

Amendments to Title 08, Chapter 101,
Rules Governing the Manufacture and Sale
of Intoxicating Liquor of the County of Maui

and

Chapter 102, Rules Governing Administrative
Practices and Procedures of the Liquor Commission
and Liquor Adjudication Board of the County of Maui

1. Section 08-101-5, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by adding definitions to be appropriately inserted and to read as follows:

"Drink" means any quantity of wine, beer, or distilled spirits served in a container.

"Hosted bar" means a bar at an event at which the drinks are or have been paid by the host.

"No host bar" means a bar at an event at which guests are required to pay for the drinks themselves. Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

2. Section 08-101-25, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (a) and (e) to read as follows:

"(a) Hours during which licensed premises may be open for the transaction of business shall be as follows:

- (1) Dispensers, [restaurants,] clubs, transient vessels, tour or cruise vessels, and specials: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day[.], and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales for special license only.
- (2) Cabarets: any hour of the day from 8:00 a.m. to 4:00 a.m., the following day.
- (3) Hotels and condominium hotels: from 6:00 a.m. to 4:00 a.m., the following day, and any hour of the day for room service.
- (4) Retailers: any hour of the day from 6:00 a.m. to 11:00 p.m.
- (5) Manufacturers [and wholesalers]: from [5:00 a.m. to 9:00 p.m.] any hour of the day for manufacture and wholesale, 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales, and any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales.
- (6) Brewpubs: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, any hour of the day for manufacture and wholesale, and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales.

- (7) Small craft producer pubs: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, any hour of the day for manufacture and wholesale, and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales.
- (8) Caterers: any hour of the day from 6:00 a.m. to 2:00 a.m., the following day.
- (9) Wineries: any hour of the day for manufacture and wholesale, and from 6:00 a.m. to 11:00 p.m. for off-premises retail sales and on premises wine tasting activities.
- (10) Restaurants: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, and 6:00 a.m. to 11:00 p.m. for off-premises retail sales, pursuant to Section 281-31(c), Hawaii Revised Statutes.
- (11) Wholesalers: any hour of the day. [Eff 7/1/00; am and comp 6/18/15; am and comp 3/4/17; am and comp 7/29/17; am and comp 1/14/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

(e) Licensee may operate or be open for business for other than the sale, service, or consumption of liquor prior to or beyond the hours prescribed by the commission [, upon submitting an application and obtaining prior approval from the commission.], provided an “employee approved by the Director” shall be within and in active charge of the premises at all times. [Eff 7/1/00; am and comp 6/18/15; am and comp 3/4/17; am and comp 7/29/17; am and comp 1/14/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

3. Section 08-101-30, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (a) and (h) to read as follows:

“(a) Applications for liquor licenses, renewals, transfers, management agreement, solicitor’s permit, or change of partner(s) in a partnership, limited liability partnership, member, manager, organizer or any person of a limited liability company, or officer(s), director(s), and stockholder(s) owning or controlling twenty-five percent or more of the outstanding stock or ownership of a corporation, thereof, and all notices of public hearing sent, and affidavits filed by applicants in connection with and part of such applications, shall be in the respective original forms and accompanied by the following necessary documentation and any other original forms or documents which may be prescribed from time to time by the commission, which shall be considered as part of the application.

- (1) [Department of health clearance;
- (2)] State [and federal] tax [clearances] clearance or that the applicant has entered into and is complying with an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments;
- [(3)](2) Floor plans (not construction plans) drawn to scale;
- [(4)](3) Tax map (drawn to scale) and list of all tax map key numbers, names and addresses of property owners, and lessees and owners of record of shares in a cooperative apartment situated within a radius of five hundred feet of the proposed premises;

