

## ACT 257

S.B. NO. 900

A Bill for an Act Relating to Liquor License Applications.

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

SECTION 1. The purpose of this Act is to clarify the liquor laws of the State for the benefit of applicants and other participants in a proceeding before the county liquor commissions. The legislature finds that government proceedings work best when all parties understand what the procedures and requirements are. The clarifications made by this Act will provide for more certainty in the liquor license application process and will reduce delays and costs associated with the processing of liquor license applications.

SECTION 2. Section 281-1, Hawaii Revised Statutes, is amended by amending the definition of “premises” or “licensed premises” to read:

““Premises” or “licensed premises” means the [premises in respect of] 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; 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.”

SECTION 3. Section 281-39.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 [~~establishment.~~] 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 liquor license applicants.'

SECTION 4. Section 281-41, Hawaii Revised Statutes, is amended to read as follows:

**“§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.** No license issued under this chapter to an original applicant or to any transferee shall be transferable or be transferred within one year of such issuance or transfer except for good cause shown to the satisfaction of the liquor commission. 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 such owners or lessees to protest the transfer of a license. Exceptions are class 5 and 11 licensees who must comply with the notice requirements as set forth in section 281-57. No class 5 or 12 license issued to a standard bar as defined in section 281-1, shall be transferable to other than a standard bar, and that such license shall be subject to revocation if the licensed premises is not retained as a standard bar except upon written application to the commission by the licensee and/or the proposed transferee, subject to sections 281-51 to 281-60.

A county may increase the requirements for transfers of class 5, category (2) and (4), 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.

For the purpose of this section, “special liquor district” means an area designated by a county for restoration, reservation, redevelopment, or rejuvenation, 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.

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

Where a license is held by a limited partnership or a limited liability company, the admission or withdrawal of a limited partner 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 limited partner or a member to be an unfit or improper person to hold a license in the limited 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.

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.

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.

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.

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 which results in the transferee thereof becoming the owner of twenty-five per cent or more of the outstanding capital stock, the corporate licensee shall, prior to the date of such 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 such officer or director. 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 such capital stock is effected to a fit or proper person pursuant to section 281-45 or until the unfit or improper officer or director is removed or replaced by a fit and proper person pursuant to section 281-45.

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.”

SECTION 5. Section 281-56, Hawaii Revised Statutes, is amended to read as follows:

**“§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 7, class 8, or class 9, such report shall show:

- (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
- {(8)} (9) Any and all other matters and things, which 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.

(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."

SECTION 6. Section 281-57, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(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.”

2. By amending subsection (c) to read:

“(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 last tax return filed by the person or the person's agent or representative;

- (2) In counties with a population of [one] two hundred-fifty 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 any applicant that is a hotel as defined in section 486K-1, a restaurant, or a convenience store. 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 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-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 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). The commission shall cancel the hearing if not receiving the affidavit prior to the hearing or if discovering that the affidavit is false."

SECTION 7. Section 281-59, Hawaii Revised Statutes, is amended to read as follows:

**"§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[-, and shall within]. The liquor commission shall accept all written or oral testimony for or

against the application whether the application is denied, refused, or withdrawn. Within fifteen days [thereafter]<sup>1</sup> after the hearing, or within thirty days thereafter if in its discretion the commission extends the fifteen days to thirty 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 [registered]:

- (1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or [a majority of the owners]
- (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,<sup>2</sup> 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. 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. Owners or lessees who own more than one property may count 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. 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[~~-, grant~~]:

- (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 [may of]
- (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."

SECTION 8. Section 281-60, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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[; ~~provided that this section shall not apply to withdrawals which are not based on protests whether or not the protests are filed~~]. 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;
- ~~(3)~~ (4) Whether the applicant is a fit and proper person to have a license; and
- ~~(4)~~ (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."

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon approval.

(Approved June 19, 2001.)

Notes

- 1. So in original.
- 2. Comma should be underscored.