

## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
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Neil Abercrombie  
*Governor*

Richard C. Lim  
*Director, DBEDT*

Mary Alice Evans  
*Deputy Director, DBEDT*

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*Director, DBEDT*  
*Voting Ex Officio*

**AGENDA (Corrected)**  
**Wednesday, November 20, 2013 ★ 9:30 p.m.**  
**No. 1 Capitol District Building**  
**250 South Hotel Street - Conference Room 436**

**I. Call to Order**

**II. Approval of October 30, 2013 Meeting Minutes**

**III. New Business**

- A. Proposed Amendments to Hawaii Administrative Rules for Title 17 Chapter 799 Preschool Open Doors Program (Department of Human Services) – Exhibit 1
- B. Proposed new rules Sections 3-81-20 General Right of Inspection, 3-82-38.26 Bottle Service for On-Premise Consumption, 3-82-41.3 Management or Operating Agreements, and 3-84-73.1 Quality of Liquor, and Proposed Amendments to Sections 3-80-1.1 Definitions, 3-81-17.53 License Fees; When Due and How Calculated, 3-81-17.54 Gross Sales Reports, 3-17.55 Additional License Fees on Gross Sales, 3-82-31.8 Recorking, 3-82.38.5 Registration of Employees, 3-82-38.8 Semi-Annual Submission of Employee List, 3-82-38.9 Licensee and Manager in Charge of Premises, 3-82-38.25 Restrictions or Conditions on Licenses, 3-82-41.2 Transfer of Corporate Stock; Notification Regarding Limited Partners, Limited Liability Company Managers or Members, 3-83-53.1 License Applications; Notice of Hearing; Affidavits, 3-83-61.1 Renewal of Existing License, 3-83-62 Architectural Requirements/Alteration of Licensed Premises, 3-84-72.2 Premises Lighting; Doors, 3-84-78.01 Conduct of Employees, 3-84-78.01 Conduct of Employees, 3-84-78.06 Solicitation of Business Outside of Premises, 3-84-78.52 Stacking of Drinks, and 3-85-91.12 Licenses under Safekeeping (Liquor Commission – City and County of Honolulu) – Exhibit 2

**IV. Administrative Matters:**

- A. Proposed 2014 Board Meeting Schedule
- B. Board Business Cards
- C. RegAlert, electronic email alert system for announcement of proposed and amended administrative rules impacting small businesses
- D. Board's Draft 2013 Annual Report, pursuant to Section 201M-5, Hawaii Revised Statutes
- E. Discussion of Board's Brochure and Hawaii Bill of Rights Brochure
- F. Chair's Report – Exhibit A

**V. Adjournment**

**VI. Next Meeting:** Scheduled for Wednesday, December 11, 2013, Conf. Rm. 436

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

## Exhibit 1

OCT 08 2013

NEIL ABERCROMBIE  
GOVERNOR



PATRICIA McMANAMAN  
DIRECTOR

BARBARA A. YAMASHITA  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

October 7, 2013

DTS: 20131010093407  
TO: SBRRB  
FROM: Director's Office  
Comment/Recommendation  
Due Date: 10/23/13

MEMORANDUM

TO: The Honorable Neil Abercrombie  
Governor of Hawaii

FROM: *Patricia McManaman*  
Patricia McManaman, Director

SUBJECT: PRELIMINARY APPROVAL OF PROPOSED CHAPTER 17-799 HAWAII  
ADMINISTRATIVE RULES, PRESCHOOL OPEN DOORS PROGRAM

In accordance with Administrative Directive 09-01, we are requesting your preliminary approval of the above-mentioned Benefit, Employment and Support Services Division rules. These rules have been reviewed by the Attorney General's Office to ensure compliance with applicable state and federal legal requirements, and approved as to form.

We are attaching for your review and consideration the text of the proposed amendments in Ramseyer format and a statement of its anticipated impact.

We plan to hold a public hearing on the proposed amendments. Therefore, your preliminary approval is respectfully requested to enable the department to publish the legal notice.

Your expedited response to this request would be greatly appreciated. If you have any questions, please contact Scott Nakasone, Assistant Administrator of the Benefit, Employment and Support Services Division at 586-7054.

Enclosures

The Honorable Neil Abercrombie  
Preliminary Approval of Proposed Chapter 17-799  
Hawaii Administrative Rules, Preschool Open Doors Program  
October 7, 2013  
Page 2

\_\_\_\_\_ APPROVED \_\_\_\_\_ DISAPPROVED TO PROCEED WITH PUBLIC HEARING:

\_\_\_\_\_  
NEIL ABERCROMBIE  
Governor, State of Hawaii

\_\_\_\_\_  
Date

c: Honorable Kalbert Young, Director  
Department of Budget and Finance (B&F)

Honorable Richard Lim, Director  
Department of Business, Economic, Development and Tourism (DBED&T)

## IMPACT STATEMENT

### CHAPTER 17-799, PRESCHOOL OPEN DOORS PROGRAM

#### PROPOSED CHANGES TO BE MADE

The proposed new chapter 17-799 will effectuate the creation, implementation, and operation of the Preschool Open Doors program that was statutorily established through the enactment of Act 169, Session Laws of Hawaii (SLH) 2013. Previously, the Preschool Open Doors Program was established through Hawaii Administrative Rules (HAR) as a subchapter to chapter 17-798.2, Child Care Services program. In the creation of §17-799, sections have been based substantially on the existing §17-798.2.

The following are the differences between the existing §17-798.2, and the proposed new chapter §17-799, to reflect the Preschool Open Doors Program as established by Act 169, SLH 2013:

#### §17-799-1 Purpose

Establishes that, "Child care payments under this subchapter shall be for early childhood services to low and moderate income families that contributes to school readiness by providing up to a school year of experience in a preschool program chosen by the child's caretaker prior to the child entering kindergarten. The intent of the program is to provide child care payments to as many eligible families as possible through the limited funding that is appropriated for the State fiscal year."

#### §17-799-2 Definitions

Definitions under this section are from the existing §17-798.2, Child Care Services, with the following additions and amendments:

#### Additions:

The following terms are created to:

Establish the preschool accreditation that the department will recognize for the Preschool Open Doors Program when determining child care payment rate:

"Accredited" means a group child care center, or group child care home, that is certified by the National Association for the Education of Young Children, (NAEYC), or the National Early Childhood Program Accreditation, (NECPA), to meet accreditation standards.

Recognize the additional record check requirement that applies to providers of child care:

"Adult abuse record check" means an examination of an individual's adult abuse confirmation history through:

- (1) An initial name inquiry into State adult protective services files;
- (2) Subsequent adult abuse confirmation history checks for new hires and re-hires; and
- (3) An annual name inquiry into State adult protective services files.

Establish the applicants considered for preschool open doors enrollment:

"Approved priority applicant" means an applicant that has met program eligibility criteria and has their application income-ranked within their priority group, and within their geographical area designated by the department, by dividing their monthly gross income by eighty-five per cent of the State Median Income for a family of the same size.

Establish the reference of the Department of Human Services:

"Department" means the department of human services or its designee.

Define the type of care recognized by the program:

"Group child care center" or "GCC" means a facility, other than a private home, at which care is provided, as defined in HRS §346-151.

"Group child care home" or "GCCH" means a facility, which may be an extended or modified private home, at which care is provided to seven to twelve children.

Define the terms, "low-income" and "moderate-income", as stated in Act 169, SLH 2013:

"Low-income" means gross income less than or equal to one hundred eighty five per cent of the Federal Poverty Guidelines.

"Moderate-income" means gross income greater than one hundred eighty five per cent and less than or equal to two hundred fifty per cent of the Federal Poverty Guidelines.

Define self-employment for applicants of the Preschool Open Doors Program:

"Self-employment" means an individual is not subject to discharge from his or her job by another person, reports income to the Internal Revenue Service and the State as a self-employed person, meets social security requirements as a self-employed person and pays employer's and employee's share of social security taxes, and is not considered an employee of an agency or organization.

Update the term used for the federally-funded financial assistance program administered by the department to eligible families, which in Hawaii had been previously known as Aid to Families and Dependent Children (AFDC):

"Temporary Assistance for Needy Families" or "TANF" means the federal and state financial assistance and non-assistance program administered by the department under 42 U.S.C. §§601-617 and HRS §346-29.

Amendments:

The following terms:

"Caretaker", had the following added to its existing definition, "This includes a foster parent who may not be providing financial support to the child but may be receiving support for the child from a private or public agency. This also includes teen parents who are birth parents to the child."

"Child care" has been narrowly defined so that it supports the purpose of the Preschool Open Doors Program by amending the following statement for "Child care" that reads, "Child care, for the purposes of this chapter, is limited to care provided in a group child care home, or in a group child care center"

"Eligibility period", has been amended to comply with the limitation of the program's funding source availability. The term reads, "'Eligibility period" means a period up to twelve months, established by the department, that shall not exceed the applicable State fiscal year, during which the household may be eligible for child care payments."

"Essential person", has been amended to update the previous reference of "AFDC" to "TANF".

"Preschool", has been amended by removing the reference "department-licensed", to recognize that preschools that are exempted by licensure under HRS §346-152 may be an allowable group child care center for the Preschool Open Doors program.

"Prospective budgeting" has been amended by removing the reference to "child care need" and "caretakers' activity hours" as this is a requirement for child care under 17-798.2, but is not a requirement for the Preschool Open Door Program.

"Overpayment", "Presumptively eligible" and "Underpayment" have been amended removing the reference "provider".

"State Median Income" has been amended by removing reference to the Child Care Development Fund (CCDF).

#### §17-799-3 Confidentiality

This establishes the department's confidentiality policy and practice in §17-601 applies to recipients of child care assistance under this chapter.

#### §17-799-4 Scope

Establishes that the Preschool Open Doors Program is a child care services program, and that funding for this program shall only be used for this intended purpose.

#### §17-799-5 Application period

This establishes the process by which the department shall notify the public when applications will be made available to apply for the program, how to obtain an application, and when applications received will be processed.

§17-799-6 Application process

Establishes what constitutes an application for the program, the date of application, the requirement of verification from applicants to establish eligibility for the program, the date of eligibility as defined by the start date of the selected preschool, and the disposition of applications received outside of the open enrollment period.

§17-799-7 Priority of applications

Establishes how applications for the program will be prioritized effective with the state fiscal year 2015 funding to comply with Act 169, SLH 2013, and that the department will give notice to applicants regarding the status of their applications.

§17-799-8 Family unit eligibility requirements

Establishes that the child and applicant shall reside together, that the child meets the priority application criteria, and that the applicant meets income eligibility criteria unless they are a foster parent to the child placed by the Department. Also establishes that applicants who meet the family unit eligibility requirements, but are not eligible for program enrollment because of lack of funding, are to be placed on a waitlist and the department shall notify the family unit of this status.

§17-799-9 Income considered in eligibility determination

Establishes what constitutes income for program eligibility purposes.

§17-799-10 Excluded monthly income

Establishes what income is excluded from determining program eligibility.

§17-799-11 Program enrollment

Establishes the process that approved priority applicants, and waitlisted approved priority applicants selected for program enrollment, will need to complete to receive child care payments. The required form that the approved priority applicant must have their chosen preschool complete must be returned to the department within 20 days. The approved priority applicant will be responsible that their chosen preschool meets the program qualifications and reporting requirements.

§17-799-12 Program qualifications for preschools

Establishes program qualifications for preschools that includes conducting a school readiness assessments as provided by the department, for each eligible Preschool Open Doors Program child enrolled, and submit the results of the assessments to the department. The department shall assign the assessment and assessment submittal deadlines.



§17-799-13 Child care rates

Establishes the department's maximum payment rate depending on the type of child care selected.

The rates for type of child care are:

\$710 for accredited licensed and accredited license exempt group child care center preschool;  
and

\$675 for non-accredited licensed and non-accredited license exempt group child care center preschool, and group child care home.

§17-799-14 Method of computing child care payment

Establishes the department's methodology for calculating the approved child care payment to enrolled program participants. Also establishes a sliding scale co-payment chart that is based on the family unit's income. Family unit's shall be responsible for child care costs in excess of the department's approved monthly payment amount. The department shall project the initial authorized payment amount for the duration of the program eligibility period.

§17-799-15 Child care payments

Establishes what child care payments consists of, the frequency in which payments will be made, and the manner in which payments will be made. Explains how the Department will determine the payments to be authorized and requirement to notify child care payment recipients. Also details certain exceptions, and under what circumstances, that the Department may use in processing the payments.

§17-799-16 Mandatory reporting

Establishes what are mandatory reporting items for recipients of child care payments. Details the timeline in which mandatory reporting items are to be reported to the Department. Also details the action that the Department will take based on the nature of the mandatory reporting item, and the timeline that was followed in reporting by the child care recipient.

§17-799-17 Waitlisted applicants

Establishes how the Department will address otherwise approved priority applicants that are not enrolled in the program due to lack of funding. Describes requirements for the approved priority applicants while on the waitlist, as well as when they are selected from the waitlist for possible enrollment. Describes the Department's notification responsibilities and process by which to select waitlisted approved priority applicants for possible program enrollment. Establishes that the designation of an approved priority applicant to the waitlist is not appealable.

§17-799-18 Denial, suspension, or termination of child care

Establishes the conditions when an application may be denied, and when child care payments may be suspended or terminated. Details when the Department is required to send to the applicant or recipient a timely and adequate notice, or only adequate notice.

§17-799-19 Notices

Establishes the notification requirements that the Department shall be responsible for to applicants and recipients.

§17-799-20 Administrative appeal requests

Establishes the conditions for when an applicant or recipient may appeal the Department's decision regarding their program application or child care payment. Also establishes that no child care payments or adjusted child care payment shall be authorized during the appeal process.

§17-799-21 Underpayments and overpayments

Details the process by which the Department corrects underpayments and overpayments.

§17-799-22 Termination for insufficient funds

Establishes the options that the Department may exercise to address situations where the program has insufficient funding to continue to operate. Also establishes that the Department's action to terminate program participation due to insufficient funding is not appealable.

EFFECT ON THE OPERATIONS AND PROGRAMS OF THE DEPARTMENT

Act 169, SLH 2013, provides funding to implement the Preschool Open Doors Program as proposed through this new chapter. The Department's level of effort to operationalize this program will be impacted despite the funding as it will need to coordinate all the program requirements. However, the Department anticipates that all of these items will be accomplished prior to the start of the State Fiscal Year 2015.

FINAL RESULT EXPECTED

Adoption of a new chapter specific to the Preschool Open Doors Program, separate from the existing Child Care Services chapter, will allow the DHS or State to more easily fulfill the intent of Act 169, SLH 2013 in establishing the Preschool Open Doors Program as the statewide school readiness program.

PROGRAM AND FINANCIAL IMPACT ON THE STATE

The adoption of this chapter will allow for the program to provide child care to an estimated 1,200+ children who will not be able to attend public school kindergarten in the 2014-15 calendar year because their birth date occurs after the kindergarten eligibility date pursuant to HRS §302A-411. Families of these children would need to absorb the full cost of an additional year of child care, creating financial hardship which in turn would weaken their discretionary spending into the local economy.

LONG AND SHORT TERM IMPACT ON THE PUBLIC, ECONOMIC GROWTH AND THE ECONOMY OF THE STATE

The short and long term will be the investment in school readiness for children prior to their entry into kindergarten by having children attend preschool where they can be provided a developmentally appropriate experience to prepare them physically, cognitively, linguistically, socially, and emotionally. Through this investment, the children will have a better chance to be better students and more productive and contributing adults in our local economy.

### OTHER ALTERNATIVES

There are none.

### IMPACT ON SMALL BUSINESS

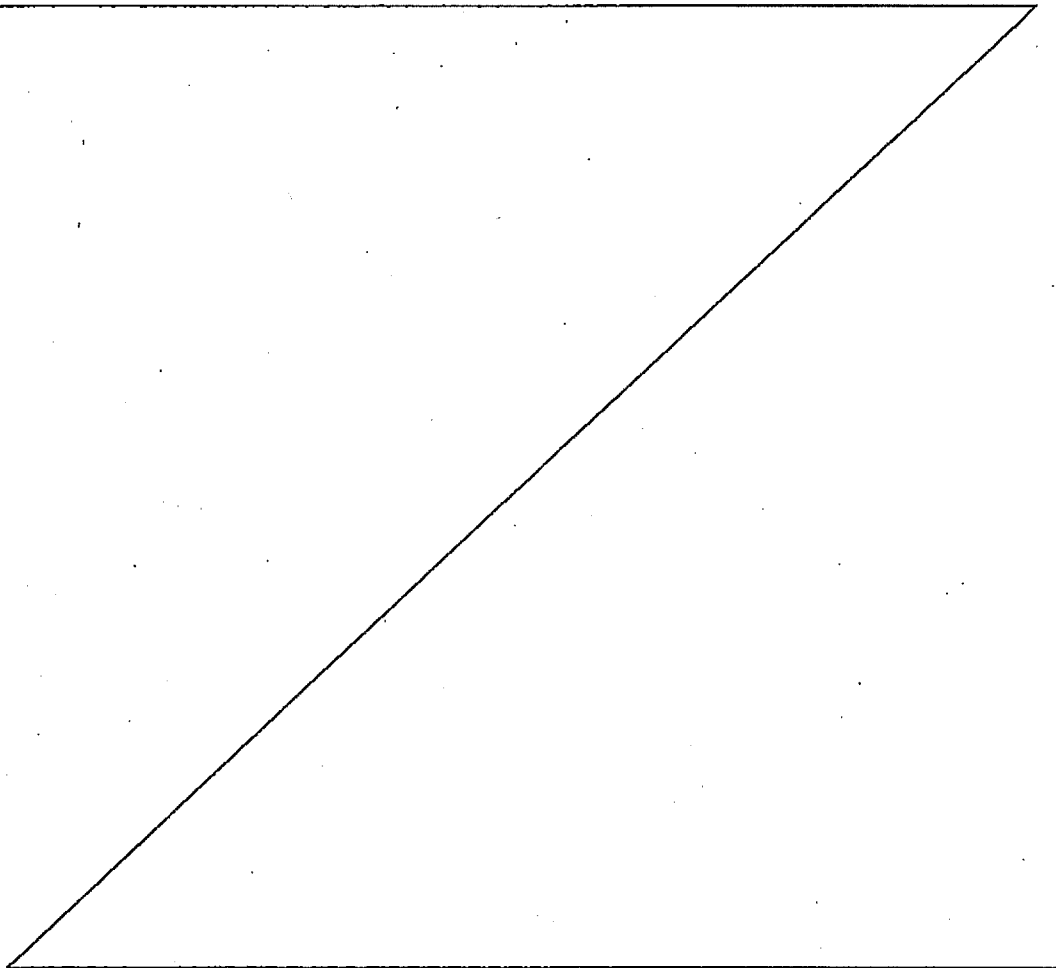
The department anticipates expansion of preschool enrollment, and minimal impact on preschool operators to comply with the school readiness assessment requirements as a result of this new chapter.

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-799  
Hawaii Administrative Rules

October 7, 2013

1. Chapter 799 of Title 17, Hawaii  
Administrative Rules, entitled "Preschool Open Doors  
Program" is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 799

PRESCHOOL OPEN DOORS PROGRAM

Subchapter 1 General Provisions

- §17-799-1 Purpose
- §17-799-2 Definitions
- §17-799-3 Confidentiality
- §17-799-4 Scope
- §17-799-5 Application period
- §17-799-6 Application process
- §17-799-7 Priority of applications
- §17-799-8 Family unit eligibility requirements
- §17-799-9 Income considered in eligibility determination
- §17-799-10 Excluded monthly income
- §17-799-11 Program enrollment
- §17-799-12 Program qualifications for preschools
- §17-799-13 Child care rates
- §17-799-14 Method of computing child care payment
- §17-799-15 Child care payments
- §17-799-16 Mandatory reporting
- §17-799-17 Waitlisted applicants
- §17-799-18 Denial, suspension, or termination of child care
- §17-799-19 Notices
- §17-799-20 Administrative appeal requests
- §17-799-21 Underpayments and overpayments
- §17-799-22 Termination for insufficient funds

§17-799-23 to §17-799-50 Reserved  
Historical Note: Chapter 17-799 is based  
substantially upon chapter 17-798.2, Child Care  
Services, Subchapter 2, Preschool Open Doors [Eff  
03/08/08]

## SUBCHAPTER 1

### GENERAL PROVISIONS

§17-799-1 Purpose. Child care payments under this subchapter shall be for early childhood services to low and moderate income families that contributes to school readiness by providing up to a school year of experience in a preschool program chosen by the child's caretaker prior to the child entering kindergarten. The intent of the program is to provide child care payments to as many eligible families as possible through the limited funding that is appropriated for the State fiscal year.  
[Eff ] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-2 Definitions. As used in this chapter: "Accredited" means a group child care center, or group child care home, that is certified by the National Association for the Education of Young Children (NAEYC), or the National Early Childhood Program Accreditation (NECPA), to meet accreditation standards.

"Adequate notice" means a written notice that includes:

- (1) A statement of the action the agency has taken or intends to take;
- (2) The reason for the intended action;
- (3) The specific departmental rules supporting the intended action;

- (4) The name and telephone number of the person in the department to contact for additional information;
- (5) The family unit's right to request an informal review, an administrative appeal, or both; and
- (6) Information on the availability of free legal representation, if applicable.

"Adult abuse record check" means an examination of an individual's adult abuse confirmation history through:

- (1) An initial name inquiry into State adult protective services files;
- (2) Subsequent adult abuse confirmation history checks for new hires and re-hires; and
- (3) An annual name inquiry into State adult protective services files.

"Applicant" means the caretaker, including an emancipated minor pursuant to HRS §571-2 and HRS §577-25 and a teenage head of the household, who has the responsibility to provide care for the child, and needs child care. This does not include an unmarried minor who is a parent to the individual's own baby who together reside in the same household with the minor's adult caretaker.

"Application" means the action by which an individual indicates on a form prescribed by the department a request to receive assistance with child care costs and services.

"Approved priority applicant" means an applicant that has met program eligibility criteria and has their application income-ranked within their priority group, and within their geographical area designated by the department, by dividing their monthly gross income by eighty-five per cent of the State Median Income for a family of the same size.

"Background check" means criminal history record checks, child and adult abuse and neglect checks, and other checks required by federal or State law, conducted by the department in order to determine eligibility for child care services.

"Benefit month" means the calendar month for which the caretaker is eligible for a child care payment.

"Budget month" means the calendar month(s) for which the child care expense and income of a family unit are used to compute the payment amount that the family unit shall receive in the payment month.

"Caretaker" means an adult who resides with and is responsible for the care of a child, and who is a birth, hanai, foster, or adoptive parent, guardian, step-parent, or relative who is related to the child by blood, marriage, or adoption, or a person authorized by the caretaker through a power of attorney valid for a period not to exceed twelve months. The caretaker designation may remain even when the caretaker is temporarily absent from the home as long as the caretaker continues to maintain responsibility for the care, education, and financial support of the child. This includes a foster parent who may not be providing financial support to the child but may be receiving support for the child from a private or public agency. This also includes teen parents who are birth parents to the child.

"Child" means any person who has not reached the age of eighteen.

"Child abuse record check" means an examination of an individual's child abuse confirmation history through:

- (1) An initial name inquiry into the State child welfare record files;
- (2) Subsequent child abuse confirmation history checks for new hires and re-hires; and
- (3) An annual name inquiry into State child welfare record files.

"Child care" means those situations in which a caregiver has agreed to assume the responsibility for the child's supervision, apart from and in the absence of the child's caretaker, for any part of a twenty-four-hour day. Child care, for the purposes of this chapter, is limited to care provided in a group child care home, or in a group child care center.



"Co-payment" means the family unit's share of the child care expense which is the difference between the maximum payment amount allowed for the type and amount of care up to the department's child care payment rate maximum, and the amount the family unit is determined to be eligible for by the department.

"Corrective payment" means a payment issued by the department in an amount equal to the difference between what a caretaker is entitled to receive by regulation and the amount they actually received.

"Department" means the department of human services or its designee.

"Eligibility period" means a period up to twelve months, established by the department, that shall not exceed the applicable State fiscal year, during which the household may be eligible for child care payments.

"Essential person" means a needy person designated by the caretaker to be included in the TANF household that receives a public-funded financial assistance payment, who is ineligible in the person's own right for TANF, who is designated by the caretaker as being essential to the caretaker's well-being, and who performs a service that would not otherwise be performed or that would otherwise have to be purchased if the person did not live in the TANF household.

"Family unit" means the caretakers and their minor children who reside together in the same household.

"Federal fiscal year" means a period beginning October 1 and ending September 30.

"Federal Poverty Guidelines" or "FPG" means the poverty guidelines for Hawaii that are established in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2) and cited in the Child Care and Development Fund Plan For State of Hawaii that is approved by the Administration for Children and Families, U.S. Department of Health and Human Services, pursuant to C.F.R. §§98.14 to 98.18.

"Gross income" means all non-excluded earned and unearned income as specified in this chapter.

"Group child care center" or "GCC" means a facility, other than a private home, at which care is provided, as defined in HRS §346-151.

"Group child care home" or "GCCH" means a facility, which may be an extended or modified private home, at which care is provided to seven to twelve children, as defined in HRS §346-151.

"Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than the natural parents at the time of the child's birth or early childhood. The child is given outright and the natural parents renounce all claims to the child. The natural parents cannot reclaim the child except for the death or serious injury of the hanai parents.

"License-exempt care" means group child care center care that is exempt from licensure or registration by the department under HRS §346-152.

"Limited English proficiency" or "LEP" means limited ability in speaking, reading, writing, or understanding the English language by a person whose native language is a language other than English or by a person who lives in a family or community environment where a language other than English is the dominant language.

"Low-income" means gross income less than or equal to one hundred eighty five per cent of the Federal Poverty Guidelines.

"Minor" means a person under eighteen years old.

"Moderate-income" means gross income greater than one hundred eighty five per cent and less than or equal to two hundred fifty per cent of the Federal Poverty Guidelines.

"Monthly gross income limit" means eighty-five per cent of the State Median Income for a family of the same size.

"Non-recurring lump sum" means income that is not normally repeated or a cumulative amount received or available to be received by an individual. Educational loans, grants or scholarships shall not be considered as non-recurring lump sums.

"Overpayment" means the amount of payments issued to a caretaker for a benefit month that is in excess

of the amount which the caretaker is eligible to receive. It also includes payments that are not used for their intended purpose.

"Payment month" means the calendar month in which a child care payment is issued.

"Power of attorney" means a legal instrument authorizing another to act as one's agent or attorney-in-fact.

"Preschool" means a Group Child Care Center (GCC) or Group Child Care Home (GCCH) that provides services for children ages two years to six years old.

"Presumptively eligible" means a family unit may be approved for child care payments upon submittal to the department of the completed and signed child care certificate and preschool confirmation form and consent forms for the department to conduct background checks on the employees of the selected preschool, pending the results of the required background checks.

"Prospective budgeting" means computation of the child care payment based on the worker's best estimate of the child care expense and gross income that will exist in a calendar month. The best estimate shall be based on the worker's reasonable projection of future circumstances based on the family unit's past and current month's circumstances.

"Relative" means a person related by blood, marriage, adoption, or hanai.

"Reside with" means an eligible child living in a home or family setting with the child's eligible caretaker.

"Self-employment" means an individual is not subject to discharge from his or her job by another person, reports income to the Internal Revenue Service and the State as a self-employed person, meets social security requirements as a self-employed person and pays employer's and employee's share of social security taxes, and is not considered an employee of an agency or organization.

"Special populations referral" means documentation to verify that a child does not qualify full-time for the state department of education (DOE) special education program services and:

- (1) Has a physical, developmental, behavioral or emotional health condition that is outside of the normal range;
- (2) Meets the state department of health criteria for environmental risk as defined in HRS §321-351;
- (3) Resides in a LEP household; or
- (4) Is homeless.

"State fiscal year" means a period beginning July 1 and ending June 30.

"State Median Income" means the official guidelines issued yearly in the Federal Register by the Secretary of Health and Human Services, Administration for Children and Families under the authority of 42 U.S.C. §8621, the Omnibus Budget Reconciliation Act of 1981.

"Temporarily absent" means a period of up to ninety days when the caretaker is not residing in the home with the child as a result of employment or job training commitments.

"Temporary Assistance for Needy Families" or "TANF" means the federal and state financial assistance and non-assistance programs administered by the department under 42 U.S.C. §§601-617 and HRS §346-29.

"Timely notice" means when the department mails a notice of adverse action at least ten calendar days prior to the effective date of the action.

"Underpayment" means the amount of payments issued to a caretaker for a benefit month that is less than the amount which the caretaker was eligible to receive. [Eff \_\_\_\_\_] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-151, SLH 2013, Act 169, §2)

§17-799-3 Confidentiality. Requirements for confidentiality shall be as provided in chapter 17-601. [Eff \_\_\_\_\_] (Auth: HRS §§346-10 and 346-14) (Imp: HRS §346-10)

§17-799-4 Scope. (a) Child care services shall include, but are not limited to:

- (1) Supervision to assure the child's safety, comfort, and health;
- (2) Personal care as appropriate to the child's age and developmental maturity;
- (3) Activities appropriate to the child's age, developmental stage, and degree of physical or mental ability; and
- (4) Health and nutritional services.

(b) Child care services shall exclude:

- (1) Services provided to a child enrolled in or eligible for public education in kindergarten to twelfth grade during the regular school day;
- (2) Services for which a child receives academic credit toward graduation;
- (3) Any instructional services that supplants or duplicates the academic program of any public or private school which is established for the purpose of compliance with the school attendance law of Hawaii; or
- (4) Services that provide specialized training or skill development to children, as indicated in HRS §346-152(a)(4).

(c) Child care payments shall only be used for services described in subsection (a).

(d) This chapter shall be effective with the application period for child care payments for the State fiscal year 2015 program services. [Eff

] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-5 Application period. (a) The department shall establish an application period during the calendar year to accept applications for the preschool open doors program for the ensuing State fiscal year.

(b) Prior to the start of an application period, the department shall issue a public notice to the

general public announcing the availability to apply for the program. The public notice shall contain:

- (1) The beginning and ending dates of the application period;
- (2) Information about how to obtain an application; and
- (3) Contact information for additional information.

(c) Within thirty days from the end of the application period, applications received by the department shall be processed in accordance with §17-799-7, and prioritized in accordance with §17-799-8.

(d) The department shall conduct at least one application period during the calendar year. [Eff ] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-6 Application process. (a) A request for child care payments shall be submitted on an application form prescribed by the department.

(b) The form shall be dated and signed by the applicant under penalty of law that all the information needed to establish eligibility for child care payments, as stated on the form, is true and correct.

(c) The applicant shall be required to submit copies of documents for verification of the information provided to establish eligibility for the program.

(d) The date of application shall be the date the signed and dated application form is received by the department.

(e) An application received outside of an open application period shall be subject to 17-799-18(a)(2). [Eff ] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-7 Priority of applications. (a) Approved applications shall be assigned to priority

groups in the following order from the highest priority to lowest.

- (1) Children who turned four years old between August 1 through December 31 of the prior year applying for the program for the designated school year, have a completed Special Populations Referral form prescribed by the department, are eligible to enter kindergarten at the start of the following school year, and need child care assistance to attend preschool;
- (2) Children who will turn four years old between January 1 through July 31 of the year applying for the program for the designated school year, have a completed Special Populations Referral form prescribed by the department, are eligible to enter kindergarten at the start of the following school year, and need child care assistance to attend preschool; and
- (3) Children who will turn four years old during the year applying for the program for the designated school year, are eligible to enter kindergarten at the start of the following school year, and need child care assistance to attend preschool.

(b) Approved applications shall be income-ranked within their priority group, and within their geographical area designated by the department, by dividing their monthly gross income by eighty-five per cent of the State Median Income for a family of the same size.

(c) The department shall issue written notification to each applicant for services, pursuant to 17-799-19. [Eff \_\_\_\_\_] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14; SLH 2013, Act 169, §2)

§17-799-8 Family unit eligibility requirements.

- (a) The department shall verify that the child and

caretaker meet the eligibility requirements as described in this chapter.

(b) A child eligible for child care payments shall reside with the eligible caretaker and meet the priority application criteria in 17-799-7.

(c) A child receiving child care payments under this chapter shall not be eligible to receive child care payments under chapter 17-798.2.

(d) A caretaker shall be eligible for child care payments provided the caretaker has monthly gross income verified through documentation that does not exceed eighty-five per cent of the State Median Income for a family of the same size, using the Income Eligibility Limits as established in Exhibit I, dated October 1, 2009, attached at the end of this chapter.

(e) A caretaker who is a foster parent licensed by the department, or by an organization under the authority of the department, shall not be subject to subsection (d).

(f) A family unit who meets the eligibility conditions of this section, but is not selected to participate in the program due to lack of funds shall be placed on a waitlist and assigned a waitlist priority as established in 17-799-17.

[Eff ] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-9 Income considered in eligibility determination. (a) Monthly gross income shall be used to determine income eligibility of the family unit by using one of the following:

- (1) The average of the prior two months gross income for existing employment;
- (2) The monthly gross income received in the prior month for existing employment; or
- (3) The monthly gross income that is anticipated to be received by the family unit, such as, but not limited to, from prospective employment.



- (A) Weekly gross income anticipated to be received shall be converted to a monthly gross income by multiplying the weekly income by 4.3333.
  - (B) Bi-weekly gross income anticipated to be received shall be converted to monthly income by multiplying the bi-weekly income by 2.1667.
- (4) Gross income from the caretakers' business or self-employment such as selling real estate, or engaging in fishing and farming, which provide irregular income over a period of six months, may be allowed to be averaged to determine the budget month amount.
- (b) Monthly gross income means monthly sums of income received from sources such as but not limited to:
- (1) Gross income (before deductions are made for items such as, but not limited to, taxes, union dues, bonds, and pensions) from:
    - (A) Wages;
    - (B) Salary;
    - (C) Armed forces pay, excluding basic housing allowance;
    - (D) Commissions;
    - (E) Tips;
    - (F) Piece-rate payments; or
    - (G) Cash bonuses earned.
  - (2) Social security pensions and survivors' benefits (prior to deductions for medical insurance) including:
    - (A) Railroad retirement insurance checks from the U.S. government; and
    - (B) Permanent disability insurance payments made by the Social Security Administration.
  - (3) Unemployment insurance benefits such as:
    - (A) Compensation received from government unemployment insurance agencies or private insurance companies during periods of unemployment; and

- (B) Any strike benefits received from union funds.
- (4) Worker's compensation benefits and temporary disability insurance benefits:
  - (A) Worker's compensation benefits include compensation received from private or public insurance companies for injuries incurred at work;
  - (B) Temporary disability insurance benefits include compensation received from private or public insurance companies for short-term disabilities resulting from off-the-job sickness or injury; and
  - (C) The cost of the insurance shall have been paid by the employer and not by the employee, and the benefits are made to individuals who continue to be considered employees of the company;
- (5) Pensions and annuities, including pensions or retirement benefits paid to a retired person or the person's survivors by a former employer or by a union, either directly or by an insurance company;
- (6) Veteran's pensions and other benefits, which include:
  - (A) Money paid periodically by the Veteran's Administration to:
    - (i) Survivors of deceased veterans; or
    - (ii) Disabled members of the armed forces;
  - (B) Subsistence allowances paid to veterans for:
    - (i) Education; or
    - (ii) On-the-job training; and
  - (C) Refunds paid to former members of the armed forces as GI insurance premiums;
- (7) An allotment of a member of the armed forces;
- (8) Alimony;
- (9) Child support;

- (10) Public assistance payments from another state;
- (11) Hawaii public assistance payments;
- (12) Adoption assistance payments;
- (13) Dividends from stockholdings or memberships in associations;
- (14) Periodic interest on savings or bonds;
- (15) Income from estates or trust funds;
- (16) Income from rental of property after business expenses;
- (17) Royalties;
- (18) Income received from self-employment:
  - (A) Income received from non-farm self-employment means the gross receipts minus expenses for an individual's own business, professional enterprise, or partnerships.
    - (i) Gross receipts shall include the value of all goods sold and services rendered.
    - (ii) Expenses shall include the costs of goods purchased, rent, heat, light, power, wages and salaries paid, business taxes, and other similar costs.
    - (iii) The value of salable merchandise consumed by the proprietors of retail stores shall not be included as part of net income.
    - (iv) Items such as depreciation, personal, business and entertainment expenses, transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods shall not be deducted as business expenses. Personal expenses such as lunches and transportation to and from work shall not be deducted as business expenses.

(B) Income received from farm self-employment means the gross receipts minus operating expenses from the operation of a farm by a person on the person's own account, as an owner, renter, or sharecropper.

(i) Gross receipts shall include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items.

(ii) Operating expenses shall include the cost of feed, fertilizer, seed, and other farming supplies, cash wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes (not state and federal income taxes), and other similar expenses.