- [(5)](4) Personal history statement;
- [(6)](5) Verification of any corporation, partnership, association, limited liability company, limited liability partnership, or any other entity;
- [(7)](6) Affidavit of mailing of notices of public hearing and certificate of mailing as verified by the United States Postal Service;
- [(8)](7) Transferor's gross sales report;
- [(9)](8) Transferor's endorsement of transfer;
- [(10)](9) Executed copy of agreement of sale, lease, rental agreement, which states that the premises and its operation must be under the licensee's exclusive control at all times;
- [(11)](10) Additional fee assessment agreement;
- [(12)](11) Coast guard documentation;
- [(13)](12) Zoning clearance;
- [(14)](13) Building permit;
- [(15)](14) Criminal history record check;
- [(16)](15) Stockholder's list;
- [(17)](16) Certificate of occupancy, miscellaneous inspection report, and clearance from the department of fire control (miscellaneous inspection report and clearance from the department of fire control shall indicate that all governmental regulations and administrative rules have been complied with); and
- [(18)] Guaranty or bond; and
- (19)](17) Copy of a federal or State governmental picture identification and social security card for each person. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

(h) A change of location application is subject to all requirements and hearings as a new application for a license[.], provided the Director may approve a change of location within the County without hearing upon the filing of the application for change of location and any required documents for a Class 9 tour or cruise vessel license and for a Class 8, transient vessel license. The liquor license for the existing premises shall become void upon the issuance of the license for the new location. Licensee shall meet all requirements as a new license, pay the prorated license fee, and if applicable, file a gross sales report on all liquor sold under the original license and pay the assessment fee prior to the issuance of the license. All records of the original license shall be part of the licensee's change of location application and record. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

4. Section 08-101-31, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-31 No license issued, when. No license shall be issued:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may

grant a license under the rules of the commission to a partnership, trust, association, limited liability partnership, limited liability company, corporation, or any other person, that has been convicted of a felony where the commission finds that the partner, member, manager, organizer, or any person of a limited liability partnership, limited liability company or organization's officers, directors, and any person owning or controlling twenty-five percent or more of the outstanding stock are fit and proper persons to have a license;

- (2) To any partner in a partnership, or a corporation, trust or association, the officers, directors, or any other person of which, or any of them, would be disqualified under subsection (1) from obtaining the license individually, or any person of which, owning or controlling twenty-five percent or more of the outstanding capital stock, or any other person, would be disqualified under such subsection (1) from obtaining the license individually; provided that for publicly-traded companies or entities ultimately solely owned by a publicly-traded company, only the officers and directors designated as primary decision-makers shall be considered to determine disqualification under paragraph (1);
- (3) To any applicant for a license, or a renewal of a license, or in the case of a transfer of a license, where both the transferor and the transferee, failed to present to the issuing agency a tax clearance certificate from the department of taxation[,] showing that the applicant or the transferor and transferee do not owe the State government any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement[;] or when the applicant or the transferor or transferee, in the case of a transfer of a license, is validly challenging a tax assessment, penalty, or other proceeding that prevents the issuance of a signed certificate from the state tax agency, the commission shall issue a license that is valid for the period of time necessary to resolve the challenge;
- (4) To any applicant who has a partner in the partnership, limited liability partnership, member, manager, agent, organizer, or any person owning or controlling twenty-five percent or more of a limited liability company, or any officer, director or any person owning or controlling twenty-five percent or more of the outstanding stock of any corporation, trust, or association, or any other person, who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under the rules of the commission;
- (5) To any person owning or controlling twenty-five percent or more of the outstanding stock of the corporation, trust, or association of a licensee, who is currently delinquent in filing the gross liquor sales report of any license that was issued, or currently owing any fees or monies due to the department, or both. "Any fees or monies" shall include but not be limited to license fees, publication fees, and any assessment of a penalty imposed by the department, commission, or board. Any licensee, who has any person, or person owning or controlling twenty-five percent or more of the

outstanding stock of a corporation, trust, or association of a licensee, who is delinquent in filing the gross liquor sales report of any other license that was issued, or currently owing any fees or monies to the department, shall not exercise its license until the gross sales report is filed and percentage fee paid;

