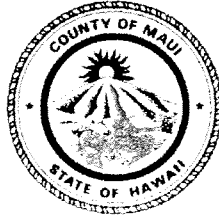


MICHAEL P. VICTORINO  
Mayor

GLENN MUKAI  
Director

GEORGETTE C.R. TYAU  
Deputy Director



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OFFICE OF THE MAYOR

DEPARTMENT OF LIQUOR CONTROL  
COUNTY OF MAUI  
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August 28, 2019

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Yuki Lei Sugimura  
Chair, Multimodal Transportation Committee  
Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Michael P. Victorino* 8/29/19  
Mayor Date

Dear Chair Sugimura:

**SUBJECT: ROADWAY SAFETY (MT-10(8))**

*Please provide an explanation or description of the rules the Department enforces to ensure responsible alcohol beverage service and to prevent over-serving of alcohol.*

The various sections within the Hawaii Revised Statutes and Rules of the Liquor Commission, County of Maui are enforced to ensure responsible alcohol beverage service and to prevent over-serving of alcohol.

The Rules of the Liquor Commission are more restrictive than State law by including the additional wording "under the influence of liquor, drugs, or any combination thereof".

**§281-78, Hawaii Revised Statutes**

**Prohibitions.**

- (b) At no time under any circumstances shall any licensee or its employee:
  - (1) Sell, serve, or furnish any liquor to, or allow the consumption of any liquor by:
    - (B) Any person at the time under the influence of liquor;
    - (C) Any person known to the licensee to be addicted to the excessive use of

intoxicating liquor; or

- (5) Knowingly permit any person under the influence of liquor or disorderly person to be or remain in or on the licensed premises;

**§08-101-60, Rules of the Liquor Commission**

**Prohibitions.**

- (b) At no time under any circumstances shall any licensee or its employee:
  - (1) Sell, serve, or furnish any liquor to, or allow the consumption of any liquor by:
    - (B) Any person at the time under the influence of liquor, drugs, or any combination thereof;
    - (C) Any person known to the licensee to be addicted to the excessive use of intoxicating liquor; or
  - (5) Knowingly permit any person under the influence of liquor, drugs, or any combination thereof, or disorderly person to be or remain in or on the licensed premises;
  - (11) Fail to exercise due care in determining whether a person is under the influence of liquor, drugs, or a combination thereof;

**§281-78.5, Hawaii Revised Statutes**

**Practices to promote excessive consumption of liquor; prohibited.**

(a) No person licensed to sell liquor for consumption on the premises shall engage in practices which promote excessive consumption of liquor.

(b) The liquor commission shall adopt rules pursuant to chapter 91 to prohibit specific liquor promotion practices which promote excessive consumption of liquor; provided that any rules adopted by the counties related to the stacking of liquor shall specify that:

- (1) Stacking of beer shall be defined based on a standard serving size of total volume; and
- (2) A standard serving size of beer shall be defined as not exceeding a total volume of thirty-two ounces before a customer at any one time.

(c) Any person who violates this section or any rule adopted by the commission pursuant to this chapter shall be guilty of a violation for each separate offense. Each date of violation shall constitute a separate offense.

**§08-101-69, Rules of the Liquor Commission**

**Practice to promote excessive consumption of liquor; prohibited.**

- (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;
    - (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.
  - (3) Employ any person for the purpose of selling, furnishing or serving liquor under any scheme, plan, or arrangement involving the payment for such services on the basis of any commission, percentage, or such similar method of payment without the prior approval of the commission.
- (b) No licensee shall sell, serve, or furnish liquor to any person at a cost below licensee's cost of liquor purchased at wholesale, except as may be provided in the rules of the commission. For this section, cost of liquor shall mean the licensee's wholesale purchase price including any tax, shipping and handling cost.

The Rules of the Liquor Commission require liquor service shall be made by the licensee or an employee of the licensee to insure the server has direct contact with and observes the condition of the patron and to ensure compliance with any other rules or laws. In addition, the Rules require an on duty employee approved by the director must be in active charge of each liquor dispensing or consumption area at all times whenever there is sale, service, or consumption of liquor. The Licensee is responsible at all times to exercise due care in determining whether a person is under the influence of liquor, drugs, or a combination thereof.

**§08-101-70, Rules of the Liquor Commission**

**Employee approved by the director.**

- (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.

(b) The term "employee approved by the director" means a managerial or supervisory employee or the holder of the license who is twenty-one years of age or older, has successfully completed an examination administered by the department on liquor laws and rules of the commission, attended a server training program approved by the department and issued a certificate by the department. The certificate shall be valid for a term of four years from date of issue and must be in the employee's possession or be readily available on the premises for inspection at all times, while on duty.

