

14  
December 7, 2016 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair	NA	Oahu	Parking Pass	Yes
Kyoko Kimura	HA	Maui	Parking Pass	Yes
Harris Nakamoto, Vice Chair	NA	Oahu	NA	No
Director's ex officio Mark Richey	NA	Oahu	NA	Yes
Robert Cundiff	NA	Oahu	Parking Pass	Yes
Nancy Atmospera-Walch	NA	Oahu	NA	No
Garth Yamanaka	HA	B.I.	Parking Pass	Yes

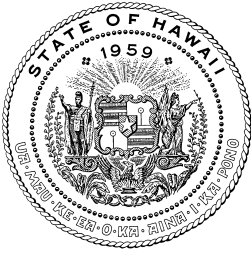
Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Poll Board Attendance	✓
Draft Agenda to Chair for approval	✓
Prepare TAF's for Director's approval - ASAP (Linda) - Group TAF	✓
Copies of Rule Package for Lte. Gov's Office (2) and Scan for Posting on State Calendar	✓
Send Chair Approval of last Draft Agenda to Chair for approval	✓
Post approved agenda on SBRRB website, State Calendar, 3) Lte. Governor's Office	✓✓
Send Agendas to those people who requested it - IMPORTANT (Attached copies)	✓
Upload Meeting Documents onto Board's Website in Calendar	✓
Include "discussion leader" names on the agendas to Board members only.	✓
Prepare Agenda ONLY for "Chair" with Names of Attendees	✓
Mail parking permits to those Board members noted	✓

STAFF				
Dawn Apuna				Via I-pad
Dori Palcovich				

Post Meeting Checklist	

**Visitors Sign-in-Sheet - Small Business Regulatory Review Board - December 14, 2016**

	Name	Title	Organization	Email	Phone
1	Annathilai	Asst Admin	Hen Cigwov Comm	ahilai@howululu.gov	768-7302
2	Jett Masatsugu			jmas808@gmail.com	554 3406
3	DERRICK ISHIIHAKA	PT	HAPT	derrick@islandpt.com	201 8600
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## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Email: [dbedt.sbrb@hawaii.gov](mailto:dbedt.sbrb@hawaii.gov)  
Website: [dbedt.hawaii.gov/sbrb](http://dbedt.hawaii.gov/sbrb)

Tel 808 586-2594

### AGENDA

**Wednesday, December 14, 2016 ★ 1:00 p.m.**  
**No. 1 Capitol District Building**  
**250 South Hotel Street - Conference Room 436**

**David Y. Ige**  
*Governor*

**Luis P. Salaveria**  
*DBEDT Director*

#### Members

Anthony Borge  
*Chairperson*  
*Oahu*

Harris Nakamoto  
*Vice Chairperson*  
*Oahu*

Kyoko Kimura  
*2<sup>nd</sup> Vice Chairperson*  
*Maui*

Robert Cundiff  
*Oahu*

Nancy Atmospera-Walch  
*Oahu*

Garth Yamanaka  
*Hawaii*

Director, DBEDT  
*Voting Ex Officio*

#### **I. Call to Order**

#### **II. Approval of November 16, 2016 Meeting Minutes**

#### **III. Old Business**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to **Rules of the Liquor Commission, City and County of Honolulu**, Title 3, Subtitle 6, promulgated by the Liquor Commission, City and County of Honolulu, as follows – *attached and incorporated as Exhibit 1*:
1. Chapter 80, **General Provisions**
  2. Chapter 82, **Licenses and Permits, General Provisions**
  3. Chapter 83, **Procedure for Obtaining License**
  4. Chapter 84, **Duties of and Supervision over Licensee**
  5. Chapter 86, **General Violations and Prosecutions**

#### **IV. Administrative Matters**

- A. Discussion and Action on the Board's 2016 Draft Annual Report Summary for Submission to the Hawaii State Legislature under Section 201M-5(f), Hawaii Revised Statutes (HRS)
- B. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers, under Section 201M-5, HRS
- C. Update on the Board's Budget Proposal for Fiscal 2017 and 2018

#### **V. Legislative Matters**

- A. Update on Proposed Amendments to Chapter 201M, HRS – *attached and incorporated as Exhibit 2*

#### **VI. Next Meeting:** Scheduled for Wednesday, January 25, 2017 at 10:00 a.m., Capitol District Building, Conference Room 436, Honolulu, Hawaii

#### **VII. Adjournment**

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

# Exhibit 1

**Proposed Amendments to  
Rules of the Liquor Commission of the City and County of Honolulu (2015)**

**Note:** Material to be repealed is *[bracketed]*.

New material is underscored (new rule/standalone section is **bold face** only, not underscored).

\* \* \* \* \*

**SUMMARY:** Amends catering definition to conform with new catering license type; deletes stacking definition if stacking rule is repealed; and adds definition for undue noise or disturbance for Rule §3-84-78.03.

**§3-80-1.1. Definitions.**

“Caterer” as it pertains to a Class 13(a) licensee means a restaurant (class 2), hotel (class 12), or condominium hotel (class 15) licensee which provides off-premise liquor service in connection with food service, as stated in ~~[Sec. 281-31(n)]~~ Sec. 281-31(m) HRS.

~~*["Stacking" of liquor by the licensee means allowing the service for consumption, of more than one drink at a time per customer, except that beer may be served with a straight or unmixed serving of liquor. This shall not apply to Commission approved authorized showroom facilities which may serve the "minimum" number of drinks at the same time to lessen disturbance to the show.]*~~

“Undue noise” or “undue disturbance” means disturbance to the peace and quiet of the residents or tenants of the neighborhood from music, customers, or other noise originating from a licensed premises that is unreasonable. Music, customers, or other noise originating from a licensed premises is unreasonable within the meaning of Rule §3-84-78.03 if considering the nature and purpose of the licensee’s conduct and the circumstances known to the licensee, including the nature and zoning district of the location and the time of the day or night, the licensee’s conduct involves a gross deviation from the standard of conduct that a law-abiding citizen conducting the same type of business would follow in the same situation; or the failure to heed the reasonable admonition of a Commission investigator that the noise is unreasonable and should be stopped or reduced.

\* \* \* \* \*

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

**SUMMARY:** Adds license fees for new catering license type, winery, BYOB, and small craft producer pub licenses; corrects inadvertent omission of license fee for Category 2 brewpub license; and deletes license fee for repealed license class (Vessel).

**§3-81-17.51 License Fees. ...**

<del>7</del>	<del>Vessel</del>	<del>\$660</del> ...
13	<u>(a) Caterer, General (Class 2, Class 12, Class 15 only)</u>	\$30 per day
	(b) Caterer, General (Food Service Business Type) (1) Category 1 – Standard  (2) Category 2 – Music/Dancing	\$600, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible*, not to exceed \$25,000, plus \$30 per day.  \$720, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible*, not to exceed \$25,000, plus \$30 per day.
14	Brewpub (1) <u>Category 1 – Standard</u>  (2) Category 2 – Music/Dancing	\$1,680, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible*, not to exceed \$40,000.  \$1,800, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible*, not to exceed \$40,000. ...
16	Winery	\$1,200, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible*, not to exceed \$25,000.
17	BYOB (1) Category 1 – Music only (2) Category 2 – Music/Dancing	\$360  \$420
18	Small Craft Producer Pub (1) Category 1 – Standard  (2) Category 2 – Music/Dancing	\$1,680, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible*, not to exceed \$40,000.  \$1,800, and three-fourths of one percent

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

	(0.0075) of the total gross liquor sales less a *deductible*, not to exceed \$40,000.
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\* \* \* \* \*

**SUMMARY:** Makes conforming changes for BYOB license; makes other amendments to clarify requirements; and deletes repealed license class (Vessel).

**§3-81-17.54. Gross Sales Reports.**

- (a) All licensees, except [vessel,] transient vessel (per day), [and] special, and bring-your-own-beverage, shall file a report as directed by the Commission showing the true and accurate gross sales of liquor and purchases of liquor. The report shall be signed by the owner, partner, corporate officer, member, or authorized agent and submitted with the original signature of the authorized party. The gross sales report shall also indicate the additional license fee due and payable which exceeds the minimum fees established by §3-81-17.51.
- (b) All tour and cruise vessel licensees shall file a report on a prescribed form as directed by the Commission showing the true and accurate declaration of liquor purchases. The report shall be signed by the owner, partner, corporate officer, member, or authorized agent and submitted with the original signature of the authorized party. The gross sales report shall also indicate the additional fee due and payable which exceeds the minimum fees established by §3-81-17.51.
- (c) The report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. All reports shall be complete and filed with the additional license fee, if applicable, on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.
- (d) All licensees, except [vessel,] transient vessel (per day), [and] special, and bring-your-own-beverage, shall produce within three (3) calendars days for Commission inspection books or records showing all income, purchases and expenses of their liquor licensed business. These books and records, including but not limited to daily sales records and invoices, shall be made available for inspection and/or auditing by the Commission, through its auditors or otherwise, at any time and shall be preserved for a period of four years, except that the Commission may, in its discretion, consent to destruction of those books and records within the period or may require that they be kept longer.

Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

- (e) Gross sales from off-premises catering shall be included in the gross sales report of the Restaurant, Hotel, or Condominium Hotel licensee.
- (f) Licensees who give complimentary drinks or samples without charge shall report the value of those drinks in their annual gross sales report. If there is no sales price related to the complimentary drink, the licensee shall report the complimentary drink's value at four (4) times the amount of liquor purchased.
- (g) In addition to the report for the period ending June 30<sup>th</sup>, wholesale licensees shall complete and file an interim gross sales of liquor report for the period July 1 to December 31. The interim report is due not later than March 1<sup>st</sup> of the following year. The Commission may direct the wholesale class to file additional interim gross sales of liquor reports, and establish the respective due date(s).

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**SUMMARY:** Redesignation of section paragraph only.

**§3-82-31.3. Determination of Nudity in Cabarets.**

- (a) The Administrator shall classify each cabaret license to determine whether the cabaret licensee is permitted to provide professional entertainment by a dancer pursuant to Section 281-31~~(j)~~(k), Hawaii Revised Statutes.
- (b) Any cabaret licensee aggrieved by the decision of the administrator may file a written notice of appeal to the Commission within thirty (30) days after receipt of the notice of classification. The Commission shall hold a hearing and issue a final decision on the matter.
- (c) A cabaret licensee seeking to provide professional entertainment by a dancer shall file an application on a form prescribed by the Commission and comply with Sections 281-51 to 281-60, Hawaii Revised Statutes.

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**SUMMARY:** Redesignation of section paragraph only.

**§3-82-31.5. Brew Pub Licenses.**

- (a) Brew Pub categories shall only be as follows:
  - (1) A standard bar; or
  - (2) A premise in which live entertainment or recorded music is provided. Facilities for dancing may be permitted as provided by Liquor Commission rules.
- (b) All Brew Pub licensees shall file a report as directed by the Commission showing the total number of barrels of malt beverages manufactured on the licensee's premises during the license year, which report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration.



Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

- All reports shall be filed on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.
- (c) Any Brew Pub licensee is permitted to conduct the activities described in paragraphs (1) through (8) of Section 281-31~~(e)~~(n), HRS, upon written approval of the Commission, subject to the following conditions:
- (1) An application for the designation of a second location other than the licensed premises shall be submitted by the licensee on a form prescribed by the Commission.
  - (2) The designated second location shall be in an area zoned for the proposed activity.
  - (3) An application for the designation of a second location shall be accompanied by a lease agreement or any other document showing that the licensee has the exclusive right to legally occupy the proposed premises, and a floor plan of the premises drawn to scale.
- (4) Invoices for all malt beverages manufactured and/or sold at the designated second location shall be kept on the premises. All such records shall be kept for not less than three (3) years.

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**SUMMARY:** Amends provisions to conform with new catering license type; provides more specificity regarding food sales that must accompany catered liquor sales.

**§3-82-31.7. Catering By Restaurant, Hotel, or Condominium Hotel Licensees.**

- (a) Restaurant, hotel, and condominium hotel licensees may provide catering if that activity is directly related to the licensee's operation as a restaurant, hotel, or condominium hotel.
- (b) Businesses that wish to provide on or off-premises catering service shall apply for a restaurant (class 2), hotel (class 12), or condominium hotel (class 15) license, as applicable by law and rule, which will permit the sale of liquor (other than alcohol) while performing food catering functions.
- (c) Off-premises catering will only be authorized upon the issuance of a caterer (class 13~~(a)~~(a)) license. A caterer event license is required for each off-premises catered event where liquor is served.
- (d) For each off-premises catered event, the licensee shall submit an application for a caterer (class 13~~(a)~~(a)) event license. The application shall include a notice stating the date, time, and location of the event; a floor plan showing the boundaries of the proposed catered licensed premises; a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and Rules of the Commission and open to inspection by the Commission's investigators.