- (6) To a limited liability company, the members, managers, organizers, or any person, of which or any of them, would be disqualified under subsection (1) from obtaining the license individually, would be disqualified under that paragraph from obtaining the license individually;
- (7) To a limited liability company, partnership, limited liability partnership, or corporation, that may consist of a limited liability company, partnership, limited liability partnership, corporation, or any other person or any combination thereof, the members, managers, organizers, partners, officers, directors, or any person thereof, of which any of them would be disqualified under subsection (1) from obtaining the license individually, or a person owning or controlling twenty-five percent or more of the outstanding stock of such corporation would be disqualified under that paragraph from obtaining the license individually; or
- (8) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, or class 18 license, unless the applicant for issuance of a license or renewal of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of \$1,000,000. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 3/4/17; am and comp 12/30/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

5. Section 08-101-33, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (f) to read as follows:

“(f) In no case shall any application for renewal of a liquor license be accepted unless it includes the completed application, basic fee payment, State [and Federal] tax [clearances,] clearance and all other required documents. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

6. Section 08-101-35, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by adding a new subsection to be appropriately designated and to read as follows:

“(d) If a licensee closes out of the business for which the license is held, during the term for which the license was issued, the licensee shall within five days from the date of closing the same, give commission notice thereof and surrender the licensee’s license for cancellation, unless the licensee obtains prior approval from the commission to place its license with the commission for safekeeping. For the purposes of this subsection, “safekeeping” means the holding of a liquor license at the commission office while the licensee is not operating or expired. [Eff 7/1/00; am and comp 7/15/02; am

and comp 4/22/12; am and comp 8/12/19] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

7. Section 08-101-50, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (b) and (d) to read as follows:

“(b) Basic fee. This fee shall be paid in advance not later than each June 15th, prior to the fiscal year for which the license is issued. The fee paid for a license issued on any other date shall be reckoned proportionally from the first day of the month in which the business is commenced to the expiration date or to the next payment due date.

	<u>Class</u>	<u>Kind</u>	<u>Basic Fee</u>
(1)	Manufacturers (including rectifiers)	(A) Beer	\$ 600
		(B) Wine	600
		(C) Wine manufactured from fruits grown in the State	300
		(D) Alcohol	200
		(E) Other liquors	640
(2)	Restaurant	(A) General	600
		(B) Beer and Wine	300
		(C) Beer	150
(3)	Wholesale	(A) General	2,400
		(B) Beer and Wine	1,800
		(C) Alcohol	200
(4)	Retail	(A) General	560
		(B) Beer and Wine	260
		(C) Alcohol	200
(5)	Dispenser	(A) General	600
		(B) Beer and Wine	300
		(C) Beer	150
(6)	Club		320
(8)	Transient Vessel, per day		25
		Monthly	100
		Yearly	1,200
(9)	Tour or Cruise Vessel		300
(10)	Special, per day	(A) General	25
		(B) Beer and Wine	15
		(C) Beer	10
	Fundraising event		0
(11)	Cabaret		1,200
(12)	Hotel		1,200
(13)	Caterer		600
(14)	Brewpub		1,000
(15)	Condominium Hotel		1,200
(16)	Winery		1,000
(18)	Small craft producer pub		1,000

[Eff 7/1/00; am and comp 7/15/02; am and comp 6/18/15; am and comp 9/3/16; am and comp 3/4/17; am and comp 1/14/18; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

- (d) Percentage fee.
- (1) Licensees in classes 2(A), (B) and (C), 4(A) and (B), 5(A), (B) and (C), 6, 9, 11, 12, 13, [14,] 15, [16, 18,] and temporary license, as defined in subsection (b) of this section, shall be subject to the basic fee plus a percentage fee. Licensees in class 1 (other than a class 1 manufacturer, whose wine is manufactured from fruits grown in the State), and class 3, class 14, class 16 and class 18, as defined in subsection (b) of this section, shall be subject to basic fee plus the percentage fee of retail (on premises and or off premises) liquor sales to any person for private use and consumption. Licensees in class 9, as defined in subsection (b) of this section, shall be subject to basic fee plus percentage fee of four times the total amount of liquor purchased from class 1 manufacturers' licensee, class 3 wholesale dealers' licensee, class 14 brewpub licensee, class 16 winery licensee, and class 18 small craft producer pub licensee. Licensee shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report.
- (2) The percentage fee for each current fiscal year shall be based upon the following formula, which shall establish the percentage to be applied to the gross sales or four times the total amount of liquor purchased of each licensee:

$$\frac{EE - BF - C}{EGS} = \text{Percentage}$$

EE = Estimated Expenditures (current fiscal year)

