

**INTOXICATING
LIQUOR LAWS
IN HAWAII
AND
THE INDUSTRY**

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FOREWORD

This report on Intoxicating Liquor Laws in Hawaii and the Industry has been prepared in response to a legislative request for a comprehensive review of Hawaii's Intoxicating Liquor Law. It became evident that some of the more significant questions to be considered in a study of Hawaii's intoxicating liquor laws were centered on or closely related to matters that are basically of an economic nature. The Legislative Reference Bureau is fortunate in that Dr. Harold L. Wattel, Dean of the School of Business at Hofstra University, a recognized authority on the economics of the liquor industry, agreed to undertake the conduct of that portion of the study dealing with economic aspects. Chapters V to XII are his contribution.

The report traces the history of liquor and liquor laws and their administration in Hawaii, analyzes the complexities of the economics of each level of the liquor industry, examines the liquor market and what is known of the patterns of liquor consumption, surveys liquor laws and economic experiences nationally, and concludes with a number of suggestions for legislative consideration in the format of a suggested recodification of Hawaii's Intoxicating Liquor Law.

Members of the Bureau staff who assisted in the preparation of the report are Wayne Minami, Annette Miyagi, and as a legislative intern, Marvin Ching.

Acknowledgment is here made of the generous cooperation in providing advice and information to the Bureau on the part of liquor commissioners, executive secretaries and staff members of the liquor commissions, and representatives of the liquor industry.

Herman S. Doi
Director

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Chapter I

INTOXICATING LIQUOR IN HAWAII, HISTORICAL DEVELOPMENTS

The Commodity in Hawaii from Captain Cook through Prohibition and Repeal

The use of intoxicating liquor and the events, public attitudes, and laws associated with this unique commodity in Hawaii have corresponded closely and at times synchronized with parallel processes and developments on the United States mainland. Even as distilled spirits were originally introduced into North America by the immigrant colonists,¹ the Europeans and Americans who first came to Hawaii initiated the Hawaiians into the use of alcoholic liquors and taught them the art of distillation.

When the Hawaiian Islands were discovered by Captain James Cook in 1778, the only beverages used by Hawaiians were water, coconut milk and 'awa.² 'Awa had played an important part in the Hawaiian culture. It was a sacred drink for purposes of communal ceremonies, offerings and as a symbol of worship; it was a specific in the Hawaiian materia medica, used as a tranquilizer, diuretic, and stomachic tonic; and as a drink for pleasure, it served the usual ends of hospitality and sociability. 'Awa is described as a narcotic drink, and it is said to relax the mind, body, and nerves although over indulgence for a period of time can adversely affect the skin and eyes.

The foreigners who came to Hawaii following Cook's discovery were as unfamiliar with 'awa, its uses and the surrounding customs, as they were with other Hawaiian practices and customs. 'Awa was gradually displaced as the foreigners plied the Hawaiians with liquor, then sold it to them, and finally taught them how to distill. 'Awa lost its prestige as a sacred offering, for the old religion gave way to the efforts of the missionary teachings. Its prescription for medicinal purposes was replaced by the acceptance of modern medicines. And as a drink for pleasure, the liquors of the haoles proved to be more potent than the soporific 'awa.

Although the 1842 temperance pledge specifically included the abjuration of 'awa,³ neither its cultivation nor consumption was ever outlawed. In fact, until 1932⁴ it was evidently treated as a lucrative source of revenue, with licensing a requirement for sellers of 'awa.⁵

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Their initial legislative treatment of alcoholic liquors reflected the Hawaiian leaders' judgment of the popularity which this foreign importation had soon acquired. The earliest reported Hawaiian liquor legislation⁶ is attributed to Kamehameha I who is said to have proclaimed a stringent prohibitory law in 1818, the year before his death and two years before the arrival of the first company of missionaries sent by the American Board of Commissioners for Foreign Missions. According to Kuykendall, the recognized historian of the Hawaiian Kingdom:

. . . Kamehameha II failed to follow the example of his illustrious sire and during his brief reign drunkenness became distressingly common throughout the whole kingdom, but especially unrestrained in the principal towns and seaports, Honolulu and Lahaina, where foreigners were most numerous.⁷

During the regency of the reign of Kamehameha III, the governor of Maui instituted rigorous enforcement of the prohibitory law with the result that the islands of Maui, Molokai, and Lanai experienced a relatively "dry" twelve-year regimen between 1826 and 1838. In the course of the same period on Oahu, and illustrative of the problems faced by a newly developing law making and law enforcement system, the governing authorities' approaches toward execution of liquor legislation vacillated between extreme positions. Although a prohibition against "retailing ardent spirits at houses for selling spirits" was included in the enactments of the first formal legislation by the Hawaiian chiefs,⁸ at times the liquor traffic was condoned by granting licenses to sellers in direct opposition to the law. At other times the licensing of grogshops was discontinued and a strong effort was made to suppress the sale of liquor.

The temperance movement, carrying the endorsement of the New England missionaries, grew to a potent force in the 1830's and is credited with providing much of the justification for the liquor laws included in the penal code of 1835⁹ and for the liquor laws of 1838. The 1835 penal code consists of five chapters and covers murder and other degrees of homicide, theft, unlawful sexual intercourse and divorce, fraud and perjury, and drunkenness and offenses committed while intoxicated.

Kuykendall describes some of the 1838 liquor legislation:¹⁰

On March 13 . . . the king published at Lahaina a notice to the "foreigners who keep grog-shops on Oahu," stating that at the termination of the current license period (March 31) the number of liquor licenses for Oahu would be reduced. "But two houses only will be left where liquors may be sold, the two houses where billiard-tables are

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now kept, but most of the grog-shops are taboo, and must sell no more," under penalty of a fine of two thousand dollars or forfeiture of the house and premises. Just a week later a "law regulating the sale of ardent spirits" was enacted and promulgated. By this law no restriction was imposed on the sale of spirits "by the barrel or large cask," but a license was required for selling at retail.

* * *

3. Any house having been licensed for retailing spirits, may sell by the glass, but not by any larger measure; and its doors must be closed by ten o'clock at night, and all visitors must go away until morning. And on Sunday such house shall not be opened from ten o'clock on Saturday night until Monday morning.

4. We prohibit drunkenness in the licensed houses.

In accordance with the notice issued beforehand, only two licenses were granted, instead of twelve or fourteen as had been the case previously. Several of the foreigners whose liquor licenses were discontinued entered a vigorous but ineffectual protest against the action of the government, which they denounced as "unfair and unjust."

Other liquor legislation of 1838 included prohibitions against distillation in the Islands and against importation of distilled liquors, and the imposition of a one dollar per gallon duty on imported wines. Since this was the first Hawaiian import duty, the Hawaiian customs service originated in the appointment of an inspector of wines who also served as collector of customs for the port of Honolulu.

The prohibitory scheme received mixed reactions. Even foreign shipmasters were among those who heartily approved of effective prohibition. The Sandwich Island Gazette,¹¹ organ of the opposition, objected to the tariff on wines. It editorialized that the law would be ineffective as a temperance measure and would be an entering wedge for a general tariff on imports which would hinder trade and retard development of the Islands. Others, objecting to prohibition only as applied to the foreigners, who abstained "from indulgence, in excess, of wines or spirits" suggested that the Hawaiians could be prevented from drinking alcoholic liquors by levying a duty of a dollar a gallon on both spiritous liquors and wines.

The import duty on wine was later extended to brandy and other liquors and became a crucial factor in the Hawaiian Kingdom's foreign relations, particularly those with France, from 1839 onward for many years. An underlying conflict between the United States and the Protestant missionaries, on the one hand, who were first on the scene in Hawaii and the later French and their Catholic missionaries, was frequently crystallized on issues involving alcoholic beverages. The

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forces for and against prohibition and for high as against low duties on imported liquor represented a religious struggle which ended in 1859 during the reign of Kamehameha IV with a French-Hawaiian treaty which effectually quashed the prohibition law and guaranteed religious freedom in Hawaii.

Prohibition of a selective character, in that it applied only to natives of Hawaii,¹² was intermittently enforced during the period of the Hawaiian Kingdom. Such partial prohibitions reflected the attitudes of the particular reigning monarch. Kamehameha V, a benevolent despot, wished his subjects to be hardworking and thrifty and felt that they must be protected from waste and temptation. When it was proposed that the law against furnishing liquor to native Hawaiians be repealed, he said, "I will never sign the death warrant of my people,"¹³ and the proposal was defeated. However, in 1882 King Kalakaua's government repealed the prohibition thus making it possible for Hawaiians to purchase liquor legally at retail stores and saloons, a privilege theretofore reserved for haoles.¹⁴

The 1882 pattern of intoxicating liquor legislation remained in force, with but few amendments, throughout the final days of the Kingdom, the brief period of the Republic, and the first years of the Territory.¹⁵ The Organic Act¹⁶ of 1900, which created the Territory of Hawaii, provided in section 55, dealing with the legislative powers delegated to the Territory, "nor shall spiritous or intoxicating liquors be sold except under such rules and restrictions as the Territorial legislature shall provide". In 1907, just two years after the territorial legislature passed the first county government act in Hawaii, Act 119 was enacted as a comprehensive revision and recodification of Hawaii's intoxicating liquor laws. This Act, providing for "county boards of license commissioners", appointed by the governor, constituted a significant change in government organization, for prior to that time, jurisdiction over intoxicating liquor laws was vested in the treasurer for the territorial government and the minister of the interior for the Hawaiian Kingdom.

The national prohibition movement, led by the Anti-Saloon League, did not omit special attention to Hawaii in the campaign which was to culminate in 1919¹⁷ with federal constitutional prohibition. In 1910 there had been considerable debate over prohibition in Hawaii, but the demand for such legislation was confined almost exclusively to the League.¹⁸ In that year a bill providing for prohibition in the Islands by act of Congress was dropped when numerous Hawaiian organizations protested.¹⁹ Congress then contented itself with referring the subject to the Hawaiian people by providing for a special election on prohibition.²⁰ The vote was against prohibition by a majority of over three to one.²¹

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Congress imposed prohibition in Hawaii in 1918, about a year and a half before the Eighteenth Amendment became effective, as a war measure.²² Then, in 1921 in an act supplemental to the National Prohibition Act, the Prohibition Act was specifically applied to Hawaii, and the territorial courts were given the necessary enforcing jurisdiction.²³ Finally, repeal was extended to Hawaii in 1934 when Congress repealed all federal liquor prohibition laws to the extent they were in force in the Territory.²⁴

The last brief period of prohibition in Hawaii was instituted by order of the military government immediately following December 7, 1941. No liquor was sold until February, 1942, and then and throughout the war years, sales were subject to a controlled plan with strict rationing in effect. Adult civilians were permitted to purchase weekly one bottle of distilled spirits, or one case of beer, or five bottles of wine. The distilled spirits available during those years were the locally manufactured imitation whiskey, rum, and gin made from alcohol derived from sugar cane products or pineapple juice.²⁵

When repeal seemed imminent in the early 1930's, the territorial government faced the problem of enacting legislation that would establish Hawaii's basic system of intoxicating liquor laws and the administrative machinery to implement and enforce the laws.

Legislative History of Hawaii's Intoxicating Liquor Law Since Repeal

In contemplation of the anticipated repeal of the Eighteenth Amendment to the United States Constitution, the Hawaii legislature enacted two liquor bills at the regular session of 1933. The legislative committee reports on these measures indicate that the proposals were "in line with the action being taken by other states and territories",²⁶ and that they incorporated the provisions of "the old liquor law".²⁷ Act 33, which established county liquor commissions and provided for the licensing and regulation of the manufacture and sale of beers and wine, and Act 197, which provided for the licensing and regulation of the manufacture and sale of other intoxicating liquors, were, in effect, only stop-gap measures. Approximately six months after their enactment, they were repealed and replaced by more comprehensive legislation at the 1933 Special Session which had been called by Governor Judd because of the grave financial crisis in the Territory.²⁸

Act 40, Session Laws of Hawaii 1933, Special Session, is the foundation upon which the scheme of Hawaii's present liquor laws rests.

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Its purpose was stated in the legislative committee reports as follows:

Your Committee believes that the sale of liquor in the open under strict supervision of an independent commission clothed with broad powers will result in an effective control of this traffic.²⁹

and

This Bill has for its purpose a scheme of regulating and controlling the manufacture and sale of intoxicating liquors. It makes intoxicating liquors readily available to those who desire to use the same and yet incorporates most of the regulatory features of the 1907 Act, which Act seemingly afforded a satisfactory scheme of regulation of the liquor traffic as it existed prior to the advent of prohibition.³⁰

The Act's 77 sections, more than half of which remain unchanged in existing law, and the subsequent amendments and additions, including substantive matters pertaining to liquor tax laws, up through 1967 are here summarized chronologically. For comparative purposes, the summaries are arranged, insofar as possible, in a manner to correspond to the parts of Chapter 159, Revised Laws of Hawaii 1955: General Provisions; Liquor Commissions; Licenses and Permits, General Provisions; Procedure for Obtaining License; Duties of and Supervision Over Licensee; Revocation of License; and General Violations and Prosecutions; plus the Liquor Tax.

Session Laws, Special Session 1933

Act 40:

General Provisions. The Act provides a few rules for statutory construction, definitions of 23 terms and a list of classes of excepted articles, containing alcohol or liquor, which may be manufactured or sold without being subject to the intoxicating liquor law. The sale and manufacture of liquor is declared lawful only if done pursuant to a license.

Liquor Commissions. The intoxicating liquor law is administered by four county liquor commissions each consisting of three members appointed by the governor. The members of the commissions serve three-year terms and are compensated on a per diem basis of \$10 a day for service on official duties, plus necessary travel and other incidental expenses. Each commission has a staff consisting of a secretary, one or more inspectors, and clerical employees.³¹ The commissions are required to submit an annual report to the governor,

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including a statement of account which the county auditor must examine and report on.

A liquor commission fund is created in the treasury of each county into which all fees and other monies received by the commission are paid and out of which all expenses of the commission are paid. Excess receipts are paid into the general fund of the county.

The commissions are vested with many powers and a broad, discretionary jurisdiction. They are authorized to issue all licenses for the sale and manufacture of liquor; revoke or suspend licenses or reprimand licensees for violations; generally control, supervise, and regulate the sale and manufacture of liquor; promulgate rules and regulations which have the force and effect of law; limit the number of licenses in the county or in a locality in the county; fix the hours during which licensed premises may be open for the transaction of business; prescribe the forms to be used by licensees for keeping records pertaining to their business; and hear and determine complaints against any licensee, with most of the powers of a circuit judge at chambers. In addition, the commissions are given subpoena powers and a general right of inspection which extends to the right of access to any part of a licensee's premises at any time, without notice and without any search warrant or other legal process.

Licenses and Permits, General Provisions. Eight classes of licenses are established as follows:

- Class 1. Manufacturers', consisting of five kinds, beer, wine, wine manufactured from grapes or other fruits grown in the Territory, alcohol, and other specified liquors.
- Class 2. Wholesale dealers', consisting of four kinds, general, beer, wine, and alcohol.
- Class 3. Retail dealers', consisting of four kinds, general, beer, wine, and alcohol.
- Class 4. Hotel, consisting of three kinds, general, beer, and wine.
- Class 5. Restaurant, consisting of three kinds, general, beer, and wine.
- Class 6. Club, consisting of one kind only, general.

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Class 7. Vessel, consisting of one kind only, general.

Class 8. Special, for the sale of beer and wine for a period not to exceed three days, by the glass only.

In addition to the eight prescribed classes of licenses, special privilege permits may be granted, under certain conditions, to the holder of a hotel or restaurant license to sell liquor otherwise than with meals.

The schedule of fees for the several classes and kinds of licenses ranges from \$480 to \$6.

Other provisions impose conditions on licenses generally and special conditions on certain licenses, regulate sales of alcohol, provide for transfer of licenses, prohibit "tied house"³² activities of manufacturers and wholesale dealers, and regulate advertising on licensed premises.

Four categories of disqualification for a liquor license are established: (1) to a minor, a person convicted of a felony and not pardoned, or any person not deemed by the commission a fit and proper person to have a license; (2) to a corporation if any of its officers or directors would be disqualified under item (1) individually; (3) to an applicant who does not have a certificate of tax clearance; and (4) to an applicant whose liquor license was revoked within the two-year period prior to the date of application.

Procedure for Obtaining License. No liquor license may be issued until after the premises upon which the business is to be conducted have passed an inspection, and no license may be issued or renewed except after the holding of a public hearing. The process of obtaining a license involves eight steps: (1) filing with the commission an application containing prescribed information; (2) referral of the application to an inspector for investigation; (3) the inspector's report to the commission containing prescribed information and the inspector's recommendation for or against granting the application; (4) publication, paid for by the applicant, of notice of a public hearing on the application and filing by the applicant of affidavits of notice mailed to a majority of the owners or lessees of real estate situated within five hundred feet of the premises for which the license is asked; (5) filing of protests against granting or renewal of the license by any registered voter for the precinct within which is located the premises for which the license is asked or by any owner or lessee of real estate situated within five hundred

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feet of the premises; (6) holding the hearing at which the commission considers the application and decides either to grant or refuse the application; (7) petitioning for rehearing by any person affected by the commission's decision, to be granted at the discretion of the commission; and (8) granting of a renewal of the existing license under the same procedure, generally, as for an original application.

Duties of and Supervision Over Licensee. A licensee's duties include posting of his license on the licensed premises; maintaining and operating the premises in the manner prescribed by the commission; manufacturing or selling only pure liquor, unadulterated with noxious, deleterious, or poisonous substances; labeling every container of liquor with prescribed information; delivering samples of liquor to persons properly authorized to secure samples for analysis; and admitting authorized persons into the premises for inspection and examination purposes.

The supervisory and enforcing functions of the commission include authority to take samples of liquor for analysis, to enter any licensed premise for inspection, and to arrest any licensee for violation of any provision of the Act.

Detailed provisions on interdiction prohibit the sale of liquor by any licensee to a person against whom a court has entered an order of interdiction on a finding that he is not a fit and proper person to be permitted to consume liquor.

Among the many prohibitions listed are consumption of liquor on a public highway; sale or delivery of liquor on Sundays or election days; sale or furnishing by a licensee of liquor to a minor, a person under the influence of liquor, a person known to be addicted to the excessive use of intoxicating liquor, or to an interdicted person; consumption of liquor on licensed premises except as permitted by the terms of the license; permitting a person under the influence of liquor or an interdicted or disorderly person to remain on the licensed premises; employment of a minor under the age of eighteen in or about licensed premises where liquor is consumed; failure to prevent or suppress violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct on the premises; acceptance of certain goods, such as wearing apparel, tools, household furniture, or implements of trade in payment for liquor; and auction sales of liquor.

Other sections provide that there can be no legal action to recover debts based on the sale of liquor for credit except by a licensee and that it is a misdemeanor for intoxicated persons to

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and disposition of liquor and other property; and rules applicable to arrest.

Session Laws of 1935

Act 105:

General Provisions. The definition of "club" is amended to restrict it to organizations in existence at least two years prior to application for a license, and the importation of liquor for purposes of resale within the Territory is prohibited, except by licensed wholesalers or manufacturers.

Liquor Commissions. A ceiling is placed on the per diem compensation of members of the liquor commissions, \$100 a month for the city and county of Honolulu and \$70 a month for the other counties. The powers of liquor inspectors are clarified, and they are granted, within the scope of their duties, police powers. A provision making the power, authority, and discretion of the commission final, non-reviewable and nonappealable is deleted.

Licenses and Permits, General Provisions. The definitions of certain classes of licenses are amended, and three new classes are added, agents', dispensers' and tavern. Hotel, restaurant, and dispensers' licenses are divided into additional classes based on distances from different classes of post offices. License fees are adjusted, with a new range of from \$12 to \$840.

Procedure for Obtaining License. The commission is authorized to hold a preliminary hearing upon any application and deny the application at the preliminary hearing. In the case of renewals, the applicant need not send the notice to surrounding real estate owners or lessees, but if a renewal is asked for premises at least 25 per cent larger in area than the original licensed premises, the application for renewal will be considered an original application.

Duties of and Supervision Over Licensee. The interdiction provisions are repealed. The prohibition against sales and deliveries of liquor on Sundays or election days is amended to authorize the commission to permit the sale of beer by tavern licensees and the delivery of draught beer. The provision relating to the employment of minors under eighteen is amended to prohibit their employment on licensed premises only in serving or assisting in serving liquor. Additional prohibitions proscribe the employment of women and the furnishing of amusement features on any premises operated under a

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dispenser's license and relate to identifying notices of the brand of draught beer sold by licensees.

Session Laws of 1937

Act 211:

General Provisions. The term "club" is again redefined to include descriptions of a club's operations, and the prohibition against importation of liquor by anyone except a licensed wholesaler or manufacturer is extended to cover all importations and not just those for the purposes of resale within the Territory.

Liquor Commissions. The county residence requirement for members of the liquor commissions is increased from one year to three years, and the numbers and terms of the members of the Honolulu commission are increased from three to five members and from three to five years. Not more than a majority of the members of any commission may be of one political party, nor may any member serve as an officer or committee member of a political party organization or be a candidate for election to a public office. Commission employees, aside from voting, may not support, advocate, or aid in the election or defeat of any candidate for public office, on the penalty of summary dismissal. The jurisdiction and powers of the commissions are extended to cover the importation of liquor and the prescription of the terms, conditions, and circumstances under which persons, or any class of persons, may be employed by holders of dispensers' licenses. The hours for sales by manufacturers and wholesalers are limited by providing for no sales after 6 p.m., except on Saturdays and holidays when no sales are permitted after 7:30 p.m.

Licenses and Permits, General Provisions. A new classification of licenses is established as follows:

- Class 1. Manufacturers', consisting of five kinds, beer, wine, wine manufactured from grapes or other fruits grown in the Territory, alcohol, and other specified liquor.
- Class 2. Agents', consisting of one kind only, general, and authorized to sell only as an agent of manufacturers and only to persons holding wholesale dealers' licenses.

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- Class 3. Wholesale dealers', consisting of three kinds, general, beer and wine, and alcohol.
- Class 4. Retail dealers', consisting of three kinds, general, beer and wine, and alcohol.
- Class 5. Dispensers', consisting of three kinds, general, beer and wine, and beer.
- Class 6. Club, consisting of one kind only, general.
- Class 7. Vessel, consisting of one kind only, general.
- Class 8. Special, for the sale of beer for a period not to exceed three days, by the glass only.

Under the new classification, the special privilege permits are discarded under which certain licensees could dispense liquor without meals, and the distinction is removed between licenses requiring the serving of a meal with liquor and those allowing the dispensing of liquor without service of meals. Manufacturers are prohibited from having any interest in the license or premises of any other licensee. Wholesalers' orders which have been solicited in a county other than where their license is located can be filled only by direct shipment from the county where the license is held or from outside the Territory.

The fees for the various classes and kinds of licenses are increased, ranging from \$12 to \$900. The fees for dispensers' licenses outside the district of Honolulu are set at half the amount fixed for Honolulu, except that in areas where within a radius of two miles there is a population of fewer than one thousand, the fees for dispensers' licenses are set at one-third of the Honolulu fees.

Consistent with the 1937 enactment of unfair practices legislation,³³ retail dealers are prohibited from selling liquor at prices less than the locally prevailing retail prices, and wholesalers are required to invoice the vendee's license number on all wholesale sales.

Additional controls circumscribe the nature of advertisements on licensed premises if they are visible from the street.

Procedure for Obtaining License. A new provision gives the commission discretionary power to permit the reduction or increase, if the increase is not in excess of 25 per cent, in the area of any licensed premises.

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Duties of and Supervision Over Licensee. The prohibition against sales of liquor on Sundays or election days is again amended to authorize the commission to permit sales by clubs and dispensers. Other new prohibitions are added against selling or furnishing liquor for consumption in a vehicle on the licensed premises, against selling or service of liquor by any minor on licensed premises, and against giving liquor as a prize at public places.

Session Laws of 1939

Act 71:

Licenses and Permits, General Provisions. This Act amends the classification of licenses to authorize manufacturers and wholesale dealers to sell draught beer to individuals for private use and consumption.

Act 205:

Licenses and Permits, General Provisions. Wholesalers are permitted to sell liquor to post exchanges, ships service stores, army and navy officers' clubs, or like organizations located on army and navy reservations and to any vessel other than vessels performing a regular water transportation passenger service between any two or more ports in the Territory. Another license class is established for additional vessel licenses, primarily for foreign vessels, at a fee of \$5 per day. The importation of liquor without a license is permitted by religious organizations for sacramental purposes, by certain consular officers of foreign countries, and by any person entering the Territory in an amount not to exceed one gallon. Manufacturers and wholesale dealers licensed in one county are permitted to solicit and take orders for direct shipment of liquor to other counties through authorized local agents in such other counties, and provisions are made for the issuance of agents' permits at a fee of \$15 per year.

Procedure for Obtaining License. The requirement of a public hearing for license renewal is eliminated, and procedures are simplified for renewals and for requests for permission to increase or decrease the area of licensed premises.

Duties of and Supervision Over Licensee. The law pertaining to arrest without warrant is amended to authorize an inspector or police officer to assist a licensee in arresting a patron upon the licensee's request if a violation by the patron occurs in the presence of the

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licensee, an inspector, or a police officer.

Act 222:

Liquor Tax. Hawaii's first liquor tax following repeal became effective July 1, 1939. The legislative committee reports on the tax measure contain statements indicative of legislative intent as to the justification for the tax and as to the measure of the tax. House Standing Committee Report No. 305³⁴ states:

Your Committee, after studying the problem of the effects of liquor in relation to the cost of government, feels that the cost of government is materially increased due to liquor, and that the establishment of a liquor tax is fair and equitable. Statistics bear out the fact that the costs of police, institutions and some other branches of the government have been greatly increased due to liquor.

Senate Standing Committee Report No. 298,³⁵ in amending the imposition of the tax as originally proposed, states:

The tax proposed to be levied by the bill is a tax of a certain amount per gallon or per barrel, as the case may be, of the various types of liquor regardless of the price or value thereof. Your Committee believes that a fairer basis for taxing the sale and use of liquor would be to tax the same at a certain percentage of the retail sale price thereof.

The new tax, administered by the territorial tax commissioner, is an excise tax of six per cent of the retail price of liquor sold by a retail dealer, manufacturer, or wholesaler to a purchaser for consumption and not for resale, a dispenser, club, or vessel owner. Tax pyramiding is prevented by a specification that the tax shall be paid only once on the same liquor. The liquor tax revenues constitute territorial realizations.

Session Laws of 1941

Act 150:

Liquor Commissions. The Act authorizes inspectors to serve subpoenas issued by the commission and provides for witness fees of \$2 a day and twenty cents a mile traveling to a hearing, to be paid out of commission funds if the subpoena is at the direction of the commission and at the expense of any party if the subpoena is at the direction of the party. The fees are the same as are paid to witnesses subpoenaed to testify before a circuit court.

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Session Laws of 1941, Special Session

Act 79:

Liquor Commissions. The terms of members of all liquor commissions are set at three years, thus reducing from five to three years the terms of members of the commission for the city and county of Honolulu.

Act 41:

Revocation of License. The Act provides for an appeal to the circuit court judge at chambers from a commission order suspending or revoking a license. It provides that the appeal does not operate as a stay to the order appealed from.

This Act became effective on the approval of the legislature over the governor's veto. The veto message³⁶ states:

The effect of this bill, should it become law, would be to curtail the powers of the liquor commissions throughout the Territory and lessen their control over the liquor traffic. Everyone recognizes that the liquor business, though legitimate, must be strictly controlled in the public interest. Any lessening of this control might prove disastrous to the community welfare, particularly in a community like Honolulu where there are such large numbers of the armed forces of the country and defense workers.

During an emergency, such as now exists, regulation of the liquor traffic is always more strict as a course in aid of National Defense. Even now, I am informed, there are bills pending in the Congress to prohibit the sale of intoxicating liquor within five miles of any army post where troops are stationed. Should Hawaii, by law, "let down the bars" in the matter of the regulation of the liquor traffic, we would give an added reason for the proposed regulation by the Congress.

We remember the regulation by Congress of the sale of intoxicating liquors during World War I. The enactment of this bill and others pending before the Legislature into law "liberalizing" the regulation of the liquor traffic, is but to invite action by the Congress along lines adopted in 1917.

The law on this subject, as it now stands, has worked well, has the support of the public, and in my opinion, should not be changed.

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Act 89:

Liquor Commissions. Commission records are made available to the inspection of the public instead of only to certain government officials.

Procedure for Obtaining License. A copy of the inspector's report on an application for a license is required to be furnished to the applicant at least 48 hours before any hearing on the application. The procedure for license renewal is further simplified by providing that a renewal shall be granted upon the filing of an application, except for good cause.

Duties of and Supervision Over Licensee. The prohibition against sale of liquor to a minor is modified so that such a sale does not constitute a violation if the licensee was misled by appearances and circumstances into honestly believing that the minor was of legal age, if the licensee acted in good faith, and if he can prove that he acted in good faith. The commission is authorized to suspend the license of a wholesaler, retailer, dispenser, club, or vessel for failure to pay within 45 days of the end of the month of purchase for liquor purchased from the holder of a manufacturer's, wholesale, or retail license; and the holder of a manufacturer's, wholesale, or retail license is required to report the failure of purchasers to make the timely payment or be subject to suspension of license also.

Revocation of License. A license may not be suspended or revoked for a violation, other than conviction at law, based upon the personal observation of an inspector unless the licensee is given notice within a week after the alleged violation and given a hearing not more than ten nor less than five days after the notice.

General Violations and Prosecutions. The offense of a minor purchasing liquor is added with a maximum penalty of a \$500 fine or six months imprisonment, or both.

This Act became effective on the approval of the legislature over the governor's veto. The veto message³⁷ states:

. . . Aside from the objections I have urged against the weakening of the authority of the Liquor Commissions, there are certain specific objections that I wish to call to your attention. I believe that the law as it now stands, relating to the sale of intoxicating liquor to minors, should not be changed. The bill provides a "loop-hole" through which a licensee selling such would escape punishment. He would claim "honest mistake" in every case and if the commission (or the court if

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prosecuted criminally) were in doubt as to the truth of his plea, he would have to be given the benefit of the doubt. Experience has shown that the law as it now stands is necessary if there is to be any punishment for the sale of liquor to minors. It is the majority rule under such statutes throughout the country. Everyone recognizes the harm done to immature boys and girls by their use, even in small quantities, of intoxicating liquors. Every possible safeguard should be thrown around them in this regard.

Licensees should not be encouraged to sell to youth on the chance that they may escape just punishment. If they sell, it should be at their peril such as is now the law here and in the majority of jurisdictions.

I do not see the reason or logic in making liquor commissions collection agents for those who sell liquor to a licensee, who fails to pay for same, as this bill would do. If the purpose of the provision is to weed out those licensees who have not sufficient capital to carry on without resorting to illegal practices, the punishment should be revocation of the license, not mere suspension, as the bill provides.

. . . (The report of the Attorney General's office states it) has the effect of preventing the revocation or suspension of licenses . . . where the cause of such suspension or revocation is based on the evidence of the personal observation of the liquor inspector unless notice of the violation charge is given within the time specified and a hearing on said charge is had within the time specified therein. I have had some difficulty in reconciling this proviso with the next proviso in said (section), which provides, in effect, that the commission may at any time for the proper protection of the public summarily suspend (sic) a license pending a hearing and decision of the charge. As a practical matter probably 99% of the causes for a revocation of the license are discovered by liquor inspectors and consequently the proviso proposed by the amendment would prevent the summary suspension of a liquor license, as provided in the last proviso of (the section), where the cause of the suspension was based on the personal observation of the inspector. If this result is intended by the bill then the last proviso should have been repealed. As the bill now stands there is some inconsistency between the two provisos indicated.

In conclusion, permit me to say that I have had more protests against the enactment of (this bill) into law than have been made to any other bill before me during my incumbency of the office of Governor of the Territory. These protests come from all classes and particularly from those organizations which are interested in the youth problems of the Territory.

I believe that public opinion in this community, not only does not support the enactment of this bill, but is definitely opposed to its becoming law.

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Session Laws of 1943

Act 86:

General Provisions. This Act exempts from the provisions of the state intoxicating liquor laws recreational establishments and clubs operated for members of the armed forces and their guests under supervision of military or naval authorities and permits the sale of liquor to dispensers located in the Hawaii National Park operating with the permission of the United States. The Act expired July 1, 1947, on the expiration of the Hawaii Defense Act.³⁸

Session Laws of 1945

Act 144:

General Provisions. The requirement that a club must be in existence for two years before applying for a liquor license is amended by decreasing the time to one year.

Act 52:

Revocation of License. The right of appeal from orders of license suspension or revocation by the liquor commission is extended to such orders of the director of liquor control as to licenses issued under the provisions of the Hawaii Defense Act Rule No. 55.

Act 217:

Procedure for Obtaining License. The requirement is removed that liquor inspectors include in their reports on applications for licenses, recommendations for or against granting an application and reasons therefor.

Session Laws of 1947

Act 148:

Licenses and Permits, General Provisions. Wholesale dealers are authorized to sell liquor to aviation companies engaged in trans-pacific flight for use on aircraft outside the jurisdiction of the Territory.

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Duties of and Supervision Over Licensee. The requirement of payment by a wholesale, retail, dispenser, club, or vessel licensee for liquor within 45 days after the end of the month of purchase from a manufacturer, wholesale, or retail licensee is amended to require only the payment of the liquor tax within twenty days after the end of the month of a purchase by a retail, dispenser, club, or vessel licensee from a manufacturer or wholesaler.

Act 111:

Liquor Tax. A comprehensive taxation and revenue apportioning measure increases the excise tax of liquor from six to eight per cent based on the retail price. The liquor tax law is also clarified to provide that a wholesaler selling to a retail dealer must pay the tax and collect it from the purchaser as is clearly the case on sales by wholesalers to dispensers, clubs, and vessel owners.

Session Laws of 1949

Act 147:

General Provisions. Consumption of liquor on unlicensed premises, such as restaurants and bottle clubs, is restricted to those hours during which licensed premises may be open for business and is made subject to prohibitions against consumption of liquor by minors, persons under the influence of liquor, disorderly persons, and the like.

Act 301:

Licenses and Permits, General Provisions. The liquor commissions, within their respective jurisdictions, are authorized to make rules and regulations to prohibit or regulate the sale of liquor in violation of a fair trade contract and to prohibit the sale of liquor, with certain exceptions, except pursuant to fair trade contracts. These provisions, according to House Standing Committee Report No. 705,³⁹ are "to stabilize liquor prices by placing the liquor trade under the so-called Fair Trade Practices Act . . . eliminate the necessity of Rule 31 . . . relative to 'prevailing price rule' (which had) proved to be complicated, cumbersome, and full of red tape." The "prevailing price rule" had been necessary to implement the pre-Act 301 provision which prohibited the sale of liquor by retail dealers at prices "less than the locally prevailing retail price".

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Act 301 also provides additional procedures for inspection in case of license transfers and removes the restriction on external advertising at licensed premises which had limited sign content to the name of the establishment, type of license, and display of merchandise sold under the license.

Act 352:

Licenses and Permits, General Provisions. Tax clearances are required before issuance or renewal of liquor licenses.

Act 314:

Revocation of License. Penalties in the form of fines, as well as license revocation or suspension, are authorized; however, a liquor commission is prohibited from imposing on a licensee both a fine and a revocation or suspension. The maximum fine authorized is \$500.

Act 343:

Liquor Tax. The liquor tax is amended from eight per cent based on the retail price to twelve per cent based on the wholesale price.

Session Laws of 1951

Act 223:

General Provisions. The terms "addicted to the excessive use of intoxicating liquor" and "minor" are defined.

Licenses and Permits, General Provisions. Transfers of licenses within a year of original issuance are prohibited unless good cause is shown to the satisfaction of the liquor commission.

Liquor price posting is required of manufacturers, rectifiers, and wholesalers, applicable to all liquor sold or distributed by them to licensees within the Territory.

Procedure for Obtaining License. A \$25 filing fee is imposed on applicants for a license or transfer of a license. In certain cases, applicants who have been refused a license may reapply after ninety days instead of having to wait one year after the refusal.

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Duties of and Supervision Over Licensee. The prohibition against a licensee selling or furnishing liquor to a person addicted to the excessive use of intoxicating liquor is clarified by limiting the prohibition to cases where the licensee knows that the person is so addicted.

Tie-in sales of liquor and merchandise and direct or indirect gifts or prizes of liquor by licensees are prohibited.

Revocation of License. The sale of liquor without a license is provided for in certain cases arising because a license has been revoked or cancelled; the liquor has been acquired by a bank, trust company, or financial institution in the ordinary course of its business; of the licensee's death; of damaged containers acquired by certain insurers; and of foreclosure proceedings.

Act 280:

Revocation of License. Orders of liquor commissions imposing fines are made appealable to the circuit judge in the same manner as appeals from orders suspending or revoking licenses, except that the appeal from imposition of a fine operates as a stay of the order appealed from.

Act 284:

Liquor Tax. A temporary one-year exemption from the liquor tax is granted for sales of intoxicating liquor to agencies and instrumentalities of the United States with a provision that the exemption will extend an additional year if the governor declares by proclamation that the loss of revenue does not substantially affect the financial condition of the Territory.⁴⁰

Session Laws of 1953

Act 183:

Liquor Tax. The tax exemption granted by Act 284, Session Laws of Hawaii 1951, for sales of intoxicating liquor to federal agencies and instrumentalities is extended an additional year with a provision that the exemption will extend one more year if the governor declares by proclamation that the loss of revenue does not substantially affect the financial condition of the Territory.

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Session Laws of 1955

Act 34:

Licenses and Permits, General Provisions. "Fair trading" of intoxicating liquor is significantly strengthened to prevent retail liquor dealers from selling branded liquor at a price below the established minimum price. Schedules of minimum consumer resale prices are to be filed with the liquor commissions by licensed manufacturers or wholesalers before any liquor bearing a brand or producer's name can be sold. The information required in the schedules is specifically set forth, and it is emphasized that the prices of the schedules will be uniform throughout the Territory.

The first schedules of minimum consumer retail prices are to be filed within 45 days after the approval of the Act on a date to be fixed by the commissions, but not later than the first day of the following month. New schedules or amendments to old schedules are to be filed on or before the fifteenth day of the month prior to their becoming effective on the first day of the following month. Within ten days of the filing of the schedules, the commissions are to make them available for public inspection and a list of the prevailing minimum consumer retail prices is to be prominently displayed where the sales are made at licensed retail liquor establishments.

It is also provided that no licensed retailer is to sell liquor at less than the prevailing minimum consumer resale price except when special permission is granted by the liquor commission. The commissions are authorized to promulgate rules to carry out the purposes of the Act, to permit withdrawals, amendments, or modifications of price schedules, to permit sales at less than the minimum consumer resale price of liquor which has been damaged, deteriorated, or to close out a brand, and to permit the sale of unlisted liquor under certain circumstances. Provision is made for enforcement of the Act by authorizing the liquor commissions to suspend a license for ten days for the first offense, thirty days for the second offense, and to suspend, cancel, or revoke a license on the third offense.

Act 263:

Licenses and Permits, General Provisions. A new class of license is established for cabarets for on-premises consumption of intoxicating liquor. The license is limited to premises where food is served, facilities for dancing by patrons are provided, including a dance

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floor and an orchestra of not less than three members, and professional entertainment is provided for patrons. All cabarets may be open for business until 3 a.m. throughout the week. The cabaret annual license fee is set at \$420 or three-fourths of one per cent of gross sales, whichever is larger, but not to exceed \$1,500. Smaller fees for cabarets outside of Honolulu are authorized under the same terms as for dispensers.

Other license fees are also adjusted upward.

Act 214:

Liquor Tax. The tax exemption for sales of intoxicating liquor to agencies and instrumentalities of the United States is continued and made effective until repealed.

Session Laws of 1957

Act 321:

Licenses and Permits, General Provisions. The liquor commissions on the Neighbor Islands are authorized to increase the minimum fees for dispenser and cabaret licenses, with the approval of the governor, if necessary to meet the commission's operational costs and expenses. The increases may not exceed the minimum fees for the licenses in Honolulu. License fees for cabarets in Honolulu are increased in addition to increased fees for manufacturer or wholesale solicitors.

Corporate licensees are required to notify the liquor commission of any change in ownership of capital stock involving 25 per cent or more of the stock, or if the change in ownership of any number of shares results in the transferee becoming the owner of 25 per cent or more of the outstanding capital. A license can be revoked or suspended if a felon, a minor, or any other person not fit to hold a liquor license owns 25 per cent or more of the outstanding capital stock of a corporate licensee.

Procedure for Obtaining License. Corporations are required in their applications for liquor licenses to name all stockholders owning 25 per cent or more of their outstanding capital stock. If any such stockholder is not a person fit to hold a liquor license individually, the application will be denied.

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Liquor commissions are allowed fifteen days, instead of ten days, within which to decide after public hearings on applications for licenses.

Revocation of License. The procedure on revocation or suspension of a liquor license is amended to (a) require that whenever a liquor commission proposes to take action against a licensee because of a violation based on the personal observation of an inspector, written notice of the alleged violation must be given to the licensee within ten days after its occurrence, instead of within one week; (b) require that testimony taken at hearings in proceedings to revoke or suspend a license or assess a fine against a licensee be under oath, recorded stenographically, or by machine, and that certified copies of the transcript or record be furnished to the licensee upon his request and at his expense; and (c) provide that if the holder of a license cannot be found, service of a notice of hearing or order of the commission may be made by leaving a certified copy at his home, or by posting a certified copy at his licensed premises and sending another copy by registered mail to his home, instead of the former requirement that the notice or order must be served upon the holder of the license in person within one week after the alleged violation occurred.

General Violations and Prosecutions. The liquor commissions are authorized to employ and pay for attorneys to represent inspectors and other commission employees in criminal proceedings if the employees are prosecuted for acts done in the performance of their duties. County attorneys are directed to represent the employees in civil actions. The commissions are given the responsibility of determining whether their employees acted in the performance of their duties.

Act 293:

Licenses and Permits, General Provisions. New dispenser and cabaret licenses are prohibited for premises situated within five hundred feet of a church or school building.

Act 274:

Duties of and Supervision Over Licensee. The prohibition against consumption of liquor on public highways is extended to public sidewalks.

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Act 164:

General Violations and Prosecutions. A new misdemeanor is enacted, the purchase of liquor by an adult for the consumption or use of a minor. The maximum penalty is a \$500 fine or six months imprisonment, or both.

Session Laws of 1957, Special Session

Act 1:

Liquor Tax. The excise tax on liquor is increased from 12 to 16 per cent of the wholesale price.

Session Laws of 1959

Act 100:

Licenses and Permits, General Provisions. Applications for partnership licenses are required to be signed by a majority of the general partners of the partnership, instead of by a majority of the members of the partnership.

Act 207:

Revocation of License. A trustee in bankruptcy, assignee, or executor or administrator of a licensee is permitted to exercise the license for the purpose of closing the affairs of the estate for a period of 45 days, instead of only for 21 days.

Session Laws of 1960

Act 26:

Liquor Tax. A five-year liquor tax exemption is granted for ti root okolehao distilled in the State.⁴¹

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Session Laws of 1961

Act 91:

General Provisions. The definition of "sell" or "to sell" is amended specifically to include delivery of liquor by a licensee's vehicle or the vehicle of a licensee's agent as "delivery for value".

Act 92:

Liquor Commissions. The liquor commissions are authorized to regulate the hours of business for manufacturers and wholesalers of liquor to the same extent as for other licensees.

Act 89:

Licenses and Permits, General Provisions. The restriction on retail dealers which limited them to retail sale of liquor in original packages in quantities of less than five gallons at one time is removed; so these licensees are authorized to sell liquor in original packages without limitation as to quantity.

Act 90:

Licenses and Permits, General Provisions. In the authorization of special three-day beer licenses, the requirement is removed that sales under such licenses must be by the glass only.

Session Laws of 1963

Act 50:

General Provisions. The use of the terms "Hawaii", "Hawaiian", and "Aloha State" in connection with labeling, designating, or selling liquor is prohibited unless the liquor is wholly manufactured in the State. The use of the terms "Hawaii Rum" and "Hawaiian Rum" in connection with labeling, designating, or selling rum is prohibited unless the rum has been aged at least two years from the date of distillation.

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Act 78:

Liquor Commissions. The liquor commissions are required to deposit fees and other monies collected by them into their respective county general funds, thereby abolishing the special county liquor commission funds. The expenses of the commissions are made payable out of their respective county general funds.

Act 172:

Liquor Commissions. The power to appoint members of the county liquor commissions is transferred from the State to the counties, and the commissions are re-established under county regulatory and fiscal control. The commissions consist of five members each, appointed and removable by the elected executive head of the county with the advice and consent of the county legislative body. Commission members are appointed for five-year terms, designate their own chairman, and are allowed expenses plus compensation for services at the rate of \$10 per day, up to \$100 per month. Qualifications include United States citizenship and three-year county residence. Disqualifications include interest in the liquor business, identification with prohibition interests, holding an elected state or county office, or being a candidate for state or county elected office. All employees of the commissions are transferred from state to county employment.

Session Laws of 1965

Act 31:

Liquor Commissions. The power to set liquor license fees, terms of licenses, and payment requirements is transferred from the State to the several liquor commissions within their respective jurisdictions, except in the case of solicitors' and representatives' permits.

Act 96:

Liquor Commissions. The intoxicating liquor law is amended to achieve greater compliance with the Hawaii Administrative Procedure Act, Chapter 6C, Revised Laws of Hawaii 1955.

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Act 121:

Licenses and Permits, General Provisions. The prohibitions against issuing a dispenser or cabaret license for premises situated within five hundred feet of a church or school building is removed.

Act 181:

Licenses and Permits, General Provisions. The issuance or renewal of agents' licenses is terminated.

Act 258:

Procedure for Obtaining License. The notice required to be mailed to surrounding property owners and lessees in connection with an application for a license is authorized to be made by certified mail with return receipt requested or, by certified mail with return receipt requested and with delivery to addressee only, as well as by registered mail.

Act 94:

Duties of and Supervision Over License. The labeling prescriptions for liquor manufacturers are amended to permit the use of a registered trade name in lieu of the name of the manufacturer and to delete the requirement of stating the date of manufacture.

Act 155:

Liquor Tax. The liquor tax is increased from 16 to 20 per cent of wholesale value.

Session Laws of 1966

Act 28:

Liquor Tax. It is clarified that income from the sale of liquor to persons or carriers in interstate or foreign commerce, intended for consumption out-of-state, is exempt for general excise and consumption tax purposes.

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Session Laws of 1967

Act 104:

Liquor Commissions. The fees paid to witnesses subpoenaed to testify at liquor commission hearings are increased and made the same as fees for witnesses at circuit court or grand jury criminal cases.

Act 127:

Liquor Commissions. The compensation for the members of the liquor commission in any county with a population in excess of 100,000 is increased from \$10 a day with a maximum of \$100 a month to \$35 a day with a maximum of \$350 a month for the chairman, and to \$25 a day with a maximum of \$250 a month for the other members.

Act 171:

Liquor Commissions. The reporting period for the annual report of the liquor commission to the elected executive head of the county is changed from a calendar year basis to a fiscal year basis.

Act 105:

Licenses and Permits, General Provisions. A temporary, conditional license is authorized to be granted to an applicant for a permanent license who takes over premises operated at least one year previously under a permanent license which has been surrendered.

Act 119:

Licenses and Permits, General Provisions. The transfer of a license held by a partnership to the remaining partners in case of the death or withdrawal of a partner is permitted without the publication of notice and public hearing required in other license transfers.

Act 172:

Licenses and Permits, General Provisions. The special three-day beer class of license is changed to a one-day license consisting of three kinds, general, beer and wine, and beer.

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Act 62:

Procedure for Obtaining License. The hearing requirements applicable to the issuance of a license are not made applicable to the holder of a wholesale general license, a retail general license, or a dispensers' general license who applies for a different kind of license within the class of his existing license on the same premises, or to the holder of a license whose premises have been demolished and replaced by another building on the same site and who applies for the same or a lesser class of liquor license.

Act 167:

Procedure for Obtaining License. Applications for renewal of licenses are authorized without verification by oath. The maximum penalty for knowingly making a false statement in such an application is a \$500 fine or six months imprisonment, or both.

Act 183:

Duties of and Supervision Over Licensee. The University of Hawaii is authorized to offer and conduct courses of instruction in food and beverage control, club management, and classical food and beverage management, which include wine tasting, and to allow qualified students to take the courses even if under twenty years of age.

Act 184:

Duties of and Supervision Over Licensee. An exception is made in the prohibition against the selling or serving of liquor by a minor for minors, at individually specified licensed establishments, enrolled in an approved program of job training and employment for dining room waiters and waitresses.

Summary

Analysis of the foregoing synopsis of 35 years of liquor legislation in Hawaii reveals certain general characteristics over the years of the statutory design and direction for alcoholic beverage control in the State:

1. The legislature has vested unusually broad discretionary powers in the liquor commissions, and the extent of the grant of

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power and discretion has pertained consistently throughout the history of the Hawaii intoxicating liquor law, whether the administering commissions were state or county bodies.

2. In anomolous conjunction with the broad, discretionary powers granted by law to the liquor commissions, another pattern was established in 1933 and since then embroidered upon of providing by statute for what appear to be minutiae that could be handled administratively, e.g., specification of the number of members in an orchestra to meet a requirement for issuance of a cabaret license; specification of the hours and days for the conduct of the business of selling or delivering liquor; or specifications for placement and content of signs in connection with the sale of draught beer.

3. With the exception of a few very significant major changes reflecting new legislative policies, some of which have larger import than their effect on the intoxicating liquor laws of the State, alcoholic beverage control in Hawaii has not deviated in any large degree from the original 1933 enactment--an attestment, perhaps, to unusual wisdom of the enactors in having the foresight to legislate effectively for the future, or, perhaps, to unenlightened complacency with the status quo. Among the significant major changes that translated new legislative policies into Hawaii's intoxicating liquor laws were the establishment of a liquor tax; additions and amendments to liquor law violations involving minors in the constant attempt to provide solutions to generally recognized social problems affecting the youth of the community; extension of the jurisdiction of the liquor commissions beyond the control and regulation of the licensed industry; enactment of "fair trading" legislation, including the minimum consumer resale price provisions; enactment of the Hawaii Administrative Procedure Act which affects substantially the liquor commission rule-making, licensing, and hearings procedures; and the transfer of the liquor commissions from state to county authority as an element of a "home-rule" program.

Chapter II

ALCOHOLIC BEVERAGE CONTROL-- OBJECTIVES, THEORY, VARIETIES

It has become commonplace in alcoholic beverage control literature to observe that within the United States there are as many varieties of alcoholic beverage control systems as there are jurisdictions undertaking to administer them. Each of the systems exhibits distinctive features in law and in administrative practices. Furthermore, none of the nations of the world is without some measure of liquor regulation although no two national systems are exactly alike in detail, a variability directly related to cultural differences in drinking patterns as much as to differences in governmental structures and philosophies.¹

However many systems of control exist, the state intoxicating liquor laws do share certain common elements, and one is the unanimity in purpose of alcoholic beverage control by law. One state study in the field defines the central and crucial purpose of alcoholic beverage control legislation as follows:

. . . to minimize and more effectively control the problems commonly associated in . . . society with the use of alcoholic beverages, or, stated in positive terms, to promote temperance in the use of alcoholic beverages.²

As indicated in the table below, comparable statements of purpose are found explicitly set forth in the alcoholic beverage control laws of half of the states, not in Hawaii however.

Even in those states, including Hawaii, where the intoxicating liquor law does not include an express statement of the purpose of the legislation, judicial and administrative interpretations and explanations are in agreement with the proposition that minimization of problems commonly associated with the use of intoxicating liquor through statutory systems of control are the principal purpose of this kind of legislation. In addition to the agreement that such objectives as promotion of temperance and respect for law are to be achieved by alcoholic beverage control laws, there is also apparent agreement on the method of achieving those objectives. The method used in all states rests on an assumption that the problems commonly associated with consumption of alcohol can be controlled and minimized by the regulation of sellers, sales, and conditions of selling. The relationship in fact between the different aspects of Hawaii's scheme of control over sales of liquor vis-a-vis the acknowledged purpose of Hawaii's intoxicating liquor laws is presented in some depth below in chapters nine to twelve.

Table 1

STATUTORY STATEMENTS OF BASIC PURPOSES OF ALCOHOLIC BEVERAGE CONTROL

State	Exercise of Police Power	Welfare	Health	Peace	Morals	Protection	Safety	Promote Temperance	Prohibit Saloon	Other	Total
Alabama	x	x	x	x	x	x	x	x	x	Rehabilitation and education of alcoholics.	10
Alaska											0
Arizona											0
Arkansas											0
California	x	x	x	x	x					Eliminates evils of unlicensed traffic in alcoholic beverages.	6
Colorado	x	x	x	x	x	x			x		7
Connecticut											0
Delaware											0
District of Columbia											0
Florida											0
Georgia								x		Promote prosperity and growing of produce.	2
Hawaii											0
Idaho		x	x			x	x	x			5
Illinois		x	x			x	x	x			5
Indiana	x	x	x	x	x			x	x		7
Iowa	x	x	x	x	x	x	x				7
Kansas											0
Kentucky											0
Louisiana											0
Maine											0
Maryland	x	x	x			x	x	x		Respect and obedience to law.	7
Massachusetts											0
Michigan										Respect and obedience to law.	1

State	Exercise of Police Power	Welfare	Health	Peace	Morals	Protection	Safety	Promote Temperance	Prohibit Saloon	Other	Total
Minnesota								x			1
Mississippi										Enforce prohibition laws	1
Missouri											0
Montana	x	x	x	x	x	x	x				7
Nebraska											0
Nevada											0
New Hampshire											0
New Jersey								x		Eliminate racketeer and bootlegger.	2
New Mexico			x	x	x	x	x				4
New York		x	x			x	x	x	x	Respect and obedience to law.	7
North Carolina											0
North Dakota											0
Ohio								x		Public decency and good order.	2
Oklahoma	x	x	x	x		x	x	x	x		8
Oregon		x	x	x	x	x	x	x	x	Eliminate evils of unlicensed traffic in alcoholic beverages.	9
Pennsylvania	x	x	x	x	x	x			x		7
Rhode Island											0
South Carolina											0
South Dakota											0
Tennessee											0
Texas	x	x	x	x			x	x			6
Utah	x		x	x	x	x			x	Prevent unlicensed and unlawful traffic.	7
Vermont	x	x	x	x	x	x	x		x	Promote good order.	9
Virginia											0
Washington	x	x	x	x	x	x	x				7

Table 1 (continued)

Table 1 (continued)

State	Exercise of Police Power	Welfare	Health	Peace	Morals	Protection	Safety	Promote Temper- ance	Prohibit Saloon	Other	Total
West Virginia	x		x		x		x	x	x	Personal freedom.	7
Wisconsin											0
Wyoming		x	x	x	x	x	x				6
Totals	14	17	20	14	14	16	15	14	10	12	

Source: The Joint Committee of the States to Study Alcoholic Beverage Laws, Study (Washington, D.C.: 1960), Table 5 (modified), pp. 80-81.

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A third element common to the several states' intoxicating liquor legislation can be added to the unanimity of their purpose and the agreement on their means of achieving that purpose--with the exception of Kansas, Mississippi and Oklahoma, state legislatures enacted their basic alcoholic beverage control statutes soon after repeal. One study has described the public feelings of the time as follows:

Repeal was accomplished by the concerted action of civic-minded people who were to a large extent neither "Wets" nor "Drys," but who deplored the lawlessness, hypocrisy and corruption that impugned the honor, destroyed the peace and compromised the dignity of their country during the Prohibition Era. These crusaders for Repeal and their supporters were not unmindful of the failure of other methods of control and the contribution to the Prohibition movement made by the sordid conditions of the pre-Prohibition days. They wanted the return of those conditions no more than they wanted Prohibition . . . (they took steps) intended to make impossible the return of the saloon and its degrading influence, to prevent the "tied house" relationship between manufacturers and retailers, to forestall political corruption, and to prevent the use of the facilities of the judicial branch of government as an instrument to frustrate adequate control.³

From these few points of similarity, the state laws took off in every direction, described as follows by one writer:

Among the other forty-nine states (and minor civic units) can probably be found surviving versions of all the odd legal devices, from suburban no-license to state liquor stores, so hopefully created in the past. . . . Texas remains a "bottle state" allowing local option. Virginia forbids sale of hard liquor by the drink. In a restaurant in Charleston, South Carolina, I recently found that I could buy a cocktail on Sunday but not wine or beer because, it was explained, bar sale of wine or beer is illegal on Sunday, whereas hard liquor is illegal seven days a week. . . . But though no form of public control of booze can ever conceivably make unflawed sense, no control at all would make still less.⁴

The legal theory supporting governmental powers of control over the business, use, and traffic in intoxicants is based on the inherent police powers. It is frequently said that intoxicating liquor is sui generis, or, in a class by itself. The unique nature of the essential commodity might alone merit the label of sui generis; the fact is that alcoholic beverages, if used to excess, are so intoxicating as to present certain sociological, physiological, and behavioral problems which government attempts to alleviate, prevent, or solve by legislative schemes of alcoholic beverage control. The label becomes doubly applicable for the reason that intoxicating liquors bear the singular status of twice being the exclusive subject

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of amendments to the federal constitution. The Eighteenth Amendment made intoxicating liquors illegal;⁵ the Twenty-First Amendment restored their legality.⁶

The result of coupling the theory of intoxicating liquor as a specific object of the police power (the scope of which extends to whatever affects the peace, good order, morals, health, and general welfare) with the developed concept of intoxicating liquor as sui generis produces an almost open-ended grant of authority to the states. In general, a state has the right to prohibit, regulate, or restrain the use, manufacture, and sale of intoxicating liquors, and for this purpose, may appoint, and delegate the power to, state officers or agencies, or may vest in itself or its agency the exclusive right to sell intoxicants.⁷ In particular, courts have ruled that a state has the right, subject to federal and state constitutional limits and restrictions, to:

- Fix prices at which intoxicating liquor may be sold.
- Regulate or prohibit traffic in nonintoxicating beverages which are of such nature as to lend themselves to evasions of the law as to intoxicating liquor.
- Prohibit or restrict importation of liquor from other states.
- Authorize divisions of the state to decide by popular vote whether or not a prohibitive or restrictive liquor law should be in force within their limits.
- Provide for a licensing system for granting, suspension, and revocation of licenses for the sale of liquor; impose conditions and restrictions on the granting of the licenses; establish fees for the licenses; limit the number of licenses which may be granted; make it a punishable offense to sell liquor without a license.
- Require permits for the transportation of liquor within the state.
- Set quantitative limits on liquor sales.
- Prohibit sales of intoxicating liquor to classes of persons, such as minors, habitual drunkards, and persons under the influence of liquor.

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- Forbid sales of liquor on Sundays, election days, and other holidays; restrict sales to certain hours.
- Provide for inspection of premises of intoxicating liquor businesses.
- Require posting and display of liquor licenses.
- Forbid obstructions that prevent a clear view of the interior of premises of intoxicating liquor businesses.
- Prohibit or restrict the employment or presence of women and minors on premises where intoxicating liquor is sold.
- Impose a tax on the business of manufacturing or selling intoxicating liquor, including a reciprocal or retaliatory tax under which the tax on liquor from other states is equivalent to the tax imposed by such other states on similar imports from the taxing state.
- Prescribe punishment for violations of liquor laws.
- Authorize search, seizure, and forfeiture of contraband liquor.
- Provide for the abatement of, and injunctions against, intoxicating liquor nuisances.
- Provide for civil damage laws to give certain classes of persons who sustain injuries from the acts of an intoxicated person a right of action against the person who sold or gave him the liquor.
- Authorize political subdivisions to regulate, prohibit, or restrain the use, manufacture, and sale of intoxicating liquor.⁸

The above illustrative listing of state governmental powers over intoxicating liquor and the different segments of the liquor industry stems from two sources of authority, the Twenty-First Amendment to the United States Constitution and the common law concept of inherent police powers. The two liquor control systems developed in this country for the exercise of these powers are known as "monopoly" and "license" systems. World-wide, there are four different types of liquor control systems, each of which contains numerous variations

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within the general type.⁹ The chief characteristics of these systems may be briefly stated as follows:

1. The License System. The license system is one of the earliest types of liquor control known to the Western world and is in effect in a majority of the states, including Hawaii. It operates to select licensees, limit the number of licensed outlets, and impose other restrictive devices.

2. The Government Control or Monopoly or Authority System. This system was developed in the nineteenth century in the Scandinavian countries, first in Sweden and later in Norway and Finland, and was then adopted with variations in the Canadian provinces and in eighteen American states. It is characterized by the fact that distilled spirits, and in some cases other alcoholic beverages, are purchased exclusively by a government department or bureau, and, generally, all sales for off-premise consumption are made from stores owned and run by the government office. Usually, sales by the drink, on premises, may be made by licensees, who, however, must purchase their liquor supplies from the government. The government, then, is in the whole-sale and retail liquor business with profits going to the government rather than to private enterprise.

3. The Laissez Faire System. The laissez faire system is one of minimum governmental interference with the manufacture, sale, and consumption of intoxicating liquor and is found in undeveloped countries and in certain of the older European countries, such as Italy, where consumption of low-alcohol beverages is a long-established drinking custom.

4. The Prohibition System. The only large areas in the world today where prohibition sentiment is still strong are among those people whose religion incorporates doctrines of prohibition; however, one writer states:

Scientists who seek cycles in everything should look into the recurrence of thirteen- to fourteen-year intervals in the ups and downs of Prohibition laws. Finland tried Prohibition in 1919 and repealed it in 1932 because rumrunning and kindred enterprises were making it look foolish. The Eighteenth Amendment was repealed for the same reason, of course, in 1933. In 1964, the state of Maharashtra (including Bombay) in India abandoned Prohibition after fourteen years¹⁰

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Since the difference between monopoly and license systems is the most significant variation in the United States control systems, a resume of the chief arguments put forth by proponents of each of the two systems is presented below.¹¹

In favor of the monopoly system:

1. The state's potential for regulation and control over the flow and character of business is strengthened since it enters the field without permitting competition. The system gives more intimate direction of production, distribution, and consumption habits than does a system which relies for its effectiveness upon the issuance and revocation of licenses.
2. Under a monopoly system, government will enjoy as revenues profits from the intoxicating liquor industry that otherwise are enjoyed by a few private persons or firms. State liquor enterprises are highly profitable requiring little fixed plant or equipment, and small numbers of employees.
3. State liquor monopolies facilitate the processes of law enforcement, e.g., prevent tax evasion.
4. A monopoly system permits government to regulate conditions prior to the actual sale at the retail level and to set conditions under which wholesaling activities are handled, e.g., codes of ethics, advertising, impartial determination of the number and location of distribution outlets.
5. A monopoly system permits government to regulate conditions at the point of sale, e.g., choice of kinds of clients, physical conditions of the premises, quality of intoxicating liquors sold, and elimination of promotional activity at the point of sale and price wars.
6. Government in the liquor business is able to sever any connections between that business and such activities as "tied house" combinations, gambling, racketeering, prostitution.
7. A monopoly system lends itself to improved administrative processes and procedures, reduction of political interference and pressure group activities.

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8. A state monopoly system can better protect residential areas from the liquor traffic, ration liquor in times of shortages, and generally achieve the appropriate compromise between the two positions of prohibition and the saloon, neither of which is tenable.
9. The private profit motive is the chief inciter to evil in the liquor traffic.
10. Prices in state stores are lower generally than those in license states, and the operations of manufacturers are economic and stabilized since, under the monopoly, there is only one buyer in the state.

In favor of the license system:

1. The capitalistic economic structure of the nations now rests and has always rested on the basis of individual, competitive, private enterprise.
2. Monopoly systems may be proper in certain situations, e.g., in states where there is much "dry" sentiment.
3. Although monopoly states receive greater direct liquor revenues than license states, a simple comparison neglects indirect liquor revenue in license states, the costs to the states in collecting the revenue, the costs of doing business as a monopoly, additional employment offered by the liquor industry in license states.
4. Although consumer liquor prices may be lower in monopoly than in license states, consumer service and convenience are better served in license states.
5. To the extent that on-premise sales by the drink are permitted in monopoly states, the monopoly system is not essentially different than the license system at the retail outlet where potentially more anti-social conduct is likely to occur.
6. Under the license system, liquor law administrators are able to devote their efforts and time to the administration and enforcement of the law and need not concentrate on business problems.

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7. State stores under the monopoly system are unable to provide adequate service, with respect to wine for purposes of encouraging consumption of a drink of "moderation", and, with respect to other intoxicating liquors, for the purposes of discouraging bootlegging and bottle refilling.
8. Since repeal, there have been more political scandals in monopoly states than in license states since in the former, political interference is accentuated by greater opportunities for political patronage, bribery, and corruption.
9. A monopoly system capitalizes its monopoly status with attention primarily on the production of revenue; the undue emphasis on profits detracts from appropriate emphasis on the social aspects of control.
10. Repeated instances in monopoly states of over-purchasing and heavy inventories have given rise to suspicion on the part of the public of corruption and collusion involving public officials and industry representatives.

In connection with the advocacy of the virtues and benefits of either of the two systems of alcoholic beverage control, it is of interest to note that no state, once having adopted a particular system, has changed from a monopoly form to a license form, or vice versa. The gross division of the states into merely monopoly and license states is a misleading over-simplification; in fact, two states are classified under both systems. In Mississippi, the state tax commission and in Wyoming, the liquor commission exercise a monopoly on the sale of distilled spirits and wine at the wholesale level while private licenses are issued for retail sales. The remaining states fall into the two main classifications as follows:

License States

Alaska	Florida	Maryland
Arizona	Georgia	Massachusetts
Arkansas	Hawaii	Minnesota
California	Illinois	Missouri
Colorado	Indiana	Nebraska
Connecticut	Kansas	Nevada
Delaware	Kentucky	New Jersey
District of Columbia	Louisiana	New Mexico

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New York	Rhode Island	Tennessee
North Dakota	South Carolina	Texas
Oklahoma	South Dakota	Wisconsin

Monopoly States

Alabama	New Hampshire	Utah
Idaho	North Carolina	Vermont
Iowa	Ohio	Virginia
Maine	Oregon	Washington
Michigan	Pennsylvania	West Virginia
Montana		

Elsewhere in this report, differences among state liquor laws, rules, and administrative practices are pointed out in discussion of selected issues, e.g., liquor laws regarding minors, licensing, taxes, fees, resale price maintenance. The two overall characteristics of state alcoholic beverage control--their qualities of multiformity and of complexity and detail--are illustrated further by the following three tables in which are shown certain areas of the liquor law as treated in: (1) the monopoly states, (2) the license states, and (3) all states.

Table 2

SELECTED TOPICS RELATING TO LIQUOR LAWS--MONOPOLY STATES

State	Type of Retail Sales	Kinds of Liquors Sold by State Stores	Distilled Spirits Containers Stocked	Retail Licensee Premises Where Sales by the Drink Permitted	Total Percentage of Markup and Taxes Over Delivered Cost to the State
Alabama	Package and drink; sale for on- premise consump- tion only in un- opened $\frac{1}{2}$ pints and miniatures	Distilled spirits and wine	Min: Miniature (min- iatures and $\frac{1}{2}$ pints for sale to licensees for on-premise con- sumption only, except on special order). Max: $\frac{1}{2}$ gallon.	Resort hotels and clubs outside munici- palities, hotels, clubs, restaurants where licensees' purchases of liquor do not exceed 50 per cent of food supplies purchased, railroads, boats	67.5
Idaho	Package and drink	Distilled spirits and wine	Min: $\frac{4}{5}$ pint. Max: 1 quart (min- iatures, $\frac{1}{2}$ pints, and gallons on spe- cial order by consumer).	Golf clubs, lake resorts, and air- ports outside munici- palities, hotels, clubs, restaurants, railroads, airplanes, boats (no specifica- tion of kind of establishment eligible).	66.5
Iowa	Package and drink	Distilled spirits, wine (manufac- turer of native wine may also sell at retail for off-premises consumption), beer that is 4 per cent or more alcohol by weight	Min: 11 $\frac{1}{2}$ ounces. Max: $\frac{1}{2}$ gallon (any size on special order by consumer or licensee).	Licensees outside municipalities, hotels, clubs, restaurants, commer- cial establishments, motels, railroads, airplanes, boats	50.9
Maine	Package and drink	Distilled spirits and wine	Min: $\frac{1}{2}$ pint. Max: $\frac{1}{2}$ gallon.	Licensees outside municipalities, hotels, clubs, restaurants where not prohibited by local option, rail- roads, vessels	48.5
Michigan	Package and drink	Distilled spirits and wine that is 16 per cent or more alcohol by volume	Min: 11 $\frac{1}{2}$ ounces. Max: 1 gallon.	Licensees outside municipalities, hotels, clubs, restaurants, railroads, boats, airplanes (no speci- fication of kind of establishment eligible)	63.5
Mississippi ^a	Package and drink	All liquors over 4 per cent alco- hol by weight	Min: (sales for off-premises con- sumption) $\frac{1}{2}$ pint. Max: $\frac{1}{2}$ gallon.	Resort areas and clubs outside munici- palities, hotels, clubs, restaurants, common carriers (no specification of kind of establish- ment eligible in resort areas)	33.7 (wholesale)

Table 2 (continued)

State	Type of Retail Sales	Kinds of Liquors Sold by State Stores	Distilled Spirits Containers Stocked	Retail Licensee Premises Where Sales by the Drink Permitted	Total Percentage of Markup and Taxes Over Delivered Cost to the State
Montana	Package and drink	Distilled spirits, wine, and beer that is 4 per cent or more alcohol by weight	Min: $\frac{1}{2}$ pint. Max: $\frac{1}{2}$ gallon (other sizes on special order, miniatures in case lots only on special order by consumer and licensee)	Licensees outside municipalities, hotels, clubs, restaurants, railroads (no specification of kind of establishment eligible)	60.5
New Hampshire	Package and drink	All liquors over 6 per cent alcohol by volume	Min: $\frac{4}{5}$ pint. Max: $\frac{1}{2}$ gallon.	Certain airports outside municipalities, to bona fide guests with meals costing not less than \$1 in hotel dining room or hotel room of the guest, hotels with special licenses for designated grill or cocktail rooms, railroads, certain airport lounges for rooms where food and coffee are served	41.0
North Carolina	Package only	Distilled spirits and wine that is 14 per cent or more alcohol by volume (sweet wines over 14 per cent but not over 20 per cent alcohol by volume fortified with pure brandy may also be sold by package and drink by certain private licensees)	Min: $\frac{4}{5}$ pint. Max: 1 quart.	No licenses issued for on-premises consumption	44.0
Ohio	Package and drink	All liquors over 21 per cent alcohol by volume	Min: 12.8 ounces. Max: $\frac{1}{2}$ gallon.	Licensees outside municipalities, hotels, clubs, restaurants, nightclubs, railroads, boats	50.3
Oregon	Package and drink	Distilled spirits and wine that is 14 per cent or more alcohol by volume	Min: $\frac{4}{5}$ pint. Max: 1 gallon (miniatures and other sizes on special order by licensees and consumers in full case lots)	Licensees outside municipalities, hotels, clubs, restaurants, railroads, commercial establishments serving food, incorporated cities to sell liquors not over 14 per cent alcohol by volume and to sell all liquor for on-premises consumption by the drink	69.5
Pennsylvania	Package and drink	Distilled spirits and wine	Min: $\frac{1}{2}$ pint. Max: $\frac{1}{2}$ gallon (any size except miniatures on special order)	Hotels, clubs, restaurants, railroads, boats	79.4

Table 2 (continued)

State	Type of Retail Sales	Kinds of Liquors Sold by State Stores	Distilled Spirits Containers Stocked	Retail Licensee Premises Where Sales by the Drink Permitted	Total Percentage of Markup and Taxes Over Delivered Cost to the State
Utah	Package only	Distilled spirits, wine, and beer that is 3.2 per cent or more alcohol by weight	Min: $\frac{1}{2}$ pint. Max: $\frac{1}{2}$ gallon (miniatures and gallons available at specialty stores)	No licenses issued for on-premises consumption except trains and airplanes	69.5
Vermont	Package and drink	Distilled spirits, wine that is 14 per cent or more alcohol by volume, and beer that is 6 per cent or more alcohol by volume	Min: 11 $\frac{1}{2}$ ounces. Max: 1 gallon.	Hotels, clubs, restaurants, railroads, boats, airplanes	38.4
Virginia	Package only	Distilled spirits and wine (wine not over 14 per cent alcohol by volume also sold by package by private retail licensees and by wholesale licensees to retail licensees)	Min: $\frac{4}{5}$ pint except cordials. Max: 1 quart.	No licenses issued for on-premises consumption	44.0
Washington	Package and drink	Distilled spirits, out-of-state wine (wine produced in the state sold through private license system, both wholesale and retail), and beer that is 4 per cent or more alcohol by weight (beer over 4 per cent alcohol by weight and out-of-state wine may also be sold by the package by private licensees who purchase from the state system)	Min: $\frac{4}{5}$ pint. Max: $\frac{1}{2}$ gallon.	Licensees outside municipalities, hotels, clubs, restaurants, railroads, boats, airplanes	83.4
West Virginia	Package only	Distilled spirits and wine	Min: $\frac{4}{5}$ pint. Max: 1 quart.	No licenses issued for on-premises consumption	56.3
Wyoming ^a	Package and drink	No state stores	Min: 1/10 pint. Max: $\frac{1}{2}$ gallon.	Licensees outside municipalities, hotels, clubs, restaurants, railroads (no specification of kind of establishment eligible)	19.2 (wholesale)

^aState monopoly on sales of distilled spirits and wine at wholesale level only. Private licenses issued for retail sale only.

Table 3

SELECTED TOPICS RELATING TO LIQUOR LAWS--LICENSE STATES

State	Sale of Distilled Spirits in Miniatures Other than on Trains, Airplanes, or Boats		Commodities in Package Stores Other than Distilled Spirits	Retail Licensees Premises Where Sales by the Drink Permitted
	Type of Retail Sales			
Alaska	Package and drink	Both on- and off- premises consumption	No restriction	Licenses outside municipalities, hotels, clubs, restaurants, railroads, boats, air- planes, motels, resorts (no specification of kind of establishment eligible)
Arizona	Package and drink	On-premises consump- tion	No restriction	Licenses outside municipalities, hotels, clubs, restaurants, railroads, airplanes, motels (no specification of kind of establishment eligible)
Arkansas	Package only	Prohibited	No restriction (after 1-14-60 no license issued or transferred except to an ex- clusive liquor store)	No licenses issued for on-premises consumption
California	Package and drink	Prohibited	No restriction	Licenses outside municipalities, hotels, clubs, restaurants, railroads, boats, air- planes, public premises
Colorado	Package and drink	Off-premises consump- tion	Beer, wine, soft drinks, mixes, tobacco products, smokers supplies	Licenses outside municipalities, hotels with food only, clubs, restaurants with meals only, railroads
Connecticut	Package and drink	Cordials for both on- and off-premises consumption, except sales at drug stores	Alcoholic and nonalcoholic beverages only	Licenses outside municipalities, hotels, clubs, restaurants, railroads, boats
Delaware	Package and drink	Prohibited	Soft drinks, alcoholic mixes, cigarettes from vending machines, beer, wine, ice	Licenses outside municipalities, hotels, clubs, restaurants, railroads, boats, tap rooms, race tracks
District of Columbia	Package and drink	Restaurant and hotel licensees for on- premises consumption	No restriction	Hotels, clubs, restaurants, railroads, boats
Florida	Package and drink	On- and off-premises consumption in counties permitting on-premises sales	Beer, wine, bitters, grenadine, non- alcoholic mixer-type beverages (except those containing non-Florida fruit juices), Florida fruit juices, miniatures of nonalcoholic content, and cigarettes from vending machines	Licenses outside municipalities, hotels, clubs, restaurants, railroads, boats, air- planes, buses, caterers (no specification of kind of establishment eligible)
Georgia	Package and drink	Prohibited	Wine, nonalcoholic mixes, tobacco products	Licenses outside municipalities, establish- ments authorized by counties or cities
Hawaii	Package and drink	Both on- and off- premises consump- tion	No restriction	Licenses outside municipalities, hotels, clubs, restaurants, boats, vessels, caba- rets (no specification of kind of establish- ment eligible)

Table 3 (continued)

State	Sale of Distilled Spirits in Miniatures Other than on Trains, Airplanes, or Boats		Commodities in Package Stores Other than Distilled Spirits		Retail Licensees Premises Where Sales by the Drink Permitted	
	Type of Retail Sales	Package and drink	Prohibited	No restriction	Licenses outside municipalities, hotels, clubs, restaurants, railroads, boats, air- planes (no specification of kind of establishment eligible)	Club and hotel licensees outside municipali- ties, hotels, clubs, restaurants, rail- roads, airplanes
Illinois		Package and drink	Both on- and off- premises consumption	United mixes, bar supplies, tobacco products, beer if licensee has beer permit	Licenses outside municipalities, hotels, clubs, restaurants, railroads, boats, air- planes (no specification of kind of establishment eligible)	
Indiana		Package and drink	Both on- and off- premises consumption	Wine, beer that is more than 3.2	Club and hotel licensees outside municipali- ties, hotels, clubs, restaurants, rail- roads, airplanes	
Kansas		Package only	Prohibited	No restriction	No licenses issued for on-premises consump- tion	
Kentucky		Package and drink	Prohibited	No substantial part of business may con- sist of selling staple groceries or gasoline or lubricating oil; in rural areas may sell only wine in addition to distilled spirits	Licenses outside municipalities in counties containing cities of the first three classes; hotels, clubs, and restau- rants in first three classes of cities and in counties containing such cities; rail- roads, certain temporary licenses	
Louisiana		Package and drink	Prohibited	No restriction	Licenses outside municipalities, hotels, clubs, restaurants (no specification of kind of establishment eligible)	
Maryland		Package and drink	Both on- and off- premises consumption, except no off- premises in Prince George County	No restriction	Licenses outside municipalities, hotels, clubs, restaurants, railroads, boats, air- planes, race tracks, taverns (no specifica- tion of kind of establishment eligible)	
Massachusetts		Package and drink	Off-premises consump- tion where not pro- hibited by city or town authority	No restriction	Hotels, clubs, restaurants, railroads, boats, men's bars	
Minnesota		Package and drink	Prohibited	Food, cigars, cigarettes, tobacco, nonintoxicating malt beverages, soft drinks as authorized by local govern- ing bodies	Ski area licensees outside municipalities, hotels, clubs, restaurants (no private licenses for on- or off-premises consump- tion, except clubs, in municipalities with a municipal, exclusive, liquor store), rail- roads, boats, airplanes, municipal stores	
Mississippi		Package and drink	Prohibited	Alcoholic beverages over 4 per cent alco- hol by weight	Resort areas and clubs outside municipali- ties, hotels, clubs, restaurants, common carriers (no specification of kind of establishment eligible in resort areas)	

Table 3 (continued)

State	Sale of Distilled Spirits in Miniatures Other than on Trains, Airplanes, or Boats		Commodities in Package Stores Other than Distilled Spirits	Retail Licensees Premises Where Sales by the Drink Permitted	
	Type of Retail Sales	Package and drink		Prohibited	Hotels, clubs, restaurants, railroads (no specification of kind of establishment eligible)
Missouri	Package and drink	Prohibited	Distilled spirits sold only in drug stores, cigar or tobacco stores, general merchan- dise stores, grocery stores, or confec- tionery or delicatessen stores	No restriction	Hotel and motel licensees in privately owned recreation areas outside city and village limits, hotels, clubs, restaurants, railroads, boats (no specification of kind of establishment eligible)
Nebraska	Package and drink	Prohibited	No restriction	No restriction by the state; local govern- ing bodies may restrict	Regulated exclusively by counties and municipalities
Nevada	Package and drink	Both on- and off- premises consump- tion	Nonalcoholic beverages; otherwise local governing bodies may restrict	No restriction	Hotels, clubs, restaurants, railroads, boats, airplanes
New Jersey	Package and drink	Prohibited	No restriction	No restriction	Licenses outside municipalities, hotels, clubs, restaurants, railroads (no specifi- cation of kind of establishment eligible)
New Mexico	Package and drink	Both on- and off- premises consump- tion	Wine, cider	Wine, cider	Licenses outside municipalities, hotels, clubs, restaurants, railroads, boats, caterers, taverns, legitimate theaters
New York	Package and drink	Cordials and liqueurs for both on- and off- premises consump- tion, brandy for off-premises	Soft drinks, tobacco, food sundries	Soft drinks, tobacco, food sundries	Licenses outside municipalities, hotels, clubs, restaurants, railroads
North Dakota	Package and drink	Both on- and off- premises consump- tion	Wine, beer that is more than 3.2	Wine, beer that is more than 3.2	No licenses issued for on-premises consump- tion
Oklahoma	Package only	Prohibited	No restrictions in cities under 10,000 population; over 10,000, soft drinks, cigarettes, home bar accessories except in certain cities drug or grocery stores may sell distilled spirits	No restrictions in cities under 10,000 population; over 10,000, soft drinks, cigarettes, home bar accessories except in certain cities drug or grocery stores may sell distilled spirits	Hotels, clubs, restaurants, railroads, boats, men's bars, night clubs, convention hall
Rhode Island	Package and drink	Prohibited	Liquor, wine	Liquor, wine	No licenses issued for on-premises consump- tion; railroads and airplanes may sell without license
South Carolina	Package only	Prohibited			

Table 3 (continued)

State	Sale of Distilled		Commodities in Package Stores Other than Distilled Spirits	Retail Licensees Premises Where Sales by the Drink Permitted
	Type of Retail Sales	Spirits in Miniatures Other than on Trains, Airplanes, or Boats		
South Dakota	Package and drink	Prohibited	No restriction	Club licensees outside municipalities, hotels, clubs, restaurants, municipalities, railroads (no specification of kind of establishment eligible)
Tennessee	Package only	At federal installations only	Liquor only	No licenses issued for on-premises consumption
Texas	Package only	Prohibited	No restriction	No licenses issued for on-premises consumption
Wisconsin	Package and drink	Both on- and off-premises consumption	No restriction	Licensees outside municipalities, hotels, clubs, restaurants, county-owned arenas and airports (railroads and airplanes may sell without license)
Wyoming	Package and drink	Both on- and off-premises consumption	Malt beverages, nonintoxicating beverages, food, tobacco, except in drug stores	Licensees outside municipalities, hotels, clubs, restaurants, railroads (no specification of kind of establishment eligible)

Table 4

SELECTED TOPICS RELATING TO LIQUOR LAWS--ALL STATES

State	Local Option on Retail Sales	Credit to Consumers by licensees	Sales by the Drink Prohibited			Quantity That May Be Imported for Personal Use Without Tax or Permit
			Sunday	Election Day	Others	
Alabama	Yes	No restrictions	All day (except clubs)	Until polls close	None	None
Alaska	Yes	Cash only	5 a.m.-8 a.m.	Until polls close, except local authorities may permit during local elections	5 a.m.- 8 a.m. any day	No limitation
Arizona	No	Cash except hotels or motels to regis- tered guests and restaurants on credit cards	1 a.m.-12 noon	During polling hours on biennial primary and general election days	1 a.m.-6 a.m. weekdays	None
Arkansas	Yes	-----No on-premise sales-----	-----	-----	-----	None
California	No	No restrictions	2 a.m.-6 a.m.	During polling hours on statewide elec- tion days	2 a.m.-6 a.m. any day	Amount exempt by U.S. if in possession of adult on common carrier from without U.S. (certain other limited importa- tion permitted)
Colorado	Yes	No restrictions	2 a.m.-8 a.m. and after 8 p.m.	During polling hours on primary, general, or municipal elec- tion days	2 a.m.-7 a.m. weekdays; 12:01 a.m.- 7 a.m. Mondays; 2 a.m.-8 a.m. and after 8 p.m. Christmas	None
Connecticut	Yes	No restrictions	After 1 a.m. except when Sunday is December 31 or January 1, sales may be made after 12 noon and except town may permit sales 12 noon to 9 p.m. or prohibit sales between 12 mid- night Saturday and 1 a.m. Sunday	During polling hours on state or municipal election days	1 a.m.-9 a.m. weekdays, Good Friday, Christ- mas	1 gallon in possession

Table 4 (continued)

State	Local Option on Retail Sales	Credit to Consumers by Licensees	Sales by the Drink Prohibited			Quantity That May Be Imported for Personal Use Without Tax or Permit
			Sunday	Election Day	Others	
Delaware	Yes	Cash except hotels or restaurants to guests and clubs to members	All day except hotels, restau- rants, clubs, or railroads may sell with meals 1 p.m.-9 p.m. under special license	During polling hours	12 midnight-9 a.m. weekdays, Good Friday, Thanksgiving, Christmas	None
District of Columbia	No	Cash except hotels or clubs to guests and members	All day	During polling hours on presidential election days	2 a.m.-8 a.m. weekdays; mid- night Sunday- 8 a.m. Monday	1 gallon, may be shipped by common carrier
Florida	Yes	No restrictions	All day unless otherwise pro- vided by local ordinance, or election in certain dis- tricts	During polling hours except on special elections; city or county may further restrict	12 midnight-7 a.m. unless otherwise set by city or county	1 gallon in possession
Georgia	Yes	Cash only	All day	All day	Set locally	None
Hawaii	No	No restrictions	All day except as provided by the liquor com- mission for clubs and dispensers	During polling hours except as provided by the liquor com- mission for clubs and dispensers	Set by liquor commission	1 gallon in possession
Idaho	Yes	No restrictions	After 1 a.m.- 10 a.m. Monday	Until polls close on general and primary election days	1 a.m.-10 a.m. weekdays; 1 a.m.-10 a.m. next day on Christmas, Memorial and Thanksgiving days	2 quarts
Illinois	Yes	Cash except hotels or clubs to guests and members and on credit cards	All day unless authorized by local ordinance	During polling hours except on township or school elections	Hours subject to local regula- tion	1 gallon per year
Indiana	No	Cash only	1 a.m.-7 a.m. Monday	Until polls close on primary and general election days	1 a.m.-7 a.m. weekdays; 12:01 a.m.-7 a.m. next day on Christmas, May 30, New Year	1 quart in possession

Table 4 (continued)

State	Local Option on Retail Sales	Credit to Consumers by Licensees	Sales by the Drink Prohibited			Quantity That May Be Imported for Personal Use without Tax or Permit
			Sunday	Election Day	Others	
Iowa	Yes	Cash except clubs to members, hotels or motels to guests, or on credit cards	1 a.m.-7 a.m. Monday	No restriction	2 a.m.-7 a.m. weekdays	None
Kansas	Yes	-----No on-premise sales-----	-----	-----	-----	None
Kentucky	Yes	Cash except hotels or clubs to guests and members	All day except cities of first three classes and counties with such cities may permit sales to 6 a.m.	During polling hours	Midnight-8 a.m. except cities of first three classes and counties with such cities may provide otherwise	None
Louisiana	Yes	No restrictions	All day except as otherwise provided by local ordinance	Until one hour after polls close on state primary days except in Orleans Parish unless prohibited by local authori- ties	None	None
Maine	Yes	Cash except hotels or clubs to guests and members and hotels and class A restaurants on credit cards	All day	Until polls close on general and statewide primary election days	Midnight-6 a.m. weekdays; after 11:45 p.m. Saturdays; before noon May 30; after 2 a.m. January 1 except if on Sunday	4 quarts
Maryland	Yes (only pursuant to special legislative act)	No restriction except in certain counties for off- premises delivery and hotels or clubs to guests and members	-----Wide variations among political subdivisions-----			1 quart at a time, but not more than 2 quarts a month, in possession
Massachusetts	Yes	No restrictions	Taverns, all day; others before 1 p.m.; local authority may restrict further	During polling hours unless permitted by local authority	Widely varied	None

Table 4 (continued)

State	Local Option on Retail Sales	Credit to Consumers by Licensees	Sales by the Drink Prohibited			Quantity That May Be Imported for Personal Use Without Tax or Permit
			Sunday	Election Day	Others	
Michigan	Yes	Cash except hotels or clubs to guests and members	2 a.m.-12 mid- night	Until polls close on primary, general, or municipal election days	2 a.m.-7 a.m. weekdays; 9 p.m. December 24 to 7 a.m. December 26 or to 7 a.m. December 27 if 26th is Sunday	Amount exempt by U.S. in pos- session of a person 21 or over from without U.S.
Minnesota	Yes	No restrictions	After 1 a.m.	1 a.m.-8 p.m.	1 a.m.-8 a.m. weekdays; 1 a.m.-3 p.m. Memorial Day; municipalities may further restrict hours of sale	1 quart from another state, 1 gallon from foreign country, by adult in possession
Mississippi	Yes	No restrictions	All day except in resort areas; other local varia- tions	All day except in resort areas; other local variations	Midnight-10 a.m. except in resort areas; other local variations	None
Missouri	Yes	No restrictions	All day except certain cities and municipali- ties may permit sale until 1:30 a.m. on Sunday and may prohibit sales before 1:30 a.m. Monday	1:30 a.m.-1/2 hour after polls close	1:30 a.m.-6 a.m. weekdays; certain cities may also regulate hours for "set- up" establish- ments	5 gallons
Montana	Yes	No restrictions	2 a.m.-1 p.m.	During polling hours on day of biennial general or primary election when state and national officers are elected; others, all day	2 a.m.-8 a.m. weekdays	1 gallon in possession
Nebraska	Yes	Cash except hotels, restaurants, or clubs to guests and members	After 1 a.m.	During polling hours	1 a.m.-6 a.m. weekdays; local authorities may require closing prior to 1 a.m.	No limitation
Nevada	No	No restrictions	Localities regu- late but none restrict	During polling hours	Localities regu- late but none restrict	None

Table 4 (continued)

State	Local Option on Retail Sales	Credit to Consumers by Licensees	Sales by the Drink Prohibited			Quantity That May Be Imported for Personal Use Without Tax or Permit
			Sunday	Election Day	Others	
New Hampshire	Yes	Cash except hotels or restaurants on credit cards and hotels to guests in dining or guest rooms	12:45 a.m.- noon; after 9:45 p.m.	No restriction	12:45 a.m.-6 a.m. weekdays; 11:45 p.m.-6 a.m. clubs and airports except 12:45 a.m. Saturday	3 quarts in possession
New Jersey	Yes	No restrictions except as imposed by local authori- ties	Set by local authority unless by referendum	During polling hours	Set by local authority un- less by referendum	1 gallon per 24 hours
New Mexico	Yes	No restrictions	After 2 a.m.	During polling hours on primary, general, and municipal elec- tion days	12:01 a.m.-7 a.m. Mondays; 2 a.m.-7 a.m. other weekdays	Reasonable quantity by adults
New York	Yes	Cash except hotels or clubs to guests and members or under credit permit	3 a.m.-1 p.m.	During polling hours	3 a.m. (4 a.m. in New York City)-8 a.m. weekdays; other local varia- tions	1 gallon
North Carolina	Yes					1 gallon in possession
North Dakota	No	No restrictions	All day	Until 1 hour after polls close	1 a.m.-8 a.m. weekdays; after 6 p.m. Christmas Eve, Christmas, Good Friday, Memorial Day; if Christmas on Sun- day, following Monday	1 gallon in possession from foreign country
Ohio	Yes	No restrictions	After 1 a.m. except certain licensees after 2:30 a.m.	6 a.m.-7:30 p.m. on May primary or general election days	1 a.m. (2:30 a.m. under special permit)-5:30 a.m. per month in possession of a person 21 or over; if outside U.S. over 48 hours	1 quart (1 gallon from Virgin Islands, Guam, American Samoa)
Oklahoma	No					1 quart

Table 4 (continued)

State	Local Option on Retail Sales	Credit to Consumers by Licensees	Sales by the Drink Prohibited			Quantity That May Be Imported for Personal Use Without Tax or Permit
			Sunday	Election Day	Others	
Oregon	Yes	No restrictions	2:30 a.m.- 7 a.m.	During polling hours on statewide election days	2:30 a.m.-7 a.m. weekdays	1 quart in possession
Pennsylvania	Yes	Cash except hotels or clubs to guests and members and on railroad credit cards	After 2 a.m.; 3 a.m.-7 a.m. clubs; hotels in first and second class cities may sell 1 p.m.-10 p.m. pursuant to local option	2 a.m. to 1 hour after polls close (clubs excepted)	2 a.m.-7 a.m. weekdays hotels and restaurants, 3 a.m.-7 a.m. weekdays clubs	1 gallon in possession purchased personally in foreign country if admitted U.S. duty free
Rhode Island	Yes	Cash only	All day except 1 a.m.-12 noon hotels, clubs, and restaurants	During polling hours except hotels, clubs, and restaurants	1 a.m.-6 a.m. weekdays and Christmas; other varia- tions	3 gallons must be declared and approved by the liquor control administrator
South Carolina	No		-----No on-premise sales-----			To value of \$20 cost in posses- sion from outside Continental U.S.
South Dakota	Yes	No restrictions	All day	Until polls close on general and primary election days	12 midnight- 7 a.m. week- days; 1 a.m.- 7 a.m. certain licensees	None
Tennessee	Yes		-----No on-premise sales-----			None
Texas	Yes		-----No on-premise sales-----			None
Utah	No	-----No on-premise sales except on trains and airplanes-----				None
Vermont	Yes	Cash except hotels to guests	Before noon and after 9 p.m. for hotels and restau- rants; before noon and after 11 p.m. for clubs	Until polls close	1 a.m.-8 a.m. weekdays; 2 a.m.-8 a.m. weekdays if live entertain- ment furnished	2 gallons in possession
Virginia	Yes		-----No on-premise sales-----			1 gallon in possession

Table 4 (continued)

State	Local Option on Retail Sales	Credit to Consumers by Licensees	Sales by the Drink Prohibited			Quantity That May Be Imported for Personal Use Without Tax or Permit
			Sunday	Election Day	Others	
Washington	Yes	Cash except hotels or clubs to guests and members and certain licensees with food on approval of liquor control board	All day	Until polls close on days of election of state, county, or municipal officers	2 a.m.-6 a.m. weekdays; before 6 a.m. Mondays; after 3 a.m. New Year unless on Sunday	None
West Virginia	Yes					1 gallon in possession
Wisconsin	Yes	No restrictions	1 a.m.-8 a.m. counties under 50,000 population; 3:30 a.m.-10 a.m. counties over 50,000 population	No restriction	1 a.m.-8 a.m. weekdays but 3 a.m.-8 a.m. on January 1 counties under 50,000 popula- tion; 2 a.m.- 6 a.m. week- days but no restrictions on January 1 counties over 50,000	1 quart in possession by adult arriving from foreign country after 48 hours
Wyoming	No	Cash only	2 a.m.-6 a.m. Monday except clubs and trains	No restriction	2 a.m.-6 a.m. weekdays except clubs and trains	None

Source: Summary of State Laws and Regulations Relating to Distilled Spirits, Eighteenth Edition, November, 1966
(Washington, D.C.: Distilled Spirits Institute, 1967), 90 pp.

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These tables show such wide discrepancies in state traditions and approaches to liquor laws as to defy orderly classification. For instance, of the ten "brown bag" states where sale by the drink for on-premises consumption is not permitted, four (North Carolina, Utah, Virginia and West Virginia) are monopoly states, and six (Arkansas, Kansas, Oklahoma, South Carolina, Tennessee and Texas) are license states; of the twelve jurisdictions that do not provide for local option,¹² two (Utah and Wyoming) are monopoly states, and ten are license jurisdictions (Arizona, California, Washington, D.C., Hawaii, Indiana, Maryland, Nevada, North Dakota, Oklahoma and South Carolina).

The conflicts apparent in the state systems led the Joint Committee of the States¹³ in its 1960 Official Study on Alcoholic Beverage Control to abandon the earlier objective of drafting a model or uniform law for state alcoholic beverage control. Instead, the study concluded with twenty-four "Principles to be Used as Guideposts to Standardized Control", set out below with comment:

1--To be effective as to acts that are mala prohibita,¹⁴ penal statutes including ABC¹⁵ laws must have the approval of the people and must be in substantial conformity with public thinking.

Comment:

This is not to imply that the validity of law depends upon its popular acceptance or that penal statutes are not necessary and desirable when large numbers or groups of people subject thereto are not in agreement with their provisions. The special, indispensable need of ABC laws for support of this kind is well illustrated by the failure of the Eighteenth Amendment and the statutes implementing its provisions, which furnish an excellent example of the results of enactments in this field of which the people generally disapprove and by which in large number they refuse to be bound. If public thinking is erroneous, all media of public education should make their respective and proper contributions to correct that condition.

2--Governmental control of operations of the alcoholic beverage business aims primarily at the prevention of certain socially undesirable conditions, which history and experience have demonstrated will develop in the absence of such control.

Comment:

This principle is given expression in the preambles and enacting clauses of the control laws of the several states, where the purpose of the law has been stated in such language as "promoting temperance and moderation," "preventing intoxication," "preventing the return of the old-time saloon and the

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evils thereof," and "for the protection of the safety, welfare, health, peace and morals of the people." The history of this country, including colonial days, records legislative efforts with widely varying provisions, all showing acceptance by citizens of the necessity of control of this business by government.

3--Alcoholic beverage control should be commensurate with its purposes and should provide the control agency with sufficient power, authority, funds and facilities to enable it to assure accomplishment of those purposes with latitude for uncertainties.

Comment:

This principle has been well-stated in the enacting clauses of many of the control statutes in such language as "this entire act shall be deemed an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state and all its provisions shall be liberally construed for the accomplishment of that purpose," (from the Texas Liquor Control Law). Such power and authority must be complemented by responsibility identical in kind and degree, in order that the public may know where responsibility truly rests and may be guided accordingly in evaluating the standards and merits of the ABC agency.

4--Primary responsibility for the control of the alcoholic beverage business belongs to the individual states.

Comment:

Such investment is provided for specifically by the Twenty-first Amendment, by virtue of which each state has full authority to determine just what is needed in the way of regulation to protect the health, welfare, safety and morals of its people. Exclusive federal control does not permit adequate adjustment of the control system to accommodate the many regional and sectional customs and attitudes. Whether it is advisable for the state to delegate to its communities participation in that control, and, if so, the extent of such local participation, are moot questions. If local participation is provided, great effort must be exerted to insure the appointment of administrators who are strong, independent and able to stand out against the corroding as well as corrupting influences of the political pressures which, at this level, are particularly virulent and dangerous.

5--The collection of revenue from the alcoholic beverage business must be considered and treated as a subordinate interest of government and the control by the state of the alcoholic beverage business to prevent socially undesirable conditions must always prevail over revenue considerations.

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Comment:

Despite the fact that an increased volume of business by this industry would produce greater revenue for the state, such increase is undesirable if incompatible with control objectives. Similarly, increases in the amounts of taxes levied on alcoholic beverages are inconsistent with control objectives if they tend to increase participation in moonshining, bootlegging or other unlawful activity. Taxes on alcoholic beverages which are so excessive as to cause public resentment create a condition tolerant of the moonshiner and the moonshining business and thereby compromise temperance and undermine respect for and obedience to law.

6--Effective administration of control is most likely to result from a system in which the ABC agency is a separate and distinct unit of government.

Comment:

Such status is not, however, an indispensable condition of good control which has been and can be attained where ABC functions are integrated with existing departments. We feel that good control is possible--in fact, does exist--under such conditions but we are persuaded, nevertheless, that a direct line of responsibility from the head of the ABC agency to the governor is most important and is most likely to assure effective control.

7--The ultimate success of the state ABC agency depends at least in part upon the adequacy of internal administration, and sound principles of public administration should be applied to the governmental control of alcoholic beverages.

Comment:

The application of such principles is as essential to effective alcoholic beverage control as to every other function of government. Where civil service is a recognized state function and the authority of the ABC agency as to personnel is thereby limited, there should be close correlation of the functions of the two agencies to the end that inefficiency or uselessness of service may not exist. Just and fair treatment of personnel are needed on the one hand to insure good morale, and on the other courtesy to the public, respect for authority and devotion to duty on the part of all personnel must also be forthcoming.

8--Alcoholic beverage control has been and can be administered satisfactorily by an ABC agency headed either by an individual, be he commissioner or executive director, or by a board or commission.

Comment:

Advantages and disadvantages exist in both systems. In theory, where there is one person at the head of the agency, greater

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efficiency, expedition and consistency are to be found. The superiority of the board over the single administrator is emphasized in the important matter of continuity, especially where the board members serve overlapping terms of office. Theoretically at least, greater capacity and broader vision are to be expected from a board, and the public is inclined to the belief that greater justice and equity flow from board action. We have found good examples of excellent administration under both systems.

9--Stability and continuity in the personnel of the control agencies are of the utmost importance to good control.

Comment:

One of the most glaring weaknesses which exist in the field of alcoholic beverage control is to be found in the frequent turnover among ABC administrators. This condition is the result largely of changes of the chief executives of the states, but is also influenced, in many instances, by inadequate compensation and all too frequently by unhealthy political pressure. Good alcoholic beverage control requires administration by an organization expert in this field and it cannot logically be expected when changes in key personnel occur with undue frequency. There should also be continuity in the tenure of staff and non-policy-making personnel to insure effective recruitment of qualified and capable help and their continued employment, unaffected by the vicissitudes of ABC administrators and the changes of state administrations. The importance of the services of these employees to the public welfare should be stressed; they should be encouraged to qualify for promotion within the organization by study and application; and they should be given the fullest practicable measure of recognition in the way of job security, compensation and wholesome working conditions.

10--Responsibility for performance of the two principal functions of control, namely, licensing and administrative enforcement, should be vested in the same agency of government.

Comment:

Where one agency has either power without the other, its ability to insure high standards among licensees is definitely curtailed. Whether the agency responsible for licensing and enforcement should administer the program of collecting taxes on alcoholic beverages is a moot question. If the responsibility for such collection is so joined, care must be taken to treat as the paramount concern of government the prevention and elimination of social evils and not the collection of revenue. It is well established in theory and practice, however, that there should be close cooperation and teamwork among all agencies of government responsible for the performance of these various functions.

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11--The enforcement of the criminal provisions of ABC laws should be the responsibility of all law enforcement officers.

Comment:

Traditionally, in most if not all states, all peace officers and prosecuting attorneys are responsible for the prevention and suppression of crime and the prosecution of criminals. Since control statutes generally contain provisions classifying violations thereof either as felonies or misdemeanors, the enforcement of such provisions should be handled in the same manner as is that of other penal statutes, that is, they should be enforced by all peace officers and prosecuting attorneys. Whether the detection and prosecution of these violations, to the extent that they are criminal in character, should also be the responsibility of the control agency and, if so, the extent of such responsibility, are moot questions. Administrative enforcement through disciplinary action against licenses and permits must be provided for and it must be neither contingent nor conditioned upon criminal conviction. The sanctions provided by criminal prosecution alone have never sufficed to "protect the safety, welfare, health, peace and morals of the people" in connection with the operations of the alcoholic beverage business, nor have they accomplished a degree of compliance essential to the attainment of that common objective of control.

Where local law enforcement agencies fail culpably to perform their duties of enforcement, the state itself should take over the enforcement program in such manner as is consistent with the laws of the particular state. After having established enforcement techniques and a realistic and effective enforcement program, the state should arrange to return that function to local authorities under circumstances that will assure the continuance of that program.

12--The ABC statute should fix the respective responsibility of the various agencies of government relating to the enforcement of the ABC law.

Comment:

Since state ABC programs are generally complex and normally require large scale participation by both state and local authorities, it is highly important that the respective responsibilities of each agency be definitely fixed in order that each may understand clearly its own obligations and that it may know the functions of the other involved agencies. Unless this action is taken, confusion, misunderstanding, avoidance of responsibility and conflict in performance of duty are likely to occur, all of which are injurious to good control. Enforcement responsibility if positively centered is most likely to succeed. Unless it is a separate function

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delegated to a specific agency exclusively, ABC enforcement instruction should be part of the program of training law enforcement officers charged with general responsibilities. Even under such specific delegation the agency responsible for enforcement should work in close cooperation with other law enforcement agencies of general jurisdiction.

13--Constant evaluation and stimulation of enforcement activities through training those charged with the responsibility and through regularized inspectional supervision tend to promote good ABC enforcement by contributing to good morale, proper efficiency and overall uniformity.

Comment:

Inspectional service should seek to determine not only whether routines are being followed but whether they adequately accomplish the purposes intended. Such services may sample public opinion to determine the worth of existing routines. Among techniques which have been found helpful in promoting good enforcement are the following:

- (a) Regular meetings of enforcement officials.
- (b) Distribution and use of guide books, instructional pamphlets and informational bulletins.
- (c) Use of regular reports from enforcement officials to those responsible for criminal and administrative enforcement.
- (d) Occasional meetings between enforcement officials and licensees.
- (e) Occasional public meetings to promote constructive criticism and informed comment.

14--Authorization to participate in the alcoholic beverage business is a privilege subject to control in the public interest.

Comment:

A license or permit to participate in this business should not confer any right or privilege other than as specified in the ABC law. Any statute which undertakes to create a property right in the terms of such license is inimical to and destructive of the public interest. To obtain a license, the applicant must prove his qualifications and to retain it he must maintain those qualifications.

15--The use of all pertinent objective criteria bearing upon the personal qualifications of applicants for licenses and upon the suitability of premises proposed to be licensed is important to insure

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that only honest, honorable, respectable business people engage in the liquor business, and that only premises that meet standards of need, safety, decency, cleanliness, reputability and serviceability, be covered by licenses.

Comment:

To the greatest extent reasonably possible, these criteria should be defined by statute or rule so that applicants before spending time, funds and efforts to qualify may know with substantial preciseness to what standards they must conform. We say "reasonably possible" because these requirements should have realistic limits and should not be so demanding as to tend to defeat the purposes of the licensing function. However, whether defined by statute or rule or fixed by policy, there should be reasonable uniformity and consistency in their application.

16--Applications for licenses should be acted upon by the ABC agency as promptly as possible, with due regard both for the interests of the applicant and the public.

Comment:

It is difficult to fix arbitrarily the limits of reasonableness, since the public interest requires that applications be investigated thoroughly and since any of several valid reasons frequently prevent expeditious action on applications. Uniformity in handling all comparable applications is highly important. Where expedition and thoroughness conflict the latter consideration should prevail. Delay, however, even for justifiable reasons, creates an unwholesome atmosphere and gives rise to suspicions about favoritism, improper influence and venality and it is, therefore, of the highest importance that efforts be made assiduously to find techniques and to train personnel to accomplish thoroughness with the greatest possible dispatch.

17--Persons seeking entry into the alcoholic beverage business as transferees of existing licenses, where license transfers are permitted, should meet the same standards of personal qualifications as required of applicants for original licenses, and premises to which a licensee proposes to move his business should meet the same standards of premises suitability that would be applied if an original application were being made for the premises to which removal is proposed.

Comment:

Unless these principles are adhered to, it is evident that the standards which have been fixed in the public interest will be lowered through the operation of the transfer of licenses and the removal of licensed businesses. The advisability of permitting transfers of licenses is itself a debatable question. Where there has been overlicensing and the number of

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licenses has been limited, the practice of permitting transfers has prevented reduction in the number of outlets.

18--Applicants for renewal of existing licenses should be considered in all respects in the same position as applicants for new licenses.

Comment:

This principle, of course, must be applied in the light of the fact that a good license history indicates the qualifications of the applicant for renewal and of the suitability of the premises, and that conversely a record of bad, weak, or marginal operation, is good evidence of the disqualification of the applicant for renewal or the unsuitability of the premises, or both. The staggering of the renewal dates of licenses according to a plan consistent with the general operations of the ABC agency should enhance the efficacy of the system requiring the annual renewal of liquor licenses. Unless the agency can give each application for renewal full examination and mature consideration before approval or disapproval, a plan of license recall may well be adopted which will permit such examination and consideration and will provide fair treatment of the licensee.

19--Although, generally speaking, the public interest is not promoted by preventing well-qualified persons from entering the alcoholic beverage business, yet the issuance of licenses in number definitely beyond the requirements of consumers is inadvisable.

Comment:

Competition among business enterprises is the backbone of the private enterprise system and competition among licensees, as a result of which those who serve the public well succeed and those who do not do so fail, is not unwholesome. Nevertheless, there is a point beyond which ABC licenses should not be issued unless and until strong proof of need is shown. Public patronage of a specific establishment which operates in strict conformity with the requirements of law and regulation is good proof of need. A system which permits progressive licensing by issuing licenses to applicants with good qualifications and weeds out and eliminates licensees who have been found wanting in capacity, willingness and disposition to fulfill their obligations as such is the nearest approach to the ideal.

20--Faithful use of the following criteria will result in a substantial contribution to the licensing program of every ABC agency.

Comment:

These criteria require that as a prerequisite to qualification, the applicant for a license must:

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- (a) Be a citizen of the United States.
- (b) Have a good record of law observance. If he has in the past been convicted of a crime, he must prove affirmatively that his character has been rehabilitated and that he has readjusted himself to the laws of society.
- (c) Be of good repute and moral character.
- (d) Have a good record of compliance if he has been previously licensed.
- (e) Be at least twenty-one years of age.
- (f) Be a legitimate party in the ownership interest of the business for which the license is sought. If there are other persons with ownership interests in the business, such interests must be disclosed.
- (g) Be independent of any interlocking industry interest which by law, regulation or policy has been denounced as inimical to good control.
- (h) Be possessed of demonstrated financial responsibility to meet adequately the requirements of the business proposed to be licensed.
- (i) Be independent of any official connection with any law enforcement agency having any kind or degree of responsibility for ABC enforcement, including any participation as an officer or employee of the ABC agency itself.
- (j) Be able to read and write the English language and to show an understanding of the ABC law and rules.

21--Adherence to the following requirements will contribute to the success of ABC administration:

- (1) The ABC agency should make available to the public informational material as to circumstances governing the issuance of licenses and the operations thereunder.
- (2) All applicants should be required to make formal application in writing for a license with all statements thereunder supported by oath or affirmation, and with applicants being held strictly accountable for the accuracy, completeness and truthfulness of information thereby submitted.
- (3) All such applications should be carefully examined with emphasis on the qualifications of the applicant as tested by all qualifying criteria.

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- (4) Close liaison should be maintained by the ABC agency with all other law enforcement agencies, and where the applicant has had any experiences in the past with any of those agencies, the full case histories should be recorded, studied and considered.
- (5) Complaints of objectors who oppose the approval of the application should be given due consideration. The weight to be ascribed to such objections should be determined by the force and validity of the reasons presented in support thereof.

22--The basic provisions and procedures of control should be established by published law or rule, but the ABC agency should have broad discretionary powers to formulate administrative policy, to issue or deny licenses limited only by the requirement that its action be neither arbitrary nor capricious, and to penalize violators where substantial evidence has been presented in an open hearing to support charges of violations.

Comment:

It is in the interest of good control that there be available to the public definite and specific information relating to the basic requirements and prohibitions binding on applicants and licensees. To the extent that these requirements and prohibitions can be stated in definite and precise language without thereby limiting or destroying good administration or weakening control, they should in due course be incorporated either into the law or into the written rules. It is likewise in the interest of good control that those who administer it be, and be recognized as, experts in this field, and that they be held accountable as such by the public for the sound and effective administration of the law. Systems which permit outside boards of review or courts of law to substitute their judgment for that of the administrator or administrative agency do violence to this principle and make it impossible for the public to hold anyone strictly accountable for the failure to get good ABC administration, which is the usual result. Problems peculiar to the alcoholic beverage industry and to effective governmental control are numerous and involved, and they should be resolved only by experts in government with backgrounds and general qualifications known by the public to include a full understanding of and a sincere agreement with the philosophy, purposes, procedures and policies essential to effective control.

23--All agencies of government responsible in any respect for the ABC program must collaborate and coordinate their efforts, and there must be cooperation between all these agencies on the one hand and all other agencies of government on the other.

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Comment:

Collaboration and cooperation of this type should never be used to confuse the respective responsibilities of the agencies involved, and there should be a clear-cut, definitive understanding by all of the respective functions of each. Shared responsibility can easily deteriorate into impaired responsibility.

24--The public interest requires strict compliance with rigid standards of alcoholic beverage control by a respectable and law-abiding industry, under a sound law administered by an able and upright ABC agency, supported by an informed and understanding public opinion.

Comment:

This statement epitomizes the rationale, purposes, functions and requirements of alcoholic beverage control.¹⁶

Chapter III

THE ADMINISTRATION OF HAWAII'S INTOXICATING LIQUOR LAW

Brief Survey of State Administrations

The structural and operational patterns of state agencies responsible for administering alcoholic beverage control laws display as great a variety as other aspects of these laws, as shown in Table 5.

This catalogue of differences in organizational structure and administrative techniques found in state alcoholic beverage control includes the following counts:

- Of organizational units, 39 are independent bodies; 10 are part of state fiscal agencies; 3 are part of state law enforcement agencies; and 4 are part of other state agencies, such as commerce or department of state.¹
- Alcoholic beverage control agencies are headed by a single executive in 17 jurisdictions and by a multi-member board or commission in the remaining jurisdictions with the number of members ranging from 3 to 7.
- In all but 8 states, the executive head of the alcoholic beverage control agency is appointed by the governor, and of those eight, 5 are elected officials of state government.
- Extensive civil service coverage for employees of alcoholic beverage control agencies applies in about half of the jurisdictions.
- The same agency is responsible for both alcoholic beverage control and liquor tax administration in about half of the jurisdictions.
- Some form of the Model State Administrative Procedure Act is in effect in fourteen states.

Such inventoried differences and similarities illustrate the absence of any clearly ideal model for the administration of governmental regulation of intoxicating liquor. The range of the factors inventoried also indicates that in any state, the overall organization and operation of government, the system of public law, and the

Table 5

COMPARISON OF SELECTED FACTORS IN THE ADMINISTRATION OF ALCOHOLIC BEVERAGE CONTROL, BY STATE

State	Administrative Agency	Agency Head, Full- or Part-Time, Terms	Employees, Other than Agency Head, Under Civil Service	Liquor Tax Administrative Agency	Model State Administrative Procedure Act
Alabama	Alcoholic beverage control board, appointed by governor; administrator appointed by board	3 members, per diem, 6-year term, removable at governor's pleasure	All, except administrator and assistant administrator	Alcoholic beverage control board	No
Alaska	Alcoholic beverage control board, appointed by governor, in department of revenue; director appointed by governor	3 members, meet at least annually, 3-year term	None	Department of revenue	No
Arizona	Department of liquor licenses and control, superintendent appointed by governor	1 superintendent, full-time, 6-year term, removable for cause	None	Tax commission	No
Arkansas	Alcoholic beverage control board, appointed by governor; director appointed by board to serve at its pleasure	3 members, per diem, 6-year term, removable for cause	None	Department of revenue	Yes
California	Department of alcoholic beverage control, director appointed by governor to serve at his pleasure; also appeals board	1 director who is also removable for cause by majority vote of all members of legislature	All, except deputy director and area administrators	Board of equalization	No
Colorado	Department of state	Secretary of state, elected for 4-year term	All	Department of revenue	No
Connecticut	Liquor control commission, appointed by governor	3 members, full-time, 6-year term, removable for cause	All	Tax commissioner	No
Delaware	Alcoholic beverage control commission, appointed by governor, chairman serves at governor's pleasure	5 members, per diem, 3-year term	None	Alcoholic beverage control commission	Yes
District of Columbia	Alcoholic beverage control board, appointed by district mayor	3 members, full-time, 4-year term	All, except inspectors	Collector of taxes	No
Florida	Beverage department, director appointed by governor	1 director, full-time, serves at governor's pleasure	All, except legal and certain secretarial staff	Beverage department	No

Table 5 (continued)

State	Administrative Agency	Agency Head, Full-time, or Part-Time, Terms	Employees, Other than Agency Head, Under Civil Service	Liquor Tax Administrative Agency	Model State Administrative Procedure Act
Georgia	Department of revenue, commissioner appointed by governor	1 revenue commissioner, full-time, serves at governor's pleasure	All	Department of revenue	Yes
Hawaii	County liquor commissions, appointed by executive head of county with advice and consent of county legislative body	5 members in each county, per diem, 5-year term, removable by executive head of county with advice and consent of county legislative body	All	Department of taxation	Yes
Idaho	State stores - liquor dispensary, superintendent appointed by governor; licensees to sell for on-premises consumption - department of law enforcement, director of liquor law enforcement, appointed by governor	1 superintendent liquor dispensary, full-time, 4-year term, serves at governor's pleasure	None	Tax commission	No
Illinois	Liquor control commission, appointed by governor	3 members, full-time, 6-year term	None	Department of revenue	No
Indiana	Alcoholic beverage commission, appointed by governor	4 members, full-time, 4-year term, removable at governor's pleasure	None	Alcoholic beverage commission	No
Iowa	Liquor control commission, appointed by governor (beer - department of revenue)	3 members, full-time, 6-year term, removable for cause	None	Department of revenue	No
Kansas	Director of alcoholic beverage control, appointed by governor; also board of review, appointed by governor	1 director, full-time, removable at governor's pleasure; board of review, 3 members, per diem, 4-year term, removable for cause	All, except deputy director, attorneys, and chief of enforcement section	Department of revenue and director of alcoholic beverage control	No
Kentucky	Department of alcoholic beverage control, appointed by governor	3 members of board, including commissioner, full time, 4-year term	None	Department of revenue	No
Louisiana	Alcoholic beverage control board, appointed by governor	5 members, full-time, no fixed term, removable at governor's pleasure	All, except secretary	Department of revenue	Yes

Table 5 (continued)

State	Administrative Agency	Agency Head, Full-Time, or Part-Time, Terms	Employees, Other than Agency Head, Under Civil Service	Liquor Tax Administrative Agency	Model State Administrative Procedure Act
Maine	Liquor commission, appointed by governor; also hearing commissioner, appointed by governor	3 members, chairman full-time, 3-year term, removable for cause; hearing commissioner, full-time, 4-year term, removable for cause	All, except business administrator	Liquor commission	No
Maryland	Office of comptroller (local boards administer laws of local application)	Comptroller, elected for 4-year term	All, except certain part-time employees	Comptroller	Yes
Massachusetts	Alcoholic beverage control commission, appointed by governor	3 members, full-time, 3-year term, removable by governor with advice and consent of council	All	Department of corporations and taxation	No
Michigan	Liquor control commission, appointed by governor, in department of commerce	5 members, full-time, 3-year term, removable for cause	All	Liquor control commission	Yes
Minnesota	Liquor control department, commissioner appointed by governor	1 commissioner, full-time, 4-year term, removable for cause	All	Liquor control department	No
Mississippi	Tax commission, alcoholic beverage control division, director appointed by commission	1 director, full-time, serves at pleasure of tax commission	n.a.	Tax commission	No
Missouri	Liquor control department, appointed by governor	1 supervisor, full-time, serves at governor's pleasure	None	Department of revenue	Yes
Montana	Liquor control board, appointed by governor; administrator, appointed by board	5 members, per diem, 4-year term, removable for cause	None	Liquor control board	No
Nebraska	Liquor control commission, appointed by governor	3 members, full-time, 6-year term, removable for cause	None	Liquor control commission	No
Nevada	Tax commission, governor is chairman, others appointed by governor	7 members, including governor, other members (except public service commissioner) per diem, 4-year term	None	Tax commission	No
New Hampshire	Liquor commission, appointed by governor	3 members, full-time, 6-year term, removable for cause	All	Liquor commission	No

Table 5 (continued)

State	Administrative Agency	Agency Head, Full- or Part-Time, Terms	Employees, Other than Agency Head, Under Civil Service	Liquor Tax Administrative Agency	Model State Administrative Procedure Act
New Jersey	Division of alcoholic beverage control in attorney general depart- ment of law and public safety, division director appointed by governor	1 director, full-time, serves during governor's term, removable for cause	All, except investigators, inspectors, legal as- sistants, executive as- sistants, and deputy directors; all of these achieve tenure after 3 years	Department of treasury	No
New Mexico	Division of liquor control in bureau of revenue, appointed by governor	1 chief of division, full-time, 2-year term	None	Bureau of revenue	No
New York	State liquor authority, appointed by governor	5 members, full-time, 5-year term, removable for cause	All, except secretary, secretaries to commis- sioners and chief executive officer, counsel, assistant counsel, and deputy commissioners	Department of taxation and finance	No
North Carolina	Board of alcoholic control, appointed by governor; also director, appointed by governor	5 members, per diem, 3 with 6-year term and 2 with 4-year term; 1 director, full-time, 4-year term, removable by governor with consent of board	None	Department of revenue	No
North Dakota	Attorney general	Attorney general, elected for 4-year term	None	Treasurer	No
Ohio	Department of liquor control, appointed by governor; also director, appointed by governor	3 members, full-time, 6-year term, removable for cause; 1 director, full-time, serves at governor's pleasure	All, except director, assistant director, administrative aide to director, division chiefs, and cashier	Tax commissioner	No
Oklahoma	Alcoholic beverage control board, appointed by governor; also director, appointed by board	5 members, per diem, 7-year term, removable for cause; 1 director, full-time, serves at pleasure of board	None	Tax commission	Yes
Oregon	Liquor control commission, appointed by governor; also administrator ap- pointed by commission	3 members, per diem, 6-year term, removable for cause; 1 adminis- trator, full-time	All, except assistant attorney general	Liquor control commission	Yes

Table 5 (continued)

State	Administrative Agency	Agency Head, Full- or Part-Time, Terms	Employees, Other than Agency Head, Under Civil Service	Liquor Tax Administrative Agency	Model State Administrative Procedure Act
Pennsylvania	Liquor control board, appointed by governor	3 members, full-time, 6-year term	All, except hearing examiners, board secre- tary, secretaries to board members, and assistant and special assistant attor- neys general	Department of revenue	No
Rhode Island	Department of business regulation, liquor control administration, administrator appointed by director of depart- ment with approval of governor; also liquor control hearing board, in the department, appointed by governor	3 members on liquor control hearing board, per diem, 6-year term, removable by governor for cause	All	Department of administration	Yes
South Carolina	Tax commission, appointed by governor	5 members, per diem (chairman full-time), 6-year term, removable by governor with advice and consent of senate	None	Tax commission	No
South Dakota	Department of revenue, commissioner appointed by governor	1 commissioner of revenue, full-time, 4-year term, removable for cause	None	Department of revenue	No
Tennessee	Alcoholic beverage com- mission, appointed by governor; also director, appointed by commission	3 members, full-time, serve during governor's term, removable for cause; 1 director, full-time, serves at pleasure of commission	None	Department of revenue	No
Texas	Liquor control board, appointed by governor; also administrator, appointed by board	3 members, per diem, 6-year term; 1 adminis- trator, full-time, serves at pleasure of board	None	Liquor control board	No
Utah	Liquor control commis- sion, appointed by governor	3 members, full-time, 6-year term, removable at governor's pleasure	None	Tax commission	No
Vermont	Department of liquor con- trol, liquor control board appointed by gover- nor, commissioner appointed by board	3 members of board, per diem, 6-year term, re- movable for cause; 1 commissioner, full-time	All, except commissioner	Commissioner of taxes	No

Table 5 (continued)

State	Administrative Agency	Agency Head, Full- or Part-Time, Terms	Employees, Other than Agency Head, Under Civil Service	Liquor Tax Administrative Agency	Model State Administrative Procedure Act
Virginia	Department of alcoholic beverage control, appointed by governor	3 members of board, full- time, 5-year term, remov- able at governor's pleasure	None	Department of taxation	No
Washington	Liquor control board, appointed by governor	3 members, full-time, 9-year term, removable for cause	None	Liquor control board	Yes
West Virginia	Alcohol beverage control commission, appointed by governor	1 commissioner, full- time, 4-year term	None	Alcohol beverage control commission	Yes
Wisconsin	Department of taxation, commissioner appointed by governor	1 tax commissioner, 6-year term	All	Department of taxation	Yes
Wyoming	Liquor commission, con- sisting of governor, secretary of state, treasurer, auditor, and superintendent of public instruction	--	None	Liquor commission	No

Sources: Distilled Spirits Institute, Summary of State Laws and Regulations Relating to Distilled Spirits, Eighteenth edition, November, 1966 (Washington, D. C.: 1967), 90pp.; The Joint Committee of the States to Study Alcoholic Beverage Laws, Alcoholic Beverage Control, An Official Study (Washington, D. C.: Rev. 1960), Tables 4, 6, and 7, pp. 79, 82, and 83; The Book of the States 1968-1969 (Chicago: The Council of State Governments, 1968), p. 143; State Administrative Officials Classified by Functions, Supp. II, The Book of the States 1967 (Chicago: The Council of State Governments, 1967), pp. 52-53; various state statutes.