(g) Licensee shall be responsible to have all managers, assistant managers, supervisory personnel, or any other person, who performs any type of managerial or supervisory functions in conjunction with the operation, maintenance, supervision or management of the licensed premises, directly or indirectly, meet the minimum requirements set forth by the commission to be an "employee approved by the director."

(h) An on-duty employee duly approved by the director must be in active charge and be within each liquor dispensing or consumption area at all times whenever there is sale, service, or consumption of liquor.

#### **§08-101-84, Rules of the Liquor Commission**

##### **Preparation of drinks; clearing of tables.**

(a) On the premises licensed for the sale and consumption of liquor thereon, liquor service to a customer shall be made by the licensee or an employee of the licensee, except by special permit.

*Furthermore, please explain how over-serving of alcohol is identified.*

#### **§281-1, Hawaii Revised Statutes**

**Definitions.** Whenever used in this chapter, unless otherwise apparent from context:

**"Under the influence of liquor"** means that the person concerned has consumed intoxicating liquor sufficient to impair at the particular time under inquiry the person's normal mental faculties or ability to care for oneself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of oneself which the person would otherwise normally possess.

A person's physical or mental attributes, which may include but not limited to face flushed, red bloodshot eyes, odor of liquor on their breath, unsteady on their feet, slurred speech, incoherent, etc. as well as statements and observations by patrons, employees and or police officers, etc. are utilized to determine whether the person was under the influence of liquor. Blood alcohol level reading from the intoxilyzer or blood drawn may reinforce and or assist in making the determination. Other factors utilized may be amount of alcoholic drinks consumed within a time period.

Enforcement Liquor Control Officers are tasked to inspect all licensed premises daily. All on-view alleged violations of Chapter 281, HRS, or Rules of the Liquor Commission are investigated immediately.

Enforcement Liquor Control Officers conduct hourly checks with the Maui Police Department for any incidents that may have occurred involving liquor licensed premises or any OUI arrest and fatal accidents that may involve alcohol.

The Department receives police reports on incidents involving liquor licensed premises and all OUI arrests and/or fatal accidents.

The Enforcement Liquor Control Officer IV reviews all police reports, investigates or assigns the enforcement staff to investigate all incidents involving liquor licensed premises as well as all OUI and fatal accidents to determine if liquor licensed premises are involved.

Investigation cases involving the sale, service or furnishing of any liquor to, or allowing the consumption of liquor by a person under the influence of liquor involving liquor licensed premises are submitted to the Department of the Prosecuting Attorney for review and determination of charges, if any, and the prosecution of the cases before the Liquor Control Adjudication Board. The Prosecuting Attorney makes the recommendation for penalties should the licensee be found to be in violation by the Liquor Control Adjudication Board.

The Rules of the Liquor Commission have mandatory penalties for the sale, service or consumption of a person under the influence of liquor. Mandatory penalties contributed in the reduction of incidents from liquor licensed premises.

The Liquor Control Adjudication Board has suspended or revoked liquor licenses for the sale, service or furnishing to or consumption of liquor by a person under the influence of liquor.

#### **§08-101-104, Rules of the Liquor Commission**

##### **Mandatory minimum penalties.**

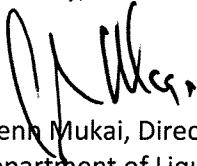
(a) Excessive service. If the licensee has been convicted of committing the offense defined in section 281-78(b)(1)(B), HRS; or section 08-101-60(b)(1)(B) of the rules of the commission, the licensee shall be sentenced as follows:

- (1) If the licensee has not been convicted of committing the offense in section 281-78(b)(1)(B), HRS, or section 08-101-60(b)(1)(B) of the rules of the commission during the previous five years, the **minimum sentence shall be a fine of not less than \$1,000**, no portion of which may be suspended.
- (2) If the licensee has been once convicted of committing the offense in section 281-78(b)(1)(B), HRS, or section 08-101-60(b)(1)(B) of the rules of the commission during the previous five years, the **minimum sentence shall be a fine of \$2,000**, no portion of which may be suspended.

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- (3) If the licensee has been twice convicted of committing the offense in section 281-78(b)(1)(B), HRS, or section 08-101-60(b)(1)(B) of the rules of the commission during the previous five years, the **minimum sentence shall be a suspension of the license.**
- (4) If the licensee has been thrice convicted of committing the offense in section 281-78(b)(1)(B), HRS, or section 08-101-60(b)(1)(B) of the rules of the commission during the previous five years, the **sentence shall be a revocation of the license.**

Sincerely,



Glenn Mukai, Director  
Department of Liquor Control

GM/gcrt