

Hawaii Bar Owners Association (HIBOA)

HRS Section 281 Concerns and Issues

- We have no proposed legislation currently regarding Liquor Law in Hawaii but we do have areas of concern. They follow in the order of their appearance in the law and not by order of importance. We will occasionally jump to another section regarding the same subject.

- Commission and adjudication board qualifications
- Fines as funding for education programs outside the Commissions
- Noise and decibel levels
- Some license class issues

Section 2 81–11 County Liquor Commissions and liquor control adjudication boards; qualifications and compensation

- RE: some liquor control adjudication boards qualifications
- (a),consisting of not less than five members, no more than the minimum required for a quorum of whom shall belong to **the same political party at the time of appointment** may be created for each of the counties.
- no more than the minimum requirement of four from of shall belong to **the same political party at the time of appointment**
- *We question why the board or commission have to be of the same political party?*

- (b).....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 manufacturer or sale of liquor** or who advocates or is or becomes a member of, or connected with, any organization his again if I connected
- *We respect the concept of no industry people on the board to sway it to be pro liquor but we feel that a limit of only one member may be from within the industry. It may actually be good to have one board member understand the actual day to day operations within the business.*

Section 281–17 Jurisdiction and powers

- (3) ...shall be financed the money collected from the assessment of fines against licensees; provided that fine moneys, not to exceed ten percent a year of fines accumulated, may be used to fund the public liquor related educational or enforcement programs.

- *HIBOA does not oppose the general idea of this but we don't think it should be done through the liquor commission and financed with fine moneys.*
- *Fines should be going to the general fund and for those programs meant for the public. The programs should be funded through the general fund simply for the good purpose that exists.*
- *This penal method of fund raising just creates a cash engine for the county and the education program that will be self-defeating. Licensees complying with the law would produce fewer fines resulting in less income thus demanding an increase in fines though they are actually in greater compliance. It results in a frustration within the licensed industry because the more they are in compliance (and producing less fine income) the more demand there will be for more fines.*

- *Take a look at the UH Cancer Research Center and the Health Department's funding of it through cigarette taxes. With higher taxes upon a reduced number of smokers they receive less income. The result is they have to increase the tax upon smokers thus continually reducing the Center's income. It sets itself up for failure.*
- *Essentially the law punishes good behavior in this method of fund raising. The good behavior diminishes the income thus demanding government fine somebody more harshly over lesser issues so the program can continue.*
- *The Commissions should not set themselves up in this model doomed to failure.*
- *HIBOA would want to know what the level of fines income has been and what increases have resulted from this law. Current fine limits are capped at \$2000.00 and \$1000.00 in certain cases. We oppose the raising of fine limits.*

Section 281–17.5 fees

- (b) Any such liquor license fees or any moneys collected or received by any liquor commission under this chapter may only be used for costs and expenses directly relating to operational and administrative costs actually incurred by the liquor commission collecting or receiving such liquor license fees or moneys. Such fees or money shall not be used for any costs or expenses other than those directly related to its operation and administration, except as otherwise provided by law.
- *HIBOA would hope that the fees and the fines are separate and not involved with the educational programs in the public*

Continuing on the prior section

Section 2 81–17 Jurisdiction and powers

- Regarding: Noise and sound levels
- (10)that a liquor commission in a county with a population of seven hundred thousand or greater may establish a pilot program that employs both dBA and dBC sound level measurement system for the purpose of community noise control; provided further that the dBC sound level measurements shall be in accordance with the following maximum permissible sound levels in dBC:

- (A)residential, conservation, preservation, public space, open space, or similar types shall have a maximum dBC sound level of
 - 55 from 7:00am to 10:00pm....
 - 45 from 10:00pm to 7:00am
- (B)....multifamily dwellings, apartment, business, commercial, hotel, resort or similar type shall have a maximum dBC sound level of
 - 60 from 7:00am to 10:00pm....
 - 50 from 10:00pm to 7:00am
- (C)....agriculture, country, industrial or similar type shall have a maximum dBC sound level of
 - 70 from 7:00am to 10pm....
 - 70 from 10:00pm to 7:00am