(iii) The value of fuel, foods, or other farm products used for family living shall not be included as part of net income. [Eff

] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-10 Excluded monthly income. The following types of income received in any given month shall be excluded from consideration in determining income eligibility for child care payments:

- (1) Money received from the sale of property such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling the property, in which

- case, the net proceeds would be counted as self-employment income;
- (2) Withdrawals of bank deposits;
  - (3) Loans;
  - (4) Gifts, including in-kind gifts such as free room and board, when the gift is not a form of compensation in lieu of wages or salary;
  - (5) Monies received in the form of a nonrecurring lump sum payment including, but not limited to, the following:
    - (A) Income tax refunds, rebates, or credits;
    - (B) Retroactive lump sum social security, SSI, public assistance, or unemployment compensation benefits;
    - (C) Retroactive annual adjustment payments in the veteran administration's (VA) disability pensions;
    - (D) Lump sum inheritances or insurance payments;
  - (6) Refunds of security deposits on rental property or utilities;
  - (7) Capital gains;
  - (8) Earnings of minor children who are members of the household and are students at least half-time shall be excluded even during temporary interruptions in school attendance due to semester or vacation breaks, provided the minors' enrollment will resume following the break;
  - (9) Loans, grants, and scholarships obtained and used under conditions that prohibit use for current living expenses;
  - (10) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education;
  - (11) Home produce utilized for home consumption;
  - (12) The value of an allotment under the Food Stamp Act of 1977, as amended, 7 U.S.C. §2017;
  - (13) The value of USDA donated or surplus foods;

- (14) The value of supplemental food assistance under the Child Nutrition Act of 1966, 42 U.S.C. §§1771-1789, and the special food service program for children under the National School Lunch Act, as amended, 42 U.S.C. §§1751-1769;
- (15) Benefits received from the special supplemental food program for women, infants, and children (WIC), 42 U.S.C. §1771;
- (16) Allowances and payments to participants in programs, other than on-the-job training, under the Workforce Investment Act (WIA) of 1998, 20 U.S.C. §9201;
- (17) The earned income of individuals participating in on-the-job training programs under the Work Investment Act (WIA) of 1998, 20 U.S.C. §9201, who are between 18 and 19 years of age and under the parental control of another household member;
- (18) Earned income tax credit (EITC) payments received either as a lump sum or recurring payments under section 3507 of the Internal Revenue Code of 1986;
- (19) Financial assistance provided by a program funded in whole or in part under title IV of the Higher Education Act in accordance with Pub. L. No. 99-498;
- (20) Payments or allowances made under any federal, state, or local laws for the purpose of energy assistance;
- (21) Assistance payments received as a result of a declared federal major disaster or emergency from the federal emergency management agency (FEMA), and other comparable disaster assistance provided by any state or local government agency, and disaster assistance organizations;
- (22) Payments made from the Agent Orange Settlement Fund or any other fund established in connection with settling

- liability claims concerning the chemical Agent Orange, Pub. L. No. 101-201;
- (23) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4636;
- (24) Payments received under the Radiation Exposure Compensation Act, Pub. L. No. 101-426, to compensate individuals for injuries or deaths resulting from the exposure to radiation from nuclear testing or uranium mining;
- (25) Payments to individuals participating in the Senior Community Service Employment Program (SCSEP) funded under title V of the Older Americans Act of 1965, 42 U.S.C. §3001; Pub. L. No. 100-175;
- (26) Payments to volunteers derived from the volunteer's participation in the following programs authorized by the Domestic Volunteer Service Act of 1973, 42 U.S.C. §§5011, 4951-4958:
- (A) Foster grandparent program;
- (B) Senior companion program; and
- (C) Volunteers in service to America (VISTA) and AmeriCorps programs;
- (27) Military re-enlistment bonus;
- (28) Foster board payments;
- (29) All payments pursuant to chapter 17-656.2; and
- (30) Any other payments made in accordance with state and federal laws that preclude the payments from being counted as income.
- [Eff                                 ] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-11 Program enrollment. (a) The department shall issue a designated form to as many approved priority applicants, as established in subsection 17-799-7(b), that can be enrolled for child care payments within the available state fiscal year

funding. The department shall also issue a designated form to waitlisted approved priority applicants who meet the condition of subsection 17-799-17(f).

(b) The approved priority applicants shall return the completed and signed designated form within twenty days from the date of issuance to provide the name and address of the preschool and verify the cost of the preschool.

(c) The caretaker shall choose a preschool that meets the program qualifications in 17-799-12.

(d) The caretaker shall ensure that a school readiness assessment conducted by the preschool is submitted to the department.

(e) Failure to comply with subsection (d) shall be subject to section 17-799-18. [Eff  
] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-12 Program qualifications for preschools. A preschool chosen by a caretaker shall:

- (1) Be limited for the purposes of this chapter to:
  - (A) A group child care center that is licensed by the department under chapter 17-892.1, or license-exempt under HRS §346-152 and satisfies HRS §346-152.5; or
  - (B) A group child care home that is licensed by the department under chapter 17-892.1;
- (2) Agree to conduct a readiness assessment for each eligible child who is enrolled and approved to receive child care payments under this chapter. The readiness assessment, assessment results reporting form, and reporting submittal deadline, shall be prescribed by the department; and
- (3) Cooperate with the department for overpayment resolution if the family unit elected child care payments pursuant to subsection 17-799-15(b) (2).



[Eff \_\_\_\_\_ ] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-13 Child care rates. Child care payment rates shall be the following, based on types of care:

- (1) \$710 for accredited licensed and accredited license-exempt group child care center preschool; and
- (2) \$675 for non-accredited licensed and non-accredited license-exempt group child care center preschool, and group child care home.

[Eff \_\_\_\_\_ ] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-14 Method of computing child care payment. (a) Child care payment shall be computed based on:

- (1) Monthly gross income;
  - (2) The preschool chosen by the family unit;
  - (3) The actual cost of child care selected; and
  - (4) The type of child care.
- (b) The child care payment amount shall be

determined by:

- (1) Identifying the type of child care selected and approved for each eligible child, and selecting the appropriate rate as established in section 17-799-13;
- (2) Comparing the child care allowance according to subsection (b) (1) and the actual child care cost, and choosing the lesser amount.
- (3) Determining the family unit's co-payment (conversely, the percentage of the department's maximum rate allowable) based on the family unit's monthly gross income, and using the co-payment rates established in Exhibit I, dated October 1, 2009, attached at the end of this chapter.

(4) Subtracting the family unit's co-payment from the amount determined in subsection (b) (2).

(c) The family unit shall be responsible for any child care costs in excess of the child care payment.

(d) The family unit shall be responsible to pay its share of the child care cost directly to the preschool.

(e) The department shall project the family unit's eligibility and monthly payments prospectively for the entire eligibility period.

(f) The initial payment shall be calculated from the first calendar day of the initial month of eligibility to the end of the month, and shall be considered the first month of the eligibility period.

[Eff. \_\_\_\_\_] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-15 Child care payments. (a) Payment for child care may be provided:

- (1) Through monies issued one month at a time and paid to the caretaker; or
- (2) Through monies issued one month at a time and paid to the preschool on behalf of the caretaker.

(b) Child care payments include:

- (1) A one-time only payment in a State fiscal year for registration, which may also include supply and activity fees, required by the facility, not to exceed \$125.00; and
- (2) Monthly cost of child care per child, as paid, but not to exceed the child care rates specified in section 17-799-13.

(c) The department shall:

- (1) Allow, at the department's option, for the presumptive eligibility of a license-exempt preschool selected by the caretaker upon receipt by the department of the completed and signed child care certificate and preschool confirmation forms and consent

forms for conducting a background check, provided that the presumptive eligibility shall end upon completion of the background check;

- (2) Authorize the initial and subsequent monthly child care payments based on sections 17-799-8, 17-799-9, 17-799-10, 17-799-11, 17-799-12, 17-799-13, 17-799-14, 17-799-15, 17-799-16, 17-799-18, 17-799-19, 17-799-21, and 17-799-22;
- (3) Provide notification of payment to the family unit pursuant to section 17-799-19; and
- (4) Track and monitor appropriateness and utilization of child care and payments.

(d) The child care payment issued for a benefit month shall not be issued more than once except when the caretaker cannot continue to use the preschool due to the following:

- (1) Unanticipated closure of the preschool;
- (2) Child care had been paid for the month;
- (3) The caretaker enrolls the child in another preschool in the same month child care was issued for the preschool referenced in paragraph (d)(1);
- (4) The preschool referenced in paragraph (d)(1) refuses to refund the child care paid for the month; and
- (5) The new preschool enrollment requires a child care payment from the family unit for the month. [Eff \_\_\_\_\_] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-16 Mandatory reporting. (a) A recipient of child care payments shall be responsible to report the following changes to the department within ten calendar days of occurrence:

- (1) Preschool child is attending;
- (2) Cost of care;
- (3) Child care type; or

(4) Child is no longer attending preschool.

(b) Changes may be reported in writing, in person, or by telephone, and shall be supported by verifying documentation.

(c) When changes are reported pursuant to this section, the department shall take action on the reported changes that result in a lower payment and calculate payments for the balance of the eligibility period, after timely and adequate notice.

(d) Changes that are reported shall be implemented in the first month following the month in which the change was reported, and the department shall recover any overpayments from the date of the occurrence. [Eff ] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-17 Waitlisted applicants. (a) If an application has been approved but all available funds have been obligated, the applicant shall be placed on a prioritized waitlist that shall follow the priority methodology established in section 17-799-7.

(b) Waitlisted applicants shall be provided written notification as referenced in subsection 17-799-19(b).

(c) While on the waitlist, the applicant may be required to update information contained in the application.

(d) Availability of funding shall be reevaluated periodically by the department during the State fiscal year to determine if funding is available to enroll waitlisted applicants.

(e) Upon determining funds are available, the department shall select waitlisted applicants by priority, and provide notification of program enrollment as established in section 17-799-19.

(f) Waitlisted applicants selected for program enrollment shall meet all eligibility requirements as established in section 17-799-8.

(g) Eligibility for the initial payment shall be the later of:

- (1) The month that requirements of section 17-799-11(b) are met; or
- (2) The eligible child's first month of preschool.
- (h) If the waitlisted applicant is unable to meet requirements of subsections (f) and (g), the applicant will be notified of their application denial and the department shall refer to the next available waitlist applicant by priority.
- (i) Assignment of applicants to the waitlist shall be final and conclusive. [Eff ]  
(Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-18 Denial, reduction, suspension, or termination of child care. (a) Child care payments may be denied, reduced, suspended, or terminated when:

- (1) The caretaker does not complete the process of application or determination of eligibility within the open application period, or withdraws the application;
- (2) The caretaker submits an application outside the open application period;
- (3) The caretaker does not sign and date the application form prescribed by the department;
- (4) The caretaker does not submit a completed application form prescribed by the department;
- (5) The caretaker does not submit verifying documentation requested by the department;
- (6) The child does not meet the eligibility requirements referenced in subsection 17-799-8(b) or (c);
- (7) The caretaker does not meet the eligibility requirements referenced in subsection 17-799-8(d);
- (8) The preschool does not meet program qualification requirements referenced in subsection 17-799-12;

- (9) Conditions initially present in the family unit situation have changed and child care is no longer needed;
  - (10) The family unit has not used authorized care;
  - (11) The child has absences that are unexcused for more than five consecutive days;
  - (12) The caretaker voluntarily requests discontinuance of child care payments;
  - (13) The caretaker and the child are unable to use child care and another service must be planned for;
  - (14) The caretaker fails to comply with mandatory reporting requirements;
  - (15) The family unit is no longer eligible for child care payments;
  - (16) The family unit cannot be located;
  - (17) The family unit fails to utilize child care payments in accordance with subsection 17-799-4(c) and does not reconcile the resulting overpayments in accordance with section 17-799-21;
  - (18) The caretaker fails to comply with requirements referenced in subsection 17-799-11(b); or
  - (19) The department determines pursuant to section 17-799-22 that there are insufficient funds to maintain all children receiving care.
- (b) Child care payments may be suspended for a period not to exceed one month when:
- (1) The payment amount is determined to be zero; or
  - (2) The designated preschool does not meet the conditions set forth in section 17-799-12 and the family unit must find a different approved preschool. [Eff ]  
(Auth: HRS §346-14, SLH 2013, Act 169, §2)  
(Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-19 Notices. (a) The department shall provide a written notice to applicants and recipients about their eligibility status that shall contain:

- (1) A statement of the action taken;
- (2) The reasons for the action;
- (3) The specific rules supporting the action; and
- (4) The right to appeal the action of the department through established administrative appeals procedures.

(b) Applicants that are placed on a waitlist shall be provided written notification of this designation, and a separate notice if they are selected from the waitlist to enroll into the program.

(c) The department shall provide a caretaker with timely and adequate notice prior to taking adverse action to deny, reduce, suspend, or terminate any child care payments specified in this chapter.

(d) A caretaker can submit verifying documentation for consideration by the department to reverse the proposed department action prior to the effective date of the action.

(e) Only adequate notice is required when the following occurs:

- (1) A caretaker is deceased;
- (2) A caretaker left the State;
- (3) A caretaker requests discontinuance of child care payments;
- (4) A caretaker fails to comply with mandatory reporting requirements;
- (5) A caretaker's whereabouts are unknown; or
- (6) The department determines pursuant to section 17-799-22 that there are insufficient funds to maintain all children receiving care. [Eff ]

(Auth: HRS §346-14, SLH 2013, Act 169, §2)

(Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-20 Administrative appeal requests. (a) A caretaker may file a written request for an administrative appeal, in accordance with the

provisions set forth in chapter 17-602.1, when the family unit disagrees with the department's adverse action to deny, reduce, suspend, or terminate payment, or with the department's determination of an overpayment, except in the case of sections 17-799-17 or 17-799-18(a) (19).

(b) Child care payments shall not continue during the appeal process. [Eff ]  
(Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

§17-799-21 Underpayments and overpayments.

- (a) Underpayments shall be processed as follows:
- (1) Prompt action shall be taken to correct any underpayment to a currently eligible caretaker who would have received a greater payment if an error by the department had not occurred.
  - (2) If a caretaker has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment.
- (b) Overpayments shall be processed as follows:
- (1) Failure to provide information, as specified in sections 17-799-6, 17-799-7, 17-799-15, 17-799-16, and 17-799-17, or errors made by the department may affect the caretaker's eligibility and result in an overpayment.
  - (2) An overpayment made to a caretaker shall be recovered through:
    - (A) Repayment in cash, in full or in part, by the caretaker to the department; or
    - (B) A reduction of not less than ten percent in the child care payment amount payable to the caretaker in subsequent months until the entire amount of overpayment is recovered, provided the caretaker



continues to receive such payments.

- (3) A caretaker subject to recovery of an overpayment shall be provided adequate notice by the department including:
  - (A) The reasons, dates, and the amount of the alleged overpayment; and
  - (B) The proposed method by which the overpayment shall be recovered.
- (4) Recovery of an overpayment to former recipients of child care payments shall be referred to the department's fiscal management office for collection action.
- (5) If a caretaker for whom a collection action has been initiated fails to make a payment for any month in the calendar tax year, the department may refer debts exceeding twenty-five dollars to the comptroller of the State for tax setoff as specified in chapter 17-606.  
 [Eff \_\_\_\_\_ ] (Auth: HRS §§346-14, 346-44, SLH 2013, Act 169, §2) (Imp: HRS §§346-35, 346-44, SLH 2013, Act 169, §2)

§17-799-22 Termination for insufficient funds.

(a) The department may, at its discretion, refuse to take new applications, refuse to enroll priority applicants who have been waitlisted, reduce payments, or terminate payments when there are insufficient funds to pay child care payments at current amounts through the end of the State fiscal year.

(b) Refusal to take new applications, refusal to enroll approved priority applicants who have been waitlisted, reducing payments, or terminating payments will first be accomplished in reverse priority from what is listed in section 17-799-7. Priority will further be determined within the categories set forth in section 17-799-7 by income, with higher income family units' payments reduced or terminated first.

(c) The department budget will be managed by reviewing monthly expenditures and evaluating whether the cumulative expenditures at the end of any given month are less than or equal to the number of months that have expired in the fiscal year times 1/12 of the budget appropriation for child care payments for the State fiscal year.

(d) When the department determines that the budget appropriation has or soon will be exceeded, notices of adverse action may be issued to limit the number of children receiving payments in any given month or to take other necessary action to operate within the child care budget appropriation. A decision under this subsection shall be final and conclusive." [Eff \_\_\_\_\_ ] (Auth: HRS §346-14, SLH 2013, Act 169, §2) (Imp: HRS §346-14, SLH 2013, Act 169, §2)

2. The adoption of chapter 17-799, Hawaii Administrative Rules, shall take effect ten days after filing with the office of the lieutenant governor.

**Child Care  
Gross Income Eligibility Limits and Sliding Fee Scale**

Family Size	Income Eligibility Limit	0-50% FPL	50%-70% FPL	70%-100% FPL	100%-110% FPL	110%-125% FPL	125%-150% FPL	150%-160% FPL	160%-175% FPL	175%-200% FPL	200% FPL - elig. limit
		0% co-pay	10% co-pay	20% co-pay	30% co-pay	40% co-pay	50% co-pay	60% co-pay	70% co-pay	80% co-pay	90% co-pay
1	2431	446	669	892	981	1115	1338	1427	1561	1784	2431
2	3179	599	898	1197	1317	1496	1796	1915	2095	2394	3179
3	3927	751	1127	1502	1652	1878	2253	2403	2629	3004	3927
4	4675	904	1355	1807	1988	2259	2711	2891	3162	3614	4675
5	5423	1056	1584	2112	2323	2640	3168	3379	3696	4224	5423
6	6171	1209	1813	2417	2659	3021	3626	3867	4230	4834	6171
7	6312	1361	2042	2722	2994	3403	4083	4355	4764	5444	6312
8	6452	1514	2270	3027	3330	3784	4541	4843	5297	6054	6452
9	6592	1666	2499	3332	3665	4165	4998	5331	5831	6592	-
10	6732	1819	2728	3637	4001	4546	5456	5819	6365	6732	-
11	6873	1971	2957	3942	4336	4928	5913	6307	6873	-	-
12	7013	2124	3185	4247	4672	5309	6371	6795	7013	-	-
13	7153	2276	3414	4552	5007	5690	6828	7153	-	-	-
14	7293	2429	3643	4857	5343	6071	7286	7293	-	-	-
15	7434	2581	3872	5162	5678	6453	7434	-	-	-	-
<b>For each additional, add</b>	140	152	229	305	335	382	140	-	-	-	-

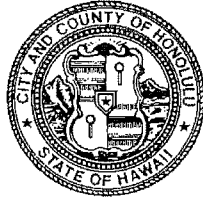
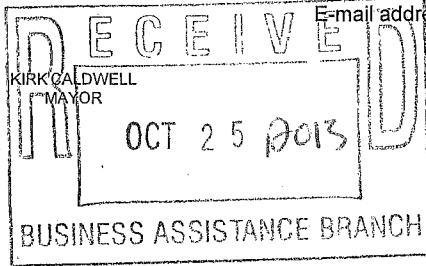
**Instructions:**

1. Gross Income (GI) eligibility limit is at 85% of State Median Income (SMI).
2. Compare GI with Income Eligibility Limit to determine income eligibility.
3. If GI is less than or equal to the Income Eligibility Limit, find the largest reimbursement rate for which the income limit is greater than or equal to GI.

## Exhibit 2

LIQUOR COMMISSION  
**CITY AND COUNTY OF HONOLULU**

711 KAPIOLANI BOULEVARD, SUITE 600 • HONOLULU, HAWAII 96813-5249  
PHONE: (808) 768-7300 or (808) 768-7355 • FAX: (808) 768-7311  
E-mail address: liquor@honolulu.gov • INTERNET: www.honolulu.gov/liq



October 23, 2013

MICHAEL S. YAMAGUCHI  
CHAIRMAN

IRIS R. OKAWA  
VICE CHAIR

WESLEY F. FONG  
COMMISSIONER

JOSEPH V. O'DONNELL  
COMMISSIONER

JOSEPH M. MAGALDI, JR.  
COMMISSIONER

ANNA C. HIRAI  
ACTING ADMINISTRATOR

Chu Lan Shubert-Kwock, Chair  
Small Business Regulatory Review Board  
Department of Business, Economic Development & Tourism  
No. 1 Capitol District Building  
250 South Hotel Street  
Honolulu, Hawaii 96813

Re: Proposed Amendment to Rules §3-80-1.1 "Definitions"; §3-81-17.53 "License Fees; When Due and How Calculated"; Rule §3-81-17.54 "Gross Sales Reports"; Rule §3-81-17.55 "Additional License Fees on Gross Sales"; §3-82-31.8 "Recorking"; §3-82-38.5 "Registration of Employees"; §3-82-38.8 "Semi-Annual Submission of Employee List"; §3-82-38.9 "Licensee and Manager in Charge of Premises"; §3-82-38.25 "Restrictions or Conditions on Licenses"; §3-82-41.2 "Transfer of Corporate Stock; Notification Regarding Limited Partners, Limited Liability Company Managers or Members"; §3-83-53.1 "License Applications; Notice of Hearing; Affidavits"; §3-83-61.1 "Renewal of Existing License"; §3-83-62 "Architectural Requirements/Alteration of Licensed Premises"; §3-84-72.2 "Premises Lighting; Doors"; §3-84-78.01 "Conduct of Employees"; §3-84-78.06 "Solicitation of Business Outside of Premises"; §3-84-78.52 "Stacking of Drinks"; §3-85-91.12 "Licenses Under Safekeeping"

Proposed New Rules §3-81-20 "General Right of Inspection"; §3-82-38.26 "Bottle Service for On-Premise Consumption"; §3-82-41.3 "Management or Operating Agreements"; §3-84-73.1 "Quality of Liquor"

Chair Kwock and Members of the Small Business Regulatory Review Board:

The Liquor Commission of the City and County of Honolulu ("Commission") proposes to amend and add the above-referenced Rules of the Liquor Commission, City and County of Honolulu ("Rules"). The last Rules amendment by the Commission took place in 2008.

The proposed amendments and new rules (collectively, "Proposed Amendments") will affect small businesses within the meaning of Chapter 201M, Hawaii Revised Statutes ("Hawaii Small Business Regulatory Flexibility Act" or "Act"). As required by the Act, Commission administration participated in small discussion groups and provided copies of the Proposed Amendments to representatives of the principal classes of licenses set forth in §281-31, Hawaii Revised Statutes ("HRS"), and to practitioners who represent licensees of

all classes before the Commission (“Representatives”).\* The Representatives were asked to review the Proposed Amendments and provide input on the impact of the Proposed Amendments on their respective license class. In addition, the Commission reviewed, discussed, and revised the Proposed Amendments over the course of several months during the December 2012 to March 2013 time period. After deliberation, on March 14, 2013, the Commission approved for submission to the public hearing process the proposed form of amended and new Rules described herein. The full text of the Proposed Amendments is attached hereto as Exhibit A.†

After due consideration of the comments provided by the Representatives, and the availability, practicability, and efficacy of regulatory alternatives that could be implemented, the Commission submits the following Proposed Amendments. The Commission also provides information in response to certain inquiries contained in Administrative Directive No. 09-01, as well as other information required by the Act.

For easier reference and review, the Proposed Amendments are grouped into six (6) subject matter areas.

**DEFINITIONS**

Rule No.	Description	Exh. A
-1.1	Distinguishes “dancer”; “go-go dancer”; “entertainer”.	1
-1.1	Conforms “manager” to other rule requirements.	1
-1.1	Eliminates marital status from “sexual contact”.	2
-1.1	Excludes customers from definition of “employee” and “bartender”.	2

**ADMINISTRATIVE**

Rule No.	Description	Exh. A
-17.53	Reduces license fee refund by outstanding assessments/penalties.	2-3
-17.55	Clarifies application of deductible in license transfer situation.	6
-38.5	Conforms dates of validity for bartender and manager cards with server training test dates.	7-9
-38.8	Eliminates retail dealer licensees from semi-annual employee list filing requirement.	9
-38.9	Conforms dates of validity for manager cards with server training test dates.	10-11
-61.1	Requires business entity licensees to submit proof of continued good standing at the time of license renewal.	19
-91.12	Establishes time limit for safekeeping.	23

\* Review materials were sent to approximately 25 individuals. Comments were received from two (2) wholesale dealer licensees; Hawaii Food Industry Association; Hawaii Bar Owners Association; Hawaii Lodging & Tourism Association; Kyo-ya Company Ltd. hotel licensees; Seven-Eleven (Hawaii), Inc.; five (5) attorneys; and two (2) liquor license consultants.

† Included are summarized comments from the Representatives.

**GROSS LIQUOR SALES REPORTS**

Rule No.	Description	Exh. A
-17.54	Specifies who may sign a licensee's GLS report, other requirements.	3-4
-17.54	Clarifies value for complimentary drinks.	4-5
-17.54	Requires interim GLS report for wholesale dealer licensees.	5-6

**ENFORCEMENT**

Rule No.	Description	Exh. A
-20	New rule describes authority under investigator's general right of inspection.	6-7
-72.2	Conforms locked door rule to amended definition of "employee".	21
-78.01	Makes violent, quarrelsome, etc. conduct prohibition applicable to licensee's employees.	22
-78.06	Provides objective measurement for solicitation of business outside of the licensed premises.	22
-78.52	Clarifies drink stacking.	22-23

**LICENSE CONDITIONS**

Rule No.	Description	Exh. A
-31.8	Conforms recorking rule to law amendments.	7
-38.25	Authorizes imposition of restrictions/conditions at time of license transfer.	11
-38.26	New rule authorizes bottle service at on-premise consumption establishments.	12
-73.1	New rule prohibits transferring liquor from original container to any other container.	21

**LICENSING**

Rule No.	Description	Exh. A
-41.2	Clarifies notification requirements for changes in LLC licensees.	12-13
-41.3	New rule establishes procedure for review/approval of management agreements.	13
-53.1	Requires restaurant license applicants to establish ability to meet 30% food sales requirement.	14-19
-62	Clarifies alterations for hotel licensees; requires neighborhood board notification only for permanent extensions of premises.	20
-62	Requires final inspection before licensee can use/occupy approved extension of premises.	21

Of the 22 Rules proposed for amendment or adoption, only eight (8) received substantive comment from the Representatives.‡ Discussion of these eight (8) Rules

‡ One Representative submitted multiple questions regarding the process but was unable to attend the scheduled discussion session. While impractical to detail all of those questions in this impact statement, the Commission will make a concerted

follows, in three (3) topic groupings:

*(1) RELATING TO ENFORCEMENT*

Proposed new Rule §3-81-20 "General Right of Inspection"

AMENDMENT PURPOSE, RESULT: HRS §281-20 gives authority to liquor commission investigators, at all times and without notice and without any search warrant or other legal process, to have immediate access to every part of a licensed premises for the purpose of insuring a licensee's compliance with liquor laws and liquor rules. The proposed new rule defines the scope of this statutory authority, including appropriate safeguards to the licensee and the licensee's privacy/confidentiality concerns.

