

ACT 76

H.B. NO. 137

A Bill for an Act Relating to Liquor.

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

SECTION 1. Section 244D-3, Hawaii Revised Statutes, is amended to read as follows:

“§244D-3 Cooperation between department and liquor commission.

The department of taxation and the liquor commission, if the commission exercises its authority under this chapter, shall cooperate in the enforcement of this chapter.

The department shall notify the proper liquor commission of the name and address of every permittee whose permit has been revoked, and any license issued to the permittee under the liquor law thereupon shall be deemed forfeited.

The department may notify the proper liquor commission of the name and address of every person who has failed to file any return required, or to pay any tax prescribed, or to secure a permit, or to perform any other duty or act imposed under this chapter, and ~~[such] the proper~~ liquor commission shall thereupon suspend any license ~~[which] that~~ may have been issued to any ~~[such]~~ person under the liquor law until ~~[such] the~~ time ~~[as such] the~~ person complies with this chapter.

~~“[The liquor commission, if the commission exercises its authority under this chapter, shall provide to the department the results of any examination the commission has undertaken pursuant to section 244D-10 and shall, upon request, furnish to the department any information in its possession relative to any person having a license issued by it, and its records shall be open to examination of the department.]”~~

SECTION 2. Section 244D-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every dealer shall keep a record of all sales of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) made by the dealer, in ~~[such] a form [as] prescribed by the department of taxation [may prescribe]~~. Every person holding a license under the liquor law, other than a manufacturer’s or wholesaler’s license, shall keep a record of all purchases by the person of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a), in ~~[such] a form [as] prescribed by the department [may prescribe]~~. All ~~[such]~~ records shall be offered for inspection and examination at any time upon demand by the department ~~[or commission]~~ and shall be preserved for a period of five years, except that the department may in writing consent to their destruction within ~~[such] the five-year~~ period or may require that they be kept longer.

The department may by rule require the dealer to keep ~~[such]~~ other records as it may deem necessary for the proper enforcement of this chapter.”

SECTION 3. Section 244D-10, Hawaii Revised Statutes, is amended to read as follows:

“**§244D-10 Inspection.** The director of taxation, ~~[the liquor commission,]~~ or the duly authorized agent of ~~[either] the director [or commission],~~ may examine all records required to be kept under this chapter, and books, papers, and records of any person engaged in the sale of liquor to verify the accuracy of the payment of the tax imposed by this chapter and other compliance with this chapter and regulations adopted pursuant thereto. Every person in possession of ~~[such]~~ books, papers, and records and the person’s agents and employees shall give the director~~[-, the commission,]~~ or the duly authorized agent of ~~[either of them,]~~ the director, the means, facilities, and opportunities for ~~[such]~~ examination.

~~[The authority granted to the liquor commission under this section shall not conflict with section 231-18 and shall not extend to the inspection of any documents not directly related to this chapter.]”~~

SECTION 4. Section 281-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) 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[~~;~~]. Investigations of violations of chapter 244D shall be referred to 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

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

SECTION 5. Section 281-20, Hawaii Revised Statutes, is amended to read as follows:

“**§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.”

SECTION 6. Section 281-53, Hawaii Revised Statutes, is amended to read as follows:

“**§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~~], and notarized by 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 member-managed limited liability company by a member thereof, or if a manager-managed limited liability company by a manager 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 decision-makers 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~~] that 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 provided in section 281-102 [~~provided~~].”

SECTION 7. Section 281-56, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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]~~ the 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]~~ that 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]~~ proposed 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) (6) 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) (7) For the next application by the same applicant for a license in the same physical location 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) (8) [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] The possible adverse effects the premises, after licensing, may have on the surrounding community[-] if the license application is for premises within a county having a population of five hundred thousand residents or more.”~~

SECTION 8. Section 281-79, Hawaii Revised Statutes, is amended to read as follows:

“**§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]~~ the 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."

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 11. This Act shall take effect on January 1, 2023.

(Approved June 17, 2022.)