BF = Basic Fees (current fiscal year)

C = Carryover (prior fiscal year)
(Carryover in excess of twenty per cent as provided in section 281-17.5, HRS)

EGS = Estimated Gross Sales (prior fiscal year)

- (3) Licensees in the above-mentioned classes shall file with the director on a form prescribed by the commission a report showing true and accurate gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the director and shall be completed, filed at, and accepted by the department not later than 4:30 p.m. on July 31 after the date of expiration of such licenses, and at such other times or intervals as the director may require. If the 31st of July falls on Saturday, Sunday, or legal County of Maui holiday, the last day for the filing of the gross liquor sales report shall be 4:30 p.m. on the first County of Maui working day following. The gross sales of liquor report shall be on the original form(s) and contain the original signature; duplicates or copies shall not be accepted.

The director may reject, refuse to accept, or return any gross liquor sales report that is inaccurate, incomplete, illegible, or does not meet any requirement(s) of or not in compliance with any rule of the commission or chapter 281, HRS.

- (4) After a tally of all total gross liquor sales filed by the due date by the licensees, the percentage fee due and payable shall be assessed each licensee and shall be paid within thirty-one calendar days of receipt of said assessment.
- (5) In case of transfer of such licenses, the report shall be filed and paid by the transferor immediately after approval by the commission and before the actual transfer of the license and the business of the licensee-transferor. The percentage fee based on the current applicable percentage fee shall be paid prior to the issuance of the license.
- (6) Any licensee who fails to file the report or fails to pay the percentage fee due on or before the due date shall not exercise his license after the due date and until said report has been filed or percentage fee paid, or both.
- (7) Where licenses are revoked, expired, or canceled, or the licensee closes out the business for which the license is held, the report shall be filed and the percentage fee due paid within five calendar days of the revocation, expiration, cancellation or closing out the business. The percentage fee due shall be based on the current applicable percentage.
- (8) Any licensee who fails to pay the percentage fee by the due date shall be assessed a late charge of five percent per month on the balance due until such fees are paid in full. The five percent late charge shall be a flat fee (not be prorated) that will be charged for any portion of the month payment is due.
- (9) Any licensee who fails to pay the percentage fee within ninety days of the due date, shall be notified and scheduled for hearing. Upon satisfactory proof of such prohibited activity, the license shall be revoked.
- (10) No licensee shall fail to accurately report revenues from gross liquor sales or to properly complete the gross liquor sales report. It shall be the licensee's responsibility to maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to the rules of the commission. Records shall be maintained for a period of four years.
- (11) All licensees shall have available for inspection within the County, books or records, or both, showing all income, purchases, and expenses of their liquor license business. These books and records, including but not limited to daily sales records, price lists, employee time sheets, and invoices, shall be made available for inspection or auditing, or both, by the department, through its auditor(s) or otherwise, at any time upon demand and shall be preserved for a period of four years, except that the commission may, in its discretion, consent to destruction of such books and records within such period or may require that they be kept longer. Licensee or its employees shall record the sale of liquor at the time of the transaction on its daily sales records.
- (12) Any licensee who fails to pay any fee due on or before the due date or when any check, money order, or the like that is utilized by the licensee for payment of such fee is returned by any financial institution for non-payment due to insufficient funds or for any other reason, shall not exercise the license until said fee and any related service charges are paid in cash, certified check, or money order, and such payment is duly processed by the department.