- *Regarding the relatively new changes in law that we've had since 2012 HIBOA finds the limits of decibel levels for compliance to be near impossible. Unfortunately all of them are ridiculously low and below the normal levels of sound in a city so every licensee is in violation and because all are in violation it becomes a matter of selective enforcement. Everybody is in violation but upon complaint the law puts enforcement in the position to cite with a violation.*
- *We compare this to having a state wide highway speed limit of 35mph though everyone is traveling at the expected 55mph. Everyone would be breaking the law but by citing selectively only some would be cited when all are breaking the law.*
- *We feel that enforcement would like to see realistic numbers put back in place.*

Section 281-60 further application

- (2)(D) the typical or **ambient noise levels of the area**
- *How is that determined? Levels increase with city noise progressively*

Section 281–61 renewals

- Other than for good cause, the renewal of an existing license shall be granted upon the filing of an application; provided that if:
 - (1) Complaints from the public;
 - (2) Reports from the commissions investigators; or
 - (3) Adjudication of the commission or the liquor control adjudication board, indicate that noise created by patrons departing from the premises disturbs residents on the street or of the neighborhood in which the premises are located, or that noise from the premises or adjacent related outdoor areas such as parking lots or lanais exceed standards contained in state or county noise codes or intrudes into nearby residential units, the commission may deny the renewal application or withhold the issuance of a renewed license until corrective measures meeting the commissions approval are taken.

- *The law allows the commission limitations upon the license in these matters. Most times the commissions have been fair but with the lowering of the sound levels it is much more difficult for licensees to comply.*
- *The Smoking Ban directly influences this matter as a licensee must place their customers outside the establishment where they cannot legally control the patron.*
- *The commission and the licensee are put in a difficult position to comply. The commission seeks limited noise by patrons after 10pm and the ban places those same patrons outside by law. The licensee is caught in the middle and subject to fine in either case.*
- *HIBOA would like the support of the Liquor commissions in changing this Smoking ban to either making it the licensee's choice or allowing patrons back inside after 9pm.*

Section 2-81–31 licenses and classes

- (c) **Class 2. Restaurant licenses**
- *HIBOA sees some licensees caught in percentage areas where liquor licenses holders see year to year changes that go back-and-forth between the decided percentages (I believe of 30%) that put their class of license in conflict with local rules. It's not realistic for anybody to know what they will do in sales, it's like reading the future. People can't do that so we don't think they should be considered annually to be in exact compliance of percentages. There should be found some flexibility within the law or the rules where a county can make this a simpler circumstance. Business is business, we just try to do business based on who is attending, if your sales don't balance within the percentages repeatedly then maybe the law or rule should allow them hold a different license without the complete hearing for a change of class*

class 11 cabarets, hours of operation

- *We realize that they have restricted Hours of operation. They close at 4 AM but they can't open to 10 AM. General licensees close at 2am and can open again at six within four hours. We question why the closing period is for 4 hours for general licensees and 6 hours for cabaret licensees. Should there be a change that we would allow licenses who have 4 o'clock license to open at an earlier hour perhaps at 8am. This will accommodate a lot of them for covering football on Sunday mornings.*

Class limitations in transfers and renewals

- *Regarding class of licenses, HIBOA would like to see some flexibility in the matter of transfers or renewals to a similar but not identical class. Sometimes if you have a failed license as a restaurant license and over and over again it's been a restaurant license that continually fails it may be prohibitive and costly like to continue in the same license class. It would be pro business to allow greater flexibility.*

Section 281–56 report by investigator

- (3) locality of any church, chapel or school, if any, within a distance of 500 feet from the nearest point of the premise for which the license is asked to the nearest point of the church, chapel or school grounds.
- *HIBOA would seek to grandfather licenses that predate the development of some of these facilities as they now have shown the movement of some churches, chapels and schools into more traditional business locations.*

- Section 21–78 **prohibitions** knowingly permit any person under the influence of liquor to remain in the bar.
- *It should be paramount that we as regulators and providers not just put someone out on the street without concern for the public. It is a better service to the public to assure the problem patron is directed home properly rather than just put out the door. Leeway in that matter can be helpful to all rather than citing for someone intoxicated upon the premise.*

For contact regarding the matters above or to contact the Hawaii Bar Owners Association, you can contact me,

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Hawaii Bar Owners Association

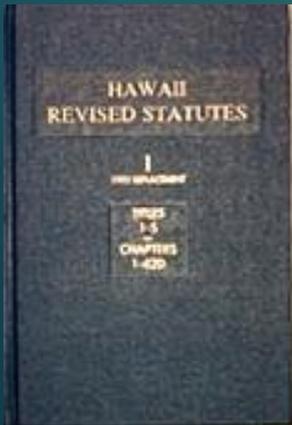
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Honolulu, HI 96817

Discussion: HRS Chapter 281 Amendments

Presenters:

Gerald Matsunaga, *Commissioner (Kauai)*
Bill Comerford, *Licensee & HIBOA President*
Kenneth Hoo, Esq.
Robert Ichikawa, Esq.



2015 HLC Conference
Ala Moana Hotel
October 12, 2015

HRS 281-41(1) 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

*(i). 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 that results in the transferee thereof becoming the owner of twenty-five per cent or more of the outstanding **voting** capital stock, the corporate licensee shall, prior to the date of the 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,*

HRS 281-41(1) continued

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 the officer or director. **Provided, that if the licensee is a publicly traded company, or a solely owned entity of a publicly traded company, the licensee shall, within thirty days from the date of election of any replacement of an officer designated as a primary decision maker regarding the purchase and sale of liquor, notify the commission in writing of the name, age, and place of residence of the officer.**

HRS 281-41(1) continued

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 the capital stock is effected to a fit or proper person pursuant to section 281-45 or until the unfit or improper transferee, officer, or director is removed or replaced by a fit and proper person pursuant to section 281-45.

HRS 281-45(3) No license issued, when.

*(3) Unless the applicant for a license or a renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency **a signed certificate from the director of taxation and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the state or federal governments any delinquent taxes, penalties, or interest;** or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation and the Internal Revenue Service for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement;*

HRS 281-53 (1) Application; penalty for false statements.

*(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 solely owned by a publicly traded company, the names of 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;*

S.B. 1154

A BILL FOR AN ACT

RELATING TO THE LIQUOR COMMISSION.

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

SECTION 1. Section 281-57, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:



"(b) If no preliminary hearing is had or if the application is not denied upon a preliminary hearing, the commission shall fix a day for the public hearing of the application (other than an application for an alcohol license or a license in classes 8 to 10 and 13) and shall give public notice of the hearing at least once in each of two consecutive weeks, in the county, the date of the hearing to be not less than forty-five days after the first notice[-] (except that in counties with a population of five hundred thousand or more, the date of the hearing shall be not less than thirty days after the first notice). The notice shall require that all protests or objections against the issuance of the license applied for shall be filed with the administrator of the commission at or before the time of hearing. Before giving the notice the commission shall collect from the applicant the cost of giving the public notice or require a deposit to cover the same.



(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 current real property tax record of the person or the person's agent or representative;*



(2) In counties with a population of five hundred 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 applications for class 2, class 4, class 12, and class 15 licenses. 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~~[-]~~ **(except that in counties with a population of five hundred thousand or more, the notices shall be mailed at least thirty 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 business 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-business-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 business 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). When the requirements of this section have not been met, the commission may cancel the hearing or continue the public hearing subject to the provisions of this section."

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

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

Reflections on Legislation

ACT 227

Approved by the Governor
on JUL 13 2015

ORIGINAL ACT 227

HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

H.B. NO. 770
H.D. 1
S.D. 1

A BILL FOR AN ACT

RELATING TO INTOXICATING LIQUOR.

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

- 1 SECTION 1. Section 281-31, Hawaii Revised Statutes, is
- 2 amended as follows:



Questions & Answers



mahalo