

ACT 249

S.B. NO. 2136

A Bill for an Act Relating to Liquor Control Adjudication Board.

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:

““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.”

SECTION 2. Section 281-11, Hawaii Revised Statutes, is amended to read as follows:

“§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 [three] the minimum required for a quorum of whom shall belong to the same political party at the time of appointment, [is] may be created for each of the counties. The elected executive head of each county [shall] 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 [such] 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] 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.

(d) Each member of the commission[,] or board, before entering upon the duties of the member's office, shall take and subscribe to an oath that the member will faithfully perform such duties according to law, which written oath shall be filed with the elected executive head of each county."

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

"§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."

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

"§281-12 Commission and board office. The council of each county shall furnish the liquor commission and the liquor control adjudication board of [such] 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."

SECTION 5. Section 281-13, Hawaii Revised Statutes, is amended to read as follows:

"§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 [such] the meetings as the commission

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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.”

SECTION 6. Section 281-14, Hawaii Revised Statutes, is amended to read as follows:

“**§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.”

SECTION 7. Section 281-16, Hawaii Revised Statutes, is amended to read as follows:

“**§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.”

SECTION 8. Section 281-17, Hawaii Revised Statutes, is amended to read as follows:

“**§281-17 Jurisdiction and powers.** The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures or sells any liquor without being authorized pursuant to this chapter; provided that in counties which 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 of 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 licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees;
- (4) From time to time to make, amend, and repeal such rules, not inconsistent with this chapter, as in the judgment of the commission seem 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 or by order or 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 chapters 76 and 77, 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, to prescribe their duties, and fix their compensation; to 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. No employee of any commission, aside from exercising the right to vote, shall support, advocate, or aid in the election or defeat of any candidate for public office, and upon satisfactory proof of such prohibited activity the offender shall be summarily dismissed;
 - (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 [such] 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 [dispensers' and cabaret] 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 [and], the manner of payment of fees for [such] the licenses and permits, and the amount of filing fees; and
 - (13) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.

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."

SECTION 9. Section 281-19, Hawaii Revised Statutes, is amended to read as follows:

"§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 [such] 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."

SECTION 10. Section 281-21, Hawaii Revised Statutes, is amended to read as follows:

"§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[.] or liquor control adjudication board.

Every witness attending or testifying at any hearing of the commission or board in response to a subpoena issued by it shall be paid as provided for in section 621-7. If a witness is subpoenaed by direction of the commission[.] or board, 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 [such] that party."

SECTION 11. Section 281-71, Hawaii Revised Statutes, is amended to read as follows:

"§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."

SECTION 12. Section 281-91, Hawaii Revised Statutes, is amended to read as follows:

“§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 [such], 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 [or licensed], corporation, or unincorporated association, service may be made upon any partner or officer thereof.”

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SECTION 13. Section 281-92, Hawaii Revised Statutes, is amended to read as follows:

“§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 by the supreme court subject to chapter 602.”

SECTION 14. Section 281-93, Hawaii Revised Statutes, is amended to read as follows:

“§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.”

SECTION 15. Section 281-94, Hawaii Revised Statutes, is amended to read as follows:

“§281-94 Forfeiture of fee paid. If any license is revoked and canceled by the liquor commission or liquor control adjudication board, the fee paid for the license shall be forfeited to the county as respects the unexpired portion of the fee paid for the license.”

SECTION 16. Section 281-101.4, Hawaii Revised Statutes, is amended to read as follows:

“[[§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, [such] 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 [such] 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 [such], 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, or unincorporated association, service may be made upon any partner or officer thereof."

SECTION 17. Section 281-102.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(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."

SECTION 18. Section 281-106, Hawaii Revised Statutes, is amended to read as follows:

"**§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."

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 20. This Act shall take effect upon its approval.

(Approved July 20, 1998.)