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

- (e) A caterer event license fee, as established by §3-81-17.51, shall be submitted with the application.
- (f) A duly registered manager shall be in active charge of the licensed, catered premises during times that the premises is open for business. No other employees on the catered, licensed premises need to be registered with the Commission.
- (g) Gross sales from on or off-premises catering shall be included in the gross sales report of the restaurant, hotel, or condominium hotel licensee. Each catered event must include food and liquor. At least thirty (30) per cent of the establishment's gross revenue from all catered events must come from the sale of foods.
- (h) The licensee shall clearly post the issued license at the catered premises.
- (i) A catering licensee shall have available for inspection and review the contract indicating the parties involved in the catered event or activity.

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**SUMMARY:** Amends rule to conform with Hawaii, Kauai, and Maui county liquor commission practice.

**§3-82-31.8. Recorking.**

Unless inconsistent with Chapter 281 of the Hawaii Revised Statutes or the Rules of the Liquor Commission, any licensee engaged in meal service [shall] may allow a patron who has purchased or brought unto the licensed premises wine, liquor or beer for consumption with a meal to remove the partially consumed product from the licensed premises, which shall be recorked or resealed in its original container.

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**SUMMARY:** Implementing rule for new catering license type.

**§3-82-31.9. Catering By Food Service Businesses.**

- (a) **Food service businesses may provide liquor service if that activity is directly related to the business's operation as a food service provider or food catering service.**
- (b) **Minimum requirements of a caterer (class 13(b)) license shall be that it is an enterprise which is regularly and in a bona fide manner in the business of preparing meals for patrons for compensation, and which has kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for meals, and operated in compliance with State Department of Health laws and regulations.**
- (c) **If liquor for catered events will be stored other than at the kitchen facilities identified in (b), approval for outside warehousing must be obtained in accordance with §3-82-42.1.**

Note: Material to be repealed is *[bracketed]*; new material is underscored or boldfaced.

- (d) A per-event caterer license is required for each catered event where liquor is served.
- (e) For each catered event, the caterer (class 13(b)) licensee shall submit an application for a caterer event license. The application shall include a notice stating the date, time, and location of the event; a floor plan showing the boundaries of the proposed catered licensed premises; a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and Rules of the Commission and open to inspection by the Commission's investigators.
- (f) A per-event caterer license fee, as established by §3-81-17.51, shall be submitted with the application.
- (g) A duly registered manager shall be in active charge of the licensed, catered premises during times that the premises is open for business and licensed. No other employees on the catered, licensed premises need to be registered with the Commission.
- (h) The licensee shall clearly post the issued license at the catered premises.
- (i) A caterer (class (b)) licensee shall have available for inspection and review the contract indicating the parties involved in the catered event or activity.
- (j) Liquor sales, service, and consumption shall be limited to the catered event. Each catered event must include food and liquor. At least thirty (30) per cent of the establishment's gross revenue from all catered events must come from the sale of foods.
- (k) Retail dealer (class 3), dispenser (class 5), club (class 6), cabaret (class 11), brewpub (class 15), winery (class 16), and small craft producer pub (class 18) licensees may not apply for a caterer (class 13(b)) license.

\* \* \* \* \*

**SUMMARY:** Implementing rule for winery license.

#### **§3-82-31.10. Winery Licenses.**

All Winery licensees shall file a report as directed by the Commission showing the total number of barrels of wine manufactured on the licensee's premises during the license year, which report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. All reports shall be filed on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

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**SUMMARY:** New rule permits manufacturers to charge for sampling (not permitted for any other off-premises consumption class of license).

**§3-82-31.11 Manufacturer Licenses.**

If on-premises sampling of beer, wine, or other specified liquor manufactured or distilled from fruits or other products grown in the State has been approved by the Commission, manufacturer licensees may charge for sampling to offset costs. The value of the charges for the samples shall be reported in the licensee's annual gross sales report.

\* \* \* \* \*

**SUMMARY:** Makes conforming changes for winery, BYOB and small craft producer pub licenses.

**§3-82-38.4. Employee Records.**

- (a) All dispenser, cabaret, hotel, club, restaurant, brewpub, ~~and~~ condominium hotel, winery, bring-your-own-beverage, and small craft producer pub licensees, including temporary licenses, shall have available on the licensed premises a time card or other adequate record showing in English the month, day, year, and time, indicating a.m. or p.m. and the legal first name and surname of each employee when that employee is on duty. This rule also applies to managers but does not apply to entertainers or kitchen staff who do not handle, serve or sell liquor.
- (b) Time record entries shall be made at the time the employee reports on duty and again when the employee goes off duty. If the employee is a minor, the licensee shall print on the time record below the employee's name that said employee is a minor. Employee time records shall be preserved for at least six months.
- (c) Electronic or otherwise recorded payroll registration may be used for the purposes of this rule with the Administrator's approval.

\* \* \* \* \*

**SUMMARY:** Makes conforming changes for new catering type, winery, BYOB and small craft producer pub licenses; makes other amendments to conform with agency practice.

**§3-82-38.5. Registration of Employees.**

- (a) All dispenser, cabaret, hotel, club, brewpub, ~~or~~ condominium hotel, winery, bring-your-own-beverage, or small craft producer pub licensees shall employ only persons in that section of the licensed premises where liquor is sold, served or consumed who are registered with the Commission prior to the start of employment. For restaurant and class 13(b) caterer licensees, only managers

Note: Material to be repealed is ~~[bracketed]~~; new material is underscored or **boldfaced**.

- and bartenders are required to be registered prior to the start of employment. Licensees shall ensure that any bartender currently employed in these classes of licenses successfully completes the server-training program within ninety (90) days of the publication of these rules. A temporary registration is allowed for each employee who has an unexpired certificate of registration. This temporary registration shall not exceed three (3) consecutive days, and will only become effective if the licensee timely advised the Commission by facsimile time stamp of the temporary employment. Further, the employee temporarily registered with the Commission must permanently register not later than the first working day after the temporary registration expires. An employee need not obtain a new certificate of registration because of a name change only. This rule shall apply to the registration of employees under a temporary license based upon a new license application as stated in §3-82-32.1. However, this rule shall not apply to employees under a temporary license based upon a transfer license application where the employee is registered under the pre-existing license.
- (b) Certificates of registration issued by the Commission shall be valid only for the licensed premises for which the employee registers and the license number of the premises shall be printed on the certificate of registration. Employees may be employed to work at more than one licensed premises; however, a separate certificate of registration shall be required for each licensed premises. Certificates of registration for employees, except for dancers, bartenders, or managers shall be valid for four (4) years from the date of issue. For bartenders or managers, certificates of registration shall be valid for four (4) years from the date of successful completion of the server training program required under subparagraph (f) of this rule (including passing the examination).
- (c) Persons who apply to the Commission for registration shall present:
- (1) ~~[Positive identification in the form of either a passport, a laminated driver's license with photograph, or other laminated government identification with a photograph]~~ A valid, unexpired government issued ID card, containing the registrant's name, photo, and date of birth (e.g., Driver's License, State ID, US Passport, or Military ID; and
  - (2) ~~[Proof of a Social Security number]~~ An original Social Security Card or a Wage and Tax Statement Form W-2, provided the Social Security Number is printed on the document. A printed electronically transmitted copy is acceptable.;
  - ~~(3) — A current satisfactory tuberculosis (TB) clearance report].~~
- (d) Each person registered shall be photographed and issued a certificate of registration which shall be valid until the expiration date indicated thereon or when recalled, suspended, or revoked by the Commission. The certificate of registration shall be retained by each employee and not surrendered to or held by the employer. A processing fee shall be charged for each certificate of registration issued to cover the cost of materials and processing.
- (e) Licensees shall ensure that all employees who are required to register with the Commission have their certificate of registration for the licensed premises readily available for inspection while on duty at that licensed premises.

**Note:** Material to be repealed is ~~bracketed~~; new material is underscored or **boldfaced**.

- (f) All dispenser, cabaret, restaurant, tour or cruise vessel, annually licensed transient vessel, hotel, club, brewpub, or condominium hotel licensees shall employ only bartenders who have successfully completed the server-training program administered by the Commission, including an examination and instruction in the following areas:
- (1) Identifying and dealing with intoxicated persons,
  - (2) Reviewing liquor laws and rules, and
  - (3) Dangers of driving while intoxicated.
- In these classes, the licensees shall ensure that individuals currently employed as a bartender successfully complete the server-training program within ninety (90) days of publication of these rules. A person may be issued a certificate of registration as a bartender for the same or another licensed premises and need not retake the server-training program if that person had successfully completed the server-training program within the past four (4) years.
- (g) If an employee has been issued a manager's certificate of registration for a particular licensed premises, the employee with the manager's certificate need not be issued a separate employee's certificate of registration of another category, except dancers, for the same licensed premises.
- (h) Entertainers are not required to be registered as employees pursuant to this rule.
- (i) The licensee shall ensure that any employee who performs duties of a hostess, as defined in §3-80-1.1, in a class 5 Dispenser, Category 4 licensed premises, is duly registered as a hostess with the Liquor Commission. Licensed premises not authorized Category 4 (hostess) shall not have employees registered or performing duties as hostesses, except as defined in §3-80-1.1.
- (j) For hotel and condominium hotel licensees, only managers, bartenders and staff who handle, serve or sell liquor are required to be registered as employees pursuant to this rule.

\* \* \* \* \*

**SUMMARY:** Reduces frequency of reporting to conform with agency practice (reflecting change from employee lists stored as hard copy versus digital copy).

**§3-82-38.8. ~~[Semi-]Annual [Submission] Update of Employee List.~~**

All ~~[brewpub, tour or cruise vessels, dispenser, cabaret, hotel, club, restaurant, condominium hotel,]~~ licensees required to register employees pursuant to §3-82-38.5 shall submit to the Commission, ~~[semi-]annually~~ on a date and in such manner as the Commission may direct, and on such other dates as may be required by the Commission, the name of every person then employed on the licensed premises who is registered with the Commission or who is subject to registration. The employment of a person who had previously registered for a particular premises and whose name does not appear on the licensee's ~~[semi-]annual~~ list of employees shall be considered terminated and the registration of that person shall be voided. A person whose registration with the Commission for a particular premises has expired and who then applies for re-registration shall be considered an original applicant and shall appear in person at the Commission's office to complete this registration. It

Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

shall be presumed evidence of a violation of §3-82-38.5, Registration of Employees; §3-82-38.6, Dancers; and §3-82-38.9, Managers; that an unregistered employee's name appears on any employee time card or employment records.

\* \* \* \* \*

**SUMMARY:** Makes conforming changes for new catering type, winery, BYOB and small craft producer pub licenses; makes other amendments to conform with agency practice.

**§3-82-38.9. Licensee and Manager in Charge of Premises.**

- (a) Each dispenser, cabaret, tour or cruise vessel, annually licensed transient vessel, restaurant, class 13(b) caterer, club, hotel, caterer, brewpub, [and] condominium hotel, winery, and small craft producer pub licensee shall have a duly registered manager in active charge of the licensed premises during the time the establishment is open for business and licensed to sell or serve liquor.
- (1) Managers on catered premises shall be registered with the hotel, restaurant, class 13(b) caterer, or condominium hotel licensee performing the catering.
  - (2) Retail (class 4) licensees shall have a duly registered manager or assistant manager assigned to each licensed premises (or group of premises if ownership has multiple properties) to insure employees are knowledgeable in applicable Commission laws and rules. It is not required that these managers be present at all times but shall assume responsibility for training and monitoring their assigned stores. These managers shall complete the server-training program and pass the examination prior to being assigned those duties or within one hundred eighty (180) days after publication of these rules, if currently performing those duties.
  - (3) Bring-your-own-beverage (class 17) licensees shall have a duly registered manager in charge of the licensed premises during the time the establishment is licensed to permit consumption on the premises by patrons.**
- (b) A person shall successfully complete the server-training program and pass the examination administered by the Commission before that person can be registered with the Commission as a manager or permitted to renew the manager's certificate of registration. However, a person may be issued a manager's certificate of registration for the same or another licensed premises and need not retake the server-training program and pass the examination if that person had successfully completed the server training program within the past four years.
- (c) Certificates of registration issued by the Commission shall be valid only for the licensed premises in which the manager is registered. A person may be employed to work as a manager at more than one licensed premises, however, that person shall have a manager's certificate of registration for each licensed

Note: Material to be repealed is ~~[bracketed]~~; new material is underscored or boldfaced.

- premises. Retail licensees shall be exempt from the “one certificate-one premises” limitation.
- (d) Certificates of registration for managers shall be valid for four (4) years from the date of successful completion of the server training program required under subparagraph (b) of this rule (including passing the examination). Any person registered as a manager for a licensed premises may also perform any other duties at the same premises, except for performing as a dancer, which does require a separate registration, or sit with customers in the case of a cabaret. Managers of licensed cabarets are not permitted to sit with customers during hours of operation.
- (e) Persons who apply to the Commission for registration as a manager for a particular premises shall present:
- (1) ~~[Positive identification in the form of either a passport, a laminated driver’s license with photograph, or other laminated government identification with photograph]~~ A valid, unexpired government issued ID card, containing the registrant’s name, photo, and date of birth (e.g., Driver’s License, State ID, US Passport, or Military ID);
  - (2) ~~[Proof of a Social Security number]~~ An original Social Security Card or a Wage and Tax Statement Form W-2, provided the Social Security Number is printed on the document (a printed electronically transmitted copy is acceptable);
  - (3) Proof that the applicant is at least twenty-one (21) years of age; and
  - (4) A letter from the ~~[licensee]~~ holder of the liquor license, principal of the licensee entity, or authorized agent of the licensee entity certifying that the applicant will be or is a manager of the licensed premises~~;~~
  - ~~(5) — A current satisfactory tuberculosis (TB) clearance report].~~
- (f) Each person registering as a manager shall be photographed and issued a certificate of registration which shall be valid for use only at the designated licensed premises until the expiration date or until recalled, suspended or revoked by the Commission. The certificate of registration shall be retained by each manager and not surrendered to or be held by the employer. A processing fee shall be charged for each certificate of registration issued to cover the cost of materials and processing.
- (g) Licensees shall ensure that all managers who are required to register with the Commission shall have the manager’s certificate of registration for the licensed premise readily available for inspection while on duty at that premises.
- (h) All retail, dispenser, cabaret, tour or cruise vessel, restaurant, class 13(b) caterer, club, hotel, brewpub, [and] condominium hotel, bring-your-own-beverage, winery, and small craft producer pub licensees shall ensure that responsible managers have successfully completed the server-training program administered by the Commission, including passing an examination and instruction in the following areas:
- (1) Identifying and dealing with intoxicated persons,
  - (2) Reviewing liquor laws and rules, and
  - (3) Dangers of driving while intoxicated.



Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

\* \* \* \* \*

**SUMMARY:** Deletes kitchen and dining room requirement to conform with statutory amendment repealing same; clarifies requirements for hotel licensees who provide off-premises catering.

**§3-82-38.12. Requirements of a Hotel License.**

- (a) Minimum requirements for a hotel license shall be an establishment consisting of one or more buildings containing~~[- (1)]~~ at least fifty hotel guest rooms ~~[and (2) a kitchen and dining room approved by the Commission in which at least two meals consisting of either breakfast, lunch or dinner are regularly prepared and served to hotel guests and other customers. The kitchen and dining room must be located within the hotel property].~~ Hotel licensees providing off-premises catering services shall have a kitchen approved by the Commission and located within the hotel property. Room service, self-service and service at private parties in areas which are the property of and contiguous to the hotel are permitted.
- (b) Upon the opening or closing of any section within the hotel licensed premises which serves alcoholic beverages, the licensee must notify the Liquor Commission with details and floor plan changes in writing not less than thirty (30) days prior to the commencement of such event.

\* \* \* \* \*

**SUMMARY:** Makes conforming changes for winery, BYOB and small craft producer pub licenses; makes other amendments pertaining to sampling activity and growler sales; and deletes repealed license class (Vessel).

**§3-82-38.19. Hours of Business.**

A licensee shall be authorized to sell, ~~[or] serve,~~ or allow consumption of liquor based upon its class of license during the hours specified as follows:

- (a) Dispenser, Club, Restaurant, Brewpub, Caterer, ~~[Vessel,]~~ Transient Vessel, Tour or Cruise Vessel, [and] Special, Winery, and Small Craft Producer Pub: From 6:00 a.m. to 2:00 a.m. the following day.
- (b) Cabaret: From 10:00 a.m. to 4:00 a.m. the following day. Liquor may be dispensed during the prescribed hours only when service is confined to customers within the area where live or amplified recorded music for dancing is provided for patrons, including a dance floor, or professional entertainment as permitted by Section 281-31, Hawaii Revised Statutes, or authorized by the Commission, is both visible and audible to customers. In areas that do not comply with the foregoing requirement, liquor may be sold, served or consumed no later than the closing hour prescribed for dispenser premises.
- (c) Retail: From 6:00 a.m. to 12:00 midnight.
- (d) Manufacturer and Wholesaler: 24 hours a day; sampling shall be limited to from 6:00 a.m. to 2:00 a.m. the following day.
- (e) Hotel: From 6:00 a.m. to 4:00 a.m. the following day.

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

- (f) Temporary: The hours of the class of the license for which the application has been submitted.
- (g) Condominium Hotel: From 6:00 a.m. to 2:00 a.m. the following day.
- (h) Class 17 Bring-Your-Own-Beverage: From 6:00 a.m. to 2:00 a.m. the following day.**
- (i) Manufacturers, Restaurants, Retail Dealers, Brewpubs, Wineries, and Small Craft Producer Pubs for product sold for off-premises consumption: From 6:00 a.m. to 12:00 midnight.**

\* \* \* \* \*

**SUMMARY:** Deletes kitchen and dining room requirement to conform with statutory amendment repealing same; clarifies requirements for condominium hotel licensees who provide off-premises catering.

**§3-82-38.24. Requirements of a Condominium Hotel License.**

- (a) Minimum requirements for a condominium hotel license shall be a condominium hotel, as defined in Sec. 281-1, HRS, containing~~[-(1)]~~ at least fifty (50) condominium hotel guest rooms~~[-; and (2) a kitchen and dining room approved by the Commission that are regularly and in a bona fide manner used and kept open for the serving of at least one meal (consisting of either breakfast, lunch, or dinner) to condominium hotel guests and other customers. The kitchen and dining room must be located within the condominium hotel premises].~~ **Condominium Hotel licensees providing off-premises catering services shall have a kitchen approved by the Commission and located within the hotel property.** Room service, self-service, and service at private parties in areas which are within the condominium hotel premises are permitted.
- (b) As part of its initial application, (1) a condominium hotel license applicant shall submit a list of the initial condominium hotel guest rooms that are part of the proposed licensed premises and (2) the number of condominium hotel guest rooms that are part of the proposed licensed premises must equal at least fifty percent (50%) of the total number of guest rooms in the condominium hotel. If the condominium hotel is a phased project (meaning built and/or administered in separate phases), for purposes of determining the total number of condominium hotel guest rooms in the condominium hotel, each phase shall be treated as a separate condominium hotel. After said application is approved by the Commission, the condominium hotel licensee shall update the list of condominium hotel guest rooms on a quarterly basis.
- (c) In addition to the quarterly update obligation in subparagraph (b), the condominium hotel licensee shall maintain for inspection at the premises by any authorized employee of the Commission a current list of the condominium hotel guest rooms.
- (d) Upon the opening or closing of any section within the condominium hotel premises which serves alcoholic beverages, the licensee must notify the Liquor

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

Commission with details and floor plan changes (which may be shown using relevant portions of the condominium map) in writing not less than thirty (30) days prior to the commencement of such event.

\* \* \* \* \*

**SUMMARY:** New rule to prevent growler sellers from claiming “pop top” or other single-use containers qualify for growler sales.

**§3-82-38.27. “Growlers” or Containers used for Off-Premises Consumption.**

A growler or other glass, ceramic, or metal container used by Manufacturers, Restaurants, Retail Dealers, Brewpubs, Wineries, and Small Craft Producer Pubs for sale of product for off-premises consumption by patrons shall be a container that is re-sealable once opened, and intended for multiple fills and use.

\* \* \* \* \*

**SUMMARY:** Shifts compliance focus from Commission-approval process to licensee-notification/certification process and “fit and proper” quality of manager/operator.

**§3-82-41.4. Management or Operating Agreements.**

Prior to any management or operating agreement taking effect, an existing [Licensee] licensee shall [apply for and secure approval for any management or operating agreement from] notify the Commission, in writing, about such agreement [prior to such agreement taking effect,] and shall affirm to the Commission that any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the person’s or principal’s own right in conformance with Section 281-45, Hawaii Revised Statutes. [subject to the following conditions:]

- (a) The signed notice shall include the following:
- (1) Identification of the manager, operator, or entity, and submittal of the documents required under Rule §3-83-53.1(a)(1)(i)-(iv), substituting the manager, operator, or entity for “applicant” in submitting documents under those sections; and
  - (2) Except in the case of a management or operating agreement pertaining to a Hotel or Condominium Hotel license, the expected date for the transfer of the license to the manager, operator, or entity.
- (b) The signed notice shall constitute certification by the licensee that the following is true:
- [(a)](1) The agreement [shall be] is restricted to permitting the operator to manage and operate the licensed premises on behalf of the licensee, and the licensee shall remain [responsible for and maintain exclusive control] in possession and control of the licensed premises.
- [(b)](2) Except in the case of a management or operating agreement pertaining to a hotel or condominium hotel license, the agreement

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shall be for the entire licensed premises~~[, unless otherwise approved by the Commission].~~

- (3) To the best of the licensee's knowledge, information, and belief, any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the individual's or principal's own right in conformance with Section 281-45, Hawaii Revised Statutes.
- ~~[(c)] [If the agreement is effected without the prior approval of the Commission, the Commission may in its discretion revoke or suspend the license, or assess and collect a penalty, or reprimand the licensee.~~
- ~~[(d)] In conjunction with its request for approval, the licensee shall submit an executed copy of the agreement, and can be subject to submittal of any or all documents required under Rule §3-83-53.1, and shall be subject to a hearing before the Commission.~~
- (c) If the Commission finds that any proposed person or any principal of the agreement is an unfit or improper person to hold a liquor license in the person's or principal's own right pursuant to Section 281-45, Hawaii Revised Statutes, ~~[it shall not approve the agreement]~~, the notification requirement herein shall be deemed to have not been met. The licensee shall confirm within 30 days of the written notification to the licensee of the Commission's aforementioned finding, that such management or operating agreement has been terminated.
- (d) In addition to the documents required under (a)(1), licensee will provide any additional documents or information related to the arrangement contemplated by the management or operating agreement upon request.
- (e) If at any time the Commission finds that notwithstanding the terms of the agreement and notification the licensee is not in possession and control of the licensed premises, or the entire premises is not being managed and operated by the manager or operator, the Commission may in its discretion revoke or suspend the license, or assess and collect a penalty, or reprimand the licensee.

The term "management agreement" or "operating agreement" shall include any agreement, verbal or written, where through such agreement the licensee allows an operator to manage and operate the licensed premises on behalf of the licensee.

[clean version]

#### §3-82-41.4. Management or Operating Agreements.

Prior to any management or operating agreement taking effect, an existing licensee shall notify the Commission, in writing, about such agreement and shall affirm to the Commission that any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the person's or principal's own right in conformance with Section 281-45, Hawaii Revised Statutes.

- (a) The signed notice shall include the following:
- (1) Identification of the manager, operator, or entity, and submittal of the documents required under Rule §3-83-53.1(a)(1)(i)-(iv), substituting the

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- manager, operator, or entity for “applicant” in submitting documents under those sections; and
- (2) Except in the case of a management or operating agreement pertaining to a Hotel or Condominium Hotel license, the expected date for the transfer of the license to the manager, operator, or entity.
- (b) The signed notice shall constitute certification by the licensee that the following is true:
- (1) The agreement is restricted to permitting the operator to manage and operate the licensed premises on behalf of the licensee, and the licensee shall remain in possession and control of the licensed premises.
- (2) Except in the case of a management or operating agreement pertaining to a hotel or condominium hotel license, the agreement shall be for the entire licensed premises.
- (3) To the best of the licensee’s knowledge, information, and belief, any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the individual’s or principal’s own right in conformance with Section 281-45, Hawaii Revised Statutes.
- (c) If the Commission finds that any proposed person or any principal of the agreement is an unfit or improper person to hold a liquor license in the person’s or principal’s own right pursuant to Section 281-45, Hawaii Revised Statutes, the notification requirement herein shall be deemed to have not been met. The licensee shall confirm within 30 days of the written notification to the licensee of the Commission’s aforementioned finding, that such management or operating agreement has been terminated.
- (d) In addition to the documents required under (a)(1), licensee will provide any additional documents or information related to the arrangement contemplated by the management or operating agreement upon request.
- (e) If at any time the Commission finds that notwithstanding the terms of the agreement and notification the licensee is not in possession and control of the licensed premises, or the entire premises is not being managed and operated by the manager or operator, the Commission may in its discretion revoke or suspend the license, or assess and collect a penalty, or reprimand the licensee. The term “management agreement” or “operating agreement” shall include any agreement, verbal or written, where through such agreement the licensee allows an operator to manage and operate the licensed premises on behalf of the licensee.

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**SUMMARY:** Makes conforming changes for new catering type, winery, BYOB and small craft producer pub licenses.

**§3-83-53.1. License Applications; Notice of Hearing; Affidavits.**

- (a) An applicant applying for a new license or for the transfer of an existing license of a manufacturer, restaurant, wholesale, retail, dispenser, club, annual transient vessel, tour or cruise vessel, cabaret, hotel, caterer class 13(b), brewpub, ~~[or]~~

Note: Material to be repealed is ~~bracketed~~; new material is underscored or **boldfaced**.

condominium hotel, **winery, bring-your-own-beverage, or small craft producer pub** shall file in support of the application:

- (1) With the application:
  - (i) If the applicant is a sole proprietor or an unincorporated association, a personal history and affidavit for each natural person listed in the application on forms provided by the Commission.
  - (ii) If the applicant is a partnership, the partnership agreement, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of the current partners to the partnership. For each partner, a personal history and affidavit on a form provided by the Commission or, if the partner is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that partner, and a list of current principals of that partner.
  - (iii) If the applicant is a limited liability company, the articles of organization and operating agreement, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of the current managers and current members of the company with their percentage of ownership. For each manager and member, a personal history and affidavit on a form provided by the Commission or, if the manager or member is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that manager or member, and a list of current principals of that manager or member.
  - (iv) If the applicant is a corporation, the articles of incorporation, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of current officers, current directors, and current stockholders of 25% or more of the outstanding capital stock of the corporation. For each officer, director, or stockholder of 25% or more of the outstanding capital stock, a personal history and affidavit on a form provided by the Commission or, if the stockholder is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that stockholder, and a list of current principals of that stockholder.
  - (v) Except for a **caterer class 13(b)** or condominium hotel license, a floor plan to scale of the licensed premises or proposed licensed premises with the area to be licensed demarcated in red and showing all fixtures, a square footage calculation for the area to be licensed, and the scale and orientation of the plan, and, in the case of an application regarding a license for consumption on the premises, the restrooms for the premises and a preliminary approval stamp from the State Department of Health. If the applicant is applying for a class or category of license that permits

Note: Material to be repealed is ~~bracketed~~; new material is underscored or **boldfaced**.

- dancing, the designated dance floor shall be shown on the floor plan.
- (vi) A copy of the floor plan required by paragraph (v) on an 8½-inch by 11-inch piece of paper.
  - (vii) A copy of the deed, lease, sublease, assignment of lease, rental agreement, or other conveyance of the use of the property to the applicant permitting the activity for which the license is applied. A copy of the executed document with applicable consents shall be submitted before the license is issued and may be submitted in fulfillment of the requirement of this paragraph.
  - (viii) For applications for new licenses and for the transfer of an existing dispenser or cabaret license, a tax map drawn to a scale of one inch to each forty, fifty, or sixty feet showing the area within 500 feet of the licensed area or proposed licensed area of the premises and also indicating 100 feet from the premises.
  - (ix) For applications for new licenses and for the transfer of an existing dispenser or cabaret license, a list of names and addresses of all property owners, recorded lessees, condominium projects, and cooperative apartment projects within 500 feet of the premises, which list shall also designate those owners, lessees, condominiums, and cooperatives which are within 100 feet of the premises.
  - (x) Except in the matter of a hotel as defined in HRS Section 486K-1, a restaurant, or a convenience store, for applications for new licenses and for the transfer of an existing dispenser or cabaret license, a list of small businesses within 500 feet and of small businesses within 100 feet of the premises.
  - (xi) A full, true, and accurate statement of the complete financial condition of the applicant, which shall not be over six months old, or that is less than one year old and certified by the applicant to be substantially correct.
  - (xii) Documents substantiating the financial statement and showing sufficient finances to cover proposed expenditures related to the application and including initial operating expenses for the first six months of operation.
  - (xiii) For the transfer of a license, an instrument documenting the consideration for the proposed transfer.
  - (xiv) Except when the applicant will do business under its own name, exactly, for an application for a new license, a Certificate of Registration of trade name from the Department of Commerce and Consumer Affairs or other sufficient documentation of the permitted use of the trade name in accordance with §3-81-17.58, or for an application for the transfer of a license, a statement of what trade name is proposed to be used, which shall be confirmed before the transfer is effected by a Certificate of Registration of trade name or other sufficient documentation.

Note: Material to be repealed is *[bracketed]*; new material is underscored or **boldfaced**.

- (xv) A description detailing the kind of business that the applicant proposes to operate. For applications for transferred restaurant licenses, a financial report of gross revenue for the year preceding the application demonstrating that at least thirty percent of the establishment's gross revenue was derived from the sale of foods. For applications for new restaurant licenses if not previously operated as an establishment serving meals to patrons for compensation, a business plan demonstrating the applicant's ability to meet the minimum gross revenue from the sale of foods required of restaurant licensees.
- (xvi) A 4-inch by 6-inch photoimage or photograph of the front of the licensed premises or proposed licensed premises and a 4-inch by 6-inch photoimage or photograph showing the licensed premises or proposed licensed premises street location.
- (xvii) For applications for new condominium hotel licenses or for the transfer of an existing condominium hotel license:
  - a. A list of the condominium hotel guest rooms within the proposed licensed premises as of the application date.
  - b. A copy of the application for registration of the condominium hotel operator approved by the real estate commission, if applicable.
  - c. A floor plan (which may be a copy of all or portions of the recorded condominium map) marked to show:
    - (i) the portion or portions of the licensed premises or proposed licensed premises in which alcoholic beverages will be served, with such portion or portions marked in red and showing all fixtures and any designated dance floor in such portion or portions; a square footage calculation of such portion or portions; the scale of the map; and, if liquor will be consumed within such portion or portions, the restrooms for such portion or portions;
    - (ii) the locations of all condominium hotel guest rooms in the condominium hotel (which locations may be indicated by narrative description or coloring of the condominium map); and
    - (iii) the locations of the apartments, common elements and/or limited common elements over which access will be provided to and from the portion or portions of the licensed premises or proposed licensed premises in which alcoholic beverages will be served and the condominium hotel guest rooms (which locations may be indicated by narrative description or coloring of the condominium map).
  - d. A preliminary approval stamp from the State Department of Health for the portion or portions of the licensed premises or



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- proposed licensed premises in which alcoholic beverages will be served.
- e. The identity of the AOA manager and, if the applicant is not a rental program manager for condominium hotel guest rooms in the condominium hotel, the rental program manager that manages the most condominium hotel guest rooms in the condominium hotel.
- (2) Concurrent with filing the application:
- (i) A request for criminal history record clearance for liquor license, for each person required to submit a personal history and affidavit, with the Hawaii Criminal Justice Data Center.
- (ii) A request for zoning clearance with the Department of Planning and Permitting, Aloha Tower Development Corporation, or Hawaii Community Development Authority, as appropriate.
- (iii) A request for the required list of registered voters, if required, with the City Clerk. A statement that each request has been made, with the date that it was made, shall accompany the application filed with the Commission.
- (3) During the processing of the application:
- (i) Each person required to submit a personal history and affidavit is required to submit fingerprints on a fingerprint card provided by the Commission. Fingerprints for those principals not fingerprinted by an investigator for the Commission shall be submitted, with a letter of authority by the person who made the fingerprints, with the application or as soon after its submission as possible. The Commission in its discretion may waive part or all of this requirement.
- (ii) Each applicant required to make a mailing of notification of public hearing following the preliminary hearing shall submit an affidavit of mailing on a form provided by the Commission and the master mailing lists for the mailing as provided by law.
- (iii) Each applicant required to notify the registered voters in the area of the premises and each applicant who can be denied its application by a percentage of the voters shall submit the list of registered voters within 500 feet and within 100 feet to the Commission with the affidavit of mailing and the master mailing lists.
- (iv) The zoning clearance shall be submitted to the Commission as soon as possible and before the license is issued or the transfer is effected.
- (v) Each applicant for a new license shall directly notify the chair of the neighborhood board in which the applicant's place of business is to be located, in writing and delivered by certified mail, return receipt requested. The Commission, for just cause, may waive this requirement.
- (b) Except as excused by HRS Section 281-52 or 281-57, an application for a change of location, change of class, change of kind, or change of category will be treated as a new application.

Note: Material to be repealed is ~~[bracketed]~~; new material is underscored or **boldfaced**.

- (c) An applicant for a special license, other than a one-day special license for a fund raising event by a not for profit organization, shall fulfill the requirements of paragraphs (a)(1)(i)-(iv) and (xv), (a)(2)(i) and (ii), and (a)(3)(i), (iv), and (v). Additionally, the applicant shall submit a detailed floor plan and site plan with dimensions, permission of the landlord for the event or other document conveying the use of the premises to the applicant, or permission from the government entity property owner allowing the sale or consumption of liquor on the premises, and a detailed description of the event and kind of business that the applicant proposes to conduct.
- (d) An applicant for a transient vessel license shall file in or with the application:
  - (1) If the application is made by an agent for the owner, a copy of a contract or other document establishing the agent's relationship with the vessel's owner and a document establishing the identity of the agent.
  - (2) The pier and port at which the vessel will berth and the times and dates of arrival and departure.
  - (3) The name, city, and state or country of the vessel's fee titled owner.
  - (4) A personal history and affidavit, partnership agreement, articles of organization, articles of incorporation, or other organizational document of the proposed licensee.
  - (5) If the proposed licensee is not a sole proprietor, a list of the principals of the proposed licensee.
  - (6) A current financial statement of the proposed licensee.
  - (7) A photograph of the vessel.
  - (8) A description of the vessel and deck plans showing proposed liquor outlets, dance floors, and so forth.
- (e) An applicant for a caterer license shall file with the application a detailed floor plan and site plan with dimensions, permission of the landlord for the event or other document conveying the use of the premises to the applicant, or permission from the government entity property owner allowing the sale or consumption of liquor on the premises, and a detailed description of the event and kind of business that the applicant proposes to conduct.
- (f) After granting of a new license or the transfer of an existing license other than for special license, transient vessel license, or caterer license and before the license is issued or transferred, the applicant shall request a final inspection of the proposed licensed premises by Commission staff. Before the issuance of a license allowing live music or other entertainment, Commission staff will evaluate the premises regarding its suitability for live music or other entertainment.
- (g) If a new license is not issued or the transfer of a license is not effected within six months from the date of granting, the Commission will review the granting. The applicant may show good cause why the license has not been effected, and the Commission may, at the hearing, reconsider its granting.
- (h) If the Commission finds that the applicant has made a false statement as part of the application, it may deny the application, suspend or revoke any current license, or assess and collect a penalty.

\* \* \* \* \*

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

**SUMMARY:** Makes conforming changes for winery, BYOB and small craft producer pub licenses

**§3-84-72.1. Sanitation Requirements.**

Licensed premises, including all furnishings, equipment, and paraphernalia on the premises, shall be kept in a clean and sanitary condition, and drinking glasses shall be effectively sanitized. The licensee shall also comply with all rules of the State Department of Health. Restaurant, hotel, condominium hotel, club, cabaret, dispenser, [and] brewpub, winery, bring-your-own-beverage, and small craft producer pub licensees shall also provide access to adequate toilet facilities which have been approved by the State Department of Health.

\*\*\*\*\*

**SUMMARY:** Clarifies elements for violation of this rule.

**§3-84-78.03. Entertainment.**

- (a) Entertainment which causes undue noise or disturbs the peace and quiet of the residents or tenants of the neighborhood is prohibited on licensed premises.
- (b) Entertainment which causes complaints from the public or reports from the Commission's investigators indicating that sounds emanating from the licensed premises cause undue disturbance which disrupts the peace and quiet of the residents or tenants of the neighborhood is prohibited.
- (c) Entertainment which causes complaints from the public or reports by the Commission's investigators indicating that noise created by patrons departing the premises disturbs residents or tenants of the neighborhood in which the premises are located is prohibited.

\*\*\*\*\*

**SUMMARY:** Proposed for repeal.

~~**§3-84-78.52. Stacking of Drinks.**~~

~~The stacking of liquor by the licensee for consumption by customers is prohibited. "Stacking" is defined as having more than two standard servings of drinks before a customer at any one time. A standard serving means a drink containing distilled spirits in a container not to exceed sixteen ounces, or six ounces of wine, or twenty-two ounces of beer; provided that a serving in excess of these amounts shall be limited to one per customer. A multiple-serving container, not to exceed sixty ounces, may be served to two or more persons. At last call, multiple-serving container service or any drink exceeding a single standard serving shall be prohibited.]~~

\*\*\*\*\*

Note: Material to be repealed is ~~bracketed~~; new material is underscored or **boldfaced**.

**SUMMARY:** Redesignation of section paragraph only.

**§3-86-101.54. Minors on Licensed Premises with Nude Dancing.**

No licensee holding a dispenser general category 2 (nudity) license or cabaret license which is permitted to have entertainment by a nude dancer, pursuant to Section 281-31~~(j)~~(k), Hawaii Revised Statutes, shall permit any person under twenty-one years of age to enter or remain within the licensed premises, except as provided by Section 281-78(b)(3), HRS, which allows employees age 18 and above.

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Proposed Amendments to  
Rules of the Liquor Commission of the City and County of Honolulu (2015)

**Note:** Material to be repealed is *[bracketed]*.

New material is underscored (new rule/standalone section is **bold face** only, not underscored).

\* \* \* \* \*

**SUMMARY:** Amends catering definition to conform with new catering license type; deletes stacking definition if stacking rule is repealed; and adds definition for undue noise or disturbance for Rule §3-84-78.03.

**§3-80-1.1. Definitions.**

“Caterer” **as it pertains to a Class 13(a) licensee** means a restaurant (class 2), hotel (class 12), or condominium hotel (class 15) licensee which provides off-premise liquor service in connection with food service, as stated in ~~[Sec. 281-31(n)]~~ Sec. 281-31(m) HRS.

~~*["Stacking" of liquor by the licensee means allowing the service for consumption, of more than one drink at a time per customer, except that beer may be served with a straight or unmixed serving of liquor. This shall not apply to Commission approved authorized showroom facilities which may serve the "minimum" number of drinks at the same time to lessen disturbance to the show.]*~~

“Undue noise” or “undue disturbance” means disturbance to the peace and quiet of the residents or tenants of the neighborhood from music, customers, or other noise originating from a licensed premises that is unreasonable. Music, customers, or other noise originating from a licensed premises is unreasonable within the meaning of Rule §3-84-78.03 if considering the nature and purpose of the licensee’s conduct and the circumstances known to the licensee, including the nature and zoning district of the location and the time of the day or night, the licensee’s conduct involves a gross deviation from the standard of conduct that a law-abiding citizen conducting the same type of business would follow in the same situation; or the failure to heed the reasonable admonition of a Commission investigator that the noise is unreasonable and should be stopped or reduced.

\* \* \* \* \*

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

**SUMMARY:** Adds license fees for new catering license type, winery, BYOB, and small craft producer pub licenses; corrects inadvertent omission of license fee for Category 2 brewpub license; and deletes license fee for repealed license class (Vessel).

**§3-81-17.51 License Fees. ...**

<del>7</del>	<del>Vessel</del>	<del>\$660</del> ...
13	<u>(a) Caterer, General</u> <u>(Class 2, Class 12, Class 15 only)</u>	\$30 per day
	(b) Caterer, General (Food Service Business Type) (1) Category 1 – Standard  (2) Category 2 – Music/Dancing	\$600, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible*, not to exceed \$25,000, plus \$30 per day.  \$720, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible*, not to exceed \$25,000, plus \$30 per day.
14	Brewpub (1) <u>Category 1 – Standard</u>  (2) Category 2 – Music/Dancing	\$1,680, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible*, not to exceed \$40,000.  \$1,800, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible*, not to exceed \$40,000. ...
16	Winery	\$1,200, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible*, not to exceed \$25,000.
17	BYOB (1) Category 1 – Music only (2) Category 2 – Music/Dancing	\$360  \$420
18	Small Craft Producer Pub (1) Category 1 – Standard  (2) Category 2 – Music/Dancing	\$1,680, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible*, not to exceed \$40,000.  \$1,800, and three-fourths of one percent

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

	(0.0075) of the total gross liquor sales less a *deductible*, not to exceed \$40,000.
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**SUMMARY:** Makes conforming changes for BYOB license; makes other amendments to clarify requirements; and deletes repealed license class (Vessel).

**§3-81-17.54. Gross Sales Reports.**

- (a) All licensees, except [vessel,] transient vessel (per day), [and] special, and bring-your-own-beverage, shall file a report as directed by the Commission showing the true and accurate gross sales of liquor and purchases of liquor. The report shall be signed by the owner, partner, corporate officer, member, or authorized agent and submitted with the original signature of the authorized party. The gross sales report shall also indicate the additional license fee due and payable which exceeds the minimum fees established by §3-81-17.51.
- (b) All tour and cruise vessel licensees shall file a report on a prescribed form as directed by the Commission showing the true and accurate declaration of liquor purchases. The report shall be signed by the owner, partner, corporate officer, member, or authorized agent and submitted with the original signature of the authorized party. The gross sales report shall also indicate the additional fee due and payable which exceeds the minimum fees established by §3-81-17.51.
- (c) The report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. All reports shall be complete and filed with the additional license fee, if applicable, on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.
- (d) All licensees, except [vessel,] transient vessel (per day), [and] special, and bring-your-own-beverage, shall produce within three (3) calendars days for Commission inspection books or records showing all income, purchases and expenses of their liquor licensed business. These books and records, including but not limited to daily sales records and invoices, shall be made available for inspection and/or auditing by the Commission, through its auditors or otherwise, at any time and shall be preserved for a period of four years, except that the Commission may, in its discretion, consent to destruction of those books and records within the period or may require that they be kept longer.

Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

- (e) Gross sales from off-premises catering shall be included in the gross sales report of the Restaurant, Hotel, or Condominium Hotel licensee.
- (f) Licensees who give complimentary drinks or samples without charge shall report the value of those drinks in their annual gross sales report. If there is no sales price related to the complimentary drink, the licensee shall report the complimentary drink's value at four (4) times the amount of liquor purchased.
- (g) In addition to the report for the period ending June 30<sup>th</sup>, wholesale licensees shall complete and file an interim gross sales of liquor report for the period July 1 to December 31. The interim report is due not later than March 1<sup>st</sup> of the following year. The Commission may direct the wholesale class to file additional interim gross sales of liquor reports, and establish the respective due date(s).

\*\*\*\*\*

**SUMMARY:** Redesignation of section paragraph only.

**§3-82-31.3. Determination of Nudity in Cabarets.**

- (a) The Administrator shall classify each cabaret license to determine whether the cabaret licensee is permitted to provide professional entertainment by a dancer pursuant to Section 281-31~~(j)~~**(k)**, Hawaii Revised Statutes.
- (b) Any cabaret licensee aggrieved by the decision of the administrator may file a written notice of appeal to the Commission within thirty (30) days after receipt of the notice of classification. The Commission shall hold a hearing and issue a final decision on the matter.
- (c) A cabaret licensee seeking to provide professional entertainment by a dancer shall file an application on a form prescribed by the Commission and comply with Sections 281-51 to 281-60, Hawaii Revised Statutes.

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**SUMMARY:** Redesignation of section paragraph only.

**§3-82-31.5. Brew Pub Licenses.**

- (a) Brew Pub categories shall only be as follows:
  - (1) A standard bar; or
  - (2) A premise in which live entertainment or recorded music is provided. Facilities for dancing may be permitted as provided by Liquor Commission rules.
- (b) All Brew Pub licensees shall file a report as directed by the Commission showing the total number of barrels of malt beverages manufactured on the licensee's premises during the license year, which report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration.



Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

All reports shall be filed on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

- (c) Any Brew Pub licensee is permitted to conduct the activities described in paragraphs (1) through (8) of Section 281-31~~(e)~~(n), HRS, upon written approval of the Commission, subject to the following conditions:
- (1) An application for the designation of a second location other than the licensed premises shall be submitted by the licensee on a form prescribed by the Commission.
  - (2) The designated second location shall be in an area zoned for the proposed activity.
  - (3) An application for the designation of a second location shall be accompanied by a lease agreement or any other document showing that the licensee has the exclusive right to legally occupy the proposed premises, and a floor plan of the premises drawn to scale.
- (4) Invoices for all malt beverages manufactured and/or sold at the designated second location shall be kept on the premises. All such records shall be kept for not less than three (3) years.

\* \* \* \* \*

**SUMMARY:** Amends provisions to conform with new catering license type; provides more specificity regarding food sales that must accompany catered liquor sales.

**§3-82-31.7. Catering By Restaurant, Hotel, or Condominium Hotel Licensees.**

- (a) Restaurant, hotel, and condominium hotel licensees may provide catering if that activity is directly related to the licensee's operation as a restaurant, hotel, or condominium hotel.
- (b) Businesses that wish to provide on or off-premises catering service shall apply for a restaurant (class 2), hotel (class 12), or condominium hotel (class 15) license, as applicable by law and rule, which will permit the sale of liquor (other than alcohol) while performing food catering functions.
- (c) Off-premises catering will only be authorized upon the issuance of a caterer (class 13~~(a)~~(a)) license. A caterer event license is required for each off-premises catered event where liquor is served.
- (d) For each off-premises catered event, the licensee shall submit an application for a caterer (class 13~~(a)~~(a)) event license. The application shall include a notice stating the date, time, and location of the event; a floor plan showing the boundaries of the proposed catered licensed premises; a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and Rules of the Commission and open to inspection by the Commission's investigators.

Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

- (e) A caterer **event** license fee, as established by §3-81-17.51, shall be submitted with the application.
- (f) A duly registered manager shall be in active charge of the licensed, catered premises during times that the premises is open for business. No other employees on the catered, licensed premises need to be registered with the Commission.
- (g) Gross sales from on or off-premises catering shall be included in the gross sales report of the restaurant, hotel, or condominium hotel licensee. **Each catered event must include food and liquor. At least thirty (30) per cent of the establishment's gross revenue from all catered events must come from the sale of foods.**
- (h) The licensee shall clearly post the issued license at the catered premises.
- (i) A catering licensee shall have available for inspection and review the contract indicating the parties involved in the catered event or activity.

\*\*\*\*\*

**SUMMARY:** Amends rule to conform with Hawaii, Kauai, and Maui county liquor commission practice.

#### **§3-82-31.8. Recorking.**

Unless inconsistent with Chapter 281 of the Hawaii Revised Statutes or the Rules of the Liquor Commission, any licensee engaged in meal service **[shall]** **may** allow a patron who has purchased or brought onto the licensed premises wine, liquor or beer for consumption with a meal to remove the partially consumed product from the licensed premises, which shall be recorked or resealed in its original container.

\*\*\*\*\*

**SUMMARY:** Implementing rule for new catering license type.

#### **§3-82-31.9. Catering By Food Service Businesses.**

- (a) **Food service businesses may provide liquor service if that activity is directly related to the business's operation as a food service provider or food catering service.**
- (b) **Minimum requirements of a caterer (class 13(b)) license shall be that it is an enterprise which is regularly and in a bona fide manner in the business of preparing meals for patrons for compensation, and which has kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for meals, and operated in compliance with State Department of Health laws and regulations.**
- (c) **If liquor for catered events will be stored other than at the kitchen facilities identified in (b), approval for outside warehousing must be obtained in accordance with §3-82-42.1.**

Note: Material to be repealed is *[bracketed]*; new material is underscored or boldfaced.

- (d) A per-event caterer license is required for each catered event where liquor is served.
- (e) For each catered event, the caterer (class 13(b)) licensee shall submit an application for a caterer event license. The application shall include a notice stating the date, time, and location of the event; a floor plan showing the boundaries of the proposed catered licensed premises; a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and Rules of the Commission and open to inspection by the Commission's investigators.
- (f) A per-event caterer license fee, as established by §3-81-17.51, shall be submitted with the application.
- (g) A duly registered manager shall be in active charge of the licensed, catered premises during times that the premises is open for business and licensed. No other employees on the catered, licensed premises need to be registered with the Commission.
- (h) The licensee shall clearly post the issued license at the catered premises.
- (i) A caterer (class (b)) licensee shall have available for inspection and review the contract indicating the parties involved in the catered event or activity.
- (j) Liquor sales, service, and consumption shall be limited to the catered event. Each catered event must include food and liquor. At least thirty (30) per cent of the establishment's gross revenue from all catered events must come from the sale of foods.
- (k) Retail dealer (class 3), dispenser (class 5), club (class 6), cabaret (class 11), brewpub (class 15), winery (class 16), and small craft producer pub (class 18) licensees may not apply for a caterer (class 13(b)) license.

\* \* \* \* \*

**SUMMARY:** Implementing rule for winery license.

#### **§3-82-31.10. Winery Licenses.**

All Winery licensees shall file a report as directed by the Commission showing the total number of barrels of wine manufactured on the licensee's premises during the license year, which report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. All reports shall be filed on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

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**SUMMARY:** New rule permits manufacturers to charge for sampling (not permitted for any other off-premises consumption class of license).

**§3-82-31.11 Manufacturer Licenses.**

If on-premises sampling of beer, wine, or other specified liquor manufactured or distilled from fruits or other products grown in the State has been approved by the Commission, manufacturer licensees may charge for sampling to offset costs. The value of the charges for the samples shall be reported in the licensee's annual gross sales report.

\*\*\*\*\*

**SUMMARY:** Makes conforming changes for winery, BYOB and small craft producer pub licenses.

**§3-82-38.4. Employee Records.**

- (a) All dispenser, cabaret, hotel, club, restaurant, brewpub, ~~[and]~~ condominium hotel, winery, bring-your-own-beverage, and small craft producer pub licensees, including temporary licenses, shall have available on the licensed premises a time card or other adequate record showing in English the month, day, year, and time, indicating a.m. or p.m. and the legal first name and surname of each employee when that employee is on duty. This rule also applies to managers but does not apply to entertainers or kitchen staff who do not handle, serve or sell liquor.
- (b) Time record entries shall be made at the time the employee reports on duty and again when the employee goes off duty. If the employee is a minor, the licensee shall print on the time record below the employee's name that said employee is a minor. Employee time records shall be preserved for at least six months.
- (c) Electronic or otherwise recorded payroll registration may be used for the purposes of this rule with the Administrator's approval.

\*\*\*\*\*

**SUMMARY:** Makes conforming changes for new catering type, winery, BYOB and small craft producer pub licenses; makes other amendments to conform with agency practice.

**§3-82-38.5. Registration of Employees.**

- (a) All dispenser, cabaret, hotel, club, brewpub, ~~[or]~~ condominium hotel, winery, bring-your-own-beverage, or small craft producer pub licensees shall employ only persons in that section of the licensed premises where liquor is sold, served or consumed who are registered with the Commission prior to the start of employment. For restaurant and class 13(b) caterer licensees, only managers

Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

- and bartenders are required to be registered prior to the start of employment. Licensees shall ensure that any bartender currently employed in these classes of licenses successfully completes the server-training program within ninety (90) days of the publication of these rules. A temporary registration is allowed for each employee who has an unexpired certificate of registration. This temporary registration shall not exceed three (3) consecutive days, and will only become effective if the licensee timely advised the Commission by facsimile time stamp of the temporary employment. Further, the employee temporarily registered with the Commission must permanently register not later than the first working day after the temporary registration expires. An employee need not obtain a new certificate of registration because of a name change only. This rule shall apply to the registration of employees under a temporary license based upon a new license application as stated in §3-82-32.1. However, this rule shall not apply to employees under a temporary license based upon a transfer license application where the employee is registered under the pre-existing license.
- (b) Certificates of registration issued by the Commission shall be valid only for the licensed premises for which the employee registers and the license number of the premises shall be printed on the certificate of registration. Employees may be employed to work at more than one licensed premises; however, a separate certificate of registration shall be required for each licensed premises. Certificates of registration for employees, except for dancers, bartenders, or managers shall be valid for four (4) years from the date of issue. For bartenders or managers, certificates of registration shall be valid for four (4) years from the date of successful completion of the server training program required under subparagraph (f) of this rule (including passing the examination).
- (c) Persons who apply to the Commission for registration shall present:
- (1) ~~[Positive identification in the form of either a passport, a laminated driver's license with photograph, or other laminated government identification with a photograph]~~ A valid, unexpired government issued ID card, containing the registrant's name, photo, and date of birth (e.g., Driver's License, State ID, US Passport, or Military ID; and
  - (2) ~~[Proof of a Social Security number]~~ An original Social Security Card or a Wage and Tax Statement Form W-2, provided the Social Security Number is printed on the document. A printed electronically transmitted copy is acceptable.;
  - ~~(3) — A current satisfactory tuberculosis (TB) clearance report].~~
- (d) Each person registered shall be photographed and issued a certificate of registration which shall be valid until the expiration date indicated thereon or when recalled, suspended, or revoked by the Commission. The certificate of registration shall be retained by each employee and not surrendered to or held by the employer. A processing fee shall be charged for each certificate of registration issued to cover the cost of materials and processing.
- (e) Licensees shall ensure that all employees who are required to register with the Commission have their certificate of registration for the licensed premises readily available for inspection while on duty at that licensed premises.

**Note:** Material to be repealed is *[bracketed]*; new material is underscored or boldfaced.

- (f) All dispenser, cabaret, restaurant, tour or cruise vessel, annually licensed transient vessel, hotel, club, brewpub, or condominium hotel licensees shall employ only bartenders who have successfully completed the server-training program administered by the Commission, including an examination and instruction in the following areas:
- (1) Identifying and dealing with intoxicated persons,
  - (2) Reviewing liquor laws and rules, and
  - (3) Dangers of driving while intoxicated.
- In these classes, the licensees shall ensure that individuals currently employed as a bartender successfully complete the server-training program within ninety (90) days of publication of these rules. A person may be issued a certificate of registration as a bartender for the same or another licensed premises and need not retake the server-training program if that person had successfully completed the server-training program within the past four (4) years.
- (g) If an employee has been issued a manager's certificate of registration for a particular licensed premises, the employee with the manager's certificate need not be issued a separate employee's certificate of registration of another category, except dancers, for the same licensed premises.
- (h) Entertainers are not required to be registered as employees pursuant to this rule.
- (i) The licensee shall ensure that any employee who performs duties of a hostess, as defined in §3-80-1.1, in a class 5 Dispenser, Category 4 licensed premises, is duly registered as a hostess with the Liquor Commission. Licensed premises not authorized Category 4 (hostess) shall not have employees registered or performing duties as hostesses, except as defined in §3-80-1.1.
- (j) For hotel and condominium hotel licensees, only managers, bartenders and staff who handle, serve or sell liquor are required to be registered as employees pursuant to this rule.

\* \* \* \* \*

**SUMMARY:** Reduces frequency of reporting to conform with agency practice (reflecting change from employee lists stored as hard copy versus digital copy).

**§3-82-38.8. [Semi-]Annual [Submission] Update of Employee List.**

All ~~[brewpub, tour or cruise vessels, dispenser, cabaret, hotel, club, restaurant, condominium hotel,]~~ licensees required to register employees pursuant to §3-82-38.5 shall submit to the Commission, [semi-]annually on a date and in such manner as the Commission may direct, and on such other dates as may be required by the Commission, the name of every person then employed on the licensed premises who is registered with the Commission or who is subject to registration. The employment of a person who had previously registered for a particular premises and whose name does not appear on the licensee's [semi-]annual list of employees shall be considered terminated and the registration of that person shall be voided. A person whose registration with the Commission for a particular premises has expired and who then applies for re-registration shall be considered an original applicant and shall appear in person at the Commission's office to complete this registration. It

Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

shall be presumed evidence of a violation of §3-82-38.5, Registration of Employees; §3-82-38.6, Dancers; and §3-82-38.9, Managers; that an unregistered employee's name appears on any employee time card or employment records.

\* \* \* \* \*

**SUMMARY:** Makes conforming changes for new catering type, winery, BYOB and small craft producer pub licenses; makes other amendments to conform with agency practice.

**§3-82-38.9. Licensee and Manager in Charge of Premises.**

- (a) Each dispenser, cabaret, tour or cruise vessel, annually licensed transient vessel, restaurant, class 13(b) caterer, club, hotel, caterer, brewpub, [and] condominium hotel, winery, and small craft producer pub licensee shall have a duly registered manager in active charge of the licensed premises during the time the establishment is open for business and licensed to sell or serve liquor.
- (1) Managers on catered premises shall be registered with the hotel, restaurant, class 13(b) caterer, or condominium hotel licensee performing the catering.
  - (2) Retail (class 4) licensees shall have a duly registered manager or assistant manager assigned to each licensed premises (or group of premises if ownership has multiple properties) to insure employees are knowledgeable in applicable Commission laws and rules. It is not required that these managers be present at all times but shall assume responsibility for training and monitoring their assigned stores. These managers shall complete the server-training program and pass the examination prior to being assigned those duties or within one hundred eighty (180) days after publication of these rules, if currently performing those duties.
  - (3) Bring-your-own-beverage (class 17) licensees shall have a duly registered manager in charge of the licensed premises during the time the establishment is licensed to permit consumption on the premises by patrons.
- (b) A person shall successfully complete the server-training program and pass the examination administered by the Commission before that person can be registered with the Commission as a manager or permitted to renew the manager's certificate of registration. However, a person may be issued a manager's certificate of registration for the same or another licensed premises and need not retake the server-training program and pass the examination if that person had successfully completed the server training program within the past four years.
- (c) Certificates of registration issued by the Commission shall be valid only for the licensed premises in which the manager is registered. A person may be employed to work as a manager at more than one licensed premises, however, that person shall have a manager's certificate of registration for each licensed

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

- premises. Retail licensees shall be exempt from the “one certificate-one premises” limitation.
- (d) Certificates of registration for managers shall be valid for four (4) years from the date of successful completion of the server training program required under subparagraph (b) of this rule (including passing the examination). Any person registered as a manager for a licensed premises may also perform any other duties at the same premises, except for performing as a dancer, which does require a separate registration, or sit with customers in the case of a cabaret. Managers of licensed cabarets are not permitted to sit with customers during hours of operation.
- (e) Persons who apply to the Commission for registration as a manager for a particular premises shall present:
- (1) ~~*[Positive identification in the form of either a passport, a laminated driver’s license with photograph, or other laminated government identification with photograph]*~~ A valid, unexpired government issued ID card, containing the registrant’s name, photo, and date of birth (e.g., Driver’s License, State ID, US Passport, or Military ID);
  - (2) ~~*[Proof of a Social Security number]*~~ An original Social Security Card or a Wage and Tax Statement Form W-2, provided the Social Security Number is printed on the document (a printed electronically transmitted copy is acceptable);
  - (3) Proof that the applicant is at least twenty-one (21) years of age; and
  - (4) A letter from the ~~*[licensee]*~~ holder of the liquor license, principal of the licensee entity, or authorized agent of the licensee entity certifying that the applicant will be or is a manager of the licensed premises~~;~~
  - ~~(5) *A current satisfactory tuberculosis (TB) clearance report*.~~
- (f) Each person registering as a manager shall be photographed and issued a certificate of registration which shall be valid for use only at the designated licensed premises until the expiration date or until recalled, suspended or revoked by the Commission. The certificate of registration shall be retained by each manager and not surrendered to or be held by the employer. A processing fee shall be charged for each certificate of registration issued to cover the cost of materials and processing.
- (g) Licensees shall ensure that all managers who are required to register with the Commission shall have the manager’s certificate of registration for the licensed premise readily available for inspection while on duty at that premises.
- (h) All retail, dispenser, cabaret, tour or cruise vessel, restaurant, class 13(b) caterer, club, hotel, brewpub, [and] condominium hotel, bring-your-own-beverage, winery, and small craft producer pub licensees shall ensure that responsible managers have successfully completed the server-training program administered by the Commission, including passing an examination and instruction in the following areas:
- (1) Identifying and dealing with intoxicated persons,
  - (2) Reviewing liquor laws and rules, and
  - (3) Dangers of driving while intoxicated.



Note: Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

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**SUMMARY:** Deletes kitchen and dining room requirement to conform with statutory amendment repealing same; clarifies requirements for hotel licensees who provide off-premises catering.

**§3-82-38.12. Requirements of a Hotel License.**

- (a) Minimum requirements for a hotel license shall be an establishment consisting of one or more buildings containing ~~[- (1)]~~ at least fifty hotel guest rooms ~~[and (2) a kitchen and dining room approved by the Commission in which at least two meals consisting of either breakfast, lunch or dinner are regularly prepared and served to hotel guests and other customers. The kitchen and dining room must be located within the hotel property].~~ Hotel licensees providing off-premises catering services shall have a kitchen approved by the Commission and located within the hotel property. Room service, self-service and service at private parties in areas which are the property of and contiguous to the hotel are permitted.
- (b) Upon the opening or closing of any section within the hotel licensed premises which serves alcoholic beverages, the licensee must notify the Liquor Commission with details and floor plan changes in writing not less than thirty (30) days prior to the commencement of such event.

\*\*\*\*\*

**SUMMARY:** Makes conforming changes for winery, BYOB and small craft producer pub licenses; makes other amendments pertaining to sampling activity and growler sales; and deletes repealed license class (Vessel).

**§3-82-38.19. Hours of Business.**

A licensee shall be authorized to sell, ~~[or]~~ serve, or allow consumption of liquor based upon its class of license during the hours specified as follows:

- (a) Dispenser, Club, Restaurant, Brewpub, Caterer, ~~[Vessel,]~~ Transient Vessel, Tour or Cruise Vessel, [and] Special, Winery, and Small Craft Producer Pub: From 6:00 a.m. to 2:00 a.m. the following day.
- (b) Cabaret: From 10:00 a.m. to 4:00 a.m. the following day. Liquor may be dispensed during the prescribed hours only when service is confined to customers within the area where live or amplified recorded music for dancing is provided for patrons, including a dance floor, or professional entertainment as permitted by Section 281-31, Hawaii Revised Statutes, or authorized by the Commission, is both visible and audible to customers. In areas that do not comply with the foregoing requirement, liquor may be sold, served or consumed no later than the closing hour prescribed for dispenser premises.
- (c) Retail: From 6:00 a.m. to 12:00 midnight.
- (d) Manufacturer and Wholesaler: 24 hours a day; sampling shall be limited to from 6:00 a.m. to 2:00 a.m. the following day.
- (e) Hotel: From 6:00 a.m. to 4:00 a.m. the following day.

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

- (f) Temporary: The hours of the class of the license for which the application has been submitted.
- (g) Condominium Hotel: From 6:00 a.m. to 2:00 a.m. the following day.
- (h) Class 17 Bring-Your-Own-Beverage: From 6:00 a.m. to 2:00 a.m. the following day.**
- (i) Manufacturers, Restaurants, Retail Dealers, Brewpubs, Wineries, and Small Craft Producer Pubs for product sold for off-premises consumption: From 6:00 a.m. to 12:00 midnight.**

\* \* \* \* \*

**SUMMARY:** Deletes kitchen and dining room requirement to conform with statutory amendment repealing same; clarifies requirements for condominium hotel licensees who provide off-premises catering.

**§3-82-38.24. Requirements of a Condominium Hotel License.**

- (a) Minimum requirements for a condominium hotel license shall be a condominium hotel, as defined in Sec. 281-1, HRS, containing~~[- (1)]~~ at least fifty (50) condominium hotel guest rooms~~[- and (2) a kitchen and dining room approved by the Commission that are regularly and in a bona fide manner used and kept open for the serving of at least one meal (consisting of either breakfast, lunch, or dinner) to condominium hotel guests and other customers. The kitchen and dining room must be located within the condominium hotel premises].~~ **Condominium Hotel licensees providing off-premises catering services shall have a kitchen approved by the Commission and located within the hotel property.** Room service, self-service, and service at private parties in areas which are within the condominium hotel premises are permitted.
- (b) As part of its initial application, (1) a condominium hotel license applicant shall submit a list of the initial condominium hotel guest rooms that are part of the proposed licensed premises and (2) the number of condominium hotel guest rooms that are part of the proposed licensed premises must equal at least fifty percent (50%) of the total number of guest rooms in the condominium hotel. If the condominium hotel is a phased project (meaning built and/or administered in separate phases), for purposes of determining the total number of condominium hotel guest rooms in the condominium hotel, each phase shall be treated as a separate condominium hotel. After said application is approved by the Commission, the condominium hotel licensee shall update the list of condominium hotel guest rooms on a quarterly basis.
- (c) In addition to the quarterly update obligation in subparagraph (b), the condominium hotel licensee shall maintain for inspection at the premises by any authorized employee of the Commission a current list of the condominium hotel guest rooms.
- (d) Upon the opening or closing of any section within the condominium hotel premises which serves alcoholic beverages, the licensee must notify the Liquor

Note: Material to be repealed is *[bracketed]*; new material is underscored or boldfaced.

Commission with details and floor plan changes (which may be shown using relevant portions of the condominium map) in writing not less than thirty (30) days prior to the commencement of such event.

\* \* \* \* \*

**SUMMARY:** New rule to prevent growler sellers from claiming “pop top” or other single-use containers qualify for growler sales.

**§3-82-38.27. “Growlers” or Containers used for Off-Premises Consumption.**

A growler or other glass, ceramic, or metal container used by Manufacturers, Restaurants, Retail Dealers, Brewpubs, Wineries, and Small Craft Producer Pubs for sale of product for off-premises consumption by patrons shall be a container that is re-sealable once opened, and intended for multiple fills and use.

\* \* \* \* \*

**SUMMARY:** Shifts compliance focus from Commission-approval process to licensee-notification/certification process and “fit and proper” quality of manager/operator.

**§3-82-41.4. Management or Operating Agreements.**

Prior to any management or operating agreement taking effect, an existing [Licensee] licensee shall [apply for and secure approval for any management or operating agreement from] notify the Commission, in writing, about such agreement [prior to such agreement taking effect,] and shall affirm to the Commission that any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the person’s or principal’s own right in conformance with Section 281-45, Hawaii Revised Statutes. [subject to the following conditions:]

- (a) The signed notice shall include the following:
- (1) Identification of the manager, operator, or entity, and submittal of the documents required under Rule §3-83-53.1(a)(1)(i)-(iv), substituting the manager, operator, or entity for “applicant” in submitting documents under those sections; and
  - (2) Except in the case of a management or operating agreement pertaining to a Hotel or Condominium Hotel license, the expected date for the transfer of the license to the manager, operator, or entity.
- (b) The signed notice shall constitute certification by the licensee that the following is true:
- ~~[(a)](1)~~ The agreement [shall be] is restricted to permitting the operator to manage and operate the licensed premises on behalf of the licensee, and the licensee shall remain [responsible for and maintain exclusive control] in possession and control of the licensed premises.
- ~~[(b)](2)~~ Except in the case of a management or operating agreement pertaining to a hotel or condominium hotel license, the agreement

Note: Material to be repealed is *[bracketed]*; new material is underscored or boldfaced.

shall be for the entire licensed premises~~*[, unless otherwise approved by the Commission].*~~

- (3) To the best of the licensee's knowledge, information, and belief, any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the individual's or principal's own right in conformance with Section 281-45, Hawaii Revised Statutes.
- ~~[(c)] *[If the agreement is effected without the prior approval of the Commission, the Commission may in its discretion revoke or suspend the license, or assess and collect a penalty, or reprimand the licensee.*~~
- ~~[(d)] *In conjunction with its request for approval, the licensee shall submit an executed copy of the agreement, and can be subject to submittal of any or all documents required under Rule §3-83-53.1, and shall be subject to a hearing before the Commission.*~~
- (c) If the Commission finds that any proposed person or any principal of the agreement is an unfit or improper person to hold a liquor license in the person's or principal's own right pursuant to Section 281-45, Hawaii Revised Statutes, ~~*[it shall not approve the agreement]*~~, the notification requirement herein shall be deemed to have not been met. The licensee shall confirm within 30 days of the written notification to the licensee of the Commission's aforementioned finding, that such management or operating agreement has been terminated.
- (d) In addition to the documents required under (a)(1), licensee will provide any additional documents or information related to the arrangement contemplated by the management or operating agreement upon request.
- (e) If at any time the Commission finds that notwithstanding the terms of the agreement and notification the licensee is not in possession and control of the licensed premises, or the entire premises is not being managed and operated by the manager or operator, the Commission may in its discretion revoke or suspend the license, or assess and collect a penalty, or reprimand the licensee.

The term "management agreement" or "operating agreement" shall include any agreement, verbal or written, where through such agreement the licensee allows an operator to manage and operate the licensed premises on behalf of the licensee.

[clean version]

#### **§3-82-41.4. Management or Operating Agreements.**

Prior to any management or operating agreement taking effect, an existing licensee shall notify the Commission, in writing, about such agreement and shall affirm to the Commission that any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the person's or principal's own right in conformance with Section 281-45, Hawaii Revised Statutes.

- (a) The signed notice shall include the following:
- (1) Identification of the manager, operator, or entity, and submittal of the documents required under Rule §3-83-53.1(a)(1)(i)-(iv), substituting the

**Note:** Material to be repealed is [bracketed]; new material is underscored or **boldfaced**.

- manager, operator, or entity for “applicant” in submitting documents under those sections; and
- (2) Except in the case of a management or operating agreement pertaining to a Hotel or Condominium Hotel license, the expected date for the transfer of the license to the manager, operator, or entity.
- (b) The signed notice shall constitute certification by the licensee that the following is true:
- (1) The agreement is restricted to permitting the operator to manage and operate the licensed premises on behalf of the licensee, and the licensee shall remain in possession and control of the licensed premises.
- (2) Except in the case of a management or operating agreement pertaining to a hotel or condominium hotel license, the agreement shall be for the entire licensed premises.
- (3) To the best of the licensee’s knowledge, information, and belief, any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the individual’s or principal’s own right in conformance with Section 281-45, Hawaii Revised Statutes.
- (c) If the Commission finds that any proposed person or any principal of the agreement is an unfit or improper person to hold a liquor license in the person’s or principal’s own right pursuant to Section 281-45, Hawaii Revised Statutes, the notification requirement herein shall be deemed to have not been met. The licensee shall confirm within 30 days of the written notification to the licensee of the Commission’s aforementioned finding, that such management or operating agreement has been terminated.
- (d) In addition to the documents required under (a)(1), licensee will provide any additional documents or information related to the arrangement contemplated by the management or operating agreement upon request.
- (e) If at any time the Commission finds that notwithstanding the terms of the agreement and notification the licensee is not in possession and control of the licensed premises, or the entire premises is not being managed and operated by the manager or operator, the Commission may in its discretion revoke or suspend the license, or assess and collect a penalty, or reprimand the licensee. The term “management agreement” or “operating agreement” shall include any agreement, verbal or written, where through such agreement the licensee allows an operator to manage and operate the licensed premises on behalf of the licensee.

\*\*\*\*\*

**SUMMARY:** Makes conforming changes for new catering type, winery, BYOB and small craft producer pub licenses.

**§3-83-53.1. License Applications; Notice of Hearing; Affidavits.**

- (a) An applicant applying for a new license or for the transfer of an existing license of a manufacturer, restaurant, wholesale, retail, dispenser, club, annual transient vessel, tour or cruise vessel, cabaret, hotel, caterer class 13(b), brewpub, ~~[or]~~

Note: Material to be repealed is ~~bracketed~~; new material is underscored or **boldfaced**.

condominium hotel, winery, bring-your-own-beverage, or small craft producer pub shall file in support of the application:

- (1) With the application:
  - (i) If the applicant is a sole proprietor or an unincorporated association, a personal history and affidavit for each natural person listed in the application on forms provided by the Commission.
  - (ii) If the applicant is a partnership, the partnership agreement, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of the current partners to the partnership. For each partner, a personal history and affidavit on a form provided by the Commission or, if the partner is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that partner, and a list of current principals of that partner.
  - (iii) If the applicant is a limited liability company, the articles of organization and operating agreement, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of the current managers and current members of the company with their percentage of ownership. For each manager and member, a personal history and affidavit on a form provided by the Commission or, if the manager or member is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that manager or member, and a list of current principals of that manager or member.
  - (iv) If the applicant is a corporation, the articles of incorporation, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of current officers, current directors, and current stockholders of 25% or more of the outstanding capital stock of the corporation. For each officer, director, or stockholder of 25% or more of the outstanding capital stock, a personal history and affidavit on a form provided by the Commission or, if the stockholder is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that stockholder, and a list of current principals of that stockholder.
  - (v) Except for a caterer class 13(b) or condominium hotel license, a floor plan to scale of the licensed premises or proposed licensed premises with the area to be licensed demarcated in red and showing all fixtures, a square footage calculation for the area to be licensed, and the scale and orientation of the plan, and, in the case of an application regarding a license for consumption on the premises, the restrooms for the premises and a preliminary approval stamp from the State Department of Health. If the applicant is applying for a class or category of license that permits

Note: Material to be repealed is ~~bracketed~~; new material is underscored or **boldfaced**.

- dancing, the designated dance floor shall be shown on the floor plan.
- (vi) A copy of the floor plan required by paragraph (v) on an 8½-inch by 11-inch piece of paper.
  - (vii) A copy of the deed, lease, sublease, assignment of lease, rental agreement, or other conveyance of the use of the property to the applicant permitting the activity for which the license is applied. A copy of the executed document with applicable consents shall be submitted before the license is issued and may be submitted in fulfillment of the requirement of this paragraph.
  - (viii) For applications for new licenses and for the transfer of an existing dispenser or cabaret license, a tax map drawn to a scale of one inch to each forty, fifty, or sixty feet showing the area within 500 feet of the licensed area or proposed licensed area of the premises and also indicating 100 feet from the premises.
  - (ix) For applications for new licenses and for the transfer of an existing dispenser or cabaret license, a list of names and addresses of all property owners, recorded lessees, condominium projects, and cooperative apartment projects within 500 feet of the premises, which list shall also designate those owners, lessees, condominiums, and cooperatives which are within 100 feet of the premises.
  - (x) Except in the matter of a hotel as defined in HRS Section 486K-1, a restaurant, or a convenience store, for applications for new licenses and for the transfer of an existing dispenser or cabaret license, a list of small businesses within 500 feet and of small businesses within 100 feet of the premises.
  - (xi) A full, true, and accurate statement of the complete financial condition of the applicant, which shall not be over six months old, or that is less than one year old and certified by the applicant to be substantially correct.
  - (xii) Documents substantiating the financial statement and showing sufficient finances to cover proposed expenditures related to the application and including initial operating expenses for the first six months of operation.
  - (xiii) For the transfer of a license, an instrument documenting the consideration for the proposed transfer.
  - (xiv) Except when the applicant will do business under its own name, exactly, for an application for a new license, a Certificate of Registration of trade name from the Department of Commerce and Consumer Affairs or other sufficient documentation of the permitted use of the trade name in accordance with §3-81-17.58, or for an application for the transfer of a license, a statement of what trade name is proposed to be used, which shall be confirmed before the transfer is effected by a Certificate of Registration of trade name or other sufficient documentation.

Note: Material to be repealed is *[bracketed]*; new material is underscored or **boldfaced**.

- (xv) A description detailing the kind of business that the applicant proposes to operate. For applications for transferred restaurant licenses, a financial report of gross revenue for the year preceding the application demonstrating that at least thirty percent of the establishment's gross revenue was derived from the sale of foods. For applications for new restaurant licenses if not previously operated as an establishment serving meals to patrons for compensation, a business plan demonstrating the applicant's ability to meet the minimum gross revenue from the sale of foods required of restaurant licensees.
- (xvi) A 4-inch by 6-inch photoimage or photograph of the front of the licensed premises or proposed licensed premises and a 4-inch by 6-inch photoimage or photograph showing the licensed premises or proposed licensed premises street location.
- (xvii) For applications for new condominium hotel licenses or for the transfer of an existing condominium hotel license:
  - a. A list of the condominium hotel guest rooms within the proposed licensed premises as of the application date.
  - b. A copy of the application for registration of the condominium hotel operator approved by the real estate commission, if applicable.
  - c. A floor plan (which may be a copy of all or portions of the recorded condominium map) marked to show:
    - (i) the portion or portions of the licensed premises or proposed licensed premises in which alcoholic beverages will be served, with such portion or portions marked in red and showing all fixtures and any designated dance floor in such portion or portions; a square footage calculation of such portion or portions; the scale of the map; and, if liquor will be consumed within such portion or portions, the restrooms for such portion or portions;
    - (ii) the locations of all condominium hotel guest rooms in the condominium hotel (which locations may be indicated by narrative description or coloring of the condominium map); and
    - (iii) the locations of the apartments, common elements and/or limited common elements over which access will be provided to and from the portion or portions of the licensed premises or proposed licensed premises in which alcoholic beverages will be served and the condominium hotel guest rooms (which locations may be indicated by narrative description or coloring of the condominium map).
  - d. A preliminary approval stamp from the State Department of Health for the portion or portions of the licensed premises or



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- proposed licensed premises in which alcoholic beverages will be served.
- e. The identity of the AOA manager and, if the applicant is not a rental program manager for condominium hotel guest rooms in the condominium hotel, the rental program manager that manages the most condominium hotel guest rooms in the condominium hotel.
- (2) Concurrent with filing the application:
- (i) A request for criminal history record clearance for liquor license, for each person required to submit a personal history and affidavit, with the Hawaii Criminal Justice Data Center.
- (ii) A request for zoning clearance with the Department of Planning and Permitting, Aloha Tower Development Corporation, or Hawaii Community Development Authority, as appropriate.
- (iii) A request for the required list of registered voters, if required, with the City Clerk. A statement that each request has been made, with the date that it was made, shall accompany the application filed with the Commission.
- (3) During the processing of the application:
- (i) Each person required to submit a personal history and affidavit is required to submit fingerprints on a fingerprint card provided by the Commission. Fingerprints for those principals not fingerprinted by an investigator for the Commission shall be submitted, with a letter of authority by the person who made the fingerprints, with the application or as soon after its submission as possible. The Commission in its discretion may waive part or all of this requirement.
- (ii) Each applicant required to make a mailing of notification of public hearing following the preliminary hearing shall submit an affidavit of mailing on a form provided by the Commission and the master mailing lists for the mailing as provided by law.
- (iii) Each applicant required to notify the registered voters in the area of the premises and each applicant who can be denied its application by a percentage of the voters shall submit the list of registered voters within 500 feet and within 100 feet to the Commission with the affidavit of mailing and the master mailing lists.
- (iv) The zoning clearance shall be submitted to the Commission as soon as possible and before the license is issued or the transfer is effected.
- (v) Each applicant for a new license shall directly notify the chair of the neighborhood board in which the applicant's place of business is to be located, in writing and delivered by certified mail, return receipt requested. The Commission, for just cause, may waive this requirement.
- (b) Except as excused by HRS Section 281-52 or 281-57, an application for a change of location, change of class, change of kind, or change of category will be treated as a new application.

Note: Material to be repealed is ~~bracketed~~; new material is underscored or **boldfaced**.

- (c) An applicant for a special license, other than a one-day special license for a fund raising event by a not for profit organization, shall fulfill the requirements of paragraphs (a)(1)(i)-(iv) and (xv), (a)(2)(i) and (ii), and (a)(3)(i), (iv), and (v). Additionally, the applicant shall submit a detailed floor plan and site plan with dimensions, permission of the landlord for the event or other document conveying the use of the premises to the applicant, or permission from the government entity property owner allowing the sale or consumption of liquor on the premises, and a detailed description of the event and kind of business that the applicant proposes to conduct.
- (d) An applicant for a transient vessel license shall file in or with the application:
  - (1) If the application is made by an agent for the owner, a copy of a contract or other document establishing the agent's relationship with the vessel's owner and a document establishing the identity of the agent.
  - (2) The pier and port at which the vessel will berth and the times and dates of arrival and departure.
  - (3) The name, city, and state or country of the vessel's fee titled owner.
  - (4) A personal history and affidavit, partnership agreement, articles of organization, articles of incorporation, or other organizational document of the proposed licensee.
  - (5) If the proposed licensee is not a sole proprietor, a list of the principals of the proposed licensee.
  - (6) A current financial statement of the proposed licensee.
  - (7) A photograph of the vessel.
  - (8) A description of the vessel and deck plans showing proposed liquor outlets, dance floors, and so forth.
- (e) An applicant for a caterer license shall file with the application a detailed floor plan and site plan with dimensions, permission of the landlord for the event or other document conveying the use of the premises to the applicant, or permission from the government entity property owner allowing the sale or consumption of liquor on the premises, and a detailed description of the event and kind of business that the applicant proposes to conduct.
- (f) After granting of a new license or the transfer of an existing license other than for special license, transient vessel license, or caterer license and before the license is issued or transferred, the applicant shall request a final inspection of the proposed licensed premises by Commission staff. Before the issuance of a license allowing live music or other entertainment, Commission staff will evaluate the premises regarding its suitability for live music or other entertainment.
- (g) If a new license is not issued or the transfer of a license is not effected within six months from the date of granting, the Commission will review the granting. The applicant may show good cause why the license has not been effected, and the Commission may, at the hearing, reconsider its granting.
- (h) If the Commission finds that the applicant has made a false statement as part of the application, it may deny the application, suspend or revoke any current license, or assess and collect a penalty.

\* \* \* \* \*

Note: Material to be repealed is [bracketed]; new material is underscored or boldfaced.

**SUMMARY:** Makes conforming changes for winery, BYOB and small craft producer pub licenses

**§3-84-72.1. Sanitation Requirements.**

Licensed premises, including all furnishings, equipment, and paraphernalia on the premises, shall be kept in a clean and sanitary condition, and drinking glasses shall be effectively sanitized. The licensee shall also comply with all rules of the State Department of Health. Restaurant, hotel, condominium hotel, club, cabaret, dispenser, [and] brewpub, winery, bring-your-own-beverage, and small craft producer pub licensees shall also provide access to adequate toilet facilities which have been approved by the State Department of Health.

\*\*\*\*\*

**SUMMARY:** Clarifies elements for violation of this rule.

**§3-84-78.03. Entertainment.**

- (a) Entertainment which causes undue noise or disturbs the peace and quiet of the residents or tenants of the neighborhood is prohibited on licensed premises.
- (b) Entertainment which causes complaints from the public or reports from the Commission's investigators indicating that sounds emanating from the licensed premises cause undue disturbance which disrupts the peace and quiet of the residents or tenants of the neighborhood is prohibited.
- (c) Entertainment which causes complaints from the public or reports by the Commission's investigators indicating that noise created by patrons departing the premises disturbs residents or tenants of the neighborhood in which the premises are located is prohibited.

\*\*\*\*\*

**SUMMARY:** Proposed for repeal.

~~**§3-84-78.52. Stacking of Drinks.**~~

~~The stacking of liquor by the licensee for consumption by customers is prohibited. "Stacking" is defined as having more than two standard servings of drinks before a customer at any one time. A standard serving means a drink containing distilled spirits in a container not to exceed sixteen ounces, or six ounces of wine, or twenty-two ounces of beer; provided that a serving in excess of these amounts shall be limited to one per customer. A multiple-serving container, not to exceed sixty ounces, may be served to two or more persons. At last call, multiple-serving container service or any drink exceeding a single standard serving shall be prohibited.]~~

\*\*\*\*\*

Note: Material to be repealed is ~~bracketed~~; new material is underscored or **boldfaced**.

**SUMMARY:** Redesignation of section paragraph only.

**§3-86-101.54. Minors on Licensed Premises with Nude Dancing.**

No licensee holding a dispenser general category 2 (nudity) license or cabaret license which is permitted to have entertainment by a nude dancer, pursuant to Section 281-31~~(j)~~**(k)**, Hawaii Revised Statutes, shall permit any person under twenty-one years of age to enter or remain within the licensed premises, except as provided by Section 281-78(b)(3), HRS, which allows employees age 18 and above.

\*\*\*\*\*

## Exhibit 2

\_\_\_ .B. NO. \_\_\_

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## A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

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

1           SECTION 1. The purpose of this Act is to provide greater  
2 clarity and effect to the Small Business Regulatory Flexibility  
3 Act with the following amendments:

4           (1) Adopt a more explicit definition of "small business";

5           (2) Clarify the powers of the small business regulatory  
6 review board when reviewing administrative rules that  
7 impact small business;

8           (3) Increase the number of board members from nine to  
9 eleven; and

10          (4) Clarify when reporting by the agencies is required for  
11 submission to the small business regulatory review  
12 board and when reporting by the board is required for  
13 submission to the legislature.

14          SECTION 2. Section 201M-1, Hawaii Revised Statutes, is  
15 amended by amending the definition of "small business" to read  
16 as follows:

17          "Small business" means a for-profit [~~enterprise consisting~~  
18 ~~of~~] corporation, limited liability company, partnership, limited

.B. NO.          

1 partnership, sole proprietorship, or other legal entity that:

2 (1) Is domiciled and authorized to do business in Hawaii;

3 (2) Is independently owned and operated; and

4 (3) Employs fewer than one hundred full-time or part-time  
5 employees[-] in Hawaii."

6 SECTION 3. Section 201M-5, Hawaii Revised Statutes, is  
7 amended by amending subsections (a) and (b) to read as follows:

8 "(a) There shall be established within the department of  
9 business, economic development, and tourism, for administrative  
10 purposes, a small business regulatory review board to review any  
11 proposed new or amended rule [~~or to~~]. If the board determines  
12 that a proposed rule will not have a significant economic impact  
13 on a substantial number of small businesses, the board shall  
14 submit a statement to that effect to the agency that sets forth  
15 the reason for the board's decision. If the board determines  
16 that the proposed rule will have a significant economic impact  
17 on a substantial number of small businesses, the board may  
18 submit to the agency suggested changes in the proposed rule to  
19 minimize the economic impact of the proposed rule, or may  
20 recommend the withdrawal of the proposed rule. The board may  
21 also consider any request from small business owners for review  
22 of any rule adopted by a state agency and to make

\_\_\_\_.B. NO.\_\_\_\_

1 recommendations to the agency or the legislature regarding the  
2 need for a rule change or legislation. For requests regarding  
3 county ordinances, the board may make recommendations to the  
4 county council or the mayor for appropriate action.

5 (b) The board shall consist of [~~nine~~] eleven members, who  
6 shall be appointed by the governor pursuant to section 26-34,  
7 provided that:

8 (1) Three members shall be appointed from a list of  
9 nominees submitted to the president of the senate;

10 (2) Three members shall be appointed from a list of  
11 nominees submitted by the speaker of the house of  
12 representatives;

13 (3) [~~Two~~] Four members shall be appointed by the governor;

14 (4) The director of business, economic development, and  
15 tourism, or the director's designated representative,  
16 shall serve as an ex officio voting member of the  
17 board;

18 (5) The appointments shall reflect representation of a  
19 variety of businesses in the State;

20 (6) No more than two members shall be representatives from  
21 the same type of business; and



\_\_\_\_.B. NO.\_\_\_\_

1           (7) There shall be at least one representative from each  
2           county.

3 For the purposes of paragraphs (1) and (2), nominations shall be  
4 solicited from small business organizations, state and county  
5 chambers of commerce, and other interested business  
6 organizations."

7           SECTION 4. Section 201M-7, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9           "(a) Each agency having rules that affect small business  
10 shall submit by June 30 of each odd-numbered year~~[7]~~ to the  
11 board a list of those rules ~~[to the small business regulatory~~  
12 ~~review board;]~~ and a report describing the specific public  
13 purpose or interest for adopting the respective rules that  
14 affect small business and any other reasons to justify their  
15 continued implementation; provided that, by June 30 of each  
16 year, each agency shall submit to the ~~[small business regulatory~~  
17 ~~review]~~ board a list of any rules to be amended or repealed,  
18 based upon any new, amended, or repealed statute~~[- The agency~~  
19 ~~shall also submit a report describing the specific public~~  
20 ~~purpose or interest for adopting the respective rules that~~  
21 ~~affect small business and any other reasons to justify their~~  
22 ~~continued implementation.]~~ that impacts small business."

\_\_\_\_.B. NO.\_\_\_\_

1 SECTION 5. Section 201M-7, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3 "(c) The board may solicit testimony from the public  
4 regarding any report submitted by the agency under this section  
5 at a public meeting held pursuant to chapter 92. Upon  
6 consideration of any report submitted by an agency under this  
7 section and any public testimony, the board shall submit an  
8 evaluation report to the [~~next regular session of~~]  
9 legislature[-] each even-numbered year. The evaluation report  
10 shall include an assessment as to whether the public interest  
11 significantly outweighs a rule's effect on small business and any  
12 legislative proposal to eliminate or reduce the effect on small  
13 business. The legislature may take any action in response to  
14 the report as it finds appropriate."

15 SECTION 6. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

BY REQUEST

\_\_\_\_.B. NO.\_\_\_\_

**Report Title:**

Small Business Regulatory Flexibility Act

**Description:**

Adopt a more explicit definition of "small business," clarify the powers of the Small Business Regulatory Review Board, increase the number of board members from nine to eleven, and clarify when reporting by the agencies is required for submission to the board and for submission by the board to the Legislature.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*