- (13) Any licensee who failed to file the gross sales of liquor report by the due date, shall be assessed the percentage fee equal to the highest percentage fee due and payable by the licensee of the same class or the highest percentage fee due and payable by any licensee if there is no licensee in the same class. [Eff 7/1/00; am and comp 7/15/02; am and comp 6/18/15; am and comp 9/3/16; am and comp 3/4/17; am and comp 1/14/18; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

8. Section 08-101-52, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-52 Guaranty. (a) The applicant or licensee shall post a bond that is approved by and filed with the department. The bond shall be not less than \$5,000 or 1.5 times the total license fees paid in the current fiscal year or for any licensee that operated less than one full fiscal year, 1.5 times the prorated amount as determined by the department to reflect the basic fee and percentage fee of a year of operation, whichever is greater, shall be irrevocable and subject to the following conditions and any other conditions and restrictions set forth by the department.

- (1) The bond cannot be canceled or terminated without written permission from the department. The bond company shall pay the total sum forthwith to the department whenever there is any attempt to cancel or terminate the bond without the expressed written consent of the department, or the failure to submit payment for renewal by the due date for renewal by the principle.
 - (2) The licensee shall automatically increase the penal sum of the bond to reflect any required increase pursuant to this section upon written notification by the director.
 - (3) Payment shall be immediately paid upon written demand by the director.
 - (4) The bond certificate and yearly renewal certificate shall be filed with the department.
 - (5) The term of the bond shall be for the entire period of the term of the license to be issued.
 - (6) The bond shall contain the name of the agent and the agent’s telephone number and address.
- (b) In lieu of the bond, an individual, partners of the partnership, limited liability partnership, members, managers, organizers, or any person of a limited liability company, officers, directors, and stockholders owning or controlling twenty-five per cent or more of the outstanding stock of a corporation, trust, or association that is issued a liquor license shall be personal guarantor(s) of and liable for any payments or monies due to this department. The individual, partners of the partnership, limited liability partnership, members, managers, organizers or any person of a limited liability company, officers and directors of a corporation, trust, or association that is issued a liquor license, shall be personally liable for all costs associated with the enforcement or collection, including but not limited to attorneys' fees and court costs, in the event that suit is instituted to enforce this guaranty.

(c) Licensee shall not exercise its license whenever it withdraws or cancels any bond or personal guarantee, unless the licensee files a bond whenever any personal guarantee is canceled or withdrawn or files the required personal guarantee(s) whenever any bond is canceled or withdrawn, and files its gross liquor sales report and makes

payment of the percentage fee due on the date of the filing of the withdrawal or cancellation of the personal guarantee or bond. [Eff 7/1/00] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)] (Reserved)”

9. Section 08-101-69, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) No licensee of any premises licensed to sell liquor for consumption on the premises shall:

- (1) Sell, advertise, or offer to sell “all the liquor you can drink”, or more than two drinks of alcoholic beverage for a fixed price; or encourage, sponsor, permit or have any promotion, game or contest that involves the consumption of liquor or the awarding of liquor as a prize.
- (2) Serve an unlimited amount of liquor during a set period of time for a fixed price, provided this provision does not apply to class 2, class 9, class 10, and class 12 licensees:
 - (A) When such function is not open to the general public and for which a hosted bar is utilized such as weddings, private parties, and fundraising functions;
 - (B) Where champagne may be inclusive with brunch;
 - (C) Where liquor may be inclusive with luaus; [or]
 - (D) Where liquor may be inclusive with tour or cruise vessel operations[.]; or
 - (E) Where at a Class 2, 10, 12 or 18 one day fundraising event, a set amount of alcoholic beverages may be sold at a fixed price as well as an open bar may be utilized provided at a pairing (food and liquor) fundraising event, Section 08-101-86(d) of the Rules of the Liquor Commission shall not apply. [Eff 7/1/00; am and comp 4/2/07; am and comp 3/4/17; am and comp 9/25/17; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

10. Section 08-101-70, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) On every licensed premises, an on-duty employee duly approved by the director must be in active charge of each premises during all times that such premises is open for business[.], provided this section shall not apply to Class 8, transient vessel except for a Class 8, transient vessels that have been issued an annual license. [Eff 7/1/00; am and comp 7/15/02; am and comp 8/12/19] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

11. Section 08-101-74, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) Persons who apply to the commission for registration or as an employee approved by the director shall present: