the same shall constitute a violation of this chapter.

Class 8. Additional vessel licenses. A general license may be granted to the owner of any vessel which does not fall within class 7 for the sale of liquor (other than alcohol) on board the vessel while in any port of the State. Such sales shall be made only for consumption by passengers and their guests on board such vessel. The license shall be issuable in each county where the sales are to be made and the application for the license may be made by any agent representing the owner.

Class 9. Tour or cruise vessel licenses. 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 such sales are 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. If the vessel has a home port in the State, the license shall be issuable in the county wherein the home port is situated, otherwise in the city and county of Honolulu. 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, the same shall constitute a violation of this chapter.

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

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

Under such license the liquors therein specified shall be consumed on the premises.

Class 11. Cabaret license. A cabaret license shall be general only (but excluding alcohol) and shall authorize the sale of liquors for consumption on the premises. This license shall be issued only for premises where food is served, facilities for dancing by the patrons are provided, including a dance floor and an orchestra of not less than three members, and professional entertainment is provided for the patrons. Notwithstanding any rule or regulation of the liquor commission to the contrary, cabarets may be opened for the transaction of business until 4 a.m. throughout the entire week.

Class 12. Hotel licenses. A license to sell liquor in a hotel shall authorize the licensee to sell all liquors, except alcohol, for consumption on the premises; provided that the liquor commissions in each county shall adopt rules, as deemed appropriate by each respective liquor commission, restricting holders of hotel licenses in selling liquors as authorized by retail dealers' licenses.

Sections 281-57 to 281-61 shall not apply to classes 7 to 10."

SECTION 3. Section 281-83, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-83 Payment of liquor tax to be made. Whenever liquor is purchased by the holder of a retail, dispenser, club, cabaret, hotel, or vessel license from the holder of a manufacturer's or wholesale license, the amount added to the price on account of the tax imposed by chapter 244, as provided by section 244-5, shall be paid by the purchaser within twenty days after the end of the month in which the purchase has been made. On the failure to make the payment within such time the liquor commission may in its discretion suspend the license of the purchaser for a period of not more than ten days for the first failure and not more than twenty days for any subsequent failure.

The holder of a manufacturer's or wholesale license shall report the failure of a purchaser to comply with this section to the commission of the county in which the purchaser holds a license, in order that the suspensions provided by this section may be enforced by the commission. Any holder of a manufacturer's or wholesale license who fails to make such report may likewise be subject to the suspensions hereinabove provided."

SECTION 4. Upon application in the manner prescribed by section 281-53, Hawaii Revised Statutes, a hotel license may be issued for premises which qualify as a hotel within the meaning of this Act; provided the applicant held a valid dispenser's or cabaret license for the same premises on June 30, 1976. The provisions of section 281-52 and sections 281-54 to 281-60, Hawaii Revised Statutes, shall not apply to the granting of a hotel license to an applicant whose premises are under current license.

SECTION 5. Section 281-91, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-91 Revocation or suspension of license; hearing. The liquor commission may revoke any license at any time issued, or suspend the right of the licensee to use his 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 at law of the licensee of any violation of this chapter or of any other law relative to his license or the proper exercise thereof, or of any violation of law in any other respect on account whereof the commission may deem him to be an unfit or improper person to hold a license, or for any other cause deemed sufficient by the commission.

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; provided, that the exercise of a license shall in no case be suspended or revoked for any violation (other than a conviction at law of the licensee as above specified) based upon the personal observation of any inspector, unless written notice of the violation charged to have occurred shall have been given to the licensee within ten days after the alleged violation occurred, and the licensee shall have been given a hearing upon the charge not more than sixty nor less than five days after the giving of notice of the alleged violation.

At the hearing, before final action is taken by the commission, 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 his request and at his expense.

Any order of revocation or suspension or reprimand imposed by the commission upon the licensee shall be in addition to any penalty that might be imposed upon the licensee upon his conviction at law for any violation of this chapter. No licensee shall be subject to both the penalty assessed and collected by the commission and to revocation or suspension of license. The amount of penalty assessed and collected by the commission from any licensee for any particular offense shall not exceed the sum of \$500.

Whenever the service of any order or notice shall be required by this section such service shall be made in the following manner: by serving a certified copy of the notice or order upon the holder of the license wherever he may be found in the circuit wherein he is licensed, or, if he cannot be found after diligent search, by leaving a certified copy thereof at his 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 registered mail of the United States post office, postage prepaid, addressed to the holder of the license at his last known residence address; provided, that in the case of a licensed corporation or unincorporated association service may be made upon any officer thereof."

SECTION 6. Section 281-95, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 281-95 Bankruptcy, insolvency, death. If a licensee becomes a legally adjudicated bankrupt, or makes an assignment for the benefit of his creditors, or dies, before the expiration of the terms of his license, his trustee in bankruptcy, assignee, executor, or administrator, as the case may be, may, with the consent of the liquor commission, continue to exercise the license for the purpose of closing

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the affairs of the estate; but if not so continued within forty-five days the commissions 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 his 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.”

SECTION 7. Section 281-96, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 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 his license), and no proper permission is obtained by the licensee to continue his business under the license at some other place, the liquor commission may cancel or suspend the license.”

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 9. This Act shall take effect upon its approval.

(Approved May 12, 1976.)

*Edited accordingly.