IMPACT TO AGENCY, PUBLIC, AND STATE: Adoption of the proposed new rule is not expected to negatively impact the Commission's operations, budget, or manpower needs. To the contrary, because the scope of the right of inspection is expressly defined, Commission investigators would benefit by knowing what is and what is not permissible when entering a licensed premises to conduct an inspection. No short- or long-term impacts to the general public, economic growth, or the State economy are anticipated.

IMPACT TO SMALL BUSINESS: Because the general right of inspection has already been provided by statute, the proposed new rule is not expected to impose an unreasonable new incursion into a licensee's place of business. To the contrary, licensees should be reassured by the delineated scope of inspection as the right of inspection - and the product of that inspection - will be expressly limited to compliance with liquor laws and rules, with due regard for confidentiality or privacy rights for which the licensee is responsible.

ALTERNATIVES EXPLORED: Licensees and their representatives proposed additional language to clearly delineate the permissible scope of inspection, which additions were adopted.

*(2) RELATING TO LICENSEE OPERATIONS*

Proposed amended Rule §3-82-31.8 "Recorking"  
Proposed new Rule §3-82-41.3 "Management or Operating Agreements"  
Proposed new Rule §3-84-73.1 "Quality of Liquor"  
Proposed amended Rule §3-84-78.52 "Stacking of Drinks"

AMENDMENT PURPOSE, RESULT: The "Recorking" and "Quality of Liquor" proposed amendments were driven by, respectively, an amendment to HRS Chapter 281 and to ensure compliance with both Federal and state requirements regarding product safety. Adoption of the amended "Recorking" rule will bring the Commission's existing rule into

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effort to answer those questions and provide the commenter an opportunity to discuss his concerns with administration prior to the public hearing.



compliance with state law. Adoption of the new "Quality of Liquor" rule will accomplish a two-fold purpose - to make licensees aware of Federal requirements prohibiting refilling or reusing liquor bottles (subject to a \$1000 fine or imprisonment of up to 1 year, or both), and to ensure that licensees are obtaining their liquor inventory only from licensed wholesale dealers, and not purchasing from another retail source and refilling bottles.

Both the "Management or Operating Agreements" and "Stacking of Drinks" amendments were driven by the need to update certain of the Commission's rules to comport with modern liquor industry practices. Adoption of the proposed new "Management or Operating Agreement" rule will recognize the increasingly common practice of certain licensees (absentee owners, licensees preparing to transfer the liquor license, and hotels) to hire an individual or entity to operate the business of the licensed premises while ownership of the liquor license itself remains with the business's owner. Licensees in this situation will be given guidance on how to obtain Commission approval for this business arrangement, thus avoiding a potential violation for unauthorized transfer of license under HRS §281-41. Similarly, the proposed amendment to the "Stacking of Drinks" rule will "modernize" a rule that has not been updated or amended in over ten years.

**IMPACT TO AGENCY, PUBLIC, AND STATE:** Adoption of the proposed amendments is not expected to negatively impact the Commission's operations, budget, or manpower needs. Other than a liberalization of customer purchasing/consumption practices, no short- or long-term impacts to the general public, economic growth, or the State economy are anticipated.

**IMPACT TO SMALL BUSINESS:** As each of the proposed amendments will clarify permissible business practices for licensees, the impact to small business is expected to be positive.

**ALTERNATIVES EXPLORED:** Licensees and their representatives provided clarifying language for the "Recorking" and "Quality of Liquor" rule amendments, as well as industry-standard volume for various drink sizes for the "Stacking of Drinks" rule amendment, all of which were incorporated into the proposed amendments. Concerns expressed regarding the prospective application of the "Management or Operating Agreements" proposed new rule will be addressed through administrative action.

### *(3) RELATING TO ADMINISTRATIVE PROCEDURES*

Rule §3-81-17.54 "Gross Sales Reports

Rule §3-83-53.1 "License Applications; Notice of Hearing; Affidavits"

Rule §3-83-61.1 "Renewal of Existing License"

**AMENDMENT PURPOSE, RESULT:** Adoption of the proposed amended "Gross Sales Reports" rule§ will impose a new interim report requirement on the wholesale dealer license

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§ There are three (3) proposed amendments to this rule, of which only one was subject to substantive comment and addressed herein.

class, in addition to the existing year-end annual report required of all licensees. Gross liquor sales of the wholesale dealer class is considered a reliable indicator of the business health of the retail license classes, and the interim report requirement would provide this information to the Commission at the time it calculates the amount of additional license fees for the upcoming year. Because the Commission calculates additional license fees prior to City Council approval of the upcoming fiscal year's budget, having a mid-year indicator of the health of licensees' total gross liquor sales would enable the Commission to make a more accurate calculation, thus avoiding collecting an excess of license fees over actual operational needs, subject to an adjusting credit or refund.

Both the "License Applications ..." and "Renewal ..." proposed rule amendments are designed to ensure the fitness of an applicant to hold a restaurant license, or to continue to operate as a licensee. The "License Applications ..." proposed rule amendment will require applicants for a Restaurant class liquor license to demonstrate the applicant's ability or projected ability to meet the class requirements, to wit: that at least 30 percent of the establishment's gross revenue was or will be derived from the sale of food. If an applicant cannot meet that requirement, a Dispenser class liquor license is the appropriate license for the proposed business enterprise.

The proposed amendment to the "Renewal ..." rule will require that licensees who are business entities submit proof of good standing from the jurisdiction of the entity's organization at the time of license renewal. As good standing is an essential feature of a business entity operating in that entity form, the Commission is justified in obtaining proof of good standing at the time of license renewal.

**IMPACT TO AGENCY, PUBLIC, AND STATE:** Other than a slight increase in processing and review time related to the additional filings, adoption of the proposed amendments is not expected to negatively impact the Commission's operations, budget, or manpower needs. No short- or long-term impacts to the general public, economic growth, or the State economy are anticipated.

**IMPACT TO SMALL BUSINESS:** Both licensees and applicants will experience an increase in compliance effort to comply with the proposed amendments. However, the slight increase in effort will be offset by positive benefits expected to be obtained through the proposed rule amendments - more accurately calculated additional license fees; a required awareness of the class requirements for holding a Restaurant class liquor license; and confirmation of a business entity's good standing on a regular basis, while there is still time to correct any deficiencies threatening that status.

**ALTERNATIVES EXPLORED:** Wholesale dealers were not uniformly in support of the proposed "Gross Sales Reports" amendment. However, as wholesale dealers are already subject to routine and constant reporting requirements in connection with other aspects of their business (e.g., monthly reporting of sales by gallonage and dollar volume for liquor tax under HRS Chapter 244D), the Commission did not deem the imposition of a single

additional reporting event to be onerous or unreasonable. One wholesale dealer provided a sample six-month filing, generated in less than one hour's time.

Other licensees were not in support of the requirement proposed for new Restaurant applications, arguing it was nonsensical to make such a requirement if a business has not yet commenced operations as a restaurant. The Commission believes that virtually all new restaurant enterprises produce proposed business plans prior to opening for business, whether to obtain financing or as a matter of good business practice. Accordingly, the requirement to demonstrate eligibility for the Restaurant class license was not considered to be onerous or unreasonable.

With respect to the demonstration of good standing at license renewal time, the Commission has sought to impose this requirement for a number of years, partially due to the increasing number of instances where it was discovered that a licensee had been operating as a business entity for years following administrative dissolution by the Department of Commerce and Consumer Affairs. During the earlier attempts to impose this requirement, argument was made that it was onerous for licensees to annually obtain the certificate of good standing, which then had to be done in person. As this certificate is now easily obtainable online, the burden to the business entity licensee is greatly reduced.

\* \* \* \* \*

The Commission submits that this Small Business Impact Statement satisfies the requirements of the Small Business Regulatory Flexibility Act and addresses the concerns of small businesses regarding the economic impact and participation in the development of the proposed amendments. Further input will be obtained from small businesses at the public hearing on the proposed amendments. As I will be off-island on October 30<sup>th</sup>, we welcome your questions and discussion at the next scheduled meeting of the Small Business Regulatory Review Board.

Respectfully submitted,

  
Anna C. Hirai  
Acting Administrator

**Proposed Amendments to  
Rules of the Liquor Commission of the City and County of Honolulu (2008)**

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

New material is **underscored**.

Revisions made pursuant to licensee request are highlighted.

**§3-80-1.1. Definitions.**

“Dancer” means a person who is at least twenty-one (21) years of age and who performs or entertains **[either clothed (i.e., “Go-Go” Dancer) or]** unclothed or in such attire as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola. A dancer performing on a licensed premises shall be deemed an employee of the licensee regardless of whether the dancer is under contract or commission, compensated or not compensated, and shall be considered on duty during the period the dancer is performing and while the dancer remains on the licensed premises between performances.

**“Go-Go Dancer” means a person who is at least twenty-one (21) years of age and who performs or entertains clothed and in such attire that does not expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola. A go-go dancer performing on a licensed premises shall be deemed an employee of the licensee regardless of whether the go-go dancer is under contract or commission, compensated or not compensated, and shall be considered on duty during the period the go-go dancer is performing and while the go-go dancer remains on the licensed premises between performances.**

“Entertainer” means any musician, singer, comic, any person who operates a system that provides amplified, recorded music for dancing, any person who operates a system that provides music so that customers may sing (i.e., “karaoke machines”), or other person who performs a specialized talent for the customers of a licensed premises, regardless of whether that person is under contract or on commission, registered or not registered, compensated or not compensated. This definition excludes dancers **and go-go dancers.**

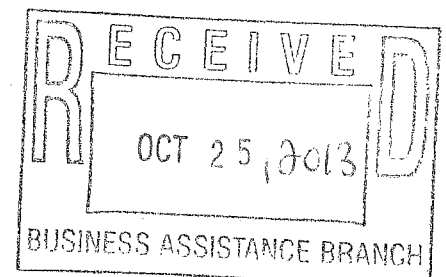
**SUMMARY:** The proposed amendment adds a definition for “go-go dancer”, and distinguishes “go-go dancers” from “dancers” and “entertainers”.

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**§3-80-1.1. Definitions.**

“Manager” means the designated person duly registered with the Commission as a manager or assistant manager who is in active charge of the licensed premises **[while the premises is open for business] during the time the establishment is licensed to sell or serve liquor.**

EXHIBIT A



**SUMMARY:** The proposed amendment conforms the definition of “manager” to Rule §3-82-38.9(a) requirements.

\*\*\*\*\*

**§3-80-1.1. Definitions.**

“Sexual Contact” means any touching of the sexual or other intimate parts of a person **[not married to]** by the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

**SUMMARY:** The proposed amendment eliminates an irrelevant personal status from the definition of “sexual contact”.

\*\*\*\*\*

**§3-80-1.1. Definitions.**

“Employee” means any person who performs a service usually or normally done, on or within a licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated. **This excludes a customer who brings into the premises, purchases from the licensee, or obtains from the licensee wine or distilled spirits in its original container, or a pitcher of beer, and pours wine or distilled spirits from the original container, or beer from a pitcher, to create an unmixed serving of liquor for himself or others who sit at the pourer’s table and consume the serving of liquor at the pourer’s table.**

“Bartender” means a person who prepares or mixes alcoholic drinks in accordance with established recipes and procedures, collects and receives payment for drinks served as all or part of his duties, and is responsible for the cleanliness and orderly condition of the bar area. This excludes people who only open or pour draught or bottled beer or wine. **This also excludes a customer who brings into the premises, purchases from the licensee, or obtains from the licensee wine or distilled spirits in its original container, or a pitcher of beer, and pours wine or distilled spirits from the original container, or beer from a pitcher, to create an unmixed serving of liquor for himself or others who sit at the pourer’s table and consume the serving of liquor at the pourer’s table.**

**SUMMARY:** The proposed amendment excludes customers who serve themselves and their table guests from the definition of “employee” and “bartender”.

\*\*\*\*\*

**§3-81-17.53. License Fees; When Due and How Calculated; Refund Offset.**

(a) The fee for any license renewed shall be due with the renewal application and payable on or before June 30 of each year. For any license other than special, transient vessel (per day), caterer, temporary or renewed licenses, the fee shall

be due and payable on the date the license is issued. The fee for a license issued July 1 shall be for a full year. The fee paid for a license issued on any other date shall be prorated from the first day of the month in which the license is issued to the end of the license year.

- (b) License fees required to be paid on June 30 of each year, or on such other date as provided by this rule, shall be the fees prescribed by §3-81-17.51 for each respective class and kind of license.
- (c) The license fee for a special and caterer license shall be based on the calendar day ending and expiring at midnight.
- (d) **If a licensee fails to effect its renewed license following payment of the license fee, refund of the fee to the licensee shall be reduced by any outstanding assessments and/or penalties for liquor law or rule violations.**

**SUMMARY:** The proposed amendment authorizes the reduction of any refunded license fee by a licensee's outstanding assessments and/or penalties.

\*\*\*\*\*

**§3-81-17.54. Gross Sales Reports.**

- (a) All licensees, except vessel, transient vessel (per day), and special, 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 **[with the Commission]** a report **on a prescribed form as directed by the Commission** showing the true and accurate declaration of liquor purchases **[as directed by the Commission and]**. **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 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.

- (d) All licensees, except vessel, transient vessel (per day), and special, shall produce within three (3) calendar 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.
- (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 shall report the value of those drinks in their annual gross sales report.

**SUMMARY:** The proposed amendment clarifies report content requirements, and specifies who may sign the gross liquor sales report on behalf of a licensee.

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**§3-81-17.54. Gross Sales Reports.**

- (a) All licensees, except vessel, transient vessel (per day), and special, shall file a report as directed by the Commission showing the true and accurate gross sales of liquor. 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 with the Commission a report showing the true and accurate declaration of liquor purchases as directed by the Commission and 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 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.
- (d) All licensees, except vessel, transient vessel (per day), and special, shall produce within three (3) calendar 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.

- (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 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.**

**SUMMARY:** The proposed amendment establishes a value for gross liquor sales reporting purposes for complimentary drinks when there is no established sales price for the drink.

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#### **§3-81-17.54. Gross Sales Reports.**

- (a) All licensees, except vessel, transient vessel (per day), and special, shall file a report as directed by the Commission showing the true and accurate gross sales of liquor. 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 with the Commission a report showing the true and accurate declaration of liquor purchases as directed by the Commission and 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 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.
- (d) All licensees, except vessel, transient vessel (per day), and special, shall produce within three (3) calendar 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.

- (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 shall report the value of those drinks in their annual gross sales report.
- (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 [January 31<sup>st</sup>] 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:** The proposed amendment adds an interim gross sales reporting requirement to the wholesale license class, with authority to direct additional interim reports. Wholesale licensees requested additional time in which to file. The extension to March 1<sup>st</sup> will not unduly hamper Administration in determining the upcoming fiscal year's deductible in the license renewal cycle.

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**§3-81-17.55. Additional License Fees on Gross Sales.**

- (a) The additional license fee based on gross sales of liquor shall be due and payable thirty-one (31) days after expiration, revocation or cancellation of the license under which the additional license fee accrued. In case of a license transfer, the additional license fee chargeable against such licenses shall become due and payable before the actual transfer of the license. If the deductible for the fiscal year has not been calculated, the prior year's deductible (prorated) will be applied to gross liquor sales to determine if any additional license fee is due. ***[At the end of the fiscal year, the current year's deductible will be applied to the total gross liquor sales to determine the additional license fee. Any amount due will be assessed to the current licensee; any refund will be returned to the current licensee.]***
- (b) If the license is issued after July 1, any additional license fee based on gross sales of liquor shall be determined by prorating the deductible for the year.

**SUMMARY:** The proposed amendment clarifies the application of the deductible to the transferor's interim and final gross liquor sales reports.

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**§3-81-20. General Right of Inspection.**

**Without notice, search warrant, or other legal process, a licensee shall provide an investigator immediate access to every part of the licensed premises**

for the purpose of making an examination or inspection thereof of items related to the licensee's compliance with the liquor laws or rules. Except as prohibited by laws governing confidential or protected information, said examination or inspection shall include, but not be limited to, any books and records of the licensee kept on the licensed premises which relate to the licensee's compliance with the liquor laws or rules. Items discovered during such examination or inspection shall be used for the purpose of enforcement of the liquor laws or rules.

**SUMMARY:** The proposed new rule expands on the general right of inspection authorized by HRS §281-20. Added language was suggested in response to objections to the overly broad scope of the proposed new rule.

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**§3-82-31.8. Recorking.**

Unless inconsistent with Chapter 281 of the Hawaii Revised Statutes or the Rules of the Liquor Commission, any [~~Class 2 Restaurant, Class 6 Club, Class 11 Cabaret, Class 12 Hotel, Class 14 Brewpub, and Class 15 Condominium Hotel~~] licensee engaged in meal service [~~may~~] shall allow a patron who has purchased or brought onto the licensed premises [~~a bottle of~~] wine, liquor or beer for consumption with a meal[,] to remove the partially consumed [~~bottle of wine~~] product from the licensed premises, which shall be recorked or resealed in its original container.

**SUMMARY:** The proposed amendment conforms the recorking rule to statutory changes made to HRS §281-31(t). After discussion with licensees, the general consensus was that the proposed amendment (three (3) different versions were provided for discussion) most closely tracked the statutory language in HRS §281-31(t). Objections to the mandatory recorking requirement due to potential liability under other provisions of the liquor laws or rules was addressed by the added language. It is expected that some licensees will continue to object to the requirement being mandatory, which Administration believes is required by the statute.

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

- (a) All dispenser, cabaret, hotel, club, brewpub, or condominium hotel 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 licensees, only managers 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 sub-paragraph (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;
  - (2) Proof of a Social Security number;
  - (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.
- (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 ~~two (2)~~ **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:** The proposed amendment clarifies the expiration date for registration cards held by bartenders and managers.

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

All [~~retail,~~] brewpub, tour or cruise vessels, dispenser, cabaret, hotel, club, restaurant, and condominium hotel licensees shall submit to the Commission, semi-annually on a date and in such manner as the Commission may direct, 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 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:** The proposed amendment corrects the incorrect inclusion of retail licensees in this rule's requirements.

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

- (a) Each dispenser, cabaret, tour or cruise vessel, annually licensed transient vessel, restaurant, club, hotel, caterer, brewpub, and condominium hotel licensee shall have a duly registered manager in active charge of the licensed premises during the time the establishment is licensed to sell or serve liquor.
- (1) Managers on catered premises shall be registered with the hotel, restaurant, 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.
- (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 ~~two~~ **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 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 ~~issue~~ **successful completion of the server training program required under sub-paragraph (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;
  - (2) Proof of a Social Security number;
  - (3) Proof that the applicant is at least twenty-one (21) years of age;

- (4) A letter from the licensee 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, club, hotel, brewpub, and condominium hotel 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.

**SUMMARY:** The proposed amendment clarifies the expiration date for registration cards held by bartenders and managers.

\* \* \* \* \*

**§3-82-38.25. Restrictions or Conditions on Licenses.**

- (a) Pursuant to HRS Section 281-61(b), the Commission may, at any time, fine, suspend, revoke, or place restrictions or conditions on any license issued under HRS 281 and the Rules of the Commission for the purpose of preventing activities within the licensed premises, or adjacent areas under the licensee's control that are potentially injurious to the health, safety, and welfare of the public. Such adjacent areas include areas such as, but not limited to, stages, entertainment areas, lanais, and parking areas.
- (b) The Commission may place such restrictions or conditions on any license issued pursuant to HRS 281 or these Rules (i) at the time the license is initially issued or transferred or (ii) at any other time upon petition of the Administrator to the Commission and after notice and hearing in accordance with HRS 281 and these Rules.
- (c) Licensee shall comply with any restrictions or conditions placed on the license by the Commission pursuant to this Rule.

**SUMMARY:** The proposed amendment expands the time when restrictions or conditions may be placed upon a license, to include at the time of license transfer.

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**§3-82-38.26. Bottle Service for On-Premise Consumption.**

**Service of wine or distilled spirits in its original container is permitted at premises licensed for on-premise consumption. The seal of the original container shall be broken at the time of service.**

**SUMMARY:** The proposed new rule permits bottle service at on-premises consumption licensed premises.

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**§3-82-41.2. Transfer of Corporate Stock; Notification Regarding Limited Partners, Limited Liability Company Managers or Members.**

- (a) Prior to the date of transfer or change in ownership of a corporation, the corporate licensee shall submit an application for stock transfer and secure the approval, in writing, of such transfer or change of ownership from the Commission. The request for approval shall include the following:
- (1) The stock purchase offer or similar document;
  - (2) Information regarding the consideration to be paid for the transfer and the effective date of the transfer of stock;
  - (3) Personal history, FBI Fingerprint card, and criminal history record clearance, as explained in §3-82-45.1, on forms prescribed by the Commission, of each new stockholder holding twenty-five percent (25%) or more of corporate stock, officer or director; and
  - (4) Upon the approval of the proposed transfer of stock by the Commission, the corporate licensee shall submit an executed copy of the stock purchase agreement to the Commission not more than fifteen days after the effective date of the transfer of stock or approval by the Commission, whichever is earlier.
- (b) Corporate licensees shall notify the Commission, in writing, within thirty days of any change of officers or directors and submit a personal history of the new officer or director, on forms prescribed by the Commission. Limited liability company licensees shall notify the Commission, in writing, ~~within thirty days of~~ **prior to** any change of managers of manager-managed limited liability companies or of any change of members in a member-managed limited liability companies and submit a personal history of the new manager or member, on forms prescribed by the Commission. All newly appointed or elected principals, who are natural persons, of any class license, except as exempted by §3-82-45.1, must be fingerprinted or submit fingerprints on a Honolulu Liquor Commission fingerprint card and submit a personal history and affidavit, and must request a Criminal History Clearance from the Hawaii Criminal Justice Data Center within thirty days of appointment or election, unless the period is extended or the requirement is waived by the Commission, for just cause. Principals that are not natural persons must submit whatever documentation establishes the entity (for example, Articles of Incorporation or Organization, or

Partnership Agreement), and a list of principals of the entity. Limited partnerships and manager-managed limited liability company licensees shall notify the Commission, in writing, within thirty days of any change of limited partners or members and submit a personal history of the new limited partner or member, on forms prescribed by the Commission.

- (c) The transfer of an aggregate of fifty-one (51%) percent of the stock of cabaret licenses which, pursuant to Section 281-31(l), Hawaii Revised Statutes, are permitted to have entertainment by dancers, shall be considered a transfer of the license for purposes of determining whether the licensee may continue to have such entertainment.
- (d) Stock transfer applicants shall provide documentation from the Department of Commerce and Consumer Affairs of proof of the existence of a valid corporation.

**SUMMARY:** The proposed amendment corrects the inconsistency between the requirements of HRS §281-41(e) and this rule as it applies to limited liability companies.

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**§3-82-41.3. Management or Operating Agreements.**

**Licensee shall apply for and secure approval for any management or operating agreement from the Commission, in writing, prior to such agreement taking effect, subject to the following conditions:**

- (a) **The agreement shall be 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 of the licensed premises.**
- (b) **The agreement shall be for the entire licensed premises, unless otherwise approved by the Commission.**
- (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.**
- (e) **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 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:** The proposed new rule establishes a procedure for Commission review and approval of management or operating agreements (based upon Maui County's



rule). Concern was expressed whether the rule requirements would be prospective. Because rule amendments typically are prospective without specific language making them retroactive, no additional language was added to this proposed amendment. If not made prospective, licensees also were concerned about existing management or operating agreements, i.e., what "grandfathering" or notification requirements would be applicable to them. A suggestion was made to have Hotel class licensees subject to an "amnesty period" when penalty-free notification could be made of existing management or operating agreements; if this is done administratively (similar to what was previously done with officer/director notifications), no additional revisions would be required.

\* \* \* \* \*

**§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, brewpub, or condominium hotel 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 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 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.
- (xv) A description detailing the kind of business that the applicant proposes to operate. **For applications for [new] 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 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.
- (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.

**SUMMARY:** The proposed amendment adopts Maui County's practice of requiring restaurant license applicants to establish their ability to meet the sale of foods requirement. A correction was made to distinguish the submission requirements for transfer versus new license applications.

\* \* \* \* \*

**§3-83-61.1. Renewal of Existing License.**

The Commission may withhold the issuance of a renewed license for good and sufficient reason, which may include, but is not limited to:

- (a) Failure to pay any outstanding penalties due the Commission;
- (b) Failure to file any outstanding gross liquor sales reports;
- (c) Failure to pay any outstanding additional license fees;
- (d) Failure to comply with any prior Commission orders, which may include, but is not limited to, an order to update or keep current any and all license application documents contained in the Commission's licensee file;
- (e) 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 neighborhood;
- (f) Complaints from the public or reports from the Commission's investigators indicating that noise created by patrons departing the premises disturbs residents of the neighborhood in which the premises are located;
- (g) A report, investigated and verified by the Commission, indicating that sounds emanating from the premises exceed permissible levels.
- (h) **For licensees who are corporations, limited partnerships, limited liability companies, or limited liability partnerships, failure to maintain the business entity's good standing in the state of its organization. In this regard, business entity licensees shall submit with their license renewal documents a certificate of good standing from the state of its organization that is not more than 60 days old to establish compliance with this requirement.**

**SUMMARY:** The proposed amendment requires a business entity licensee to establish continued good standing in the state of its organization at the time of license renewal. Licensees' objection to this requirement seemed to stem from an additional task imposed during the license renewal process, not so much the substantive requirement itself. Suggestions included: (1) Have LIQ check before issuing the renewed license; (2) Specify that the Commission can waive the requirement for good cause; or (3) See if DCCA will agree to a pre-clearance procedure similar to what DoTax does with tax clearances. As the process for obtaining evidence of good standing is relatively easy, Administration has determined to not make further revisions to the proposed amendment.

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**§3-83-62. ARCHITECTURAL REQUIREMENTS/ALTERATION OF LICENSED PREMISES.**

- (a) Any physical alterations within a licensed premises shall only be made with the prior, written approval of the Commission. Retail licensees are exempt from the prior approval requirement but are required to file an updated floor plan for the premises within five (5) business days of completion of the alteration(s). **Hotel licensees are required to obtain prior approval only for physical alterations made to (i) an area where alcoholic beverages are sold, served, or consumed or (ii) common areas.**
- (b) No licensee that is authorized on-premise consumption shall have an opening or entrance from within the licensed premises into any other enclosed, unlicensed part of the same structure, or into any adjoining, enclosed, unlicensed structure offering entertainment.
- (c) A licensee who applies for **[an] a permanent** increase in the area of the licensed premises where the increase sought is equal to or greater than 50 percent of the current area licensed shall give notice of said application to the chair of the neighborhood board in which the licensee's licensed premises is located, in writing and delivered by certified mail, return receipt requested.
- (d) Alterations, changes, or increases to a condominium hotel licensee's premises which are within (i) condominium hotel guest rooms or (ii) areas that only provide access to and from the portion or portions of the licensed premises in which alcoholic beverages will be served and condominium hotel guest rooms, are exempt from the requirements and restrictions of this Rule.

**SUMMARY:** The proposed amendment specifies that the neighborhood board notification is applicable only to permanent extensions of the licensed premises. A suggestion was made that due to the size and complexity of Hotel class premises, a rule accommodation should be made, similar to what was done for the Condominium Hotel class.

\*\*\*\*\*

**§3-83-62. ARCHITECTURAL REQUIREMENTS/ALTERATION OF LICENSED PREMISES.**

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- (c) A licensee who applies for an increase in the area of the licensed premises where the increase sought is equal to or greater than 50 percent of the current area licensed shall give notice of said application to the chair of the neighborhood board in which the licensee's licensed premises is located, in writing and delivered by certified mail, return receipt requested.
- (d) Alterations, changes, or increases to a condominium hotel licensee's premises which are within (i) condominium hotel guest rooms or (ii) areas that only provide access to and from the portion or portions of the licensed premises in which alcoholic beverages will be served and condominium hotel guest rooms, are exempt from the requirements and restrictions of this Rule.
- (e) **After granting an increase in the area of the existing licensed premises of a licensee, the licensee shall request and pass a final inspection of the premises by Commission staff before the licensee is authorized to occupy and use the granted addition.**

**SUMMARY:** The proposed amendment adds a final inspection requirement before a licensee may occupy and use a granted addition to the licensed premises.

\* \* \* \* \*

**§3-84-72.2. Premises Lighting; Doors.**

Street or primary entrances to licensed premises shall be kept unlocked during all times that **[non-employees] any person other than an on-duty employee** is on the premises. Entrances to booths shall be open and unobstructed. The interior and exterior of the licensed premises shall be well and properly lighted.

**SUMMARY:** The proposed amendment conforms the designated individuals to the definition of "customer".

\* \* \* \* \*

**§3-84-73.1. Quality of Liquor.**

**[Liquor] Straight or unmixed distilled spirits shall only be dispensed from its original container. In the handling and storage of [liquor] straight or unmixed distilled spirits, the transfer of [liquor] product from its original container to any other storage container is prohibited.**



**SUMMARY:** The proposed new rule prohibits the transfer of liquor from its original container to any other container. The revision was made to address the specific type of liquor that is the compliance problem, and eliminating wine in carafes and infused drinks from the rule's prohibitions.

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**§3-84-78.01. Conduct of Employees.**

- (a) Licensees shall be strictly accountable for the conduct of all employees on the licensed premises. Any person who performs a service usually or normally done, on or within a licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated, shall be subject to the constraints of these rules and shall be considered an on duty employee of the licensee. This rule does not apply to vendors, tradesmen, or maintenance people who, in the normal course of their duties, service the licensed premises. For purposes of this rule, an entertainer shall be deemed to be an employee of the licensee during the time the entertainer is performing or while the entertainer is on the platform or stage or in any other area set aside for the performance.
- (b) No employee while on duty shall consume liquor.
- (c) No employee while on duty shall solicit or accept any food or beverage, alcoholic or otherwise, as a gift from or at the expense of a customer.
- (d) Only registered hostesses and managers of licensed hostess bars are permitted to sit with customers during hours of operation. Registered managers and waitresses in licensed cabarets are not permitted to sit with customers during hours of operations.
- (f) **No employee while on duty shall engage in violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct on the premises.**

**SUMMARY:** The proposed amendment applies the prohibition in HRS 281-78(b)(6) to employees.

\*\*\*\*\*

**§3-84-78.06. Solicitation of Business Outside of Premises.**

No licensee authorized to sell liquor for consumption on the premises, shall solicit business ~~[immediately outside or in the vicinity]~~ **within a twenty feet radius** of the licensed premises.

**SUMMARY:** The proposed amendment provides an objective measurement for determining where a licensee may solicit business outside of the licensed premises.

\*\*\*\*\*

**§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 [ten] sixteen ounces, or [five] six ounces of wine, or [twelve] twenty-two ounces of beer; provided that a serving in excess of these amounts shall be limited to one per customer. A [pitcher] multiple-serving container, not to exceed sixty ounces, may be served to two or more persons. [No customer shall be permitted to have, for consumption, more than one drink at a time, except that a beer may be served with a straight or unmixed serving of liquor. This rule shall not apply to Commission approved authorized "showroom" facilities which may serve the "minimum" drinks at the same time to lessen disturbance to the show, or at auditoriums, theaters, concert halls, arenas, stadiums and convention halls where a walk-up, concession system of service is employed and there is no tableside or seating service provided by wait help. In these concession-serviced facilities, a customer may purchase a maximum of two drinks at a time.]

At last call, [pitcher] multiple-serving container service or any drink exceeding a single standard serving shall be prohibited.

**SUMMARY:** The proposed amendment adopts some of Hawaii County's stacking rule's objective measurements. Volume amounts and container descriptions were revised to comport with standard industry practices (size/type of glassware; common beer bottle sizes; etc.).

\*\*\*\*\*

**§3-85-91.12. Licenses Under Safekeeping.**

Any license held in safekeeping by the Commission shall be considered an active license and the licensee must continue to comply with all Liquor Commission laws and rules unless otherwise directed by the Commission. Any license held in safekeeping beyond June 30 of a license year must receive Commission approval to remain in safekeeping and as otherwise directed by the Commission.

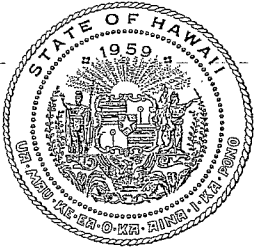
**SUMMARY:** The proposed amendment specifies that licenses held in safekeeping beyond June 30 must receive Commission approval.

- END -

# Exhibit A

**Chair's Monthly Report for**  
**November 2013**

1. Reviewed, approved and/or crafted memoranda relating to administrative rules, Board's budget request, agency introduction letters, approved at October board meeting (See attached Memo to Budget and Finance)
2. November board meeting preparation – Agenda, October minutes, review of noted administrative rules on agenda
3. Attended 3<sup>rd</sup> Annual Commissioning Ceremony on November 7, 2013



## SB SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St. 4<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594  
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### MEMORANDUM

Neil Abercrombie  
*Governor*

To: Kalbert Young, Director  
Department of Budget and Finance

Richard C. Lim  
*Director, DBEDT*

From: Chu Lan Shubert-Kwock, Chairperson  
Small Business Regulatory Review Board

Mary Alice Evans  
*Deputy Director, DBEDT*

Date: November 12, 2013

#### Members

Chu Lan Shubert-Kwock  
*Chairperson*  
*Oahu*

Subject: DBEDT Budget Request for the Small Business Regulatory Review Board

Anthony Borge  
*Vice Chairperson*  
*Oahu*

I am writing as the Chairperson and on behalf of the Small Business Regulatory Review Board regarding DBEDT's budget request for fiscal year 2015 for this Board. There are two specific requests, one for \$16,000 for operating expenses (which is mostly for neighbor island airfare), and another totaling \$28,000 for an office assistant to be shared with DBEDT's Office of Aerospace Division.

Leslie Mullens  
*2<sup>nd</sup> Vice Chairperson*  
*Maui*

As you may know, this Board is statutorily attached to DBEDT for administrative purposes under Chapter 201M, Hawaii Revised Statutes (HRS). We are responsible for reviewing administrative rules proposed by both State and County agencies to determine if and how the rules may impact small business. Since its inception in 1998, this Board has reviewed nearly 600 sets of pre- and post-public hearing statements that impact small businesses.

Barbara Bennett  
*Kauai*

Kyoko Kimura  
*Maui*

Howard Lum  
*Oahu*

Craig Takamine  
*Hawaii*

Richard C. Lim  
*Director, DBEDT*  
*Voting Ex Officio*

This year, the Board is in the process of discussing the re-implementation of "RegAlert," an electronic communication tool intended to facilitate small business owners' awareness of new and proposed administrative rules by electronic means. RegAlert is performed through several partners such as the State's chambers of commerce, Small Business Hawaii, The Legislative Center and others. This Board is Hawaii's only voice in determining small business impact and seeking ways to work with the rule-drafting agencies to lessen the often very damaging effect some government regulations can have on those least able to handle the added regulatory burden.

#### DBEDT Staff

Dori Palcovich  
*Economic Development*  
*Specialist*

There is currently one position assigned to our Board for administrative and clerical support. This is a senior position, responsible for liaison with the State and County agencies, and among other responsibilities, reviews preliminary rules, and coordinates hearings with agencies and the public (see attached position description). This position was reinstated two years ago after it was eliminated during the State's 2009 reduction-in-force crisis. Over the past two years, this single staff professional, who already has a number of other senior staff level responsibilities for DBEDT, has experienced extreme difficulty in maintaining the responsibilities and voluminous clerical paperwork that this Board receives; hence, reducing her intended real effective senior responsibilities.

Kalbert Young, Director  
Department of Budget and Finance  
November 12, 2013  
Page 2

While the Board has only recently been allowed by DBEDT to utilize clerical assistance, it is on an "as needed" and "if available" basis. The solution, while helpful, cannot provide the full clerical assistance needed to accomplish all the necessary work needed for the Board to function effectively. Late meeting minutes and unfinished timely-needed material resulted in affecting board meetings. Without the proposed funds, it will continue to leave the Board without direct operating funds, and regular dependable clerical assistance. The situation is quite desperate.

We respectfully ask that you consider approving the proposed budget request for this Board. DBEDT has not made any set budget to fund the Board's operations, and the Board is grossly underfunded and under-manpowered to perform its mandate to the small business community and State and County agencies. The Board's work has been held back due to DBEDT's intended lack of resources, support, and lack of enthusiasm to help small business. Consequently, few in the small business community have heard of this Board or what this Board does.

The members of this Board are frustrated over the years of this negligence and inconsideration of board members' expertise, sacrifice and volunteerism. This Board seriously intends to make an impact to its represented constituents and, therefore, undertakes this step to ask for your intervention and assistance. Our Board unanimously voted to request your support as we are unable to perform our obligations fully.

For example, there was no money to print business cards, buy bottled water for board members, VIP testifiers, outreach, informational workshops, etc., to communicate with agencies and the small business community which is vital to our State's economy. The members have to pay for their own business cards, drinking water, lunches, etc., when Board works over four - five hours. Board members also pay for their own parking tickets when public facility is full. One wonders, "why should good people who are busy bother to serve on such a Board?" Some folks are insulted by DBEDT's uncaring demeanor but others want to make it workable and meaningful.

Please review the attached Small Business Bill of Rights and Chapter 201M, HRS.

Thank you for your consideration. Your assistance will have a huge impact on the success of this Board where eight talented and experienced volunteers give of their time to assist our State agencies and our community.

cc: Governor Neil Abercrombie (w/o enclosures)  
Richard E. Lim, DBEDT Director (w/o enclosures)

Enclosures (3)