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tradition of government-citizen relationship shape the state's alcoholic beverage control system in the same fashion as any other governmental activity. In spite of the diversity in these administrative schemes, one factor shows up as common to most states but excepting Hawaii--ultimate authority lies with the governors through appointment or removal powers, or both and, in at least two states,² even through direct gubernatorial participation in the body responsible for administering alcoholic beverage control. It should be pointed out, however, that complete analyses of the states' statutes reveal every degree of local encroachment upon central state authority in the field. Local government units share the administrative responsibility to some extent in almost every state.³ For instance, all but nine states provide for local option;⁴ local government units participate in license issuance in all states except ten;⁵ local government units have powers with respect to revocation of licenses in almost half of the states;⁶ and in all states except thirteen⁷ the local authority extends to such other general police powers, as enforcing liquor laws, limiting hours and days of sale, issuing local licenses, regulating entertainment on licensed premises, setting local fees, controlling retail sales, or setting license quotas.⁸ When all the states' administrative arrangements are ranked from the most strongly centralized to the most strongly decentralized, Hawaii emerges as the state whose administration is closest to home base.

Hawaii's Administration; Administrative Law Concepts

A county liquor commission in Hawaii is one of the most powerful governmental bodies in the State. Vast plenary powers and virtually unfettered discretions have been assigned to the four county liquor commissions within their sphere of authority and respective geographical jurisdictions.

County liquor commissions were first provided for in Hawaii in 1907 when they were established as five-member "boards of license commissioners", a board for each county or city and county. The members of the boards were appointed by the governor biennially, divided into two classes, for four-year terms. The 1907 act (Act 119) effected a notable change in government organization, for prior to that time, jurisdiction over intoxicating liquor laws had been vested in the treasurer for the territorial government and in the minister of interior for the Hawaiian Kingdom.

Hawaii, thus, was among the vanguard with her liquor legislation in the expansion of governmental administrative activity which has

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been referred to as a "twentieth century administrative explosion".⁹ The explosion, which is evident in the proliferation of local, state, and federal administrative agencies, is usually considered a practical consequence of legislative intervention into complex areas of economic and social relations. The administrative process has evolved to meet the needs for specialization to develop the necessary expertise, flexible regulation to parallel the changing needs of the regulated fields, and continuity of public policy in view of the inability of the traditional processes to carry out the expanded scope of governmental activity.¹⁰ "Administration" is now firmly institutionalized as a regular and accepted tool in governmental machinery but only after having overcome the difficult doctrinal barrier of separation of powers. Under the separation of powers theory, all powers of government are divided into executive, legislative, and judicial; governmental functions are allotted to one or the other of the three coordinate and independent branches, and one branch is not permitted to encroach upon the powers of another branch. A rigid and literal interpretation of the separation of powers doctrine would make the very existence of an administrative agency unconstitutional since a typical agency exercises many types of power, including executive, legislative, and judicial. The theoreticians have rationalized the constitutional existence of administrative agencies in various ways--usually by redefining the executive power or the legislative power, or by frankly viewing administration as a fourth branch of government. Administrative agencies have been called "quasi-legislative", "quasi-executive", or "quasi-judicial", as the occasion required, in order to validate their functions within the separation of powers scheme.

A practical legitimation of the administrative process is compellingly suggested when one reviews the work, over a period of time, of liquor commissions in Hawaii. A general catalogue, in large categories, of the functions of Hawaii's county liquor commissions compiled from the official minutes of the commissions for a ten-year period produces an impressive enumeration of commission activities. Each of the following activities involves the ministerial, policy-making, and enforcement powers of the executive branch of government; the rule-making power of the legislature; and the prosecuting, hearing, and imposition of penalty powers of the judiciary:

1. Supervision. The control and regulation, in general, of the manufacture, importation, and sale of intoxicating liquor.
2. Licensing. The grant or refusal of licenses and duplicate licenses, relicenses, transfers of license, and reclassifications of license.

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3. Permits. The grant or refusal of permits for entertainment, games, music, and other activities on premises licenses for on-premises consumption; and permits for alcohol purchases.
4. Fees. The setting of license fees, terms of licenses, and payment provisions.
5. Hours of business. The setting of hours during which certain licensed premises may be open for the transaction of business.
6. Minimum consumer resale prices. The administration of minimum consumer resale price and price posting requirements.
7. Minors. The protection of minors, including those employed by licensees, as their interests may be adversely affected by intoxicating liquor.
8. Employees. The approval and supervision of employees, including entertainers, at licensed premises.
9. Advertising. The approval of advertising to be used on, or about, licensed premises.
10. Forms and records. The devising of forms and records and supervision over reports and accountings for purposes of licensees' business operations.
11. Intergovernmental coordination. The responsibility for coordination and cooperation with other governmental agencies, such as the department of labor and industrial relations, department of health, department of taxation, alcohol and tobacco tax division of the Internal Revenue Service, military installations, police departments, and zoning commissions.

Still other commission activities involve only powers that are classified traditionally as administrative:

12. Policy. The establishment of broad policies to guide the day-to-day, problem-by-problem administration of the state intoxicating liquor laws.

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13. Internal management. The conduct and supervision of the routine business of running the liquor commission offices and staff.
14. Enforcement and execution. The carrying out of the rules and policies laid down pursuant to legislative action, including the mechanics of supervising and inspecting licensees' activities.
15. Education. The education and training of liquor commissioners and investigators, inspectors, and other staff; the presentation of educational programs for schools and other interested public groups; and education designed for licensees and their employees.

Finally, in the enumeration of liquor commission activities are those of either a purely legislative or a purely judicial nature:

16. Rules. The adoption, filing, and publication of rules, pursuant to the State Administrative Procedure Act, which have the force and effect of law.
17. Hearings. The conduct of hearings and issuance of decisions and orders in contested cases before, or for declaratory rulings by, a liquor commission, pursuant to the State Administrative Procedure Act.
18. Penalty. The assessment and imposition of penalties or other disciplinary action for certain violations of the intoxicating liquor law.

This listing of powers assumes an awesome character, especially when one considers that the powers are exercised with the freedom of extremely broad discretion. They are all set out either explicitly or implicitly in Hawaii's intoxicating liquor law and obviously call for administrative machinery other than the legislature itself because, if for no other reason, of the great volume and detail of work involved.

A second constitutional doctrine that has long plagued the development of the administrative process is the doctrine of "non-delegation". A capsule explanation of the delegation problem might start with Article III, section 1, of the Hawaii Constitution which provides, "The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a senate and a house of representatives. Such power shall extend to all rightful subjects

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of legislation not inconsistent with this constitution or the Constitution of the United States." The issue, then, arises that, if the legislative power is constitutionally vested in the state legislature, can the legislature delegate its power to administrative agencies, and if so, to what extent? Realizing that delegation by the legislature is necessary in order that the exertion of legislative power does not become a futility, the courts have had to come up with a rule that permits the tasks of government to be performed--delegation is lawful if accompanied by sufficient standards. There have been few cases in Hawaii, and none dealing with liquor commissions, deciding the issues of legislative delegation of powers and the sufficiency of standards to legitimize the delegation. In one case which questioned the validity of the administrative discretion delegated to the public utility commission, the Hawaii Supreme Court stated that the term "public convenience and necessity" is "perfectly clear and intelligible and presents a sufficiently definite standard for controlling competition in this field of public service and guiding the commission in the exercise of its administrative discretion."¹¹ The courts have liberally accepted as sufficient standards quite vague purpose phrases, such as "public convenience and necessity", "just and reasonable", "for the purposes of this chapter", or "in the public interest". No general statutory statement of the basic purposes of Hawaii's intoxicating liquor law is set forth in the Revised Laws by which a liquor commission can be guided in formulating its ultimate purpose, exercising its administrative discretion, or handing down its policy-making decisions.¹² There are, however, four legislative directives limiting the powers of county liquor commissions in Hawaii. The following serve both as legislative purposes and as standards for administrative guidance to the commissions:

1. Their jurisdiction, power, authority, and discretion are limited to the administration of the intoxicating liquor laws of the State;
2. Their procedures are subject to the provisions of the State Administrative Procedure Act;
3. Their specific grants of discretion are intended to be broad because they are not otherwise limited; and
4. Their discretion in limiting licenses must be exercised "in the public interest".¹³

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The modern trend is toward greater liberality in permitting grants of discretion to administrative officials in order to facilitate the administration of the laws as the complexity of governmental and economic conditions increases. Professor Davis, a leading authority on administrative law, has commented:

The typical opinion of a state court on a delegation problem is quite unfortunate both in what it says and what it fails to say. It says (1) that legislative power may not be delegated, (2) that "filling up the details" is not an exercise of legislative power, (3) that legislative power is not delegated if the Legislature has laid down a standard to guide the exercise of the power, and (4) that presence or absence of vague verbalisms like "public interest" or "just and reasonable" make all the difference between valid legislation and unlawful delegation.

The typical state court opinion on delegation fails to say anything about (1) the reasons for the legislative choice to make the particular delegation, (2) the practical consequences of allowing the Legislature to do what it is trying to do, (3) the usual lack of practical advantage in compelling the Legislature to dress up the statute with vague verbiage that the judges call standards, (4) the question whether in the circumstances good government calls for a headlong choice of policy by the legislative body or whether it requires the working out of policy by case-to-case adjudication conducted by those who have the advantage of knowing the facts of particular cases, (5) the need for protection against unfairness, arbitrariness, and favoritism, (6) the importance of procedural safeguards, or opportunity for a judicial check, and in some circumstances of a proper legislative or even administrative supervision or check, or (7) the need for providing help to the Legislature in its search for practical and efficient ways of accomplishing legislative objectives.

* * *

. . . The need is usually not for standards but for safeguards. One may surmise that even now the most perceptive courts are motivated much more by the degree of protection against arbitrariness than by the doctrine about standards that they write about in their opinions. When statutes delegate power with inadequate protection against unfairness or favoritism, and when such protection can easily be provided, the reviewing courts may well either insist upon such protection or invalidate the legislation. The elements of protection that may often be feasible include a hearing with a determination on the record, a requirement of findings and reasons, respect for consistency of principle from one case to another, and opportunity for check or supervision either by administrative review or legislative review or judicial review. The kinds of protection that should be required are necessarily variables that depend upon circumstances. By and large, the safeguards required for adjudication are greater than those required for general rule making.¹⁴

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Evaluation of the Administration of Hawaii's Intoxicating Liquor Law

The following evaluation is based on Davis' seven criteria:

1. The reasons for the legislative choice to make the particular delegation.

As to the subject matter of the delegation, the detailed provisions of Hawaii's intoxicating liquor law clearly call for an administrator other than the legislature itself because, if for no other reason, of the great volume of work entailed.

As to the delegatee, since 1907 and until January 1, 1965, the legislature delegated the administration of the state intoxicating liquor laws to county liquor commissions whose members were appointed by the governor. Beginning in 1965, pursuant to the "home rule" Act,¹⁵ the legislatively delegated powers were transferred from commissions appointed at the state level to commissions appointed at the county level. The committee reports on this legislation¹⁶ gave three reasons for the change: (a) disapproval of a system whereby the members of the various county liquor commissions were appointed at the state level but operated on a local and not on a statewide level; (b) control of the consumption of alcoholic beverages is a local rather than a state function; and (c) the allocation of functions between the State and local units of government should be related realistically to the nature of the function and the capacity of the local units to support them. It was concluded that since the administration of and the responsibility for the control of liquor functions should be with the various counties, the members of the commissions should be appointed by and be responsive to the respective county executive officers.

There were two chief arguments voiced against the "home rule" legislation. The Public Administration Service Report¹⁷ stated, "The control and regulation of alcoholic beverages is clearly a State responsibility as set forth by State statute. The County Liquor Commissions should be recognized and treated as State agencies. The special fund device should be eliminated and their operations be financed by State appropriation with receipts going into the State general fund. The commissions can be assigned to the State Department of Treasury and Regulation for administrative support and budget review. The appointment of local citizens to the several commissions should adequately provide for the expression of local sentiments and preferences without circumscribing the State's responsibility for uniform regulation."

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The other argument in opposition to "home rule" for the liquor commissions was an expression of satisfaction with the status quo coupled with the apprehension that the line of authority to the local appointing officer might be conducive to undue political influences and pressures which would adversely affect fair and impartial administration of the intoxicating liquor law.

The legislative determination on the issue appears to have been founded primarily on the "local function" of consumption of intoxicating beverages and thus on control factors that are closely akin to the police powers of members of the police departments. This reasoning, of course, does not extend to every aspect of intoxicating liquor law; for instance, the liquor tax remains entirely a state function under the state department of taxation. Other aspects of intoxicating liquor law which might be counted as of more statewide than local interest include the manufacture, importation, exportation, and free-trade zone traffic of intoxicating liquor.

It is worth noting in weighing the importance and significance of "home rule" for the liquor commissions that the action appears magnified on the one hand for presaging a general trend toward increased home rule in the State¹⁸ and diminished on the other hand for not, in itself, affecting the substance of the state intoxicating liquor laws.

Objective criteria for measuring the relative merits of administration by liquor commissions appointed by the governor and by those since 1965 appointed by the executive heads of the counties are elusive at best. The change in administrative structure was accompanied by a significant turnover in liquor commissioners,¹⁹ but continuity and stability in the commissions' operations were maintained by executive secretaries and staffs most of whom had enjoyed long tenure in their civil service employment for the commissions. The tenured personnel also made possible the mechanical and ministerial adjustments with relative ease and minimal confusion. The other major shift from state to county authority was in fiscal matters, other than the state liquor tax, also accomplished in good order although the liquor commissions were not given license fee-setting power until the 1965 legislative session²⁰ when the legislature determined that this power would enable the commissions to carry out more fully the concept of county control.²¹ One of the committee reports on the measure pointed out that "License fees for solicitors and representatives' permits have been kept under state control . . . because these solicitors and representatives operate on a statewide basis and their regulations therefore should be uniform."²²

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The critical issue was raised beforehand at the time the home rule issue was under consideration: Are state or local appointing powers more likely to guard against undesirable political influence and pressure, in fact or in appearance? The question can be answered only indirectly: Whichever level of government has the more effective code of ethics. In fact, any of the legislative bodies of the State and of the counties who supply advice and consent for appointments are likely to number within their membership individuals who have an interest in or connection with some phase of the liquor industry; it is this sort of real or apparent conflict of interest that is most damaging to fair administration and enforcement of the liquor laws, for it detracts most from essential public confidence in government. In this matter of ethics, it is of interest to note that the disqualification for liquor commissioners on account of being an officer or committee member of a political party was deleted when the commissions were transferred to the counties.

Decentralization posed the problem of locating the position of liquor commissions within the organizational structure of county government, each county following an independent course. In the City and County of Honolulu, the only county operating under a charter at the time "home rule" was granted for liquor commissions, the commission was made a division of the department of finance. The Charter of the County of Hawaii, effective January 2, 1969, in Article XIII makes general provisions for all county agencies which will be fully applicable to the liquor commission. The Charter of the County of Maui, effective January 2, 1969, establishes in Chapter 10 the department of liquor control, including a five-member liquor control commission and a three-member liquor control adjudication board. The County of Kauai Charter, also effective January 2, 1969, establishes in Article XVI the liquor control commission.

2. The practical consequences of allowing the legislature to do what it is trying to do.

One of the remarkable practical consequences of combining a statewide intoxicating liquor law plus a legislative delegation of powers to administer that law to four liquor commissions, plus a transfer of the commissions from state to county authority is the creation of an ambiguity, a sort of "half-way-home rule". The decentralization move ignored the need for effective cooperation among the four county commissions and provided no means to assure that laws which are uniform throughout the State, or which should be uniform, would be uniformly administered and enforced. Another contribution to ambiguity was made by the legislative creation and

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design of the county liquor administrations with no alternative administrative system left available for county determination. Counties with "home rule" powers might well want to re-examine the commission idea and consider a single administrator system of agency head. Some of the arguments, for instance, favoring regulatory commissions are (a) they provide bi-partisanship and thus impartiality and freedom from political domination; (b) they permit broad community representation on the regulatory body; (c) they insure the combined judgment of a group as a barrier to arbitrary or capricious policy making and decisions through the safeguard of different points of view and experience; and (d) they develop expertness and continuity in a balanced mixture through fixed, staggered terms of reasonable duration.

Arguments favoring single administrators to head regulatory agencies include (a) the advantages of impartiality, expertness, continuity, and group decision that are attributed to commissions result in large part from the complementary contribution of various staff experts in an institutional process; (b) commission plurality makes it more difficult for the appointing executive to integrate the policies of the commission with those of other agencies and with the general policy of the government; (c) the commission system impedes prompt and decisive action and is unresponsive to new demands; and (d) a bureaucratic agency independent of political control on policy matters is a contradiction of the democratic process and cannot readily distinguish between politics and administration.

3. The usual lack of practical advantage in compelling the legislature to dress up the statute with vague verbiage that the judges call standards.

Approximately forty liquor commissions²³ have served the counties of Hawaii over the last fifteen years. By their records, they have concerned themselves assiduously and zealously in carrying on all but one of the eighteen functions enumerated at pages 78-80. The neglected area is that of policy making, the establishment of broad policies to guide the day-to-day, problem-by-problem administration of the state intoxicating liquor laws. The neglect of policy making as a liquor commission function is not a constant or invariable practice. Some commissions have deliberated, with varying degrees of formality, to determine commission policies, usually dealing with specific, detailed aspects of intoxicating liquor control, but occasionally with far-reaching principles within which matters of specific details can be consistently determined. A recurrent and basic problem hindering policy making has been stated, expressly or by implication, in the minutes of various liquor commissions--commissioners are frequently

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uncertain of their governmental roles. For example, many commissioners have been doubtful about and could not identify the target of their responsibility. Their quandry is sometimes put in terms of the question: Is our primary responsibility to protect existing licensees, to protect patrons of licensees, or to protect the general community? The obvious answer, that of protecting the general community, is, of course, not a choice among mutually exclusive options, for protection of licensees or protection of licensees' patrons in most cases is a direct or indirect means to promote the interests of the general community. A specific statement of legislative purpose incorporated in the intoxicating liquor law would undoubtedly be welcomed by the county commissions charged with administering that law.²⁴

4. The question whether in the circumstances good government calls for a headlong choice of policy by the legislative body or whether it requires the working out of policy by case-to-case adjudication conducted by those who have the advantage of knowing the fact of particular cases.

It can be inferred that the intention of the state legislature, even before "home rule", has been to delegate broad discretionary powers to the county liquor commissions and to provide for a county administration possessing the requisite knowledge of local conditions to handle each case wisely and consistent with community standards. Within the confines of a statewide law, each commission has had to take into consideration the special conditions that are unique to its particular county. The City and County of Honolulu's liquor commission must deal with the circumstances of a metropolitan area in juxtaposition to rural areas and the presence of a high concentration of military installations and personnel. In the other counties, a newly expanding visitor-resort industry poses its own problems. The commission on Hawaii is faced with particular enforcement problems because of the size of the island. The relatively small population of the County of Kauai and the multi-island geography of the County of Maui present still other complications and situations for commissioners responsible for administering a statewide law. It is concluded that the principles of wise delegation of discretionary powers to county liquor administrators who are responsive to local conditions is particularly fitting for the State of Hawaii.

5. The need for protection against unfairness, arbitrariness, favoritism.

The right of judicial review under Hawaii's intoxicating liquor law and Administrative Procedure Act offer some protection against a commission's, or a single commissioner's, bias in the sense of

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prejudgment concerning questions of fact about a licensee or an applicant, prejudice as an attitude for or against a licensee or applicant, and personal interest in the sense that a commissioner would stand to gain or lose by a rule or decision. Additional safeguards against bias, prejudice, and interest could be provided, such as rules for disqualifying commissioners in applicable cases.

6. The importance of procedural safeguards, or opportunity for a judicial check, and in some circumstances of a proper legislative or even administrative supervision or check.

Many essential safeguards of fairness in the administrative process in which liquor commissions are involved are insured by Hawaii's Administrative Procedure Act.²⁵ Additional safeguards might well be considered, especially in the matter of critical separation of functions. Although it has been established that administrative agencies may, because they must, exercise executive, legislative, and judicial powers notwithstanding the separation of powers doctrine, it is also widely agreed that the combination of prosecuting or investigating functions with the function of judging is a denial of due process. Three of the commissions have taken steps to deal with the problem. The Honolulu commission, through internal reorganization, has established two service sections with the investigative services section performing licensing functions and the inspectional services section performing enforcement and surveillance functions; this reorganization applies only to the investigative and inspectional staff. The approach in Hawaii and Maui is quite different. There, the county charters provide for, in addition to the liquor control commission, separate liquor control adjudication boards appointed by the mayor with the approval of the county council for five-year terms. The purely adjudicative function of the board is set forth in the charter as follows:

The . . . board shall hear and determine all complaints regarding violations of the liquor control laws of the State, or complaints regarding violations of rules and regulations established by the liquor control commission, and impose such fines or punishment as may be provided by law upon the conviction thereof.²⁶

The Honolulu innovation does not extend to prohibiting a liquor commissioner or a commission staff member involved in investigation or prosecution from participating in evaluating, hearing, or judging the case in point. It appears, however, that the Hawaii and Maui innovation, with an independent hearing board, is designed to achieve the appropriate separation necessary to achieve due process.

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The question of judicial check over liquor commission determinations also raises the issue of the kind of judicial review, by certiorari or by trial de novo, a matter of some controversy in those states which grant hearing and adjudicatory powers to the alcoholic beverage control agency.²⁷ In an action of certiorari, the court confines its review to the record kept by the agency and restricts its consideration to the question of whether the agency in reaching its determination acted within the law. Judicial review by trial de novo operates in the manner of an original hearing and requires the exercise of the court's judgment not only on questions of law but on the merits as well. The states are about evenly divided on this point with Hawaii since 1941 providing for trial de novo.²⁸ One study has clarified the issues on judicial review as follows:

Although a majority of the decisions of administrative agencies do not reach the courts, nevertheless, judicial review is necessary to prevent "abusive exercise of power in derogation of private right."²⁹ Even though judicial review is often not an effective means of compensating the party affected by the specific decision of the agency, its very existence encourages careful and dispassionate agency analysis. Yet, administrative regulation, in order to fulfill its functions, must be speedy, effective, and relatively final.³⁰

The Joint Committee of the States to Study Alcoholic Beverage Laws in its advocacy of limiting the scope of judicial review to certiorari states:

This type of review keeps from the courts . . . the mass of litigation which is likely to occur where review is on the merits and it vests in the . . . agency both the authority to maintain effective control and the clearly defined responsibility for doing so. The court may not substitute its judgment for that of the . . . agency in review by certiorari. . . . In this type of action the court . . . may: (1) affirm the decision of the . . . agency, (2) remand the matter to that agency for further proceedings, or (3) reverse or modify the decision if substantial rights of the petitioner have been prejudiced because the action of the agency was (a) arbitrary and capricious, (b) in violation of constitutional provisions, (c) based on unlawful procedure or otherwise affected by error of law, or (d) unsupported by substantial evidence as shown by the entire record as submitted . . . review (by trial de novo) discounts the value of the experience, specialized knowledge and technical competence of the . . . agency and often substitutes the opinions of a court, who may be wholly uninformed as to alcoholic beverage control, for the opinions of persons expert in this field.³¹

The counterarguments to this position support judicial review by trial de novo and emphasize the need for court protection against administrative absolutism and the lack of necessary judicial temperament on the part of administrators. The most telling argument for

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proponents of the trial de novo system overlaps into the due process area and separation of powers doctrine. When, as is usually the case, a liquor commission relies on facts gathered by its own field staff in making a determination, it is frequently difficult to demonstrate that a fair hearing and determination can be had.

7. The need for providing help to the legislature in its search for practical and efficient ways of accomplishing legislative objectives.

The legislative recommendations that are proposed by the four county liquor commissions at their annual conferences³² are the primary means used to provide help to the legislature. Under the present law, this effort is dependent on inter-county cooperation and should be maintained and regularized by legislative action. The same legislation might well serve a second important purpose of establishing a system of information exchange to implement those provisions in the state law that are intended to be uniform throughout the State. Another area of improvement under the topic of practical and efficient ways of accomplishing the objectives of the intoxicating liquor law is the devising and maintaining of meaningful records for the purpose of providing significant data that can be related to determining the validity of governmental objectives and the efficacy of the means used to achieve the objectives.

Chapter IV

ANALYSIS OF CHAPTER 159, REVISED LAWS OF HAWAII 1955: SELECTED ISSUES

The issues analyzed in this chapter are selected on the basis of their frequent appearance as subjects of Hawaii's liquor commission proceedings and as topics of concern expressed by commissioners, commission staff, and liquor industry representatives.

Minors, Intoxicating Liquor, and the Law

Every state has laws controlling the sale or furnishing of intoxicating liquor to minors, including the establishment of the minimum age at which purchases may legally be made. The laws vary considerably. In some states a young person of a given age may purchase one kind of intoxicating liquor but not other kinds; elsewhere young people may buy at a certain age if they are married but not if they are single; in one state the sex of the buyer makes a difference.

It is obvious from Table 6 that in most states the minimum legal age for purchasers of intoxicating liquor is 21 although fifteen states and the District of Columbia permit sales to those under that age. In a basic study in the field it is stated that 21 is the age usually agreed upon for the reason that:

It would appear that generally the age of 21 being the traditional legal age of majority for most purposes it was accepted as such in respect to purchases of alcoholic beverages from licensees.¹

This reasoning applies equally in Hawaii where the legal age for sales of intoxicating liquor is 20 since 20 is the age of majority in Hawaii, as well as the qualifying age for a number of other legal purposes. There are widely divergent views as to what the legal age should be² and what factors should be taken into consideration in establishing the age requirement. On the mainland United States the issue is further beclouded by the fact that jurisdictions with a minimum age of 18 have been subjected to considerable pressure from neighboring states where the minimum age is 21. Due in part to complaints from Connecticut, Massachusetts, New Jersey, Pennsylvania and Vermont, New York's Joint Legislative Committee for the Study of the Alcoholic Beverage Control Law, including a blue-ribbon advisory council, held extended hearings and sponsored elaborate research studies on the subject.³ The 1966 United States Senate hearings on measures to increase the age from 18 to 21 for purchases of wine and beer in the

Table 6

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State	Legal Age for Sale to Minors	Conditions Under Which It is Legal to Provide and Allow Minors to Drink Intoxicating Liquor
Alabama	21	No provision
Alaska	21	If given by parent
Arizona	21	No provision
Arkansas	21	No provision
California	21	No provision
Colorado	18 for 3.2 beer; 21 for other liquor	With parent's consent at home
Connecticut	21	With parent's consent at home
Delaware	21	Illegal
District of Columbia	18 for beer and wine of 14 per cent or less alcohol by volume; 21 for other liquor	Illegal
Florida	21	Illegal
Georgia	21	With written consent of parent
Hawaii	20	No provision
Idaho	20 for beer; 21 for other liquor	No provision
Illinois	21	No provision
Indiana	21	No provision
Iowa	21	If given by parent or guardian or administered by physician or dentist for medicinal purpose
Kansas	18 for 3.2 beer; 21 for other liquor	No provision
Kentucky	21	Illegal in licensed premises
Louisiana	18	Illegal
Maine	21	Over 16, with parent's consent
Maryland	21	No provision
Massachusetts	21	No provision
Michigan	21	By a physician
Minnesota	21	3.2 beer in presence of parent

Table 6 (continued)

State	Legal Age for Sale to Minors	Conditions Under Which It is Legal to Provide and Allow Minors to Drink Intoxicating Liquor
Mississippi	18 for beer and wine; 21 for other liquor	By physician or dentist in practice of his profession, by hospital for treatment of patients; by pharmacist in prescriptions; by church representative for religious ceremony
Missouri	21	With parent's consent at home
Montana	21	If prescribed by doctor; for sacramental purpose
Nebraska	21	Illegal
Nevada	21	No provision
New Hampshire	21	No provision
New Jersey	21	If acquired as gift; illegal on licensed premises
New Mexico	21	In presence of parent or guardian
New York	18	No provision
North Carolina	18 for beer and light wine; 21 for other liquor; 17 if married	No provision
North Dakota	21	If given by parent
Ohio	18 for 3.2 beer; 21 for other liquor	Home use, only if given by physician
Oklahoma	Female 18 for 3.2 beer for off-premises consumption; 21 for other liquor	No provision
Oregon	21	With parent's consent at home
Pennsylvania	21	With parent's consent at home
Rhode Island	21	Illegal on licensed premises
South Carolina	18 for beer and wine; 21 for other liquor	In presence of parent
South Dakota	19 for 3.2 beer; 21 for other liquor	No provision
Tennessee	21	Illegal
Texas	21	May possess and consume in public place in presence of parent, guardian, or spouse
Utah	21	If given by parent, guardian, or doctor for medicinal purpose

Table 6 (continued)

State	Legal Age for Sale to Minors	Conditions Under Which It is Legal to Provide and Allow Minors to Drink Intoxicating Liquor
Vermont	21	With parent's consent at home
Virginia	18 for 3.2 beer; 21 for other liquor	No provision
Washington	21	In presence of parent, guardian, or doctor
West Virginia	18 for 3.2 beer; 21 for other liquor	Illegal
Wisconsin	18 for beer; 21 for other liquor	Beer in presence of parent or guardian
Wyoming	21	No provision

Sources: Raymond G. McCarthy, Alcohol Education for Classroom and Community (New York: McGraw-Hill, 1964), pp. 27-28; Distilled Spirits Institute, Summary of State Laws and Regulations Relating to Distilled Spirits, Eighteenth edition, 1966 (Washington, D. C.: 1967), 90 pp.; various state statutes.

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District of Columbia dealt in large part with charges from Maryland and Virginia which cited the District's liquor law on age as a cause of juvenile delinquency by 18 to 20-year-olds in the surrounding states.⁴ The situation in Hawaii most analogous to this problem of neighboring states with different minimum age requirements involves those military installations in the State where 18 is the legal age for consumption of liquor.

The following excerpts from the New York and Senate hearings and reports present sharply differing attitudes on what is the wise age qualification. From the New York report:

Eighteen was selected as the legal age in this state on the recommendation of the Conway Commission in 1934. That Commission felt that at eighteen most youths achieve a degree of emancipation, either by entering college or beginning full time employment, and that frequently young persons do commence using alcoholic beverages at that age, often with parental consent. Under the circumstances, the Conway Commission reasoned, it is sensible to permit these youths to be served in premises that are operated under (Alcoholic Beverage Control) licenses and sanctions in an open, law-abiding and wholesome manner. The adoption of a higher minimum age, the Commission reported, would set the stage for drinking by youth, either furtively in unlicensed dives or otherwise in violation of law, all of which would lend glamour to the practice and so tend to defeat the purposes of control. (p. 12)

I believe that we may have overlooked the obvious by concentrating all our attention upon the Alcoholic Beverage Control Law and ignoring the remedial measures that may be available through changes in the Vehicle and Traffic Law I do not believe that any change should be made in the minimum drinking age I do not think any change is necessary. However, I am very much interested in some step that would help reduce the possibility of accidents. To this end . . . I would add (to the "implied consent law") a new clause providing a (special) standard (for chemical evidence of driving while under the influence of intoxicating liquor) in the case of a person under 21 years of age. (pp. 18-19)

I think it has been admitted and will be admitted by most witnesses before this Committee and certainly by all social scientists who study the problem, that you cannot administer a law under a democracy if the moral conscience of the people is offended by it and you cannot administer this law about drinking between the ages of 18 and 21 if it is not accepted by society and this is quite regardless of whether this law exists or obtains in all or two of the states of the Union or not, if we can say that this is a law which is unenforceable and is not acceptable to the conscience of those who would be asked to accede to it. (pp. 50-51)

A major aspect of New York's 18-year-old drinking law, which has received too little attention, is the fact that boys and girls considerably

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younger than 18 have been permitted to obtain alcoholic beverages. I recognize the difficulty of enforcing any minimum drinking age, whether 18 or 21. Experience has indicated it is altogether too easy to falsify one's age, and the facts of physiology often make it easy for 16-year-olds to masquerade as 18-year-olds and for 19-year-olds to pose as 21-year-olds. The advantage of a 21-year-old law, however, is that it is virtually impossible for boys and girls of 16 or 17 to convince anyone that they are in fact 21 years old. (p. 54)

(It is) my opinion that a person who has attained the age of 21 years is a much different person from the 18-year-old youth. It is the difference between a freshman and senior in any college. The older person has received more education, more training in moral principles and moral values. He usually has better judgment and greater and deeper respect for the law. His character is more stable and he does not possess the same desire for kicks as the younger person. . . . A teenager in my judgment does not have an absolute right to purchase alcoholic beverages. Neither our personal liberties nor our individual freedoms are absolute. Their extent must always be related to the security of the Government which provides and guarantees them. (pp. 61-62)

. . . the central issue . . . is the issue of what is the age of maturity. Some people would have us feel that this is 18, other people would have us feel that it is 21 and there are those people who might even suggest that 35 or 45 is closer to the age of maturity . . . looking at the biological facts it seems reasonably safe to state that optimal growth is reached certainly by the time that we are 18 years of age I think society offers to young people their major privileges as well as responsibilities by the age of 18. (pp. 64-65)

. . . alcohol is only one of a series of self-expressive devices our children can utilize. Our children who use alcohol mislead us into thinking it is alcohol that is the problem just as our children who speed mislead us into thinking automobiles are the problem. We have not yet allowed ourselves to believe that we should do away with our property to avoid vandalism, or to think we should do away with parents to avoid adolescent disrespect. (p. 87)

From the Senate hearing:

Beer and wine consumed by boys and girls is the cause of delinquency, dangerous driving, accidents, and death--both in the District and in the surrounding counties of Maryland and Virginia. Because Maryland forbids drinking by persons under 21, underage youths from my State flock to taverns in Washington, both to drink beer and wine and to take them back to their acquaintances at home . . . teenage drinkers wreak havoc with property and create disturbances late at night. . . . We should have learned by now that alcohol and gasoline do not mix well with mature adults; with teenagers, many of them confused and irresponsible, the combination can, in the most literal sense, be deadly. (pp. 12-13)

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Downtown is where the action is, and that's where they (young people) go, even in metropolitan areas which have a uniform drinking age, whether it is 18 or 21. And the young people come downtown because the excitement and the fun is there, whether they can get the same alcoholic beverages in their suburban hamlet or not. (p. 19)

Upon examination, 18 would seem to be the most logical time to be given the responsibility for choice when it comes to beer. This is at a time when the young men and women leave the controlled, developmental atmosphere of the home to face college, career, marriage, parenthood, or armed service with all the myriad decisions involved for their future lives. Can even a parent, much less the State, make these painful decisions for his sons and daughters? During their 18th, 19th, and 20th years, can we treat them as though they were children on the single subject of whether or not to have a beer? (p. 21)

Not all alcohol-related offenses committed by youth are equally serious. Liquor law violations are largely an artifact of state laws prohibiting the sale of intoxicating beverages to persons under twenty-one. Studies of teen-age drinking behavior indicate that these laws fail to deter early experimentation with alcohol and often lack either parental or peer-group support. . . . States should revise their liquor laws to accord more realistically with the facts of teen-age drinking. (pp. 57 and 60)

. . . sales should never be made legal anywhere in the United States of alcoholic beverages to persons under 21 years of age. . . . Whatever arbitrary age limit is set, we find that some young people begin to anticipate and test these limits. To set the limit at 18 does not solve the matter of the 16- and 17-year-old young people. They will continue to denounce the discrimination. They will try to find an older person to buy it for them, or they will attempt to secure a false identification card. (pp. 112 and 114)

To summarize these arguments, whether based on reason or emotion, they fall into the following categories:

1. The "Prohibition" argument that alcoholic consumption of all kinds is evil and that it is particularly bad for teenagers.
2. The highway safety argument that alcoholic consumption by youngsters who operate motor vehicles adds to automobile accident tolls in life, personal injury, and property damage.
3. The "forbidden fruit" argument that unduly stringent age requirements will encourage in young people a pattern of evasion of, and disrespect for, the law and civic responsibility.

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4. The "age of maturity" argument put forth variously to support an 18-year and a 20-year age requirement.
5. The enforcement argument also used in support of either of the age limits usually suggested.

Three major studies conducted to determine the drinking habits of youth are frequently cited in the literature.⁵ These studies indicated a direct relationship of drinking to age, not drinking to law--the drinking incidence number involved increased by age. By the age of 16 most of the people who were going to drink were already drinking. In Nassau County, New York, where it was known that roughly ninety per cent of the population are occasional users of alcoholic beverages, by the age of 16 about ninety per cent of the students were doing so, which means those who were going to be abstainers were already abstaining and those who were going to drink were already drinking. The studies concluded that the minimum age law exerts little, if any, retarding influence on the drinking behavior of teenagers. They found that drinking increased for 13-, 14-, 15-, and 16-year olds but that there was no appreciable rise after 16. In New York, for instance, where the legal age is set at 18, if the law were effective, one would assume there would be a tremendous rise at 18; this was not the case. The New York, Wisconsin, and Kansas research yielded consistent results: the percentage of drinking in high schools was in each area consistent with the percentage of drinking by adults in the area. It appears from the studies that the drinking patterns of college and high school students show clear correlation with parental custom, nationality, religious backgrounds, family income, and social and personal associations; and that the vast majority of young people start using alcoholic beverages in the home with parental consent and approval.

A later study done for the New York Joint Legislative Committee for the Study of the Alcoholic Beverage Control Law in 1962 and incorporated in its report resulted in conclusions generally in agreement with the earlier studies.⁶ Its authors emphasized that what is most needed as a public health effort is more general knowledge about all areas of youthful behavior and, in particular, a long-term study of children to determine the factors which lead either to alcoholism or to temperate drinking and studies of the drinking behavior of the 18- to 21-year-old group and the consequences of drinking at these ages.

The most recent study on the subject of legal drinking age, by the Cooperative Commission on the Study of Alcoholism,⁷ is reported to have included the following proposals as part of a total alcohol program:

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- It should be a national policy to promote drinking in a family setting where drinking is likely to be restrained to help prevent the development of problem drinkers.
- The legal age for buying and public drinking of alcoholic beverages should be reduced to 18 throughout the country since the 21-year age limit is largely unenforceable and creates a basically hypocritical situation.

All of the major scientific studies in their recommendations on the minimum age for drinking bolster the validity of the conclusion made by the 1952 study of the Joint Committee of the States to Study Alcoholic Beverage Laws:

The minimum age of majority in respect to the sale or service of alcoholic beverages by licensees should conform to the mores of citizens of the state and should be in substantial conformity with public thinking.

Comment:

. . . If persons under the legal age in large number use alcoholic beverages with parental permission or approval, examination of the question of reducing age would appear to be in order.⁸

The other conclusions of that study are:

1. Every person licensed to sell alcoholic beverages should be held strictly responsible for the sale, delivery or gift of an alcoholic beverage to a minor on his licensed premises.

Comment:

Only by so fixing responsibility can the state insure compliance with the prohibition against sales to minors. The licensee's obligation to take all reasonable precautions to prevent such sales should extend to his employees and he should be chargeable for any failure on their part to exercise the same high degree of care that the law requires of him. If this burden is heavy--as it undoubtedly is--it is placed upon the licensee for good cause. In accepting his license he assumes the hazard of such sales and the consequent penalties.

2. Every licensee should take all of those precautions which a prudent businessman would normally accord to a matter of primary importance to his business to assure himself that his customer is of legal age before selling or serving him an alcoholic beverage.

Comment:

Selling to minors is a matter of primary importance not only to a licensee's business but to the public interest as well. Unless a licensee is disposed to use, and in actual practice does

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use, his experience, powers of observation, knowledge of human nature, ingenuity, resourcefulness, and best judgment in ascertaining the age of every youthful patron, he evades one of his most fundamental obligations as a licensee. Due care involves searching inquiry, careful observation, and sound judgment which resolves all final doubts against making the sale or service.

* * *

4. Minor responsibility provisions are unjustifiable unless they are conducive to the promotion of true purposes of control.

Comment:

The true purposes of control are the promotion of temperance in the use of alcoholic beverages and respect for and obedience to law. To be conducive to those ends: (1) such provisions must be enforceable, and if in existence, enforced; (2) they must not make more difficult and less certain the punishment of those who sell to minors; and (3) their enforcement must not serve to destroy the reputations or blight the lives of boys and girls. Such provisions as to minor responsibility are strongly supported by some ABC [alcoholic beverage control] Administrators and vigorously denounced by others, all of whom, in reaching their respective conclusions have the same end in view, namely, the elimination of sales to minors. From their earliest days the states have been deeply concerned with the welfare of youth and it is of transcendent importance that the states be zealous, astute and circumspect in their concern for the reputations and welfare of their young people.

5. The use of documents by a licensee to assist him in restricting sales of alcoholic beverages to adults only promotes control to the extent that their use contributes to such restriction and it is a justifiable control measure only on that basis.

Comment:

Due care in determining the age of a patron whose majority is neither known nor definitely apparent to a licensee requires, as we have observed, searching inquiry. Generally this should include the production of multiple documents by the patron which identify him and set forth his age or date of birth. To serve any purpose, useful in this respect, they must be authentic, must have been issued to him by a branch of government or other responsible organization or agency and must belong to the patron. When the use of documentary evidence by a licensee qualifies, limits, or reduces the responsibility of the licensee for sales to minors to that same extent the effectiveness of the safeguards intended to prevent such sales is qualified, limited or reduced. Regardless of the severity of this interpretation, such limitation cannot be justified as a control measure until it can be shown that it has some compensating effect which inures to the benefit of control.

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6. In determining the proper age of majority in respect to sale or service of alcoholic beverages by licensees, public attitudes and convictions with reference thereto are of great importance and where not accurately known should be ascertained by objective survey and study.

Comment:

Since ABC [alcoholic beverage control] laws should be in substantial conformity with public thinking, it is important for government and the public to know what people actually are thinking. In the absence of such knowledge, public attitudes can best be ascertained through an objective survey and study.

7. There is usually available to licensees no exact formula or infallible method for ascertaining a patron's age and licensees in judging age should, therefore, leave a safe margin for error.

Comment:

It is a commonly accepted fact that among persons of the same age there is wide variation in the degree of maturity outwardly apparent during youth and adolescence. No scientific method of accurately judging age from appearance has yet been devised and the licensee who depends upon this factor alone acts at his peril. Since licensees have no legal obligation to sell alcoholic beverages to anyone of whose majority they are not certain they should resolve all such doubts by refusing service. We commend for the guidance of all licensees the slogan WHEN IN DOUBT OF A PROSPECTIVE CUSTOMER'S AGE DO NOT SELL.⁹

A number of liquor commissioners, commission executive secretaries and other staff, police officials, and judges in the State were interviewed by this writer to learn their opinions on the question of the legal age for buying and drinking intoxicating liquor in Hawaii. The consensus of the opinions, with a few exceptions, was that there should be no change in the 20-year minimum age. Most of the reasons stated in support of the existing provision dealt either with consistency in the law of minors (20 is the age of majority; it determines competency as to age for contract purposes, for marriage without parental consent, for being regularly licensed as a motor vehicle operator without parental responsibility, for executing a will, for voting) or, with speculation that decreasing the age qualification to 18 would add to enforcement problems and would operate to depress the age at which drinking starts, in fact, to 16.

The traditional approach to enforce the age restriction on sales of intoxicating liquor to minors is to impose absolute liability on licensed sellers for violation of the law. The inevitability and harshness of the penalties, which might include suspension or revocation of license, fine, or imprisonment, in cases of licensees who made

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unauthorized sales in good faith led to modifications in some states such as imposing penalties on minors for buying liquor or for misrepresenting their age. The devices used by the states to supplement the prohibition against sales to persons under the statutory age are listed below:

Alabama:	No statutory minor responsibility, but administrative regulations make it unlawful for a minor to purchase, attempt to purchase, or misrepresent his age to purchase or attempt to purchase.
Alaska:	Unlawful for minor to solicit purchase, attempt to purchase, or misrepresent his age. Good faith reliance on signed statement of age is a defense to charge of illegal sale by a licensee.
Arizona:	Unlawful for minor to purchase. Provision for age I.D. cards. Unlawful for person to present false or fraudulent I.D. card.
Arkansas:	Unlawful for minor to purchase.
California:	Unlawful for minor to purchase or to present false written evidence of age. Proof that licensee was shown documentary proof of age is a defense to criminal prosecution of proceeding to suspend or revoke license.
Colorado:	Unlawful for minor to obtain by misrepresenting age or by any other method.
Connecticut:	Unlawful for minor to purchase, attempt to purchase, or to make false statement to procure. Provision for age majority cards (\$1); unlawful to misrepresent age to procure age majority card.
Delaware:	Unlawful for minor to make false statement of age to obtain.
District of Columbia:	Unlawful for minor to misrepresent age to procure.

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Florida: Unlawful for minor to misrepresent age to induce licensee to sell.

Georgia: No minor responsibility.

Hawaii: Reliance in good faith on misleading appearance of minor may be pleaded in bar to criminal charge of selling to minor. Unlawful for minor to purchase or for adult to purchase for consumption or use of a minor.

Idaho: Individual consumer permit (50 cents annual fee) required to purchase from state store. Unlawful to make false representation to procure permit. Unlawful for minor to purchase, attempt to purchase, or to misrepresent age to purchase.

Illinois: Unlawful for minor to purchase or to misrepresent age to procure. Provision for issuance by county clerks of age I.D. cards (\$2). Unlawful to make false representation to procure card.

Indiana: Unlawful for minor over 18 to misrepresent age to purchase or procure or for minor of any age to give false written statement of age.

Iowa: Individual consumer permits (\$1 annual fee) required to purchase distilled spirits or wine from state stores. Unlawful to make false statement in procuring consumer permit.

Kansas: Unlawful for minor to misrepresent age to purchase.

Kentucky: No minor responsibility.

Louisiana: Unlawful for person under 18 to purchase.

Maine: Unlawful for minor to purchase or to misrepresent age to purchase.

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- Maryland: Unlawful for minor to misrepresent age to purchase. Proof that licensee exercised due caution to determine age may be offered as defense.
- Massachusetts: Unlawful for minor to make false statement of age to procure sale or delivery.
- Michigan: Unlawful for persons 21 to 25 to purchase without I.D. card or to give false information to procure card. Unlawful for minor to misrepresent age to procure liquor.
- Minnesota: Unlawful for minor to purchase or attempt to purchase or to misrepresent age to induce licensee to sell. Provision for age I.D. cards (\$3 annual fee). Unlawful for minor to misrepresent age to procure card.
- Mississippi: Unlawful for minor to purchase, receive, or possess in a public place or to make a false statement of age to a seller for the purpose of obtaining.
- Missouri: Unlawful for minor to purchase or attempt to purchase.
- Montana: Unlawful for minor to misrepresent age. Individual consumer permit (50 cents annual fee) required to purchase liquor from state store. Provision for issuance of age I.D. card (50 cents). Procuring and filing of signed card certifying age is a defense to charge of selling to a minor.
- Nebraska: Unlawful for minor to misrepresent age to obtain.
- Nevada: Unlawful for minor to purchase or misrepresent age to obtain. Proof that licensee required documentary evidence of age constitutes a defense to charge of selling to a minor.

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- New Hampshire: Unlawful for minor to misrepresent age to procure. Proof that minor falsely misrepresented age in writing supported by some official document of majority, minor's physical appearance such as to lead a reasonable person to believe him 21, and sale in good faith reliance thereon is prima facie evidence of innocence to charge of selling to a minor. Unlawful to sell to person 21 to 25 unless birth certificate procured and name is signed in the presence of the seller.
- New Jersey: Unlawful for minor to purchase or misrepresent age to obtain. Showing that minor misrepresented age in writing, that he gave appearance of being of age, and that the sale was made in good faith reliance upon such writing and appearance constitutes a defense to charge of selling to a minor.
- New Mexico: Unlawful for minor to purchase or receive unless accompanied by parent or guardian, or to present false documentation of age. Provision for issuance of age I.D. cards (\$3), proof of presentation of which is a defense to charge of selling to a minor.
- New York: Unlawful for minor to present or offer false or fraudulent written evidence of age to obtain.
- North Carolina: Unlawful for minor to purchase.
- North Dakota: Unlawful for minor to purchase or attempt to purchase or to misrepresent age to obtain.
- Ohio: Unlawful for minor to purchase.
- Oklahoma: Unlawful for minor to misrepresent age in writing or to present false documentation of age to induce sale.

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- Oregon: Unlawful for minor to purchase or misrepresent age to procure. Proof that minor was required to produce evidence of age and sign statement of age is admissible in defense of charge of selling to a minor. Individual purchaser permits (\$1 annual fee) are required to purchase from state stores. Provision for age I.D. cards for persons 21 to 26.
- Pennsylvania: Provision for age I.D. cards. Signed statement by holder of card in possession of licensee is a defense to civil or criminal action for selling to minor. Unlawful for minor to misrepresent age to procure liquor.
- Rhode Island: Unlawful for minor to purchase, attempt to purchase, or misrepresent age to obtain. Proof that licensee required evidence of age and that minor signed book kept for such purpose is prima facie evidence of good faith.
- South Carolina: No minor responsibility.
- South Dakota: Age I.D. cards (25 cents annual fee) required for persons 21 to 25. Unlawful to purchase when not in possession of card or to misrepresent age to obtain liquor or identification card or to attempt to purchase.
- Tennessee: No minor responsibility.
- Texas: Unlawful for minor to purchase.
- Utah: Permits (\$1 annual fee) required to purchase from state stores and package agencies. State stores and agencies may also require persons of doubtful age to execute age I.D. cards at time of purchase. Unlawful for minor to misrepresent age.
- Vermont: Unlawful for minor to misrepresent age to procure.

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- Virginia: Unlawful for minor to misrepresent age to procure. Provision for issuance of age I.D. cards.
- Washington: Provision for issuance of age I.D. cards. Proof that person presented I.D. card and was required to sign certification card is a defense to charge of selling to minor. Unlawful for minor to purchase, misrepresent age, or apply for age I.D. card.
- West Virginia: No minor responsibility.
- Wisconsin: Age I.D. cards (\$1 to \$1.25) may be obtained and must be shown on demand. Unlawful for minors to misrepresent age to obtain liquor.
- Wyoming: Unlawful for minor to misrepresent age to obtain.¹⁰

The problem of enforcing the age restriction on sales of intoxicating liquor as a means of discouraging consumption of liquor by minors suggests solutions which in themselves create problems of enforcement and administration. A minor identification system, for example, involves such problems as wholesale fraud in altered and fictitious identification cards, the lending of cards to minors by adults, and costly, elaborate administrative operations. The suggestion of prohibiting minors from entering or remaining in licensed premises, a provision which involves the same difficulties as prohibiting sales to minors, is obviously impractical for such premises as restaurants, banquet halls, clubs, or grocery and drug stores and, if applicable only to certain classes of licensed premises, is also obviously ineffective. Criticism of the Hawaii provision¹¹ that imposes a criminal penalty on a minor who purchases intoxicating liquor relies, in part, on constitutional law. The following illustration points out the advantage of penalizing a minor for possession, rather than for the purchase, of intoxicating liquor:

A criminal action is brought against a (licensee) for making a sale to a minor and as yet no charges have been brought against the minor. During the course of the trial, the prosecution calls the minor to whom the alleged sale was made as a witness and asks a question in somewhat the following form: "Will you state whether or not you purchased from the defendant the bottle of whiskey which has been marked prosecution's exhibit A for identification, and which was found in your possession while you were in the parking lot of the XYZ Club, on the night of

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August 28, 1961?" At this point, the minor may refuse to testify on the grounds that his answer may tend to incriminate him. Counsel for the minor . . . may interpose with an objection . . . to the effect that the witness has a constitutional privilege not to answer any question if his answer may tend to incriminate him. In the event the prosecution is not able to establish the fact of the sale by other means, the defendant would be released. Therefore, it may be seen that by trying to impose too many punishments, an escape route is opened to both (licensees) and minors, and the purpose of the law is defeated. However, if there were no penalties upon minors for purchasing, he could be called and could freely testify that the defendant sold the liquor to him. There would be no ground upon which the minor could invoke the privilege against self-incrimination because he is not subject to punishment for purchasing, but only for possession of intoxicants. . . . When a minor is apprehended with liquor in possession, the fact of the offense has already been established, and it is not necessary to inquire as to where he obtained it to support his conviction and, consequently for him to incriminate himself. It is highly desirable, of course, to determine the source of the liquor so that the person selling or furnishing it to him contrary to the law can also be punished. It would not be desirable to attempt to penalize both the minor and the (licensee) for the same transaction, however, if in doing so it is likely that both would escape punishment.¹²

Placing responsibility for possession of intoxicating liquor on the underage minor also closes the existing gap--there is no liquor law violation when a group of teenagers hold a beer party in one of their homes during parental absence. There would be a violation if one of the youngsters left the private residence and drank beer on the public sidewalk,¹³ but it is not illegal for a minor to possess and drink liquor if he does so on private property or even in public as, for example, in automobiles or at parks and dances.

The penalty attached to any adult purchasing intoxicating liquor for the consumption or use of a minor is the same prescribed for a minor purchasing intoxicating liquor.¹⁴ It can be argued that a distinction going to the severity of penalty is warranted for the offense of furnishing liquor to a minor when committed by any adult as contrasted to commission of the offense by a licensee. Licensees are sometimes duped into selling to a minor and may be free from intentional wrongdoing; when an unlicensed adult purchases liquor for a minor, it is, on the other hand, often at the request of the minor and usually involves an element of wilfulness and intent to violate the law.

Other areas of the Hawaii intoxicating liquor law relate to minors especially. Liquor licenses may not be issued to minors although in the case of a corporate licensee a minor may legally own

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or control up to twenty-five per cent of the outstanding capital stock.¹⁵ The prohibition against minors selling or serving intoxicating liquor on licensed premises, a prohibition that has been made more particular by rule in the counties of Maui and Hawaii and the City and County of Honolulu, was eased slightly by legislation in 1967. Act 184, Session Laws of Hawaii 1967, provided:

. . . At no time under any circumstances shall any liquor . . . be sold or served by any minor upon any licensed premises except in such individually specified licensed establishments found to be otherwise suitable by the liquor commission in which an approved program of job training and employment for dining room waiters and waitresses is being conducted in cooperation with the University of Hawaii, or the state community college system, or a federally sponsored manpower development and training program, under arrangements which ensure proper control and supervision of employees.¹⁶

The recommendation of the State Commission on Manpower and Full Employment on the exception was that it would "enable minors in properly conducted and supervised training programs to progress from bus boy to waiter or waitress as they achieve proficiency . . . (and) facilitate recruitment of local youth into hotel service entry jobs at the time they are most apt to benefit from opportunities offered by training programs; it would provide incentive for trainees, and it would open the way for higher earnings to the employee after training."¹⁷

A memorandum from the Honolulu liquor commission opposed any exception to the prohibition against minors selling or serving intoxicating liquor as follows:

The legislature in all its wisdom has seen fit to enact laws to prohibit the minor from becoming involved in the liquor business both as a licensee or as an employee who serves or sells liquor. In effect the legislature has stated that minors and liquor should not be brought together. It seems quite apparent that, having the interest of the minor in mind, the intent was to prohibit the basic exposure to liquor. There is no other way by which the objective might be accomplished.¹⁸

It is worth noting on the subject of minors, intoxicating liquor, and the law that a complete resolution of the problems involved cannot be found in the intoxicating liquor law alone. Highway safety, the family court system, criminal law involving such offenses as contributing to the delinquency of a child, and the public education system all are importantly related to society's concern about youth and drinking.

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License Classification

Liquor licenses presently authorized in Hawaii are divided into the following classes and kinds:

Class 1. Manufacturers' licenses

- Kinds: (a) beer
 (b) wine
 (c) wine manufactured from grapes or
 other fruits grown in the State
 (d) alcohol
 (e) other specified liquor

Class 3.¹⁹ Wholesale dealers' licenses

- Kinds: (a) general - all liquors except alcohol
 (b) beer and wine
 (c) alcohol

Class 4. Retail dealers' licenses

- Kinds: (a) general - all liquors except
 alcohol
 (b) beer and wine
 (c) alcohol

Class 5. Dispensers' licenses

- Kinds: (a) general - all liquors except
 alcohol
 (b) beer and wine
 (c) beer

Class 6. Club licenses - general only but excluding alcohol

Class 7. Vessel licenses - general only but excluding alcohol

Class 8. Additional vessel licenses - general only but
 excluding alcohol

Class 9. Special - limited to a term of one day on any
 occasion

- Kinds: (a) general - all liquors except alcohol
 (b) beer and wine
 (c) beer

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Class 10. Cabaret licenses - general only but excluding alcohol

In certain cases involving transfer of licenses, provision is also made for temporary, conditional licenses, limited to a term of sixty days plus one sixty-day renewal period.²⁰

The listed classes of licenses are intended to relate chronologically to the liquor industry from the point of manufacture of the liquor to the point of sale to, and in some cases actual consumption by, the consumer. However, these license classifications fail in certain particulars to relate logically to the total scheme of the Hawaii intoxicating liquor law, its administration, and the operation of the regulated industry. Two changes in the classification system have been proposed by the county liquor commissions since 1965--elimination of the class 10 cabaret license and creation of a new class, the hotel license.

The statutory distinction between a cabaret license and a dispenser's license of the general kind, both of which authorize the sale of liquor for consumption on the premises, consists of a number of specific conditions imposed on the holder of a cabaret license and the establishment of a 3 a.m. closing hour throughout the week for all cabarets. The conditions require cabaret licensees to maintain food service; provide facilities for dancing by patrons, including a dance floor and an orchestra of at least three members; and provide professional entertainment for the patrons. The difficulty of administering and enforcing such requirements is demonstrated in the following rules promulgated by the liquor commissions in attempts to refine and define the requirements (underscoring added):

City and County of Honolulu:

RULE 31. (a) A holder of a cabaret license shall provide and maintain the following minimum requirements:

- (1) Food service to patrons between the time the premises are opened for business and midnight. Food service shall mean offering to patrons regular meals consisting of at least three courses.
- (2) A dance floor, consisting of a covered area of not less than 150 square feet suitable for ballroom dancing, clearly designated and permanently set aside for such purpose.
- (3) A dance orchestra of not less than three playing members to play music during periods devoted to dancing.

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- (4) Professional entertainment for the benefit of the patrons.
- (5) No less than a total of four hours for dancing and professional entertainment between 9:00 o'clock, p.m., and 3:00 o'clock, a.m.

(b) All bars in cabaret premises, in order to operate during hours prescribed for cabarets, must confine liquor service to patrons within an area where food service and dancing facilities are available and where an orchestra and professional entertainment are both visible and audible to such patrons. Bars in such premises which do not comply with the foregoing requirements shall be allowed to operate no sooner than the prescribed opening hour for cabarets and not later than the closing hour prescribed for premises under a dispenser license.

County of Hawaii:

RULE 1.26. CABARET REQUIREMENTS.

(a) Minimum Requirements.

A holder of a cabaret license shall provide and maintain the following minimum requirements:

- (1) Food service to patrons during the hours between 9:00 p.m. and 12:00 midnight whenever the cabaret is open for business. Food service shall mean offering to patrons regular meals consisting of at least three (3) courses, with a selection from a minimum of two (2) hot entrees.
- (2) A dance floor consisting of a covered area of not less than 150 square feet suitable for ballroom dancing.
- (3) A dance orchestra of not less than three (3) playing members to play music during periods devoted to dancing.
- (4) Professional entertainment for the benefit of patrons. Professional entertainment shall be construed to mean any performance by a person or persons, other than members of the orchestra, whose principal source of income is derived from entertaining people.
- (5) No less than four (4) nights a week of professional entertainment and an orchestra, both of which shall be on simultaneous nights.
- (6) No less than a total of four (4) hours for dancing and professional entertainment between 9:00 p.m. and 3:00 a.m., on the four (4) nights of the week as required under subsection five (5) above.

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(b) Other Bars on Premises.

When two (2) or more bars are operated under a cabaret license, only bars primarily servicing cabaret patrons shall be allowed to open during the hours within which a cabaret can operate; bars not primarily servicing cabaret patrons shall close not later than the hours within which a dispenser can operate.

County of Maui:

RULE 25. (a) The holder of a cabaret license shall provide and maintain the following minimum requirements:

- (1) Food service to patrons between the time the premises are opened for business and one hour before closing. Food service shall mean offering to patrons regular meals consisting of at least a substantial portion of the meal served for supper.
- (2) A dance floor of such design and area as shall be approved by the Commission.
- (3) Public dancing, professional entertainment and a dance orchestra of not less than three playing members to play music during periods devoted to dancing, which shall be provided at least on three nights of each week between the hours of 9:30 p.m., and one hour before closing time. Professional entertainment for the benefit of patrons shall be subject to the provisions of Rule 16 [Entertainment Permits]. For the purpose of this rule, the term "week" shall mean a period of seven successive days beginning with Sunday up to and including Saturday.
- (4) Any minimum requirement for a cabaret premises or any portion of such requirement may be temporarily waived upon the showing of good cause therefor and upon a written conditional approval of the Commission.

(b) All bars in cabaret premises, in order to operate during hours prescribed for cabarets must confine liquor service to patrons within an area where food service and dancing facilities are available and where an orchestra and professional entertainment are both visible and audible to such patrons. Bars in premises which do not comply with the foregoing requirements shall be allowed to operate only during the hours prescribed for dispenser premises.

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County of Kauai:

RULE NO. 25. Minimum requirements for Cabaret establishments shall be as follows:

- (a) Food shall be available to patrons consisting of not less than short order meals from the time the premises are opened for business to midnight. Short order meals shall mean food items such as pork chops, chop steak, hamburger, or plain steaks, ham and eggs, fried fish, combined with such condiments as french fried potatoes, rice, salad, coffee, iced tea, etc.; however, such items as hors d'oeuvres, chasers, saimin, sandwich, etc. do not qualify into the category of short order meals.
- (b) Cabarets shall provide a dance floor for dancing by the patrons, and music shall be furnished by an orchestra consisting of not less than three musician members, and professional entertainment is provided for the patrons in the way of floor shows not less than three (3) nights a week in a given week beginning on Sunday and ending on Saturday. The Commission reserves the right to regulate and control professional entertainment in Cabarets or any other dispenser establishments. The licensees will be held strictly accountable for the conduct of all entertainers in the licensed premises. Cabarets shall submit the names of the professional entertainers, the name of the orchestra and to specify the dates of the three (3) nights when Cabaret floor shows will be staged and the time of each show in writing to the Commission weekly not later than 4:00 o'clock p.m., Wednesday of each week. Provided, further, the mere fact that nominal payment is made to a performer does not necessarily qualify such performers as professionals under the provisions of this Rule.

Even with the specificity supplied by commission rules, the cabaret class of license continues to present complicated problems, at times seemingly ridiculous. Should commissioners spend hours of involved deliberation on whether frozen "TV" dinners stored in the freezer compartment of a cabaret's refrigerator constitute "offering food service to patrons"; or a notice that prepared food will be ordered from an outside business at the request of a patron? There appears no valid reason for the cabaret license classification. Food service will or will not be provided by a licensee in response to patrons' demands. Entertainment, including dancing by patrons, is offered at many premises operating under dispensers' licenses and is in any case subject to close commission regulation under a permit system. The other distinguishing feature of a cabaret license, the statutory closing hour of 3 a.m., likewise does not appear to be justified by any valid reason as an exception to the general power given to the commissions to fix the hours for the transaction of

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business by licensees. Consistent with the "home rule" philosophy of the liquor commissions, the commission in each county is the logical body to provide by rule for authorized hours of service that meet community needs, standards, and customs.

It is said that classification, in terms of legislation, must be made with reference to similarity of situation, circumstances, requirements, and convenience best to serve the public interest and to be valid, must imply a reasonable and just relation to the act with respect to which the classification is made.²¹ The legislative classification of liquor licenses appears to miss the mark of valid classification in providing for only a single class, that of dispensers' licenses, for hotels and for restaurants and bars. Although the license classification is intended to facilitate effective control and regulation of the liquor industry by providing for laws and rules to meet the various kinds of liquor industry businesses and operations, it fails to take into account substantial differences between the liquor business in a hotel and that in a restaurant or bar. The liquor business as operated by hotels is distinct from other liquor businesses operating under dispensers' licenses--hotels provide food, beverages, and entertainment in public and private rooms to transient guests, permanent residents, and the general public; hotels frequently provide for more than a single bar facility; some hotels provide for package sale of intoxicating beverages as well as for sales by the drink; hotels provide room service; and usually hotels include a larger physical area than bar or restaurants.

Because of the nature of a hotel and its operations and because of legal rules and concepts particularly applicable to hotels, regulation of hotel liquor business cannot be administered in an even-handed way by the liquor commissions under existing intoxicating liquor law and commission rules for the control and regulation of dispenser licensees. Some of the incongruous complexities of lumping hotels into the same class as restaurants and bars are pointed out in the following provisions of the Hawaii intoxicating liquor law (references are to the Revised Laws of Hawaii 1955):

Section 159-1 defines "licensee" to include all agents, servants, and employees of the holder of a license. This definition, if applied strictly to a hotel licensee, would ascribe all of the responsibilities of a licensee under the liquor laws to such hotel employees as grounds keepers, room maids, maintenance engineers, and beach boys.

Section 159-16(j) authorizes the liquor commission to prescribe the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of dispensers' licenses. This authority in the case of a hotel licensee extends to every employee of

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the hotel whether or not actually working in connection with the service or sale of intoxicating liquor.

Section 159-19 authorizes liquor commissioners and inspectors to visit and have access to every part of the premises of every licensee for purposes of examination, inspection, or inquiry without notice and without search warrants or other legal process. This authority in the case of a hotel licensee presumably would extend to the rooms of permanent and transient hotel guests. (See also section 159-78)

Section 159-40 prohibits a licensee from having or keeping any liquor for sale or consumption on or in connection with his licensed premises. This prohibition extends to the resident manager of a hotel who lives on the premises and has his own liquor in his own quarters for personal consumption.

Section 159-77 prohibits the selling or furnishing of liquor to a minor, a person under the influence of liquor, or a person known to the licensee to be addicted to the excessive use of intoxicating liquor; prohibits the consumption of liquor on licensed premises except as permitted by the terms of the license; and prohibits a licensee from knowingly permitting a person under the influence of liquor to remain on the licensed premises. These prohibitions, in the case of a hotel licensee extend to all rooms of hotel guests and all occupants of the rooms. The occasional and obviously wise practice of a hotel manager encouraging a guest to return to his room after drinking instead of taking an automobile drive or some other activity is clearly illegal since the guest rooms are part of the licensed premises, and a person under the influence of liquor is not only knowingly permitted to remain on the premises, he is encouraged to remain. (See also section 159-83)

Section 159-81 provides that, except for manufacturers, wholesalers, or retail dealers, there shall be no action for debt on account of the sale on credit of any liquor. This provision does not take into account the prevalent practice of using credit cards for the payment of hotel bills.

Other complications caused by including hotel licensees under dispensers' licenses are found in liquor commission rules such as those fixing the hours during which licensed premises may be open for the transaction of business, those prohibiting vending machines on dispenser premises, those requiring that all parts of the premises be well lighted, or those prohibiting the "stacking" of liquor or service of more than one drink at a time to an individual.

This analysis of laws, rules, and practices relating to the hotel liquor business points to the need for a hotel license devised to fit the requirements of hotel operations, responsive to both the privileges and restrictions applicable to such operations, and subject to a reasonable fee commensurate with the business.

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Advertising

Although the Twenty-First Amendment to the United States Constitution placed primary responsibility for intoxicating liquor control with the states, the interstate nature of certain of the liquor industry functions makes state control alone inadequate. The Federal Alcohol Administration Act, administered under the Alcohol and Tobacco Tax Division of the Internal Revenue Service, is responsible for regulating the labeling and advertising of alcoholic beverages in interstate commerce. The federal regulations were incorporated with a few exceptions and modifications into a uniform code recommended for adoption by the states.²² The Act and the code both refer to mandatory and prohibitory statements in liquor advertising. The mandatory statements are required to inform the consumer while the prohibitory statements are intended to:

- (1) Prohibit advertising which misleads the purchaser.
- (2) Prohibit advertising which induces minors to purchase or to consume alcoholic beverages.
- (3) Prohibit advertising which associates products with illustrations or statements that may encourage improper conduct among the youth (e.g., inordinate emphasis upon sex).
- (4) Prohibit advertising which may encourage excessive consumption (e.g., advertising of unreasonable reduction of price).
- (5) Control of the advertising relationship between the producer or wholesaler and the retailer to discourage "tied house" implications.²³

Table 7 which identifies state action on a few aspects of liquor advertising shows that despite the fact of nineteen states and the District of Columbia having substantially adopted either the Federal Alcohol Administration regulations (FAA) or the Joint Committee of the States uniform advertising code (uniform code), the general picture is one of inconsistency rather than uniformity.

STATE CONTROL OVER ADVERTISING OF INTOXICATING LIQUOR

Table 7

State	In Newspapers and Magazines	On Billboards	Furnishing Advertising Material to Retailers by Manufacturers or Wholesalers
Alabama	Approval required prior to publication	Prohibited	Prohibited
Alaska	No restrictions or specifications	No restrictions or specifications	No restrictions or specifications
Arizona	FAA	FAA	If no inducement to retailer involved; consumer novelties of nominal value only
Arkansas	FAA	FAA adopted	Consumer novelties prohibited; prior approval required for retailer novelties
California	Material tending to encourage minors or immature persons to drink, offer of gift or premium, or adjacent to premises for sales for consumption on premises; if over 720 sq. in., not to be located on premises for consumption; or adjacent to premises for sale of material and decorations not over \$15 excluding installation; premises for sales for consumption on premises; signs not over 630 sq. in.; no value except as advertising	Premises for sales for consumption off premises; signs and promotion material and decorations not over \$15 excluding installation; premises for sales for consumption on premises; signs not over 630 sq. in.; no value except as advertising	Items without significant utilitarian value costing not over 15 cents per unit (novelties such as ash trays, coasters, napkins, stirrers, or pouters are considered to have significant value; recipe booklets, sport schedules, and the like may be furnished on approval of the department and one calendar costing not over 30 cents for use by retailer
Colorado	No inducement by lottery, offer coupon, merchandise of value	(Same as in Newspapers and Magazines)	Napkins, coasters, menu sheets, ash trays, or lamps, and may sell glasses, clocks, picnic coolers, matches, and paper cups
Connecticut	Uniform code, plus prohibition against refund guarantee or reference to Easter, Holy Week, Mother's Day, Santa, or biblical location on outside of \$100 a year per brand exclusive of installation cost; no value except as advertising	Signs and retail advertising specialties up to \$25 per brand in use at one time exclusive of installation	Retailer, not over \$50 a year; consumer, nominal value and not over \$50 a year; consumer novelties such as circulars, handbills, recipe booklets, pamphlets, openers, and match books may be furnished to retailers for unconditional distribution to consumers
Delaware	No offer of gift, prize, coupons, or premiums; approval required prior to publication if price referred to	(Same as in Newspapers and Magazines)	Of nominal value without charge

Table 7 (continued)

State	In Newspapers and Magazines	On Billboards	Furnishing Advertising Material to Retailers by Manufacturers or Wholesalers		
			Inside Material	Window Display	Novelties
District of Columbia	Uniform code, plus prohibition against offers of gift, prize, premium or special inducement or reference to Easter, Holy Week, Mother's Day, or Santa or depiction of children or objects suggesting presence of children, or illustration of immodest or undignified women, group, or festive scene or appealing to children	No restrictions or specifications	(Same as In Newspapers and Magazines) but no article over \$10; approval required prior to installation	(Same as Inside Material) but no in-terminently illuminated sign or reference to price	Retailer, no article over \$10 and approval required prior to furnishing; consumer, only items attached to bottle in a way to require breaking of seal to remove
Florida	Prohibition against use in advertisement of label which does not conform to FAA labeling regulations	No restrictions or specifications	Signs with no value except as advertising	Name of manufacturer may appear only once on lighted sign	Of nominal utilitarian value; approval required prior to furnishing
Georgia	Prohibition against identification of a retailer, testimonials, Sunday ads, immodest portrayal of women or women holding or consuming drink or portrayal of Santa or comic character, reference to price or school or college or athlete or athletic contest of school or college, coupons or premiums or July 4, Thanksgiving, Christmas, Easter, Mother's Day, Father's Day, Georgia Day, Memorial Day or Labor Day; maximum lineage of 1200; approval required prior to publication	Prohibited	(Same as In Newspapers and Magazines) except no prior approval required; no wall displays or obstructions of visibility from the street	Prohibited	Recipe books and pamphlets; approval required prior to furnishing
Hawaii	No restrictions or specifications	Billboards generally limited; no special restrictions or specifications for liquor	Subject to commission rules	Subject to commission rules	Subject to commission rules
Idaho	FAA plus prohibition against prices or code numbers	Prohibited	Limited materials on specific approval of state dispensary	Prohibited	Retailer novelties such as napkins, menu cards, cocktail lists, or ash trays
Illinois	FAA plus prohibition against illustrations of children or material of special appeal to children	No restrictions or limitations	Chicago, in use at one time, signs not over 1400 sq. in. and \$75 excluding installation; elsewhere, signs not over \$25.	Chicago, not over \$50 in use at one time; elsewhere, included in \$100 (under Inside Material)	Retailer novelties included in \$25 (under Inside Material); book matches not restricted

Table 7 (continued)

Furnishing Advertising Material to Retailers by Manufacturers or Wholesalers			Novelties	
State	In Newspapers and Magazines	On Billboards	Inside Material	Window Display
Indiana	Prohibition against offers of financial award as inducement to purchase; price may be advertised only if brand covered by fair trade contract	Prohibition against illustration of minors, promotion games of chance, or offer of financial award to purchasers; prohibition against location within 200 ft. of retail premises or church or school	Unilluminated signs only not visible from exterior; approval required prior to installation	Consumer novelties such as calendars, athletic schedules, maps, recipes; approval required prior to furnishing
Iowa	Uniform code, plus prohibition against prices, code numbers, or reference to contests, prizes, or premiums; advertising permitted only in media engaged in interstate commerce	(Same as in Newspapers and Magazines) plus prohibition against material appealing to children or depicting juveniles, persons drinking, athletes, athletic events, competitive sports, or women in immodest or vulgar or sensuous manner, or testimonials or use of word "bar-room" or "saloon" or "boozie" or portrayal of biblical character, of biblical character, Easter, or religious sign or symbol or use of name of Christmas, New Year's Day, Mother's Day, Father's Day, Thanksgiving, Memorial Day, Independence Day, or state, national, or local commemorative days or animate characters associated with such names; prohibition against location within 300 ft. of church, school, playground, or parks or within "dry" areas or in other than business or industrially zoned areas	Prohibited	No brand advertising except on menus and price lists

Table 7 (continued)

State	In Newspapers and Magazines	On Billboards	Inside Material	Window Display	Novelties
Kansas	Prohibition against beneficial claims or testimonials or reference to prices, recipes, Mother's Day, Father's Day, Memorial Day, Independence Day, Thanksgiving, Christmas, Easter, or Labor Day or illustration of women, children, family scenes, or retailer or wholesaler premises	Prohibited	Prohibited	Prohibited	Prohibited
Kentucky	FAA prohibitory statements	FAA prohibitory statements	FAA plus prohibition against signs visible from exterior in 1st and 2nd class cities	(Same as Inside Material)	Only printed material such as calendars, athletic schedules, or recipes which have no utilitarian value to retailer
Louisiana	No restrictions or specifications	No restrictions or specifications	No restrictions or specifications	No restrictions or specifications	No restrictions or specifications
Maine	FAA, plus prohibition against undignified or improper illustrations or inducements to minors or depictions of Santa, Christmas trees, or gifts at fireplace or associations with juveniles or use of word "Easter", "Noel", "Christmas", "Yule", or "Santa Claus" or naming of licensees; approval required prior to publication	(Same as In Newspapers and Magazines)	Prohibited	Prohibited	Prohibited
Maryland	Uniform code	No restrictions or specifications	No item over \$5; advertising feature must be paramount and may not supplant normal business expense	(Same as Inside Material)	(Same as Inside Material) and items such as stilters, pouters, ash trays, serving trays, or cocktail napkins in limited quantities are not considered as supplanting normal business expense of retailers
Massachusetts	Prohibition against portrayal or reference to Santa or biblical characters, events, or phrases; price reference limited to statement of price of specified quantity	(Same as In Newspapers and Magazines)	Prohibition against inducement or price visibility from exterior	(Same as Inside Material)	If no inducement to retailer

Table 7 (continued)

State	In Newspapers and Magazines	On Billboards	Furnishing Advertising Material to Retailers by Manufacturers or Wholesalers	
			Inside Material	Window Display
Nichigan	Prohibition against offers of contest prize or references to deceased presidents or Holy days or depictions of Santa, Christmas trees, or gifts at fireplace or association with juveniles or use of words "Easter", "Noel", "Christmas", "Yule", or "Santa Claus" or naming of licensees; approval required prior to publication	(Same as In Newspapers and Magazines)	Prohibited	Prohibited
Minnesota	Uniform code for publications generally circulated in other states, plus prohibition against references to price unless brand reference registered under price posting law or pecuniary appeal; in-state publications subject to prohibitions against immodest illustrations of female or one in provocative dress or consuming drink, portrayals of child or family scene suggesting presence of child, appeals to immature persons, health claims, references to biblical characters, public officials, ex-presidents, prizes, premiums, novelties, or pecuniary appeal, and no advertisements on Sunday, New Year's, Good Friday, Independence Day, Memorial Day, Thanksgiving, or Christmas; approval required prior to publication	Prohibited in "dry" area (same as In Newspapers and Magazines), plus prohibition against visibility from church, school, or playground; approval required prior to publication	(Same as In Newspapers and Magazines) except prohibited matter may be displayed if not visible from exterior; approval required prior to installation	(Same as In Newspapers and Magazines) plus prohibition against affixing to window pane; approval required prior to installation
Mississippi	Prohibited	Prohibited	Prohibited	Prohibited
Missouri	Uniform code, plus prohibition against offers of coupon, premium, prize, or rebate as inducement to purchase	No restrictions or specifications	Displays, signs, and trim up to \$50 a year including installation; no value except as advertising	Cost included (under Inside Material); no value except as advertising; no liquor or container in window or price or container size visible from exterior
Montana	Uniform code	Prohibited	Prohibited	Prohibited

Table 7 (continued)

State	In Newspapers and Magazines	On Billboards	Furnishing Advertising Material to Retailers by Manufacturers or Wholesalers
Nebraska	No restrictions or specifications	No restrictions or specifications	Signs up to 28 sq. ft. with brand name not over 300 sq. in. costing not over \$100 a year
Nevada	No restrictions or specifications	No restrictions or specifications	Visible to persons inside the premises
New Hampshire	Prohibition against advertisements in religious, fraternal, educational, patriotic, social, civic, or liquor retail publication or references to price, Easter, or Mother's Day or illustrations of State House, biblical character, or women holding or consuming drink or in provocative dress or undignified or immodest or suggestions of curative or therapeutic effect or offers requiring purchase of liquor or inconsistent with safety or safe driving or references to minors or inducements to minors or consumer contests or prizes	Prohibited	Not over 500 sq. in., no illumination, no reference to bargains or savings; approval required prior to installation
New Jersey	Prohibition against representations of curative or therapeutic effect, deceptive statement, illustrations of female not dignified and modest and in good taste, portrayals of children or objects suggesting presence of children, references to reward or guarantee or biblical character, identifications of retailer, or appeals to minor	(Same as In Newspapers and Magazines)	No utilitarian value up to \$100 a year excluding installation
New Mexico	No restrictions or specifications	Up to \$150 in use at one time including installation; no value except as advertising	Cost included (under Inside Material) but not to exceed \$25 excluding installation at one time
			Items of nominal cost not exceeding \$50 a year for retailer and \$500 a year for consumer novelties; unlisted items require written approval
			Retailer novelties up to \$150 a year such as ash trays, coasters, menu cards, meal checks, napkins, thermometers, clocks and calendars; consumer novelties without limitation such as ash trays, openers, shopping bags, matches, recipes, wine lists, leaflets, blotters, post cards, and pencils
			Consumer items of value not exceeding 10 cents each; approval required prior to furnishing
	No restrictions or specifications	No restrictions or specifications	Limited to coasters, trays, openers, napkins, and pourers
		Prohibited	Prohibited

Table 7 (continued)

State	In Newspapers and Magazines	On Billboards	Furnishing Advertising Material to Retailers by Manufacturers or Wholesalers		
			Inside Material	Window Display	Novelties
New York	No restrictions or specifications	No restrictions or specifications	Premises for sales for off-premises consumption, prohibited; others, up to 270 sq. in. and \$100 a year per brand excluding installation, no value except as advertising, approval required prior to installation	(Same as Inside Material) except not over \$25 excluding installation at one time	Off-premises consumption, recipe and match books; on-premises consumption, items of nominal value not over \$50 a year for retailer novelties and \$50 a year for consumer novelties
North Carolina	Restricted to facsimile of bottle or label and to price, proof, age, and formula if blend; only one brand per advertisement; approval required prior to publication	Prohibited	No licensees	No licensees	No licensees
North Dakota	No restrictions or specifications	No restrictions or specifications	Signs, displays, and novelties not to exceed \$25 a year	Cost included (under Inside Material)	Cost included (under Inside Material)
Ohio	Prohibition against exploitation of female form or using it as primary theme or portrayals of military subject or Santa or identifications of retailer or solicitations of mail order or offers of prize in contests; required to be dignified and in good taste; approval required prior to publication if portrayal of woman, child, religious subject, festive event, or the like	(Same as In Newspapers and Magazines) plus prohibition against location on exterior of retail premises or near church, school, or playground	Lighted signs limited to 2 not over 324 sq. in. each; approval required prior to installation of lighted advertisement, no limit on other advertisement; prohibition against price visibility from exterior	(Included under Inside Material)	Retailers, pourers and openers only; consumers, key chains, good luck charms, athletic schedules, and the like only by manufacturer or wholesaler direct to consumer
Oklahoma	Prohibition against references to price or savings, where liquor may be purchased, contests, prizes, premiums, recipes, or schools or illustrations of children, family scenes, or biblical characters	(Same as In Newspapers and Magazines) plus prohibition against location within 300 ft. of school, church, or licensed premises	Prohibited	Prohibited	Prohibited
Oregon	Prohibition against Sunday ads, testimonials, exploitation of the female form or using it as primary theme, primary appeals to children or references to lottery, prize, premium, Christmas, Easter, Thanksgiving, Mother's Day, Father's Day, Memorial Day, Veterans' Day, or animate or biblical characters	Permitted in cities if not prohibited by local ordinance (same as In Newspapers and Magazines)	Prohibited	Prohibited	Prohibited

Table 7 (continued)

State	In Newspapers and Magazines	On Billboards	Furnishing Advertising Material to Retailers by Manufacturers or Wholesalers	Window Display	Novelty
Pennsylvania	associated with these days or inferences of food or medical value or depictions of athletic event, athlete, or competitive sport, person drinking, child, or family scene; price information must be secondary; approval required prior to publication	Prohibited on lot or building occupied by retail licensee	Up to \$20 at one time and \$10 per item; prohibited against price visibility from exterior; approval required prior to installation; items for use in window and inside must meet both requirements	One sign or display per manufacturer not to exceed 300 sq. in.; prohibition against price visibility from exterior; approval required prior to installation; items for use in window and inside must meet both requirements	Of nominal value, not over \$1; approval required prior to furnishing
Rhode Island	Prohibition against references to price	(Same as in Newspapers and Magazines)	No restrictions or specifications	Prohibition against price advertising visible from exterior	Of no great value
South Carolina	FAA	Prohibited	No value except as advertising	Prohibited	Prohibited
South Dakota	Prohibition against references to price or offer of premium or gift to induce purchase	(Same as in Newspapers and Magazines)	No value to retailer except as advertising; inside Material) but not over \$15 in use at one time excluding installation; approval required prior to installation	Included in \$100 (under Retailer novelties up to \$15 a year for use in windows and \$30 elsewhere such as trays, coasters, menu cards, meal checks, napkins, back bar mats, and calendars primarily valuable as advertising; consumer novelties may be furnished to retailers for unconditional distribution to consumers such as ash trays, openers, corkscrews, paper shopping bags, matches, recipes, wine lists, leaflets, blotters, post cards, and pencils	Consumer novelties only such as calendars, recipes, sporting guides, and racks, pumps, and pointers with certain containers; approval required prior to furnishing
Tennessee	Uniform code, plus prohibition against references to price or pecuniary appeal	Prohibited in "dry" counties; (same as in Newspapers and Magazines) plus prohibition primarily as advertising; approval required prior to installation	(Same as in Newspapers and Magazines); valuable papers and Magazines) (Same as in News-	(Same as in News-	

Table 7 (continued)

State		In Newspapers and Magazines		On Billboards		Furnishing Advertising Material to Retailers by Manufacturers or Wholesalers		Novelties	
Texas	F&A, substantially, plus prohibition against offers of prize, premium, or gift	(Same as in Newspapers and Magazines); permit required if within 200 ft. of retail premises	No special sign or display made to fit particular wall space; no decorative materials; no utilitarian signs; no utilitarian value; approval required prior to installation	Prohibited within 6 in. of any window; no utilitarian value; approval required prior to installation	Prohibited within 6 in. of any window; no utilitarian value; approval required prior to installation	Prohibited within 6 in. of any window; no utilitarian value; approval required prior to installation	Prohibited within 6 in. of any window; no utilitarian value; approval required prior to installation	Prohibited within 6 in. of any window; no utilitarian value; approval required prior to installation	Prohibited within 6 in. of any window; no utilitarian value; approval required prior to installation
Utah	Uniform Code, plus prohibition against references to price or code numbers	Prohibited	No licensees	No licensees	No licensees	No licensees	No licensees	No licensees	No licensees
Vermont	F&A, plus prohibition against references to code numbers	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Virginia	Restricted to facsimile of bottle and front label, brand name, proof, age, type, retail price, manufacturer, method and place of distillation, and type of grain used; size limited to 800 agate lines; prohibition against color or emphasis by slanting bottle, varying size of type, or angled type; approval required prior to publication	Prohibited	No licensees	No licensees	No licensees	No licensees	No licensees	No licensees	No licensees
Washington	Prohibition against references to contest, prize, or premium or identifications of retailer	(Same as in Newspapers and Magazines)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
West Virginia	Uniform code, plus prohibition against encouragement of minors	Prohibited	No licensees	No licensees	No licensees	No licensees	No licensees	No licensees	No licensees
Wisconsin	No restrictions or specifications	No restrictions or specifications	Premises for sales for off-premises consumption, no restrictions; signs only, not to exceed \$25 a year	(Same as Inside Material) and cost included	Off-premises consumption, no restriction; others, no value except as advertising	Off-premises consumption, no restriction; others, no value except as advertising	Off-premises consumption, no restriction; others, no value except as advertising	Off-premises consumption, no restriction; others, no value except as advertising	Off-premises consumption, no restriction; others, no value except as advertising
Wyoming	Uniform code, plus prohibition against references to retail price	No restrictions or specifications	Signs only not to exceed \$200	Cost included (under Inside Material)	Retailer and consumer, of small intrinsic value	Retailer and consumer, of small intrinsic value	Retailer and consumer, of small intrinsic value	Retailer and consumer, of small intrinsic value	Retailer and consumer, of small intrinsic value

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The Hawaii law on liquor advertising provides:

The commission may prescribe the character and extent of all advertisements, posters or signs which may be posted or maintained in or about the licensed premises.

The word "saloon" shall not be used in any advertisements, posters or signs to describe the liquor business or the licensed premises of any licensee.²⁴

To implement this provision, the commissions have promulgated the following rules:

City and County of Honolulu:

RULE 13. No advertisements, posters or signs shall be in or about licensed premises without the approval of the Commission. Licensees shall not, directly or indirectly, cause obscene or immoral advertising matter to be distributed either on or from the premises or elsewhere.

Any exterior sign or poster which contains liquor advertising, either in whole or in part, shall not exceed 9 square feet in area. No exterior sign or window sign shall advertise any liquor by brand name nor contain liquor advertising in letters of more than 12 inches in height. No more than one exterior sign or poster containing liquor advertising shall be permitted for each licensed premises. Provided, however, where the licensed premises front on more than one street such premises shall be limited to no more than two exterior signs containing liquor advertising.

For the purpose of this rule, words such as "bar" or "cocktail" or the like shall be considered liquor advertising; an "exterior sign" shall be defined as one that is maintained upon or adjacent to the outside of any licensed premises; and a "window sign" shall be defined as one that is permanently installed on an exterior window of a licensed premises and visible from the street. Nothing in this rule shall be construed as applying to window displays of a temporary nature.

* * *

RULE 18. If a window or other advertising display of liquor is desired on the licensed premises, a space must be set aside especially for such display. The display of liquor by any licensee on other than licensed premises is prohibited, provided, however, the display of liquor at any fair, product show or similar exhibition by the holder of a manufacturer's or wholesale dealer's license is not prohibited.

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County of Hawaii:

1.29. Advertisements, Posters, Signs.

- (a) Interior. No advertisements, posters or signs shall be in or about the licensed premises without the approval of the Commission. Licensees shall not, directly or indirectly, cause obscene or immoral advertising matter to be distributed on the premises.
- (b) Exterior. Any exterior sign or poster which contains liquor advertising, either in whole or in part, shall not exceed nine (9) square feet in area. No exterior sign or window sign shall advertise any liquor by brand name nor contain liquor advertising in letters of more than twelve (12) inches in height. No more than one exterior sign or poster containing liquor advertising shall be permitted for each licensed premises. Provided, however, where the licensed premises front on more than one street such premises shall be limited to no more than two exterior signs (no more than one on each street) containing liquor advertising.
- (c) Definitions. For the purpose of this rule, words such as "bar, tavern, cocktail" or the like shall be considered as liquor advertising; and "exterior sign" shall be defined as one that is maintained upon or adjacent to the outside of any licensed premises; and a "window sign" shall be defined as one that is permanently installed on an exterior window of a licensed premises and visible from the street. Nothing in this rule shall be construed as applying to window displays of a temporary nature.
- (d) Exceptions. Any exterior or window sign which is installed and in use at the time this rule is adopted may be continued, provided that any change, alteration, improvement or relocation of the non-conforming sign must comply with the requirements of this rule.

County of Maui:

RULE 21. On liquor licensed premises, no exterior or interior advertising designed and so placed as to be clearly visible from the street shall be allowed without the approval of the Commission other than the name of the establishment, the type of license held by it, and the display of the merchandise sold under such license. The aggregate area of all exterior advertising signs or boards shall not exceed 24 square feet. All lettering on signs shall be approximately of the same size and no particular word shall be given prominence.

In addition, the three counties of Honolulu, Hawaii and Maui provide that:

No retail licensee shall, directly or indirectly, offer, furnish, deliver or give away any free goods, gratuities, gifts, prizes, coupons, premiums, or other article or thing of value to any consumer in connection

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with the sale of any liquor. Articles of nominal value and necessary for the proper opening of containers are exempt from this provision.²⁵

This rule has been promulgated pursuant to the minimum consumer resale price law, "to prevent its circumvention by the offering or giving of any rebate, allowance, free goods, discount or any other thing or service of value".²⁶ In this connection it is noted that neither the legislature by law nor any commission by rule has clarified the question of whether or not the practice of some retail dealers' licensees absorbing the general excise tax instead of requiring its payment by the liquor purchasers is a circumvention of the minimum consumer resale price law.

Intoxicating liquor advertising in Hawaii is subject to regulation not only by the Federal Alcohol Administration Act, the state intoxicating liquor law, and liquor commission regulations, it is also subject to such other statutes as the Hawaii Food, Drug and Cosmetic Act²⁷ and false advertising laws.²⁸ Furthermore, self-regulation is practiced by the three sectors of the liquor industry, imposed by their respective trade associations.

The advertising code of the Distilled Spirits Institute includes: (a) no advertising of distilled spirits on radio or television; (b) no advertising via billboards or other media near any military or naval establishment; (c) no advertising in any publication bearing a Sunday dateline, or in any religious publication; (d) no portrayal of women in liquor ads which show them drinking or holding drinks (until 1958, the institute forbade all pictures of women in such advertising); and (e) no paid "plugs" or "brand mentions" in any play, motion picture, television or radio program.²⁹

The U. S. Brewers' Association issues Recommended Advertising Standards to its member companies such as (a) any appeal to children or minors is avoided, and minors are never referred to on radio, television, or in print; (b) tavern and restaurant scenes are always shown in an atmosphere of respectability; (c) the so-called "cheesecake" or sex angle is never stressed, and even mild kissing scenes are not permitted; and (d) words which imply that our product gives a "lift" or is "zippy" are avoided.³⁰

The Wine Institute issues a Statement of Advertising Principles as a guide and recommends rules that include (a) no featuring of athletes in wine advertising, or any suggestion that wine aids athletic prowess; (b) no appeals to children, or use in advertising of characters with child appeal, e.g., Santa Claus; (c) no suggestions,

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in wine advertising, of any connection with contemporary religion; (d) no advertising of wine as part of the observance of Memorial Day or Armistice Day although it is permissible to suggest wine for the celebration of such holidays as Christmas, New Year's, Fourth of July, etc.; (e) avoidance of the use of sound trucks or sky writing in wine advertising.³¹

The "home rule" concept of liquor law administration, zoning law, and outdoor advertising in the State would seem to encompass those particulars of liquor advertising now regulated by the counties, particularly as to advertising in or about licensed premises. However, if advertising regulation is to be extended to such areas as newspaper and magazine copy, the regulation should be uniform throughout the State and be based on either the Federal Alcohol Administration regulations or the Joint Committee of the States uniform advertising code. The problem is stated in the following remarks:

Although advertising copy of producers, importers, and wholesalers, in newspapers and magazines of national circulation, is required to meet Federal requirements, there is no assurance to the advertiser that his copy, if prepared to meet Federal requirements, will also meet State requirements. There have been instances where national copy could not appear in newspapers and magazines, published and distributed within an individual State, without modification to meet the more stringent requirements of that State.

In any such case, the advertiser has the choice of modifying his advertisement, at additional cost to him, or declining to advertise at all. In the latter event, which so often occurs, the advertising revenue is lost to the local publishers; yet the advertisements receive substantial circulation within the State by way of national media or out-of-State newspapers. They can't be kept out.³²

Some dogmatic prohibitions in liquor advertising that have been widely accepted by the industry and state law are now being questioned. The Cooperative Commission on the Study of Alcoholism,³³ for instance, is reported to have suggested ways of implementing its recommendation that "it should be a national policy to promote drinking in a family setting to help prevent the development of problem drinkers". The study urges reducing the social pressure to drink by calling upon advertisers to stress a host's responsibility to make nonalcoholic refreshments available to guests and to remove restrictions on advertising that restrain showing of social drinking as against drinking by men only. It is also pointed out that there is now greater acceptance of drinking in the presence of women and that "a pattern of gregarious social drinking is likely to be more restrained than drinking in exclusively male settings."

Commission Authority Over Licensees and Others; Enforcement Administration

The impact of the impressive powers of Hawaii's liquor commissions is felt primarily, but not solely, by liquor licensees. The legislative grant of authority to the commissions (1) to grant, refuse, suspend, and revoke licenses; (2) to promulgate rules which have the force and effect of law; and (3) to make violation of the rules grounds for revocation or suspension of licenses literally gives the commissions life-and-death power over every member of the licensed industry. Added to the powers of the commissions granted specifically by the intoxicating liquor law³⁴ are a number of powers accepted by the commissions, more or less, in a cooperative spirit, which assist in enforcement of laws other than liquor laws. The informally expanded jurisdiction of the commissions, notably over licensees who sell at retail, reflects both the interrelated nature of many government program objectives and the widespread recognition of commission life-and-death power. Requirements of the fire marshal; of the department of health relating to standards for employees and premises; of the department of labor and industrial relations, especially those pertaining to the employment of minors; and of county zoning, planning, and building codes, even Internal Revenue Service matters, all are frequently and efficiently enforced by liquor law administrators. The commissions unarguably have legitimate and pertinent concern that persons serving drinks be certified free from tuberculosis or that licensed premises be maintained in a sanitary manner, offer adequate parking facilities, and be of safe construction. If a commission rule imposes a condition to the granting or renewal of a liquor license which also coincidentally fulfills a valid requirement of some other properly interested government agency, no case is made for a claim of unauthorized expansion of liquor commission jurisdiction. However, commission action is not based exclusively on rules and as membership changes on a commission, those commission policies which are not reduced to rule are subject to such modification as to cause confusion to and resentment by licensees. For instance, in no county is there a rule requiring applicants for licensure to have their plans approved by the county planning agency or endorsed by the department of health as a condition to issuance of a license; yet approval and endorsement of the plans are required as a matter of policy in some counties, by some commissions, and at varying stages of the liquor licensing process. If, on the other hand, planning commission approval and health department endorsement were the subject of a liquor commission rule, interested persons would be afforded opportunity to submit their views on the substance of the rule prior to its adoption³⁵ and would have fair notice of its content after adoption.³⁶ In any regulatory

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program, it is difficult to foresee all contingencies that can be encompassed within rules which, even if objected to by the persons regulated, offer the advantage of affording predictability for those engaged in the regulated activity. Although a liquor licensee receives under his license only a personal permit or privilege and not a right in property or contract and although he is subject to many restrictions intimate to the operation of his business under the license,³⁷ he is nevertheless operating a legitimate business and entitled to basic procedural due process and freedom from capricious exercise of commission discretion. One writer has generalized on the status of the liquor licensee:

. . . it seems obvious, that in the great majority of cases in this field the courts have not been inclined to interfere with legislative pronouncement or administrative activity. This makes the responsibility of the licensing agencies all the more grave and, from the public standpoint, it becomes all the more important to insist on a quality of administrative personnel capable of exercising these comparatively unfettered powers.³⁸

The power of the liquor commissions is not confined to administration of the licensing system established to control the liquor business and to exclude the diversion of intoxicating liquor from legal or authorized use. Their power extends to the full limits of the intoxicating liquor law, including control over unlicensed premises, e.g., restaurants not licensed as dispensers, and patrons of these unlicensed premises in matters such as the hours when liquor can be consumed on the premises and the persons who may obtain liquor for consumption on the premises. They also have jurisdiction over criminal offenses provided for in the intoxicating liquor law--consumption of liquor on a public highway or sidewalk, unlicensed manufacture or sale of intoxicating liquor, purchase of intoxicating liquor by an adult for the consumption or use of a minor, and purchase of intoxicating liquor by a minor.

Hawaii's liquor laws are unique from those of other states in placing primary and almost exclusive responsibility for enforcement on the liquor commissions through their administrators and, in particular, by the liquor inspectors. A tacit agreement has evolved between the liquor commission personnel and police department personnel whereby the conduct and activities of licensees are the prerogative of the liquor inspectors, and only situation involving a breach of the peace or certain kinds of lewd conduct³⁹ call for regular police action. The most frequently occurring liquor law violations are those for employees drinking on the job (including "B-girl" types of activities); selling or furnishing intoxicating liquor to minors; liquor business conducted after hours; "stacking" of drinks;

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unauthorized entertainment; adulteration of liquor; and various violations involving employment requirements such as nonregistration, failure to notify of termination of employment, absence of a manager or assistant manager on duty.

The penalties for violations run the gamut from warning and reprimand; fine, which may be suspended in part or in whole; suspension and revocation of license; to imprisonment. The possibility of license suspension or revocation, like Damocles' sword, is the economic incentive for good faith compliance by licensees and provides for generally effective control by the liquor commissions, particularly if the commissions in their initial licensing determination enjoy three freedoms: to choose only from morally acceptable applicants, to determine if premises will serve the public, and not to become an unwilling partner with those who would stifle competition.

Chapter V

INTRODUCTION TO THE INTOXICATING LIQUOR INDUSTRY

This brief introduction to the development of the intoxicating liquor industry in Hawaii sets the stage for later analysis. This chapter deals almost exclusively with the economic facets of the industry and follows the beverages functionally from production through consumption.

Intoxicating Liquor Types

Intoxicating liquor produced or sold in the United States is governed by standards of identity established by the federal government. The following are the three main types of beverages, under each of which are many subdivisions:

- (1) Beer - In terms of alcoholic content, beer has an alcohol content of about four per cent; it is fermented from cereals and malt. Included in the same family are ales, porters and stout.
- (2) Wine - Wine is also a product of fermentation, but fermented from grapes or berries. Four classes of wines are recognized:
 - (a) natural still wines with an alcoholic content of about fourteen per cent or less;
 - (b) sparkling wines with the same alcoholic content;
 - (c) fortified wines with an alcoholic content of between sixteen and twenty-three per cent; and
 - (d) aromatized wines whose alcoholic content also ranges from sixteen to twenty-three per cent.

Examples of products in each group are burgundy wine, which falls into the first group; champagne, the second; sherry, the third; and vermouth, the fourth. In Hawaii, sake is also classified as wine.

- (3) Distilled Spirits - Distilled spirits are distilled from liquids with an alcoholic content. Through this process, the alcoholic content is increased. The common classifications for these beverages are brandies, whiskies, rums, gins,

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liqueurs; and other specialized products including vodka, tequila, and Hawaii's okolehao.

Federal Taxation of Intoxicating Liquor

These various products are federally taxed at different rates. In 1934 at the time of the rebirth of the industry, beer was taxed at the rate of \$5 per barrel of thirty-one gallons, still wines at ten to forty cents per wine gallon depending upon alcohol content, and distilled spirits at \$2 per proof gallon.

Today, the rates are \$9 per barrel for beer, seventeen cents to \$2.25 per wine gallon of still wines, depending upon alcoholic content, and \$10.50 per tax gallon for distilled spirits. In addition to these taxes, producers pay federal license fees of different magnitudes, depending upon the nature of the license. The various states also impose taxes and license fees.

Hawaii Taxation of Intoxicating Liquor

The Territory of Hawaii imposed controls on the production and sale of alcoholic beverages following repeal of the 18th Amendment to the Constitution as did most of the states. Hawaii, however, was unique in not taxing intoxicating liquor until many years later, in 1939. Not only did Hawaii belatedly impose the tax, but when it did, it applied the tax on an ad valorem (value) basis rather than on a specific (bottle) basis. One by-product of this taxing arrangement is that Hawaii has not generated apparent consumption statistics as a by-product of its tax, as have all other states. The lack of a statistical series on intoxicating liquor consumption in Hawaii handicaps studies such as this one; this informational gap should be closed as soon as possible.

Hawaii's Production of Intoxicating Liquor

Hawaii is not yet a strong intoxicating liquor producing state although it is a large producer of sugar and pineapples which provide raw materials for alcoholic beverages. Consumers do not now recognize it as having any unique resource for alcoholic beverage production, e.g., as they do Scotland which has favorable water used in the production of Scotch. Nor does Hawaii sit in the middle of a large urban market to give it a transportation advantage. The State does have some record of production and this is traced in the following table:

Table 8
INTOXICATING LIQUOR PRODUCTION
HAWAII, 1934-1964

Fiscal Year	Malt Beverages (31 gallon bbls.)	Wine (gallons)	Distilled Spirits ^a (tax gallons)
1934	13,141	5,266	699,869
1935	42,784	14,949	613,622
1936	40,893	29,886	628,349
1937	68,753	14,754	459,727
1938	86,024	23,354	179,236
1939	80,444	5,065	151,394
1940	81,944	10,347	239,555
1941	81,684	54,349	227,326
1942	61,666	4,058	205,256
1943	110,481	4,799	369,968
1944	142,732	1,151	778,387
1945	160,749	938	718,852
1946	166,445	627	308,478
1947	146,224	195	232,491
1948	146,131	2,877	361,080
1949	130,525	1,317	203,480
1950	123,346	1,452	259,627
1951	99,879	0	338,569
1952	87,534	0	581,025
1953	92,072	0	
1954	82,615	0	
1955	77,700	0	
1956	66,498	0	
1957	70,091	0	469,430
1958	70,254	0	
1959	75,894	0	
1960	66,045	0	425,178 (3,163) ^b
1961	58,609	0	492,838 (1,889) ^b
1962	47,284	0	534,681 (1,708) ^b
1963	na	0	720,968 ^c (9,626) ^b
1964	na	0	761,202 ^c (7,214) ^b

Sources: U.S. Treasury Department, Internal Revenue Service, Alcohol and Tobacco Summary Statistics, various fiscal years. Also correspondence from this agency and U.S. Brewers Association, Inc., Brewers Almanac, various years.

^a Ethyl alcohol and mainly for nonbeverage use until the late 1950s.

^b Figures in parentheses are for Okolehao.

^c In 1963, 302,006 tax gallons of rum were produced and in 1964, 285,285 tax gallons.

INTRODUCTION TO THE INTOXICATING LIQUOR INDUSTRY

Even at the peak of production for any one of the three types of beverages classified above, Hawaii accounted for but a small part of the nation's total production, as may be appreciated from the following data:

Table 9

HAWAII'S SHARE OF ALCOHOLIC BEVERAGE PRODUCTION

Beverage	Fiscal Year of Hawaiian Peak Production	Hawaiian Production	National Production (000)	Hawaiian as Per Cent of National
Malt Beverages (bbls.)	1946	160,445	84,998	Less than one per cent
Wine (gals.)	1941	54,349	286,371	Less than one per cent
Distilled Spirits (tax gals. ^a)	1964	761,202	838,978	Less than one per cent

Source: U.S. Treasury Internal Revenue Service,
Alcohol and Tobacco Tax Summary Statistics
(various fiscal years).

^a Ignores 1944 production which was exclusively ethyl alcohol for non-beverage uses.

Hawaii has never had in production more than eight breweries, including sake breweries (1941), three wineries (1941-43), or three distilleries (1964). Unfortunately, a comprehensive picture of the producing industry in Hawaii cannot be found. The alcoholic beverage portion of the State's beverage industry has been too small to merit separate reporting in the published statistics of the Census of Manufacturers.

INTOXICATING LIQUOR LAWS IN HAWAII

It seems appropriate to note the decline in beer production and the increase in distilled spirits production in Hawaii. Apparently, there is a market potential in the State for indigenously produced alcoholic beverages, and in the future, this potential might be exploited to a greater extent. In 1964, revenue from license fees of producers amounted to \$2,490 in Honolulu county and \$480 in Hawaii county.

The alcoholic products consumed in Hawaii, for the most part, are produced elsewhere: on the mainland for domestic products, in Canada in the case of Canadian whisky, in Scotland in the case of Scotch, and so forth. Although the reader may not be interested in the producing industry outside of Hawaii, he should recognize that these firms strongly influence the marketing of their products in the Islands. To keep the next chapter relatively brief, only the distilled spirits segment of the industry is treated. Readers interested in the details of only the Hawaiian segments of the industry may wish to skip the following chapter.

Chapter VI

ECONOMIC ASPECTS OF ALCOHOLIC BEVERAGE MANUFACTURING

A Concentration of Facilities

When the production of alcoholic beverages was again legalized in 1933, the number of plants brought into production in the three segments of the industry was far smaller than the number that had operated prior to World War I. By the end of the 1930s, the distilled spirits industry was markedly concentrated: four firms accounted for more than half of the industry's production. In wines, production was less concentrated: ten firms produced about one-fourth of the value of the output. As for the beer industry, apparently less than twenty per cent of the value of the output was accounted for by the eight largest firms.¹

After World War II, the pace of concentration was quickened as such factors as control of raw materials on the production side and heavy promotional expenditures fostering brand loyalty on the marketing side came into play. Although the Treasury Department noted that "transportation costs in relation to the value of the product"² were important reasons for the lack of concentration in brewing, even this industry has become more concentrated in the last two decades. The progress of concentration is reflected in the next set of data.

Table 10

PER CENT OF VALUE OF SHIPMENTS AND EMPLOYMENT ACCOUNTED FOR BY
THE LARGEST COMPANIES IN ALCOHOLIC BEVERAGE PRODUCTION
1958, 1954, and 1947

SIC Number	Industry	1958		1954		1947 ^a	
		First		First		First	
		4	8	4	8	4	8
		Companies		Companies		Companies	
2082	<u>Beer and Ale</u>						
	Value of Shipments	28%	44%	27%	41%	21%	30%
	Employment	24	39	22	35	19	30
2084	<u>Wines and Brandy</u>						
	Value of Shipments	35%	50%	38%	54%	26%	42%
	Employment	27	37	23	36	NA	NA

INTOXICATING LIQUOR LAWS IN HAWAII

Table 10 (continued)

SIC Number	Industry	1958		1954		1947 ^a	
		First	8	First	8	First	8
		4	Companies	4	Companies	4	Companies
2085	<u>Distilled Liquor</u>						
	Value of Shipments	60%	77%	64%	79%	75%	86%
	Employment	57	71	57	73	74	88

Source: Concentration Ratios in Manufacturing Industry, 1958. Report prepared by the Bureau of the Census for the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, United States Senate, 87th Congress, 2nd Session, Washington 1962, pp. 12 and 78.

^a1950 for employment.

An important factor conducive to industrial concentration is the promise of growth through mergers and acquisitions. These have taken two main directions: acquiring firms engaged in like lines of trade; or acquiring firms in diverse lines of trade. In the immediate prewar and immediate postwar periods, the acquisitions by distilled spirits firms were either horizontally integrated, e.g., distilleries, or vertically integrated, e.g., cooperage firms or wholesalers. Later, the acquisitions were clearly aimed at company diversification. This is especially true of National Distillers, as may be seen from Table 11. The table also shows that there have been fewer acquisitions in the last half of the thirty-year period than the first.

While concentration ratios may not be indicative of economic power for industries which directly compete with other industries for consumer favor, they are significant in the alcoholic beverage industry. The industry, for the most part, agrees that its decisions are affected by competition of products in its own industry rather than competition from out-of-industry products. This seems to be true despite the fact that distilled spirits compete to some degree with lower alcoholic content beverages and to an even lesser degree with nonalcoholic beverages.

Table 11

ACQUISITIONS OF THE FOUR LARGEST DISTILLERS
1933-1964

Distiller	Nature of Facility			Other	Total
	Distil- lery	Winery	Cooper- age		
National Distillers					
1933-1948	20	1	3	8	32
1949-1964				25 ^a	25 ^a
Jos. E. Seagram & Sons					
1933-1948	15	2	1	6	24
1949-1964	1 ^b			2	3 ^c
Schenley					
1933-1938	16	3	2	11	32
1949-1964	4	2		5 ^c	11 ^c
Hiram Walker					
1933-1948	7	6	2	3	18
1949-1964				1 ^b	1 ^b

Source: Federal Trade Commission, The Merger Movement, A Summary Report, 1948 and communication from the Commission to author dated November 24, 1965.

^aIncludes seven partial (50 per cent or less of a company's assets or stock acquired) acquisitions.

^bPartial acquisition.

^cIncludes partial acquisitions: Seagram - 1; Schenley - 2.

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Concentration ratios are useful only to the extent that they call attention to possible problem areas. An industry may be concentrated and not exhibit the characteristics economists usually associate with concentration, namely: (1) either man-made or natural barriers to entry, (2) relatively high and stable prices, (3) strong sales competition rather than price competition, and (4) excess capacity.

In other words, a heavily concentrated industry is suspect because it may lead to uneconomically high prices as the result of the failure of firms to compete on a price basis or as the result of waste in the industry. Higher than normal profits may or may not be present in such an industry. A few firms or a few powerful firms and many weaker ones may be able to maintain their positions as the result of natural or man-made barriers to entry. This explains why economists focus first on heavily concentrated industries when seeking out areas for improved efficiency.

Plants and Capacities

The most formidable barrier to entry in the alcoholic beverage industry today is consumer acceptance, or, alternatively, the working capital necessary to cultivate consumer product acceptance. Twenty years ago, warborn shortages of raw materials for production made entry difficult, but this condition no longer obtains. Ample supplies of all factors, except perhaps sufficient capital for promotion, characterize all segments of the industry. Yet, there has been a steady attrition of plants and companies from the industry, as may be inferred from the next set of data.

Table 12

FACILITIES OPERATED TO PRODUCE ALCOHOLIC BEVERAGES SELECTED FISCAL YEARS, 1934-1964

Year	<u>Distilled Spirits</u>		Wineries	Breweries
	Distilleries	Rectifying Plants		
1934	170	379 ^a	845	714
1939	277	284	1,239	653
1944	325	229	1,022	469
1949	263	204	905	440

ECONOMIC ASPECTS

Table 12 (continued)

Year	Distilled Spirits		Wineries	Breweries
	Distilleries	Rectifying Plants		
1954	223	162	723	310
1959	186	133	531	244
1964	157	137	437	204

Source: U.S. Treasury Department, Internal Revenue Service, Alcohol and Tobacco Summary Statistics, Fiscal Year 1964, Publication 67 (1964), pp. 23, 29, 46 and 59.

^aFor 1936; 1934 data are not available.

It is not easy to estimate capacity of an industry without having access to the engineering studies of the plants involved. When estimates have to be made with no more information than previous production figures, there is much room for error. Nevertheless, for the purposes of this study, such estimates may indeed have value. For example, the distilled spirits industry was able in fiscal year 1945 to produce a total of 1,174 million tax gallons of distilled spirits, the greatest amount ever produced domestically.³ In fiscal year 1951, it produced 206 million gallons of whisky out of a total distilled spirits production of 846 million gallons, the largest volume of whisky produced in the post World War II period. (In 1936, the industry produced 224 million gallons of whisky.) Whisky production in 1964 was 102 million gallons, and total distilled spirits, 839 million gallons. The decline in the number of plants may account for the differences in productive capacity, but history suggests that the industry does not utilize its capacity completely, e.g., companies operate only part of the year in some sections of the country.

Production has fluctuated from fiscal year to fiscal year for still wines and distilling material; a high was recorded in 1964, when 652 million wine gallons were produced. Previous highs were recorded in 1947 (515 million gallons), in 1952 (524 million gallons), in 1959 (522 million gallons), and in 1963 (590 million gallons). Despite the decline in the number of premises operated, it appears that the industry, with 437 plants in 1964, had the capacity to produce more still wines and distilling material than did the 947 plants

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in 1947. The plants apparently are getting larger and production is growing, too. Capacity may be fairly well utilized.

The production of beer has not fluctuated from year to year to the same degree as production in the other two segments of the industry. Growth has been rather steady, and in fiscal year 1964, a new high in production was achieved when 103 million barrels were produced. Here, too, the average size of the plant has grown. Three times as much beer was produced in 1964 with one-third fewer plants than in 1934. Capacity may not be excessive.

Production Costs

Production costs may not be a clue to the problems of the alcoholic beverage industry. The most expensive of the beverages are the distilled spirits, products which have been relatively inexpensive to produce for some time. Consider that distillers testified before the Temporary National Economic Committee of the Congress in 1939 that whisky cost about \$0.25 and \$0.42 per gallon to produce⁴ and that during World War II, the government purchased 190 proof spirits at prices ranging from \$0.48 to \$1.46 per gallon when the three leading distillers had costs ranging from \$0.69 to \$1.36. By 1952-53, a gallon of 100 proof spirits cost between \$1.00 and \$1.25 to produce.⁵ A current indicator of costs of production are the insurance values reported on stocks of various whiskies. A series of these is set out for selected years.

Table 13
INSURANCE VALUES OF ONE GALLON OF
KENTUCKY BOURBON AGED IN NEW COOPERAGE
SELECTED AGES FOR SELECTED YEARS
1957-1964

	1957 ^a	1961 ^b	1964 ^c
Current production	\$1.20-\$1.35	\$1.10-\$1.20	\$1.10-\$1.20
Five year old	1.85- 2.25	1.90- 2.15	1.20- 1.40
Eight year old	1.90- 2.25	2.25- 2.50	1.60- 1.65
Ten year old	na	2.25- 2.65	1.65- 1.70

^aThe Liquor Handbook, 1957, p. 48.

^bThe Liquor Handbook, 1962, p. 80.

^cThe Liquor Handbook, 1965, p. 106.

ECONOMIC ASPECTS

The values cited above are for "status" whiskies; in 1964, plain corn whisky one year old aged in old cooperage could be had for between \$0.55 and \$0.70 per gallon and for between \$1.00 and \$1.15 for ten-year old whisky.

If production costs are not the important part of the costs in the alcoholic beverage industry, what are?⁶ Surely, those costs most frequently criticized by economists are advertising costs. All three sectors of the industry promote their products heavily by advertising and other selling expenses. The beverage industry (alcoholic and non-alcoholic) is reported to have spent 5.0 per cent of its receipts in 1961 for advertising; only tobacco with 5.2 per cent of its receipts placed higher. The average for all manufacturing industry was 1.4 per cent.⁷

The next set of figures can only approximate the costs involved because the data were collected by different agencies and for different purposes; it is difficult to assure statistical consistency under these conditions. The magnitudes, however, are interesting. In 1961, the beer industry spent \$228 million for advertising when consumers purchased 86.7 million barrels of beer. The advertising expense amounted to about \$2.63 a barrel. Later data are available for wine. That industry spent \$18 million for advertising in 1964 when 63 million cases of wine were purchased, for an expenditure of about \$0.29 per case. The distilled spirits industry sold about 104 million cases of spirits in 1964 when the industry spent \$99 million for advertising, or about \$0.95 per case.⁸

While capacity in some sectors of the alcoholic beverage industry may be excessive, the waste involved may indeed be far less costly than those activities associated with product promotion. But even this degree of waste associated with the latter may easily be overstated in terms of its effects on cost and price. Alcoholic beverage prices have been rather stable when tax changes have been taken into account.

Brand Choice

Consumers of alcoholic beverages are not handicapped by a dearth of choice either in terms of product characteristics or price. In most markets, they are blessed, or cursed, as the case may be, by a variety of products and prices for which most consumers are unprepared. Let us look at whisky brands where this phenomenon is very pronounced (Table 14, following page).

Table 14

NUMBER OF BRANDS OF WHISKY TYPES, AND PRICE RANGES, PENNSYLVANIA
1947, 1962, and 1964

	1947			1962			1964		
	Number of Brands	Low (fifth prices)	High (fifth prices)	Number of Brands	Low (fifth prices)	High (fifth prices)	Number of Brands	Low (fifth prices)	High (fifth prices)
Bourbon,									
Bottled in Bond	15	\$4.23	\$7.30	19	\$4.50	\$ 8.70	31	\$4.25	\$ 9.18
Rye, Bottled in Bond	--	--	--	--	--	--	3	5.44	5.76
St. Bourbon	13	3.63	6.03	50	3.75	8.99	62	3.85	10.12
St. Rye	3	3.71	5.93	7	4.00	4.75	7	4.32	4.99
St. Corn	6	2.90	3.73	1	4.11	4.11	1	4.34	4.34
St. Whisky	--	--	--	1	4.00	4.00	1	4.20	4.20
Whisky	--	--	--	5	4.72	7.49	5	4.97	7.91
Blend of St. Whisky	8	4.18	6.57	4	4.61	5.19	3	4.50	5.25
Blended Whisky	107	3.00	4.53	59	3.50	5.46	60	3.75	5.75
Blended Scotch Type	5	2.50	4.68	1	4.55	4.55	--	--	--
Canadian	6	5.59	5.99	10	4.78	6.78	15	4.99	9.73
Irish	4	5.69	7.54	2	6.44	8.09	2	6.81	8.55
Scotch	42	5.90	8.25	45	5.30	16.61	65	4.95	17.55
Other Whisky	9	3.00	3.74	--	--	--	1	4.99	4.99

Source: Pennsylvania Liquor Control Board.

ECONOMIC ASPECTS

In New York, a larger market than Pennsylvania, one finds an even wider selection, for, in addition to the national brands, there is a myriad of private brands. Pennsylvania's monopoly outlets carry 60 neutral blends; there are 98 listed as selling in New York retail liquor stores, although no one store carries the entire 98. Pennsylvania's 71 straight whiskies are matched by New York's 111. Hawaii has almost as many straight whisky brands as New York! Under these conditions the costs of the necessary space and the products allocated to that space are large indeed. From one point of view, this distributive waste is uncalled for even in a private enterprise economy which places a premium on variety and choice.

And pity the poor New York consumer of wines who faces some 203 brands of domestic still wines and even a greater number of imported still wines. This variety is supplemented by a vast array of private label still wines. In the beer industry the brands are less numerous. It is a sensitive palate indeed that can discriminate between these many brands, and a computer type mind that can then place an accurate money value on the differences.

Prices

When the average American consumer enters a market to make a purchase, he expects to be protected by competition between sellers in terms of price, quality, and related services. He does not know that in some markets peculiar to some industries, he is not protected, and that the product qualities and the product prices he faces reflect the decisions of firms which operate within an environment wherein the community of interest of the sellers is paramount. Sometimes this community of interest evolves without collusion; at other times, collusion does take place. The federal government and some states consequently have laws aimed at weeding out industrial behavior which is inimical to the consumer interest and the factors responsible for it. The average consumer, however, is oblivious to the problem.

Price patterns often reflect the degree of competition in an industry. In price-competitive industries, the consumer is likely to find fluctuating prices reflecting changing supply and demand situations. In non price-competitive industries, prices are likely to be more stable, with changing supply and demand conditions having only a slight impact on prices. Consumers who are not familiar with economic markets are likely to be concerned only with the level of prices, condemning high prices and praising low prices--except in those cases

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where they equate high prices with quality. It is not simple to make consumers understand that high and low prices have particular functions in a competitive market, functions which cannot be performed in non competitive markets. For example, in price-competitive markets, high and rising prices are expected to attract new firms and supplies into the market; low and falling prices are expected to force firms and supplies out of the market. Yet, the competitive give and take is hard on the businessman, sometimes causing him financial losses and anguish. Is it any wonder that businessmen refer to price competitive markets as disorderly and markets whose prices are stable, orderly? Orderly markets, say businessmen, are to be preferred over disorderly markets.

In the distilled spirits industry, most markets have been generally orderly in the postwar period. This does not mean that distillers have not fought, and fought bitterly, for the consumers' dollars. It merely means that the competition has taken the form of sales promotion and product innovation rather than the form of price changes.

Price competition has been stifled by state laws which call for price posting and resale price maintenance.⁹ While these two devices have dampened significantly price competition, they have not been able to stifle it completely.

Then there are those markets which have been notoriously disorderly, e.g., Washington, D. C. What this has meant for prices may be judged by the reader by referring to Table 15. Other markets alleged to be disorderly are Missouri, Nebraska, and Texas. The lower prices in these markets may indeed be noneconomic.¹⁰ Yet, they did and probably continue to prevail in the volume stores in these markets.

In most markets, distilled spirits prices have remained relatively stable except for tax changes in the postwar period. Federal and state taxes constitute a large proportion of the prices of distilled spirits, and they tend to be shifted. This means that although they may be levied at the distiller or wholesale level (the impact is at these levels), consumers tend to pay them in the form of higher prices (the incidence of the tax is on consumers). The level of taxation for distilled spirits and the extent of the changes in the postwar period may be judged from Table 16.

Table 15

RETAIL PRICES OF THE NATION'S 18 LEADING BRANDS OF WHISKEY IN 48 MARKETS
AUTUMN, 1963

States ^a	Seagram 7 Crown	Seagram V.O.	Canadian Club	Old Crow 86 ^o	Imperial	Jim Beam	Calvert Reserve or Extra	Schenley Reserve	Early Times
MANDATORY RESALE PRICE MAINTENANCE									
Hawaii	\$5.30	\$7.28	\$7.28	\$5.49	\$4.89	\$5.29	\$5.30	\$5.30	\$5.79
New York	4.99	6.65	6.55	5.45	4.50	5.10	4.99	4.99	5.45
New Jersey	4.89	6.49	6.45	5.30	4.40	--	4.89	4.89	--
Delaware	4.50	6.25	6.10	4.75	4.10	4.60	4.55	4.55	4.98
Minnesota	4.85	6.50	6.45	4.99	4.55	4.85	4.75	4.75	4.99
California	4.89	6.50	6.45	4.99	4.49	4.89	4.89	--	5.27
Massachusetts	4.85	6.45	6.35	5.19	4.45	4.90	4.85	4.85	5.29
Indiana	4.90	6.55	6.50	5.00	4.45	4.90	4.90	4.90	5.25
R.P.M. & MINIMUM MARKUP									
Connecticut	4.95	6.69	6.60	5.29	4.55	4.97	4.95	4.95	5.29
Kentucky	4.75	6.25	6.25	4.85	3.95	4.85	4.75	--	4.99
Tennessee	4.95	6.55	6.50	4.99	4.55	4.94	4.85	4.39	5.29
Rhode Island	4.89	6.54	6.21	5.13	4.42	--	4.89	4.89	--
MINIMUM MARKUP									
Arkansas	5.27	6.99	6.94	5.60	4.82	5.25	5.27	5.27	5.65
Georgia	5.45	7.00	7.00	5.60	4.95	5.40	5.45	5.45	5.75
Kansas	4.68	6.41	6.29	4.95	4.25	4.65	4.61	4.36	5.10
New Mexico	4.99	6.79	6.68	4.99	4.53	4.99	4.99	4.99	4.99
"FAIR TRADE"									
Arizona	5.00	6.79	6.78	5.45	4.79	5.00	4.99	5.00	5.45
Colorado	4.95	6.99	6.35	4.99	4.19	4.89	4.95	4.95	4.99
Florida	3.89	5.69	5.69	3.99	3.69	3.99	3.89	3.79	4.49
Illinois	4.29	6.10	5.09	3.79	3.29	3.79	3.69	3.59	3.98
Louisiana	3.75	5.75	5.75	4.00	3.50	4.00	--	--	4.00
Maryland	--	--	5.41	5.19	--	4.08	3.96	3.99	4.33
Nevada	4.75	6.40	6.40	4.99	4.35	4.79	--	--	4.99
North Dakota	4.95	6.50	6.20	4.75	4.25	5.00	4.95	4.75	5.00
Oklahoma	4.81	6.44	6.31	4.70	4.40	4.75	4.81	--	5.18
South Dakota	5.25	6.90	6.90	5.35	4.70	5.25	5.25	5.25	5.35
Wisconsin	4.29	6.50	5.85	4.35	3.69	3.85	--	4.08	4.45
Wyoming	4.60	6.25	6.30	4.75	--	4.85	4.60	4.60	5.10
MONOPOLY (STATE- OWNED STORES)									
Alabama	4.70	6.65	6.60	4.90	4.25	4.85	4.70	4.70	5.25
Idaho	4.70	6.65	6.60	4.95	4.35	4.95	4.70	4.70	5.25
Iowa	4.11	5.87	5.78	4.32	--	4.31	4.12	4.10	4.61
Maine	4.15	5.95	5.95	4.45	3.80	4.35	4.15	4.10	4.80
Michigan	4.36	6.20	6.13	4.59	3.95	4.52	4.36	4.36	4.89
Montana	4.60	6.60	6.55	4.80	4.15	4.80	4.60	4.60	5.10
New Hampshire	3.80	5.30	5.35	4.00	3.45	3.70	3.75	3.80	4.30
North Carolina	4.05	5.75	5.65	4.25	3.65	4.20	4.05	4.05	4.55
Ohio	4.19	5.81	5.87	4.41	3.83	4.41	4.20	4.19	4.65
Oregon	4.90	6.65	6.60	5.10	4.50	5.10	4.90	4.90	5.40
Pennsylvania	4.99	7.14	7.07	5.27	4.56	5.27	4.99	4.99	5.65
Utah	4.60	6.55	6.50	4.85	4.20	4.85	4.60	4.60	5.15
Vermont	4.10	5.30	5.30	4.30	3.85	4.25	4.10	4.10	4.50
Virginia	4.05	5.80	5.75	4.25	3.65	4.15	4.05	4.00	4.55
Washington	5.05	7.00	6.95	5.30	4.60	5.30	5.05	5.05	5.65
West Virginia	4.25	6.25	6.15	4.50	3.80	4.45	4.25	4.25	4.85
FREE TRADE									
Washington, D.C.	3.49	4.99	4.99	3.39	3.18	3.49	3.49	3.49	3.79
Missouri	3.79	5.29	5.29	3.88	3.39	3.88	3.88	3.79	3.88
Nebraska	4.45	5.49	5.49	4.50	3.95	4.25	4.50	4.50	4.50
Texas ^b	4.49	5.99	5.99	4.59	3.79	4.59	4.49	4.39	4.59

Table 15 (continued)

States ^a	Ancient Age	Corby's Reserve	Fleischmann Preferred	Ten High	Old Taylor	Cutty Sark	Four Roses	J & B	Kentucky Gentlemen
MANDATORY RESALE PRICE MAINTENANCE									
Hawaii	\$5.49	\$4.75	\$4.75	\$4.45	\$6.35	\$7.90	\$5.40	\$7.99	\$5.29
New York	5.95	4.49	4.55	4.50	5.95	7.11	5.19	7.09	4.79
New Jersey	6.55	--	4.40	4.35	5.70	6.99	4.99	7.15	4.79
Delaware	4.95	4.10	4.02	3.99	5.35	6.75	4.75	6.85	4.55
Minnesota	4.99	4.30	4.59	4.55	5.69	7.35	4.95	7.59	--
California	4.99	4.49	4.59	3.99	5.75	7.25	--	--	4.77
Massachusetts	5.29	4.45	4.45	4.50	5.61	6.88	4.99	6.95	4.50
Indiana	5.20	4.45	--	--	5.65	7.45	5.00	--	--
R.P.M. & MINIMUM MARKUP									
Connecticut	5.39	4.49	4.57	4.55	5.85	6.76	5.10	7.25	4.95
Kentucky	4.85	--	--	--	6.49	7.25	4.85	7.39	4.55
Tennessee	5.15	--	--	4.45	5.78	7.58	--	7.45	4.80
Rhode Island	--	4.89	4.43	4.38	6.75	7.10	4.96	7.20	--
MINIMUM MARKUP									
Arkansas	5.60	--	--	4.70	6.17	7.65	5.29	7.85	5.15
Georgia	5.70	4.90	5.15	4.85	6.30	7.85	5.50	7.85	5.45
Kansas	4.95	--	4.36	4.25	5.55	6.82	--	--	4.69
New Mexico	4.99	4.50	4.58	4.30	5.89	7.83	5.14	7.78	4.77
"FAIR TRADE"									
Arizona	5.49	4.63	4.67	4.34	5.85	7.45	5.15	7.34	--
Colorado	4.99	--	4.60	4.19	5.79	6.79	4.89	6.79	--
Florida	3.99	3.39	3.79	3.59	4.39	6.19	3.88	6.39	3.59
Illinois	3.79	2.99	3.49	3.19	4.39	5.89	3.79	5.98	3.49
Louisiana	4.00	--	--	3.50	4.75	7.00	--	--	--
Maryland	4.29	3.52	3.69	3.57	5.78	5.83	4.13	5.97	3.84
Nevada	4.99	--	4.49	3.99	5.69	7.35	--	7.39	3.98
North Dakota	4.75	4.50	4.65	4.00	5.75	7.55	5.00	7.55	--
Oklahoma	4.75	--	--	4.35	5.78	6.99	4.90	7.19	4.79
South Dakota	5.35	4.60	4.60	4.70	6.25	8.10	5.35	--	--
Wisconsin	3.85	3.79	3.59	3.69	4.88	6.30	4.08	--	--
Wyoming	4.95	--	--	--	5.35	6.90	4.32	6.52	--
MONOPOLY (STATE- OWNED STORES)									
Alabama	5.15	4.25	--	4.25	5.55	7.25	4.85	7.30	4.65
Idaho	5.15	4.35	4.45	5.00	5.55	7.10	4.90	--	--
Iowa	4.50	3.70	3.81	3.69	4.87	6.35	4.24	6.43	4.09
Maine	4.65	3.80	4.65	3.75	--	6.40	4.30	6.55	--
Michigan	4.59	3.95	4.06	3.94	5.17	6.67	4.50	6.76	4.33
Montana	5.00	4.15	4.25	4.15	5.40	7.10	4.70	7.25	--
New Hampshire	4.20	3.45	4.25	3.45	4.55	5.75	3.85	5.80	3.80
North Carolina	4.45	3.65	3.75	3.65	4.80	--	4.15	6.30	4.00
Ohio	4.59	3.81	3.79	3.81	4.94	6.61	4.32	6.52	4.18
Oregon	5.10	4.50	4.60	4.50	5.65	7.00	5.05	7.15	4.85
Pennsylvania	5.27	4.55	4.66	4.54	5.95	7.52	5.15	7.68	4.99
Utah	4.85	4.20	4.30	5.45	5.45	7.00	4.75	7.10	--
Vermont	4.40	3.85	3.85	--	4.70	5.60	4.20	5.70	--
Virginia	4.40	3.60	3.70	--	4.80	--	4.15	6.45	4.00
Washington	5.30	4.60	4.75	4.60	5.95	7.35	5.20	7.50	5.00
West Virginia	4.75	3.80	3.90	--	5.15	6.85	4.40	7.00	4.20
FREE TRADE									
Washington, D.C.	3.59	2.99	3.18	3.18	4.29	5.59	3.69	5.95	3.39
Missouri	3.88	3.33	3.49	3.39	4.39	6.19	3.99	5.99	--
Nebraska	4.65	3.95	4.29	4.10	5.95	6.79	4.50	5.90	--
Texas ^b	4.59	--	4.49	3.89	4.99	6.95	4.59	6.98	4.59

Table 15 (continued)

Source: Adapted from New York State Moreland Commission on the Alcoholic Beverage Control Law, Report and Recommendations No. 3, Mandatory Resale Price Maintenance, January 21, 1964, New York 17, N.Y., pp. 40-41.

Note: Prices are based upon information supplied to the Moreland Commission by state officials in monopoly states and by large volume stores in other jurisdictions. Hawaiian prices are based on official price postings by wholesalers.

^aAlaska, Mississippi and South Carolina omitted.

^bThe prices listed in Texas are Dallas prices. Lower prices obtained in Houston.

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Table 16

FEDERAL AND AVERAGE STATE TAX RATES DISTILLED SPIRITS 1947-1964

Year	Average State Tax Per Fifth of Distilled Spirits ^a	Federal Tax Per Fifth of 86° Distilled Spirits	Combined Amount	Tax Index 1947=100
1947	\$0.30	\$1.55	\$1.85	100
1948	.31	1.55	1.86	101
1949	.32	1.55	1.87	101
1950	.32	1.55	1.87	101
1951	.31	1.81	2.12	115
1952	.31	1.81	2.12	115
1953	.31	1.81	2.12	115
1954	.31	1.81	2.12	115
1955	.33	1.81	2.14	116
1956	.33	1.81	2.14	116
1957	.33	1.81	2.14	116
1958	.33	1.81	2.14	116
1959	.35	1.81	2.16	117
1960	.35	1.81	2.16	117
1961	.37	1.81	2.18	118
1962	.37	1.81	2.18	118
1963	.39	1.81	2.20	119
1964	.40	1.81	2.21	119

Source: Distilled Spirits Institute, Distilled Spirits
Annual Statistical Review, 1964, p. 5.

^aHawaii's tax not included since it is based on value
rather than volume.

With the tax changes in mind, the reader can now proceed to the price changes themselves. In Table 15 retail prices for selected distilled spirits were presented; in the next table, price changes at both the wholesale and retail trade levels are presented.

Table 17

SELECTED MEASURES OF PRICE CHANGES, DISTILLED SPIRITS INDUSTRY
1947-1964

1	2	3	4	5	6	7	8	9
	Wholesale			All Dis-				
	Price	Price of	Retail	tilled Spirits	Index of Prices	Price of	Wholesale	Wholesale
	Index	Seagram	Price	Index of Price	of 10 Best	Seagram	Price	Price
	Bottled	7 Crown	Index	Offerings in	Whisky Sellers	7 Crown	Index	Index
	in Bond	to Penn-	Whisky	Pennsylvania	Pennsylvania	to Penn-	Straights	Spirit
	1957-9=100	sylvania	1957-9=100	1957-9=100	1957-9=100	sylvania	1957-9	Blends
Year						(Retail)	=100	1957-9=100
1947	125.3	\$29.40	--	83.7	81.9	\$4.01	153.0	93.6
1948	125.3	29.40	--	87.2	85.9	4.03	162.0	93.6
1949	125.3	29.40	--	86.3	84.8	4.03	146.5	93.6
1950	125.3	29.40	--	86.6	94.3	4.03	122.5	93.6
1951	125.3	32.75	--	95.5	99.3	4.46	117.2	93.7
1952	125.3	32.75	--	94.4	99.1	4.46	117.2	94.4
1953	112.8	32.75	94.1	95.5	99.1	4.46	117.2	94.4
1954	101.1	32.75	94.5	96.2	99.1	4.46	104.3	94.4
1955	100.0	32.75	95.1	97.1	99.1	4.46	101.2	94.5
1956	100.0	32.75	96.0	98.4	99.1	4.46	102.0	94.5
1957	100.0	32.95	99.4	99.5	101.1	4.57	102.0	99.7
1958	100.0	32.95	99.6	100.0	99.1	4.57	98.8	100.2
1959	100.0	32.95	100.9	100.4	100.0	4.58	99.3	100.2
1960	100.0	32.95	102.4	103.8	104.0	4.77	99.7	100.2
1961	100.0	32.95	103.0	103.8	104.0	4.74	99.7	100.2
1962	100.0	32.95	103.3	105.1	103.3	4.74	99.7	100.2
1963	--	32.95	--	na	109.1	4.99	--	--
1964	--	32.95	--	na	108.6	4.99	--	--

Sources: Columns 2, 4, 8, and 9: U.S. Bureau of Labor Statistics.

7: Annual Statistical Reports of Pennsylvania Liquor Control Board.

5 and 6: Calculated by author from Annual Statistical Reports of Pennsylvania Liquor Control Board.

3 (1947-1956; 1963-4):

Estimated by author.

3 (1957-1962):

Information supplied to New York State Moreland Commission on the Alcoholic Beverage Control Law.

INTOXICATING LIQUOR LAWS IN HAWAII

Emphasis has been placed on domestically produced beverages up to this point. It is now time to turn our attention to the products imported from abroad.

Importing

American consumers do not limit their consumption of alcoholic beverages to domestically produced products. Significant quantities of distilled spirits and wines and lesser quantities of beer are imported annually. This is not a consequence of taste habits spawned by prohibition but rather flows from the acquired tastes and status concerns of our affluent society. Most imported alcoholic beverages are more expensive than their domestic counterparts, although many brands of domestic alcoholic beverages are in the high price-high status category.

The contribution of foreign producers to the supply of alcoholic beverages in the United States may be appreciated from Table 18.

Table 18

ALCOHOLIC BEVERAGES IMPORTED INTO THE UNITED STATES 1964

Distilled Spirits (million tax gallons)		
Whisky	44.5	
Gin	2.2	
Rum	.5	
Brandy	1.9	
Cordials and other	<u>1.7</u>	
TOTAL		50.7
Wine (million wine gallons)		
Champagne and Sparkling Wines	1.2	
Table Wines	8.7	
Dessert Wines	1.5	
Vermouth	<u>4.2</u>	
TOTAL		15.6
Malt Beverages (million barrels)		21.4

ECONOMIC ASPECTS

Table 18 (continued)

Sources: Distilled Spirits: Distilled Spirits
Institute, Annual Statistical Review,
1964, p. 35.

Wine: Wine Institute, Twenty-Ninth
Annual Wine Industry Statistical
Survey, Part III, p. 5.

Beer: U.S. Brewers Association, Inc.,
Brewers Almanac 1965, p. 85.

The imported products constituted 21.1 per cent of the total apparent consumption of distilled spirits, 8.4 per cent of the wine, and 0.6 per cent of the beer in the United States in fiscal year 1964.¹¹ Comparable data are not available for Hawaii although we do know that in 1957 apparently 4.4 per cent of the wine consumed in Hawaii was produced outside of California.¹² The foreign value of all alcoholic beverages imported into the United States in 1964 was \$379 million.¹³

The federal government licensed 1,857 persons to import alcoholic beverages into the United States during the fiscal year ending June 30, 1964, and 25 of these persons resided in Hawaii. Since Honolulu is the only customs port of entry for the State, all imported alcoholic beverages must be shipped through it, even when destined for the Neighbor Islands. Domestically produced beverages, however, may be shipped directly to warehouses on the Neighbor Islands and hence no transshipping costs are incurred.

The influence of the number of trade levels on consumer prices is illustrated by a problem now faced by some Scotch wholesalers.

Hawaii for some time had been a relatively low-priced Scotch market. This could be traced to the pre-Statehood treatment of Hawaii by Scotch distillers when the Territory was considered a foreign market, and Scotch was imported directly from the distillers without going through mainland importers. So treated, the usual promotional allowances were granted to Hawaiian importers, who were not required to make use of the funds and, consequently, resulted in lower retail prices. Hawaii wholesalers are no longer treated as importers and have lost the promotional allowance previously received.

INTOXICATING LIQUOR LAWS IN HAWAII

An anomaly in the federal tax law makes it possible to import bulk distilled spirits at lower prices than bottled distilled spirits. The federal import levy on distilled spirits distinguishes between 100 proof spirits and those of higher degrees of proof and taxes all spirits 100 proof or less at the 100 proof rate. Since Scotch and Canadian whiskies are bottled abroad at about 86 proof, importers of the bottled product pay tax on a portion of the water content of the beverage at the 100 proof rate. When imported in bulk, these whiskies are brought in at 100 proof or more and taxed accordingly and are later diluted to a lower proof at time of bottling. Since the proof of the product imported in bulk more accurately reflects the import tax liability, there is a saving for the bulk importer over the importer of the bottled product. A growing practice, therefore, is to import Scotch and Canadian whiskies in bulk and to bottle them domestically. The market in Hawaii undoubtedly is not large enough to warrant bulk imports at this time.

We now move closer to the Hawaiian scene with an analysis of the wholesaling function.

Chapter VII

INTOXICATING LIQUOR WHOLESALING AND JOBBING

The liquor industry has maintained the classic pattern of distribution, with products flowing from producer to wholesaler, and on occasion to sub-wholesalers, and then to retailers. This is true, that is, for the so-called license or open states. In monopoly or control states, the state owns and operates the retail stores for the distribution of one or more of the types of alcoholic beverages, usually wines and distilled spirits and sometimes beer. Wyoming and Mississippi are the only states where the state monopolizes the wholesale function only. At the present time, there are eighteen monopoly states and thirty-three license states, including the District of Columbia.

While Hawaii treats intoxicating liquor as a single genus of products, as do some other states, many states distinguish beer from distilled spirits and wines for distribution purposes. For example, New York State permits packaged beer to be retailed through grocery stores, and hence the wholesaling function for this product parallels that for food. Packaged wines and distilled spirits, on the other hand, are treated differently in that they are retailed through outlets which sell only these products, and hence the wholesale function, too, is somewhat unique.

The wholesaling function for distilled spirits and wines on the mainland is performed through both independent companies and wholly owned subsidiaries. Federal law and some state laws prohibit the tied "retail" house, that is, retailing firms owned by either distillers or wholesalers, but these same laws usually do not apply to the wholesale level of the trade. The selection of a wholesaling arrangement by a distiller or a vintner is strongly influenced by local conditions. Apparently, general rules of success and profitability are inadequate guides; distillers, for instance, may have independent wholesalers in one market and wholly owned subsidiary wholesalers in another market. Even within the same market, producers have been known to change distribution methods as their fortunes changed in that market.

One other aspect of wholesaling should be mentioned here since it will arise later in the analytical section of this part. Some wholesalers have exclusive brand franchises while others hold multiple brand franchises. The usual practice for a large distiller, for example, is to have his independent wholesalers handle his brands almost exclusively if possible. In New York City (August 1963), Distillers Corporation Seagram's, Limited, wholesaled its Seagram

INTOXICATING LIQUOR LAWS IN HAWAII

Seven Crown neutral blend through six independent wholesalers. Three of the dealers handled only those blends produced by the Seagram company or one of its divisions. One handled an important competitive blend. Two carried private label competitors. At this same time, National Distillers Products Corporation distributed its neutral blends exclusively through its wholly owned subsidiary and almost all of its other distilled spirits through this firm. As a wholly owned subsidiary, the wholesaler carried no competing brands.

In Hawaii, this mixed pattern of wholesaling exists, with perhaps one difference. In most mainland markets, sub-jobbers do not fit into the marketing structure, while in Hawaii, one does find the sub-jobber. This means that the posted minimum prices under the mandatory resale price maintenance law and the price posting law result in two wholesalers splitting the usual profit margin between the distillers' prices and the consumers' prices. This is the case, for example, for Schenley brands, which are distributed by Better Brands directly and also through jobbers on the islands on which it is not located.

The numbers of alcoholic beverage wholesalers in a market is a function of many variables: the size of the market, profit margins, manufacturer preferences, and the like.

According to the Alcohol and Tobacco Tax Division of the U.S. Treasury for the year ending June 30, 1964, there were in Hawaii thirty-one federally licensed wholesale dealers in liquor. Data for these licensees for the last five years follow:

Table 19

FIRMS FEDERALLY QUALIFIED AS WHOLESALERS OF LIQUOR AND BEER HAWAII, 1960-1964

Year Ending June 30	Liquor	Beer
1964	31	4
1963	30	5
1962	29	5
1961	29	6
1960	30	7

Source: U.S. Treasury, Internal Revenue Service, Statistics Relating to the Alcohol and Tobacco Industries, various years.

INTOXICATING LIQUOR WHOLESALING AND JOBBING

While the number of licensees has hovered around thirty for the last few years, the number of active wholesalers in Hawaii apparently is slightly less. Companies distributing liquors and beer in all counties of the State must be licensed in each county by the county liquor commission, so that the Treasury data include duplications of companies. For instance, if one looks at the Hawaii Beverage Guide for September 1965, the Official Price Book for the industry, one finds only twenty-six independent wholesalers.

Census data show a decline of six wholesalers of beer, wine and distilled spirits between 1958 and 1963, from twenty-two to sixteen, for a decline of 27.3 per cent. In the same period, sales rose 11.4 per cent from \$20.0 million to \$23.2 million. While the payroll of these establishments jumped 26.1 per cent from \$931,000 to \$1.2 million, the number of paid employees dropped about six per cent. The sales figures which are supposed to include excise and sales taxes approximate those reported by the State Director of Taxation for 1958, but differ substantially for 1963.

On the basis of census estimates, the average beer, wine, and distilled spirits wholesaler in Hawaii in 1963 employed about fourteen employees, had an annual payroll of \$73,375, and had sales of about \$1.5 million.¹

Chapter VIII

RETAILING OF INTOXICATING LIQUOR

People in Hawaii may purchase intoxicating liquor by the package or by the drink throughout the State. Some of their fellow citizens on the mainland do not have the same freedom of choice. Thirty-nine states have provisions for local option of one or more of the types of alcoholic beverages for on-premise consumption (by the drink) and for off-premise consumption (by the package) by local vote. The remaining twelve states (including the District of Columbia) have no provision for local option, but three do not permit sale by the drink.¹

These restraints on consumption delimit the area of enterprise. Thirty-three states, including the District of Columbia, permit private businessmen to engage in the retailing of distilled spirits and wine and eighteen retain that right for the state. In all states, malt beverages may be purchased by the package in privately owned and operated enterprises, except for state stores in Utah, which retails beverages of 3.2 per cent alcoholic content or greater; Iowa, Montana, and Washington, which retail beverages of four per cent alcoholic content or greater; and New Hampshire and Vermont, which retail those of six per cent or higher.

Since the Twenty-First Amendment to the U.S. Constitution granted each state the right to control its own liquor destiny, it is not surprising that this patchwork quilt of control arrangement exists.

The rationale behind much of the myriad control features is the alleged sui generis nature of intoxicating liquor which necessitates rigid control by government. Evidence of this control can usually be found in the limitations placed on entry into the retail trade. At one extreme, one finds that some political jurisdictions do not even allow on-premise consumption of beer. It would be unwieldy here to summarize the many diverse arrangements for the retailing of intoxicating liquor. Since the consumption of beverages of higher alcoholic content is considered the greater threat to temperate behavior, statistics relating to the retailing of only distilled spirits are given in the next table. The reader can readily see that many states regard limited availability of distilled spirits as a major factor in their control programs.

According to the data in Table 20, only three states have a greater number of off-premise outlets for the sale of packaged distilled spirits than Hawaii; namely, Alaska, Connecticut, and South Dakota. Connecticut, South Dakota and Hawaii all permit package sales by drug stores. Both South Dakota and Hawaii permit sale by grocery stores,

Table 20

RETAIL LICENSES FOR SALE OF DISTILLED SPIRITS

State	Number of Licenses			Estimated			Number of Licenses Per 1,000 Population						Number of Persons Per License			
	On-Premise	Off-Premise	On- and Off-Premise	Total Licenses	July 1, 1963	Population	On-Premise	Off-Premise	On- and Off-Premise	Total Licenses	On-Premise	Off-Premise	On-Premise	Off-Premise	On- and Off-Premise	Total Licenses
*Alabama	594	80	--	674	3,347,000	0.18	0.02	--	--	0.20	5,634	41,837	--	--	4,965	
Alaska	471	284	--	755	248,000	1.90	1.15	--	--	3.05	526	873	--	--	328	
Arizona	289	769	907	1,965	1,559,000	0.19	1.15	0.58	0.58	1.26	5,394	2,032	1,719	--	793	
Arkansas	--	605	--	605	1,858,000	--	0.33	--	--	0.33	--	3,071	--	--	3,071	
California	10,349	9,141	738	20,228	17,590,000	0.59	0.52	0.04	0.04	1.15	1,699	1,924	23,835	--	869	
Colorado	1,773	978	--	2,751	1,961,000	0.90	0.50	--	--	1.40	1,106	2,005	--	--	712	
Connecticut	2,663	2,210	--	4,873	2,666,000	1.00	0.83	--	--	1.83	1,001	1,206	--	--	547	
Delaware	244	276	245	765	476,000	0.51	0.58	0.51	0.51	1.60	1,950	1,724	1,942	--	622	
District of Columbia	602	388	--	990	798,000	0.75	0.49	--	--	1.24	1,325	2,056	--	--	806	
Florida	383	608	3,326	4,317	5,652,000	0.07	0.11	0.59	0.59	0.25	14,757	9,296	1,699	--	1,309	
Georgia	3	1,035	--	1,038	4,140,000	0.65	0.25	--	--	0.25	--	4,000	--	--	3,988	
Hawaii	456	493	--	949	694,000	0.87	0.72	--	--	1.37	1,522	1,408	--	--	731	
*Idaho	618	116	--	734	713,000	0.87	0.16	--	--	1.03	1,153	6,146	--	--	971	
Illinois	--	--	19,340	19,340	10,182,000	--	--	1.90	1.90	1.90	--	--	--	--	526	
Indiana	985	1,459	2,672	5,116	4,694,000	0.21	0.31	0.56	0.56	1.08	4,765	3,217	1,756	--	917	
*Iowa	2,171	192	--	2,363	2,780,000	0.78	0.07	--	--	0.85	1,280	14,479	--	--	1,176	
Kansas	--	1,064	--	1,064	2,225,000	--	0.48	--	--	0.48	--	2,091	--	--	2,091	
Kentucky	843	917	--	1,760	3,095,000	0.27	0.30	--	--	0.57	3,671	3,375	--	--	1,758	
Louisiana	--	947	4,897	5,844	3,418,000	--	0.28	1.43	1.43	1.71	--	3,609	697	--	584	
*Maine	274	79	--	353	982,000	0.28	0.08	--	--	0.36	3,583	12,430	--	--	2,781	
Maryland	290	1,000	2,731	4,021	3,289,000	0.09	0.30	0.83	0.83	1.22	11,341	3,289	1,204	--	817	
Massachusetts	4,798	2,070	--	6,868	5,218,000	0.92	0.40	--	--	1.32	1,087	2,520	--	--	759	
*Michigan	6,631	2,247	--	8,878	8,116,000	0.82	0.28	--	--	1.10	1,223	3,611	--	--	914	
Minnesota	1,133	585	872	2,590	3,500,000	0.32	0.17	0.25	0.25	0.74	3,089	5,982	4,013	--	1,351	
Missouri	2,762	2,725	--	5,487	4,328,000	0.64	0.63	--	--	1.27	1,566	1,588	--	--	788	
*Montana	1,630	153	--	1,783	707,000	2.31	0.21	--	--	2.52	433	4,620	--	--	396	
Nebraska	--	726	875	1,601	1,460,000	--	0.50	0.60	0.60	1.10	--	2,011	1,668	--	911	
Nevada	206	259	957	1,422	368,000	0.56	0.70	2.60	2.60	3.86	1,786	1,420	384	--	258	
*New Hampshire	494	49	--	543	627,000	0.79	0.08	--	--	0.87	1,269	12,795	--	--	1,154	
New Jersey	1,101	2,028	9,311	12,440	6,470,000	0.17	0.31	1.44	1.44	1.92	5,876	3,190	694	--	520	
New Mexico	--	148	1,213	1,361	1,018,000	--	0.15	1.19	1.19	1.34	--	6,878	839	--	747	
New York	22,787	4,216	--	27,003	17,708,000	1.29	0.24	--	--	1.53	777	4,200	--	--	655	
*North Carolina	--	215	--	215	4,760,000	--	0.05	--	--	0.05	--	22,139	--	--	22,139	
North Dakota	--	63	904	967	634,000	--	0.10	1.43	1.43	1.53	--	10,063	701	--	655	
*Ohio	10,530	350	--	10,880	10,173,000	1.04	0.04	--	--	1.08	966	29,065	--	--	935	
Oklahoma	--	830	--	830	2,487,000	--	0.33	--	--	0.33	--	2,996	--	--	2,996	
*Oregon	832	176	--	1,008	1,826,000	0.45	0.10	--	--	0.55	2,194	10,375	--	--	1,811	
*Pennsylvania	20,916	682	--	21,598	11,424,000	1.83	0.06	--	--	1.89	546	16,750	--	--	528	
Rhode Island	1,371	399	--	1,770	885,000	1.55	0.45	--	--	2.00	645	2,218	--	--	500	
South Carolina	--	726	--	726	2,483,000	--	0.29	--	--	0.29	--	3,420	--	--	3,420	
South Dakota	384	553	--	937	737,000	0.52	0.75	--	--	1.27	1,919	1,332	--	--	786	
Tennessee	--	388	--	388	3,694,000	--	0.11	--	--	0.11	--	9,520	--	--	9,520	
Texas	--	2,982	--	2,982	10,323,000	--	0.29	--	--	0.29	--	3,461	--	--	3,461	
*Utah	--	85	--	85	983,000	--	0.09	--	--	0.09	--	11,564	--	--	11,564	
*Vermont	453	48	--	501	390,000	1.16	0.12	--	--	1.28	860	8,125	--	--	778	

Table 20 (continued)

State ^a	Number of Licenses			Estimated Population July 1, 1963	Number of Licenses Per 1,000 Population			Number of Persons Per License		
	On- Premise	Off- Premise	On- and Off- Premise		On- Premise	Off- Premise	On- and Off- Premise	On- Premise	Off- Premise	On- and Off- Premise
*Virginia	--	185	--	4,331,000	--	0.04	--	--	23,410	--
*Washington	907	254	--	3,050,000	0.30	0.08	--	3,362	12,007	--
*West Virginia	--	146	--	1,778,000	--	0.08	--	--	12,178	--
Wisconsin	12,048	1,092	--	4,061,000	2.97	0.27	--	337	3,718	--
*Wyoming	115	80	434	337,000	0.34	0.24	1.28	2,930	4,212	776
TOTAL	112,106	47,101	49,422	186,243,000	0.60	0.25	0.27	1,661	3,954	3,768
										893

Source: Distilled Spirits Institute, Annual Statistical Review of the Distilled Spirits Industry, 1964, p. 46.

Note: * indicates control states and number of off-premise licenses represents state stores and agencies with the following exceptions: North Carolina represents county and city stores, Michigan includes specially designated distributors and Wyoming covers private licenses since this state operates a monopoly at wholesale level only.

^aAct 540, General Laws of Mississippi 1966, made Mississippi the last "wet" state, effective July 1, 1966 under a monopoly or control system.

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while Alaska reserves retail package sales for the exclusive liquor store. Let us look more closely at the situation in Hawaii.

According to the Alcohol and Tobacco Tax Division of the U.S. Treasury, there were 1,080 establishments federally qualified to engage in the retailing of liquors in Hawaii in the fiscal year ending June 30, 1964, and thirty-six qualified to retail beer. The various county liquor commissions of Hawaii reported the distribution of retail licenses for calendar year 1964 as follows:

Table 21

LOCALLY ISSUED LIQUOR LICENSES, HAWAII 1964

	Off Premise			On Premise		
	General	Beer and Wine		Alcohol	Dispensers	Clubs Cabarets
Honolulu	321	5	1	312 ^a	14	21
Hawaii	78	26	1	75 ^b	3	0
Maui	70	18	-	52 ^c	2	4
Kauai (1963)	40	5	-	36 ^d	0	3
STATE TOTAL	509	54	2	475	19	28

Sources: Annual Reports of County Liquor Commissions for 1964.

^aIncludes six for beer and wine only and three for beer only.

^bIncludes ten for beer and wine only and two for beer only.

^cIncludes six for beer and wine only and one for beer only.

^dIncludes three for beer and wine only and one for beer only.

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The licensing of retail liquor outlets in Hawaii is generally permissive. Hawaii has approximately three times as many off-premise outlets per capita as the national average and is one of the four states highest in the nation in terms of off-premise outlets. It ranks as the median state for on-premise outlets per 1,000 population for the thirty-five states permitting on-premise consumption. In terms of total licenses per 1,000 population, fifteen states rank higher than Hawaii.

There is no accurate prescription for the optimum number of retail liquor outlets, but there are pressures in the market relating costs, prices, volume, and revenue. These tend to keep the number of retail outlets within a predictable range, whether free or restricted licensing procedures are practiced by a liquor regulatory body. This range may not be readily apparent from state data since goals and other variables differ from market to market.

For other aspects of liquor retailing, it is usually possible to look to the Bureau of the Census, which periodically provides retailing data. Much of the data for Hawaii, however, are hidden in the statistics of multiple product retailers since liquor is retailed for off-premise consumption in a variety of outlets. For New York State, for example, the data for the sale of packaged liquors can be gained from the Census of Business since only liquor stores are licensed to sell packaged liquor for off-premise consumption and, in addition, these stores sell only distilled spirits and wines.

In the 1963 Census of Business, there was a tabulation of sales by product lines so that it carries some indication of the retail liquor trade in Hawaii. Unfortunately, the census was marred by underreporting (Table 22).

Moving from aggregate sales of packaged liquors (distilled spirits and wines) to the liquor stores proper, we find that in the five-year period between the last censuses, 1958 to 1963, there was an eleven per cent increase in the sales of alcoholic beverages in Hawaii according to census reports of wholesale sales of these products (Table 23). (According to the Director of Taxation of Hawaii, the increase was thirty-one per cent, but his figures include beer.) Liquor stores, however, experienced only a seven per cent increase in sales. In fact, those stores with payrolls incurred a three per cent decrease in sales in the period. As might be expected in view of these statistics, there was a decline in the number of liquor stores in Hawaii; the total declined by twelve, while those with payrolls declined by sixteen. The number without payrolls increased by four;

Table 22

CENSUS OF BUSINESS, RETAIL TRADE IN PACKAGED ALCOHOLIC BEVERAGES^a
HAWAII, 1963

Type of Retail Outlet	SIC Number	Total		Reporting Merchandisers		Reporting Packaged Alcoholic Beverages		Per Cent of Packaged Alcoholic Beverage Sales ^b	Packaged Alcoholic Beverages as Per Cent of Total Sales
		Number	Sales (000)	Number	Sales (000)	Number	Sales (000)		
TOTAL	--	3,354	\$725,977	2,530	\$627,546	300	\$14,351	100.0	32.3
General Merchandise	53	196	112,549	139	96,376	35	760	5.3	.8
Food Stores	54	558	181,988	430	168,291	194	10,321	71.9	6.1
Automotive Dealers	55	125	122,263	91	113,980	1	c	--	c
Eating & Drinking Places	58	938	88,049	736	72,845	13	266	1.9	.4
Other Retail Stores Inc. Liquor Stores	59	434	33,752	268	22,844	30	2,015	14.0	8.8

Source: 1963 Census of Business, Retail Trade, Merchandise Sales, BC63-RSTK, pp. 7K-208ff.

^aOnly establishments with payrolls.

^bTwenty-seven stores and \$989,000 not accounted for; drug-stores may be responsible for these sales.

^cWithheld to avoid disclosure.

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this increase probably reflects the movement of stores from the payroll classification to the no payroll classification as they dropped employees.

Table 23

LIQUOR RETAILING, HAWAII 1958, 1963

	1958	1963	1963 as Per Cent of 1958
Establishments (SIC 592)	89	77	86.5%
Total	89	77	86.5
With Payroll	55	39	70.9
Sales			
Total (000)	\$4,831	\$5,164	106.9
With Payroll (000)	3,877	3,758	96.9
Payroll			
Year (000)	\$ 264	\$ 314	118.9
Workweek ended nearest November 15 Total	\$5,421	\$8,098	149.4
Paid Employees			
Workweek ended nearest November 15 Total	144	164	113.9

Sources: 1958 Census of Business, Vol. II,
Part 2, pp. 52-7 and 1963 Census
of Business, Retail Trade, Hawaii
BC63-RA13, pp. 13-5 and 13-7.

The failure of many retail outlets to list their product line sales and the Census' practice of not reporting when competitive information might be divulged have reduced considerably the value of the product line reporting. While packaged liquor sales separated out of total liquor sales were not reported, total sales were, and these amounted to \$2,516,000; total sales for liquor stores whether they reported product line sales or not were \$3,758,000. The \$3.8 million in intoxicating liquor sales and other products represented 26.2 per

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cent of packaged liquor sales in Hawaii in 1963. But more than fifteen per cent of these sales were probably represented by product lines other than packaged liquor if the reports of the stores which did break down their product line sales are to be used as a guide. Packaged liquor stores were reported as selling groceries (13)-- number in parentheses indicates the number of stores selling this product line--, meals (2), alcoholic drinks (2), tobacco products (9), cosmetics, drugs, etc. (3), clothing (1), appliances (2), sporting goods (1), household fuels and ice (2), and other merchandise (4).² With sales from these products swelling their receipts, it seems that liquor stores may indeed be accounting for far less of the packaged liquor sales than the 26.2 per cent mentioned above. The Honolulu Star-Bulletin Consumer Analysis for 1963 reported that liquor stores accounted for only 11.1 per cent of beer sales and 13.8 per cent of distilled spirits and wine sales.³

The stores in Hawaii which retail liquor exclusively are relatively few and probably find the competition of the multi-product retailer severe.

The fortunes of the independent liquor store in Hawaii have been on the decline for some time. In 1948, when total liquor sales were \$21 million⁴ as against \$36 million of packaged beverages in 1963, liquor stores accounted for \$6.2 million of retail sales while in 1963 they accounted for only \$5.2 million sales.⁵ What has happened in the interim, of course, is that the multi-product retailer has accounted for an increasing portion of alcoholic beverage sales.

Chapter IX

INTOXICATING LIQUOR CONSUMPTION PATTERNS

The consumption of intoxicating liquor has been the subject of more legislation than investigation, too much of the former resting on ideas spawned in the pre-prohibition and prohibition eras. Revision of these laws, therefore, should be based on analyses--analyses resting on data.

Fortunately, there are statistics today, but they must be read with care. First, statistics of consumption are estimates. They may reflect "apparent consumption", but they are essentially estimates based on shipments to wholesalers or based on taxes paid on shipments to wholesalers. They ignore, for example, problems of inventory changes. Second, they are usually based on political subdivisions known as states. To this extent, they ignore illegal transportation of liquor (bootlegging) and legal transfer problems. Third, when totals are treated to yield individual consumption figures, the errors tend to multiply. For instance, the population figures, too, are usually estimates, and they tend to be total population figures rather than adult population figures. Even budget study data are imperfect, for they tend to survey expenditures rather than actual consumption, or, if they survey actual consumption, the procedures are too crude to validate much of the reporting. The researcher may try to refine the data or he may cite data from different sources to guard against gross errors and biases. Statistical differences, hence, may be the result of statistical errors rather than substantive causal factors.

If one is concerned with aggregate market, the differences in consumption patterns are primarily the result of population differences even if taste or consumption differ from market to market. But consumption patterns have changed over time, and these changes are interesting to note. In 1850, the annual consumption per capita of distilled spirits, malt liquors, and wines were estimated respectively as follows: 2.24 tax gallons, 1.58 gallons, and 0.27 gallons.¹ One hundred years later, the pattern was much different, as these figures show: 1.02 tax gallons of distilled spirits, 17.26 gallons of malt liquors, and 0.93 gallons of wine.² Consumption patterns also differ from region to region. Illinois consumers, we are told, purchase more straight whisky annually than they do spirit blends, whereas New Yorkers purchase more spirit blends than straight whiskies. At least, this was the pattern in 1964.³ While these changes may be related to taste, the term "taste" reflects other factors as well.

The determinants of intoxicating liquor consumption are many. The most important, according to most investigators, are income,

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price, education, job level, degree of urbanization, age, sex, and ethnic grouping. Other factors which have also gained currency as determinants of liquor consumption are the nature and stringency of control systems, climate, advertising, container size, taste, and availability of substitutes.⁴ Many of these, of course, overlap; income, education, urbanization, and job level all tend to be inter-related in this country so that it is not surprising that intoxicating liquor consumption statistically is highly correlated with each of these. Statistical correlation, of course, does not necessarily prove causation, although it may imply it. The fundamental causes of alcoholic beverage consumption are more likely to be psychological and sociological than economic, although the last factor becomes important once there is a desire for the product.⁵

Let us turn to some of the statistics (Table 24). In 1964, the highest per capita consumption of distilled spirits was recorded by Alaska. Actually, the District of Columbia and Nevada had higher per capita consumption, but each is unique, with the District marketing distilled spirits at relatively low prices to citizens of surrounding areas, and Nevada having a large transient population. At the other extreme, one finds Arkansas and Utah with very low per capita consumption.

When the consumption of alcohol rather than of the alcoholic beverage is measured, the rank order of state markets changes.

Table 24

APPARENT CONSUMPTION OF DISTILLED SPIRITS

(Comparison by States, Calendar Years 1964-1963)

Estimated Population July 1, 1964	Per Cent to Total Population of Wet States	Per Cent to U.S. Total Consumption		License States	Rank in Consumption		Consumption in Wine Gallons		Per Cent Increase Decrease	Per Capita 1964	Per Capita 1963
		1964	1963		1964	1963	1964	1963			
250,000	0.1	0.2	0.2	Alaska ^a	48	48	591,455		10.3	2.61	2.38
1,581,000	0.8	0.7	0.7	Arizona ^b	32	33	1,840,101	1,708,023	7.7	1.16	1.10
1,933,000	1.0	0.5	0.5	Arkansas ^a	38	38	1,365,192	1,271,365	7.4	.70	.68
18,084,000	9.6	12.9	12.5	California ^b	1	1	35,654,464	32,509,104	9.7	1.97	1.85
1,966,000	1.1	1.1	1.1	Colorado ^a	25	24	2,999,174	2,809,997	6.7	1.52	1.43
2,766,000	1.5	2.2	2.3	Connecticut ^b	13	12	6,095,267	5,837,963	4.4	2.20	2.19
491,000	0.3	0.4	0.4	Delaware ^a	41	41	1,117,803	968,651	15.4	2.27	2.03
808,000	0.4	2.0	2.0	Dist. of Columbia ^b	16	15	5,662,939	5,287,741	7.1	7.01 ^c	6.63 ^c
5,705,000	3.0	4.3	4.2	Florida ^a	7	7	11,828,371	10,903,000	8.5	2.07	1.93
4,294,000	2.3	1.7	1.5	Georgia ^b	20	22	4,613,310	3,789,535	21.7	1.07	.91
10,489,000	5.6	6.8	6.8	Illinois ^b	3	3	18,835,116	17,709,299	6.4	1.80	1.74
4,825,000	2.6	1.5	1.5	Indiana ^a	22	21	4,169,999	3,919,445	6.4	.86	.83
2,225,000	1.2	0.8	0.8	Kansas ^b	31	31	2,118,021	1,964,429	7.8	.95	.88
3,159,000	1.7	1.2	1.2	Kentucky ^a	23	23	3,249,912	3,082,801	5.4	1.02	1.00
3,468,000	1.8	1.9	1.8	Louisiana ^a	17	19	5,277,052	4,692,705	12.5	1.52	1.37
3,432,000	1.8	2.1	2.0	Maryland ^b	15	16	5,666,223	5,280,404	7.3	1.65	1.61
5,338,000	2.8	3.8	3.8	Massachusetts ^b	8	8	10,382,636	9,834,090	5.6	1.95	1.88
3,521,000	1.9	1.8	1.8	Minnesota ^a	19	18	5,074,763	4,711,815	7.7	1.44	1.35
4,409,000	2.3	2.1	2.1	Missouri ^a	14	14	5,866,789	5,557,611	5.6	1.33	1.28
1,480,000	0.8	0.6	0.7	Nebraska ^a	34	32	1,760,141	1,816,295	(-3.1)	1.19	1.24
408,000	0.2	0.6	0.6	Nevada ^b	35	36	1,584,831	1,480,862	7.0	3.88	4.02
6,682,000	3.6	4.9	4.9	New Jersey ^b	4	4	13,482,749	12,809,690	5.3	2.02	1.98
1,008,000	0.5	0.4	0.4	New Mexico ^b	40	40	1,172,618	1,010,188	16.1	1.16	.99
17,915,000	9.5	11.8	12.4	New York ^b	2	2	32,502,148	32,002,303	1.6	1.81	1.81
645,000	0.3	0.3	0.3	North Dakota ^a	43	44	847,665	773,147	9.6	1.31	1.22
2,465,000	1.3	0.8	0.9	Oklahoma ^b	29	28	2,346,386	2,339,763	0.3	.95	.94
914,000	0.5	0.4	0.5	Rhode Island ^a	39	39	1,246,412	1,183,661	5.3	1.36	1.34
2,555,000	1.4	1.1	1.1	South Carolina ^a	24	25	3,093,951	2,742,849	12.8	1.21	1.10
715,000	0.4	0.3	0.3	South Dakota ^a	44	43	800,978	818,434	(-2.1)	1.12	1.11
3,798,000	2.0	1.1	1.0	Tennessee ^b	26	26	2,942,936	2,632,158	11.8	.77	.71
10,397,000	5.5	3.5	3.5	Texas ^a	10	10	9,534,761	9,099,104	4.8	.91	.88
4,107,000	2.2	2.2	2.2	Wisconsin ^a	12	13	6,120,385	5,641,796	8.5	1.49	1.39
31,833,000	70.0	76.0	76.0	Total License	--	--	209,905,446	196,779,683	6.7	1.59	1.52

Table 24 (continued)

Estimated Population July 1, 1964	Per Cent to Total Population of Wet States	Per Cent to U.S. Total Consumption		Control States	Rank in Consumption		Consumption in Wine Gallons		Per Cent Increase Decrease	Per Capita 1964	Per Capita 1963
		1964	1963		1964	1963	1964	1963			
3,407,000	1.8	0.8	0.9	Alabama	30	27	2,321,690	2,341,601	(-0.9)	.68	.70
692,000	0.4	0.2	0.2	Idaho	47	47	656,581	619,994	5.9	.94	.87
2,756,000	1.5	0.9	0.8	Iowa	27	30	2,422,101	2,136,393	13.4	.88	.77
989,000	0.5	0.5	0.5	Maine	37	37	1,411,623	1,333,156	5.9	1.43	1.36
8,098,000	4.3	3.7	3.6	Michigan	9	9	10,351,517	9,285,598	11.5	1.27	1.14
705,000	0.4	0.3	0.3	Montana	42	42	874,014	850,524	2.8	1.23	1.20
654,000	0.3	0.6	0.6	New Hampshire	33	34	1,772,441	1,642,916	7.9	2.71	2.62
4,852,000	2.6	1.9	1.8	North Carolina	18	17	5,192,400	4,789,577	8.4	1.07	1.01
10,100,000	5.4	4.5	4.5	Ohio	6	6	12,333,623	11,615,988	6.2	1.22	1.14
1,871,000	1.0	0.9	0.9	Oregon	28	29	2,373,603	2,260,987	5.0	1.27	1.24
11,459,000	6.1	4.6	4.7	Pennsylvania	5	5	12,561,040	12,146,630	3.4	1.09	1.06
992,000	0.5	0.3	0.3	Utah	45	45	763,451	757,296	0.8	.76	.77
409,000	0.2	0.3	0.3	Vermont	46	46	720,569	657,687	9.6	1.76	1.69
4,378,000	2.3	2.2	2.3	Virginia	11	11	6,158,108	5,841,732	5.4	1.40	1.35
2,984,000	1.6	1.5	1.5	Washington	21	20	4,194,509	3,934,990	6.6	1.40	1.29
1,797,000	0.9	0.6	0.6	West Virginia	36	35	1,542,760	1,507,709	2.3	.86	.85
343,000	0.2	0.2	0.2	Wyoming	49	49	491,339	476,830	3.0	1.43	1.41
56,486,000	30.0	24.0	24.0	Total Control	--	--	66,141,369	62,199,608	6.3	1.17	1.10
188,319,000	100.0	100.0	100.0	GRAND TOTAL	--	--	276,046,815	258,979,291	6.6	1.47	1.40

Source: Distilled Spirits Institute, Annual Statistical Review of the Distilled Spirits Industry, 1964, p. 41.

^aBased on gallonage shipments to wholesalers.

^bBased on tax collections.

^cIn using the per capita of 7.01 and 6.63 for the District of Columbia, it should be noted that the population is for the District of Columbia only, whereas gallonage consumption represents buying for the metropolitan area, which includes Virginia and Maryland suburbs, as well as transients who are not included in the District of Columbia population.

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Table 25

APPARENT CONSUMPTION OF DISTILLED SPIRITS AND ABSOLUTE ALCOHOL
PER CAPITA OF POPULATION, TEN LEADING STATES, U.S.
1962

Per Capita Distilled Spirits Consumption	Rank	Alcohol Consumption ^a 15 Years of Age and Over
Nevada	1	Nevada
New Hampshire	2	New Hampshire
Connecticut	3	New Jersey
New Jersey	4	Wisconsin
Delaware	5	California
Florida	6	Connecticut
California	7	New York
Massachusetts	8	Delaware
New York	9	Illinois
Maryland	10	Massachusetts

Source: New York State Moreland Commission
on the Alcoholic Beverage Control
Law, Study Paper Number 1, pp. 12
and 13.

^aAll legal alcoholic beverages.

Alcoholic Beverage Consumption in Hawaii

Where does Hawaii fit into this picture?

There are no official estimates of liquor consumption in Hawaii, and only recently are there any unofficial estimates. There is, unfortunately, no official or unofficial statistical series, but since the more recent past is the focus for this study, bits and pieces of information can be put together for a somewhat coherent picture of the present. Let us first, however, take a look backward.

The history of alcoholic beverage consumption in Hawaii parallels that of the mainland to the degree that intemperate consumption and antisocial behavior in the last part of the 18th century and the early

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19th century led to sporadic attempts of various intensities to prohibit their production and consumption. Estimates by Robert C. Schmitt for Hawaiian consumption of "whisky" (probably distilled spirits) for 1847-1950 are set out in the next table with estimates of distilled spirits consumption on the mainland for more or less similar periods. Both are on an index number basis with 1947-9 equal to 100.

Table 26

INDEX OF PER CAPITA DISTILLED SPIRITS CONSUMPTION HAWAII AND THE CONTINENTAL UNITED STATES 1847-1950 (1947-9 = 100)

Period	Hawaii ^a	Continental United States ^b
1847-1877	42	178 (1850-1880)
1878-1892	132	120 (1881-1890)
1893-1917	67	121
1918-1931	na	21
1932-1940	94	66
1941-1946	134	103
1947-1950	95	97

^aRobert C. Schmitt, "Okole Maluna,"
Paradise, November 1952, p. 22.

^bCalculated by author from data
found in U.S. Department of
Commerce, Statistical Abstract
of the United States, 1951,
p. 775.

INTOXICATING LIQUOR LAWS IN HAWAII

These statistics do not permit a comparison of the absolute levels of consumption between the two areas. Schmitt estimates that the per capita consumption of "whisky" (probably all distilled spirits) in Hawaii in 1886 was 1.2 gallons;⁶ it was not much different in the continental United States, for the Department of Labor estimated the per capita consumption of distilled spirits for the fiscal year ending June 30, 1886, at 1.2 proof gallons.⁷

Table 27 contains per capita estimates of liquor consumption in Hawaii and the United States. According to these estimates, Hawaiians today consume less of all alcoholic beverages on the average than do other citizens of the United States.

For Hawaii, there are four major sets of data which relate intoxicating liquor consumption to the variables mentioned earlier. These are, first, the Bureau of Labor Statistics' extensive survey, Consumer Expenditures and Income. The relevant data are for Honolulu in 1961. The second is the report, An Analysis of Alcohol Consumption Patterns on Oahu, prepared by the Economic Research Center of the University of Hawaii for the Liquor Commission of the City and County of Honolulu. The third are the consumer analyses of the Honolulu Star-Bulletin. These latter are based on nonscientifically designed samples and hence are less reliable than the first two studies. In addition to these three, there are reports of the Hawaii Tax Department which are somewhat useful for interpreting consumption patterns.

The Effect of Income

Data for Hawaii show that consumption of intoxicating liquor increases on the average as income increases.⁸ This is true in the aggregate and in the particular. Aggregate intoxicating liquor sales measured at the wholesale level increased, for example, between 1950 and 1963 from \$15.2 million to \$23.0 million, an increase of fifty-one per cent. Part of this increase was due to the thirty-six per cent increase in population.

Table 27

PER CAPITA CONSUMPTION OF ALCOHOLIC BEVERAGES
UNITED STATES AND HAWAII, 1960-1964
(wine gallons)

Year	<u>Distilled Spirits</u>		<u>Wine</u>		<u>Malt Beverages</u>	
	<u>United States^a</u>	<u>Hawaii</u>	<u>United States</u>	<u>Hawaii^b</u>	<u>United States</u>	<u>Hawaii</u>
1964	1.45	1.33	0.970	0.665	15.9	10.9
1963	1.37	1.25	.933	.683	15.3	8.8
1962	1.37	1.12	.905	.621	15.1	8.4
1961	1.32	1.30	.938	.738	15.0	9.0
1960	1.31	1.23	.911	.771	15.1	9.1

Sources: Distilled Spirits: U.S.-DSI, Annual Statistical Review 1964,
Hawaii: The Liquor Handbook,
1961-1965, pp. 30, 32, 32, 30,
and 42 respectively.

Wine: Wine Advisory Board, Wine Institute Bulletin, #1327,
pp. 4 and 14.

Beer: United States Brewers Association, Inc., Brewers Almanac,
1965, p. 56.

^aDoes not include Hawaii.

^bIncludes only California wines. Other wines are probably an insignificant portion of total.

Table 28

SELECTED MEASURES OF AGGREGATE GROWTH IN HAWAII
1950-1963

	1950	1955	1960	1963	Percentage Change 1950-1963
Personal Income ¹ (\$ mil.)	\$689	\$952	\$1,421	\$1,667	+ 142%
Population ² (000)	478	484 ^a	591 ^a	650 ^a	+ 36
Wholesale Intoxicating Liquor Sales ³ (\$ mil.)	\$15.2 ^b	\$17.0	\$21.1	\$23.0	+ 51

- Sources:
1. Survey of Current Business, April 1965, p. 18.
 2. Hawaii State Department of Health as reported in Department of Planning and Economic Development, Statistical Report 31, June 21, 1965, p. 10.
 3. State of Hawaii, Director of Taxation, Liquor Tax Base and Collections, various years.

^aIn the period (1955-63) the number of visitors who remained overnight or longer increased 363 per cent from 110,000 to 509,000 and their expenditures from \$55,000 to \$225,000, a jump of 309 per cent. Since wholesale intoxicating liquor prices moved up slightly in this period, one may infer that the aggregate volume increased somewhat less than the aggregate value. (The Bureau of Labor Statistics national wholesale price index for alcoholic beverages rose from 95.2 to 100.7 [1957-9=100] an increase of 5.8 per cent.)

^bAverage of two fiscal years, 1949-50 and 1950-51.

CONSUMPTION PATTERNS

Early studies by the Honolulu Star-Bulletin for Honolulu and Oahu support other findings that intoxicating liquor consumption is more widespread among high-income families than low-income families. The data which follow are drawn from Bulletin researches but are quoted for their general implications rather than for their accuracy⁹ (Table 29).

One might expect beer to be a type of inferior good, that is, less of it purchased as income increased. But even with this beverage, excepting the data for bottled beer in 1960, it seems that the higher the income, the greater the percentage of purchasers.

More complete and more reliable data covering some of the variables mentioned above have emerged from the Bureau of Labor Statistics Consumer Expenditures and Income survey in 1960-1961. Expenditures for alcoholic beverages can be abstracted from the numerous voluminous reports in terms of these variables: income, number in family, age of head of household, occupation of head of household, whether home is owned or rented, by educational attainment of head of household, number of full-time earners in household, and by ethnic grouping. Since the BLS data are for Honolulu only, for perspective, where possible, data for selected other urban areas are included. Again, let us focus on the subject of income (Table 30).

For the urban portion of the nation as well as for the four urban areas cited in Table 30, households on the average spend more money for liquor in the higher income groups as compared with the lower. The progression from low to high, however, was not continuous in the four urban areas, although it was for the urban United States. These expenditures, when calculated as a percentage of current expenditures, not income, also showed a tendency to rise with income class, although the continuity of the increase was more pronounced for the urban portion of the nation than it was for any particular urban area. Peculiarly, Honolulu households are reported to have spent more money on the average for intoxicating liquor than urban households in the nation and the three other areas cited. They also, according to the Bureau of Labor Statistics study, spent a higher proportion of their current expenditures for intoxicating liquor than did the others. This is somewhat surprising in view of the lower volume estimates for the State of Hawaii, not Honolulu, that are cited elsewhere.¹⁰

Table 29

PER CENT OF RESPONDENTS WHO BOUGHT ALCOHOLIC BEVERAGES
BY INCOME AND BY TYPES, HONOLULU AND OAHU
1953 AND 1960

HONOLULU						
1953	Under \$4,000	\$4,000- 4,999	\$5,000- 6,999	\$7,000 and Above		
Bourbon	29.2%	32.7%	42.5%	58.3%		
Beer	70.2	69.2	68.4	75.6		
Scotch	14.7	21.0	25.5	44.5		
Sake	8.9	7.6	8.0	11.3		
Gin	8.1	10.5	19.2	31.3		
Wine	29.4	30.0	33.3	44.7		
OAHU						
1960	Under \$3,000	\$3,000- 3,999	\$4,000- 4,999	\$5,000- 6,999	\$7,000- 9,999	\$10,000 and Above
Beer, bottled	40.9%	38.5%	39.8%	40.3%	39.9%	34.9%
Beer, canned	55.1	63.3	62.8	63.4	67.0	67.2
Gin	8.6	12.4	16.8	16.6	24.5	37.7
Scotch	6.1	4.4	10.2	22.7	25.4	36.1
Vodka	19.2	9.8	12.3	15.8	19.9	24.7
Whisky	26.3	31.6	40.5	42.3	53.4	62.6
Wine	26.8	22.9	32.9	34.3	43.6	52.9

Source: Honolulu Star-Bulletin, Consumer Analysis,
1953 and 1960, passim.

Table 30

FAMILY EXPENDITURES FOR INTOXICATING LIQUOR, HONOLULU, NEW YORK,
SAN FRANCISCO, WASHINGTON, D.C. AND URBAN UNITED STATES
DOLLAR VALUES AND PERCENTAGE OF TOTAL EXPENDITURES
1960-1961

	Honolulu 1961	New York 1960-1	San Francisco 1960-1	District of Columbia 1960-1	Urban United States 1960-1
<u>DOLLAR EXPENDITURES INCOME CLASS</u>					
Under \$1,000	\$ 0	\$	\$ 4	\$ 1	\$ 9
\$ 1,000- 1,999	0		34	6	20
2,000- 2,999	32	49	61	43	33
3,000- 3,999	104		49	65	57
4,000- 4,999	222		122	96	74
5,000- 5,999	136		100	104	84
6,000- 7,499	100		134	107	107
7,500- 9,999	132		172	131	132
10,000-14,999	211	235	215	158	184
15,000 plus	369	293	562	228	275
AVERAGE	\$159	\$169	\$131	\$107	\$ 90
<u>PER CENT OF EXPENDITURES FOR CURRENT CONSUMPTION</u>					
Under \$1,000	0.0%	1.5%	0.5%	0.1%	0.7%
\$ 1,000- 1,999	0.0	1.1	1.6	0.4	1.1
2,000- 2,999	1.1	1.6	2.2	1.7	1.2
3,000- 3,999	2.9	2.9	1.5	1.9	1.5
4,000- 4,999	4.9	2.0	2.6	2.3	1.6
5,000- 5,999	2.7	2.2	1.8	2.2	1.6
6,000- 7,499	1.6	1.8	2.1	1.8	1.7
7,500- 9,999	1.9	1.9	2.2	1.8	1.8
10,000-14,999	2.1	2.3	2.2	1.6	1.9
15,000 plus	2.8	1.9	3.6	1.7	1.9
AVERAGE	2.4%	2.0%	2.2%	1.8%	1.7%

Sources: Bureau of Labor Statistics, Consumer Expenditures and Income, Honolulu, Hawaii, 1961, BLS Report No. 237-78 November 1963, New York, N.Y., 1960-61, BLS Report No. 237-54 November 1963, San Francisco, Calif., 1960-61, BLS Report No. 237-52 April 1964, Washington, D.C., 1960-61, BLS Report No. 237-53 February 1964, Urban United States, 1960-61, BLS Report No. 237-38 April 1964, passim. Data for 1960-61 were used where available for they resulted from a larger sample than the 1961 data alone.

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A general conclusion that a family's expenditures for intoxicating liquor and the family's income are crudely matched supports the logic if not the accuracy of the findings in all but one case; the highest expenditure is associated with the highest income: \$159 and \$7,950 for Honolulu, \$129 and \$6,822 for New York City, \$131 and \$6,372 for San Francisco, \$107 and \$6,959 for Washington, D.C., and \$90 and \$5,906 for Urban United States. The only area out of order is San Francisco with a slightly higher expenditure than New York and a slightly lower income.

Intoxicating liquor expenditures as a percentage of money income after taxes range from 2.1 per cent for San Francisco to 2.0 per cent for Hawaii, 1.9 per cent for New York, to 1.5 per cent for both Washington, D.C. and Urban United States.¹¹

The Economic Research Center Report (An Analysis of Alcohol Consumption Patterns on Oahu, Volume I) found that the percentage of drinkers in Honolulu increased almost steadily from 45.6 per cent of the sample in the under \$2,000 income class to 79.1 per cent in the over \$20,000 income class (p. 22) and average annual expenditures increased from \$62.92 for the income class under \$4,000 to \$217.62 for those in the \$15,000 and over class (p. 118).

Very closely related to income is the number of wage earners in the household. In Honolulu where the average expenditure for intoxicating liquor was \$159, family expenditures for these products varied as follows: no full-time earner - \$124, one - \$170, two - \$150, and three or more - \$219.¹² Hawaiian experience apparently is not unlike that of the nation as far as the importance of income in determining patterns of liquor consumption

The Effect of Educational Attainment of Family Head

Educational attainment of the head of the family is perhaps less positively correlated with intoxicating liquor expenditures than hitherto believed. Data collected by the Bureau of Labor Statistics raises questions not easily answered since liquor expenditures of its survey families did not rise as the level of education of the family head rose when income was held constant.¹³

While expenditures are reported to rise for the entire urban family group the higher the educational attainment of the head, the finding is not borne out by the data for the individual income classes. Income again shows itself as the key variable. For each of the four

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educational classes, with minor exceptions, expenditures rose as income rose. But when educational attainment is considered within each of the ten income classes, it appears that intoxicating liquor expenditures fall off when the family is headed by someone with 13 or more years of education. This is surprising insofar as the more educated people are expected to travel in circles where alcoholic beverages are part of the way of life involving more frequent attendance at cocktail parties, and consumption of more expensive alcoholic beverages and brands, e.g., imported whiskies and wines and highly priced bonded whiskies. These data, then, do contradict the widely held belief that consumption and educational attainment go hand in hand. Gallup poll findings have been generally accepted to support the belief that the two are positively correlated. In 1961, the poll found that 48 per cent of grammar school graduates, 67 per cent of high school graduates, and 71 per cent of college graduates consume intoxicating liquor.¹⁴

Table 31

INTOXICATING LIQUOR EXPENDITURES, SELECTED CITIES AND URBAN UNITED STATES BY YEARS OF EDUCATION OF FAMILY HEAD 1960-1961

Years of Education of Family Head	1960	1960-1961			Urban United States
	Honolulu	New York	San Francisco	Washington D.C.	
8 or less	\$134	\$111	\$ 74	\$ 65	\$ 67
9 - 12	169	134	126	112	96
13 - 16	189	150	155	121	108
Over 16	110	113	309	138	127
Average Annual Expenditures (Dollars)	159	129	131	107	90
Average Education (Years)	11	11	12	12	11

Source: Bureau of Labor Statistics, Consumer Expenditures and Income, for Cities Cited, 1960-1961.

INTOXICATING LIQUOR LAWS IN HAWAII

One can isolate the education variable by treating educational attainment within each income class. Data for urban United States are currently available but not for any of the other political entities cited above. The new data are presented in Table 32.

Table 32

INTOXICATING LIQUOR EXPENDITURES, BY YEARS OF EDUCATION OF FAMILY HEAD AND FAMILY INCOME URBAN UNITED STATES 1960-1961

Income Class	Education of Family Head			
	8 Years or Less	9-12 Years	13-16 Years	Over 16 Years
Total	\$ 66	\$ 96	\$108	\$127
Under \$1,000	7	14	20	25
\$ 1,000- 1,999	15	36	10	9
2,000- 2,999	32	34	30	68
3,000- 3,999	55	64	41	28
4,000- 4,999	73	80	59	64
5,000- 5,999	88	85	79	43
6,000- 7,499	106	109	112	64
7,500- 9,999	151	130	126	118
10,000-14,999	244	187	168	165
15,000 and Over	241	323	273	259

Source: Bureau of Labor Statistics,
Consumers Expenditure and
Income, Supplement 2 - Part A
to BLS Report 237-38, July
1964, Urban United States,
1960-61, pp. 60-63.

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The findings of the Economic Research Center indicate that for the persons in its sample, the percentage of drinkers increased with educational attainments once one gets beyond those with no schooling.¹⁵ The amounts spent annually on intoxicating liquor was not cross analyzed with educational achievement.

Effect of Occupation of Family Head

Families headed by professionals or managers tend to have greater expenditures for intoxicating liquor than families headed by blue collar workers. Time Research Report #1204 reported that 60 per cent of households headed by managers and officials in 1960 drink or serve whisky, and 58 per cent of households headed by professional and technical personnel drink or serve whisky. Households led by service workers, farmers and farm laborers, and housewives, on the other hand, reported only 34 per cent, 21 per cent, and 14 per cent respectively drinking or serving whisky.

According to the Oahu study of the Economic Research Center, the percentage of drinkers in each occupational group in the survey sample varied over a rather narrow range, from 54.15 per cent to 79.6 per cent if housewife is neglected as an occupational category. Only 47 per cent of the females in the sample were classified as drinkers while 74.2 per cent of the males were so classified. Proprietors and managers were at one end of the distribution with 79.6 per cent drinkers and laborers at the other with 54.5 per cent. Most other occupations were reported to have percentages in the sixties and seventies.

The Bureau of Labor Statistics study covers purchases rather than consumption. In Honolulu in 1961 the purchase picture is mixed as the following table shows. Note, for example, that skilled workers' families in Honolulu are reported to have expended much less than unskilled workers' families for intoxicating liquor.

Once again, the reader is asked to interpret these data very carefully. The job itself tends not to be the causal factor, although there are differences in expenditure patterns associated with the job differences. But there are other factors at play, implicit but unmentioned, such as the ethnic factor. If a particular occupational level is filled from one ethnic group and another by a second ethnic group, then the occupation may have less impact on the statistics than the ethnic factor. This may be the case in the data in Table 33.

Table 33

INTOXICATING LIQUOR EXPENDITURES, BY OCCUPATION OF THE HEAD OF
HOUSEHOLD, SELECTED URBAN AREAS, UNITED STATES
1960-1961

	Honolulu 1961	New York 1960-61	San Francisco 1960-61	District of Columbia 1960-61	Urban United States 1960-61
Self Employed	\$239	\$176	\$324	\$140	\$106
Salaried Professionals & Officials	176	134	183	158	115
Clerical, Sales	82	104	125	60	89
Wage Earners					
Skilled	145	241	172	127	126
Semiskilled	110	119	150	82	101
Unskilled	175	131	86	135	73
In Armed Forces	265	44	46	103	88
Not Working					
Retired	131	53	68	50	40
Others	131	29	27	8	26
TOTAL	\$159	\$129	\$131	\$107	\$ 90

Source: Bureau of Labor Statistics, Consumer Expenditures and Income, for Cities Cited, 1960-61.

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Effect of Ethnic Origin

Unfortunately, a two-way analysis of ethnic origin (race in Bureau of Labor Statistics terminology) and occupation of head of the family is not available for Honolulu, but it is available for urban United States. The next table comprises this cross analysis.

Table 34

EXPENDITURES FOR INTOXICATING LIQUOR, BY OCCUPATION AND ETHNIC ORIGIN, URBAN UNITED STATES 1960-1961

	Total	White	Negro	Other
Self Employed	\$106	\$108	\$ 84	\$106
Salaried Professionals & Officials	115	116	113	62
Clerical and Sales	89	90	74	63
Skilled Wage Earners	126	123	159	220
Semiskilled Wage Earners	101	102	101	54
Unskilled Wage Earners	74	75	70	82
In Armed Services	88	90	55	69
Retired	39	42	18	15

Source: Bureau of Labor Statistics, Consumer Expenditures and Income, Supplement 2 - Part A to Report 237-38, July 1964, pp. 50-53.

In Honolulu, the survey included only Whites and others; no Negroes were included. There was a significant difference between the expenditures of the two groups, \$225 for Whites against \$129 for others.

The "Other" category includes, for the most part, Chinese and Japanese. Clearly, for the three cities for which data are cited above, their expenditures for liquor are significantly below those for Whites; for the urban United States, the differences between ethnic groups are not as pronounced.

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A crude check on the validity of the importance of the ethnic factor was made by matching wholesale sales of alcoholic beverages by county with the proportion of Whites living in that county in Hawaii. Data for 1960 were used, since the census distinguished between the ethnic groups in its population count. Honolulu, with the highest proportion of Whites, had the highest wholesale sales per capita, \$3,754. Honolulu also had the highest family income for that year, \$6,792. Kauai, with the second highest proportion of Whites, ranked second in wholesale sales per capita. Its income placed third in the group of four. Hawaii had the third largest proportion of Whites and the third highest wholesale sales per capita. Hawaii ranked fourth in family income. Maui placed fourth in the ethnic count and sales. In income, it ranked second.

Table 35

EXPENDITURES FOR INTOXICATING LIQUOR, BY OCCUPATION AND ETHNIC ORIGIN, SELECTED URBAN AREAS 1960-1961

	Total	White	Negro	Other
Honolulu - 1961	\$159	\$225	\$ 0	\$129
New York - 1960-61	129	127	144	81
San Francisco - 1960-61	131	139	101	46
District of Columbia - 1960-61	107	109	105	0
Urban United States - 1960-61	90	92	75	81

Source: Bureau of Labor Statistics, Consumer Expenditures and Income, for Cities Cited, 1960-61.

This completes the chapter on intoxicating liquor consumption patterns in Hawaii. Too much of the analysis perhaps rests on data drawn from Honolulu only, but the dearth of data forced this bias. The factors which seem most important in shaping the consumption patterns in Hawaii are income, ethnic origin, occupation of the head of the family, but only to the extent that the head is self-employed or a professional. One factor, education, thought to be important, turns up as a less significant variable for this analysis.

Chapter X

THE ECONOMICS OF CONTROL

The economic facets of government control over intoxicating liquor center on the twin goals of sumptuary purposes and revenue purposes. States desiring to limit the consumption of alcoholic beverages have used their licensing powers to limit the numbers of businesses engaged in intoxicating liquor trades, their police powers to maintain high prices for alcoholic beverages, and their taxing powers also to maintain high prices. Hawaii, which has generally been permissive in its approach, adopted a permissive licensing approach as noted earlier; it belatedly imposed taxes on these products¹ in 1939, and belatedly introduced mandatory resale price maintenance for these products² in 1955.

Hawaii is the only state to impose an ad valorem tax on intoxicating liquor. This tax has not been unduly high, but it does widen the gap between low priced and high priced beverages. A reservation one may have about this system is that it does not generate statistics reflecting sales volumes as opposed to sales values as a by-product. The State has raised the level of its ad valorem tax four times,³ and with each change the revenue has continued to rise. Table 36 provides the appropriate data for the alcoholic beverage tax.

In 1964, all of the states, not including the District of Columbia, levied alcoholic beverage taxes. They collected \$864 million or 3.6 per cent of the total \$24,244 million tax revenues. Hawaii collected \$3.8 million or 2.7 per cent of its total tax collection of \$142.1 million.⁴

Alcoholic beverage taxes tend to be shifted from retailers to consumers and hence influence their purchase decisions. The effect of the tax on consumption, however, seems to be relatively light.

The introduction of mandatory resale price maintenance into the intoxicating liquor control machinery of the State was accomplished in 1955. The committee reports on the legislation said:

The purpose of this bill is to prevent the retail liquor dealers throughout the Territory from selling branded liquor at a price below the established minimum price and thereby encourage fair trade practices in the liquor retailing business.⁵

Table 36

LIQUOR TAX BASE, TAX RATE, AND COLLECTIONS
HAWAII, 1945-1966

Fiscal Year	Tax Base (million dollars)	Tax Rate (per cent)	Collections (million dollars)
1945-6	\$33.2	6%	\$2.0
1946-7	23.7	6	1.4
1947-8	20.3	8	1.6
1948-9	21.2	8	1.7
1949-50	14.4 ^a	12	1.7
1950-1	15.9	12	1.9
1951-2	16.1	12	1.9
Calendar Year			
1955	17.4	12	2.1
1956	17.5	12	2.1
1957	18.5	12	2.5
1958	17.7	12 and 16	2.8
1959	19.8	16	3.2
1960	21.3	16	3.4
1961	22.1	16	3.5
1962	22.6	16	3.6
1963	23.1	16	3.7
1964	25.0	16	4.0
1965	26.6	20 ^b	4.2
1966	28.8	20	5.4

Sources: 1945-1952: Robert M. Kamins, The Tax System of Hawaii.

1955-1966: Hawaii Director of Taxation, Liquor Tax Base and Collections (periodic mimeographed reports).

^aTax base changed from retail sales to wholesale sales on July 1, 1949.

^bThe twenty per cent rate became effective July 1, 1965, Act 155, Session Laws of Hawaii 1965, sections 8 and 9.

THE ECONOMICS OF CONTROL

Section 1 of the Act reads as follows:

It is the declared policy of the Territory that it is necessary to regulate and control the sale and distribution of liquor, within the Territory, for the purpose of fostering and promoting temperance in its consumption and respect for and obedience to the law. In order to eliminate conditions which tend to disrupt the orderly sale and distribution of such liquor, it is hereby declared as the policy of the Territory that the sale of liquor should be subjected to certain restrictions, prohibitions and regulations. The necessity for the enactment of the provisions of this section, is, therefore, declared as a matter of legislative determination.⁶

The legislature, apparently impressed with the need for higher liquor prices, passed control of these prices from retailers and wholesalers to manufacturers. They did not, as did New York, charge those posting prices for the privilege of posting or for the costs of administering these new prices. The system was simple; prices were established by private business and enforced by the State at public expense.⁷ Higher prices might at any time be obtained from an alternative procedure; namely, by raising the tax level. One additional result of the higher tax level is higher liquor tax revenues for the State.

The Liquor Commission of the County of Maui in its Twenty-Third Annual Report (December 31, 1955) noted that "These laws are basically the result of the efforts of the people in the liquor industry, for which and other reasons have appeared suspicious in some corners" (page 5).

These areas constitute the major economic aspects of the control system. They will be subject to more intensive analysis at a later stage in this report.

Chapter XI

CONSUMERS, PRICES, AND THE STATE

The Problem

Consumers are seldom organized into consumer groups. They are producer oriented rather than consumer oriented and look toward higher incomes to improve their lot rather than to a more effective use of the incomes they receive. They are naive about the natures of economic markets and generally alter their behavior patterns in response to price, quality, and service changes. One aspect of the market about which consumers are usually unaware is the role of resale price maintenance. Elected officials, however, occasionally rise to do battle on behalf of consumers by attacking resale price maintenance as a device that delimits retail price competition. In Hawaii, the general resale price maintenance law, permitted by the federal Miller Tydings Act, was enacted in 1937, while the nonsigner clause, which permits the manufacturer to bind all distributors on the basis of one signatory to his prices at all levels of trade, was added in 1945. The latter revision was removed in 1963. Act 49, Session Laws of Hawaii 1967, repealed Hawaii's Fair Trade Act in its entirety. The reasoning behind the repeal is stated as follows:

The purpose . . . is to totally repeal the Fair Trade Act . . . which . . . was enacted in 1937, and is really a resale price maintenance law and has nothing to do with fairness in trading. Under this Act any mainland or other manufacturer can set a certain retail price for a certain article and all retailers in Hawaii must sell at that price. This type of act has been opposed for many years by the U.S. Department of Justice and the Federal Trade Commission on the ground that it is an anti-competitive device and keeps the prices on these type of goods higher and less responsive to changes in supply and consumer demand. The manufacturer of these items benefits more than he should because the retailers are encouraged to promote these items over others because of their high, protected-by-law mark up. The President's Council on Economic Advisors reports that this type of law, "providing a shield from competition . . ., often raise prices to consumers". Laws like the Fair Trade Act, according to our Attorney General's Office, are designed to, and do, give rights and privileges to the large business enterprises which are the owners of brand names or trademarks, to wit: the national manufacturers and distributors, with little, if any, protection to small business.

Our Attorney General's office goes on further to state:

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The purpose of the Hawaii Anti-trust Act is to produce and promote open, free, and fair competition in business. Hawaii's "Fair Trade Act" detracts from that purpose. We think the law should be repealed.¹

Since liquor is governed by the price provisions of the liquor law rather than the general resale price maintenance law, it would seem to follow logically that the thinking that resulted in repealing the general "fair trade" law should be applied to liquor.

The consumer, of course, cannot be separated from his role as a citizen. He cannot be expected, therefore, to alter those things which affect one aspect of his behavior if that action will complicate other facets of his life. He, therefore, would probably hesitate to alter liquor price arrangements if such a change were expected to lead to greater anti-social behavior. Yet, it is not apprehension on his part about anti-social behavior that has permitted resale price maintenance in liquors since 1955 in Hawaii and in other states for varying periods of time. Rather, it is his unawareness of its presence and consequences in the field of liquor and in other commodity areas that has permitted its introduction and retention.

Should liquor pricing regulations in Hawaii be altered? This concern is a latent concern of the general populace and a more pointed concern of those legislators who speak on behalf of their constituents.

Prices and Control

A basic tenet of economics which everyone is quite prepared to quote is that the price of a commodity influences inversely the purchase of that commodity, that is, the higher the price of a commodity, the less of it that will be purchased. The exact nature of this relationship for any particular commodity is defined by the demand schedule for that commodity, or, in other words, a table or graph that shows the various quantities of a commodity that will be purchased at all possible prices. The determinateness implied in the general statements above, however, is elusive, for the investigator soon finds that the data necessary for the construction of a demand curve are not readily available. He is forced to rely, then, on statistical devices which at best can provide him with only approximate results. Yet, for private or public purposes, the elasticity of the demand curve, the relationship between a change in price and the change in the quantities purchased, is the crucial element. This element may vary from a high positive figure (the quantity purchased may increase

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by a percentage significantly larger than the percentage price decrease) to almost zero (the quantity purchased increased by a negligible percentage compared with the percentage price decrease).²

The niceties of technical economic analysis oft times are lost in favor of "common sense" approaches, especially when technical analysis is costly and its results inconclusive. In the field of liquor control, this is the case. With temperance an early goal of legislators and administrators in the post-repeal period, one of the first devices to which they turned was taxation for sumptuary purposes. Taxes were to be set so that prices would be established at relatively high levels to dampen the demand for liquor although revenue rather than control purposes characterized our early taxation of alcohol in America.³

As the prohibition era receded into the past, as goals of governments changed with respect to liquor control, and as lessons of more recent experience intruded, less attention was paid to the sumptuary purposes of the tax and more to its revenue features. This was not necessarily contradictory since increasing tax rates could always be said to have their origin in both purposes. Nevertheless, the idea of limiting liquor consumption through higher prices (it is assumed that liquor taxes are more or less shifted from the producer or wholesaler to the consumer) remains ingrained in the thought patterns of legislators, administrators, and the public.

The factors influencing consumption of distilled spirits are many, however, and the importance of any particular influence has not been assessed with any great degree of accuracy.

The high price, low consumption syndrome should not be treated as pathological. When beverage alcohol can be purchased at distilleries today from between thirty cents a gallon for neutral grain spirits and two dollars a gallon for ten-year old bourbon, there may be good reason to attempt to prevent the recurrence of those conditions which existed in England more than a hundred years ago when it was allegedly possible to get "drunk for a penny and dead drunk for tupenny."

While the license states had to rely upon taxes to inflate prices, the monopoly states had direct control over retail prices in their state stores. The adoption of a monopoly state system is supposed to reflect a more abiding interest in intoxicating liquor control than the adoption of the license system, but it is clear that administrators of these systems today differ as to the function

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of price for control. New Hampshire marks up distilled spirits by forty per cent on invoice cost and adds an additional twenty cents per fifth to reach its retail prices, while Pennsylvania marks up distilled spirits by forty-eight per cent on invoice cost and adds an additional fifteen per cent plus an additional five per cent in the form of sales taxes. Prices in New Hampshire, consequently, are significantly lower than those in Pennsylvania, as the next table shows.

If it seems somewhat strange that a common control system should yield in the two states such divergent policies and results, it is equally strange that in some license states, the responsibility for keeping prices high has been more or less delegated to the producers of alcoholic beverages. This happened when some states introduced resale price maintenance and price posting into their liquor control laws and assumed the responsibility for policing these prices.

Table 37

RETAIL PRICES OF SELECTED DISTILLED SPIRITS NEW HAMPSHIRE AND PENNSYLVANIA JANUARY 1965

	New Hampshire	Pennsylvania
	(Price per Fifth)	
Seagram 7 Crown Neutral Blend	\$3.85	\$4.99
Old Crow Straight	4.05	5.19
Old Forester Bonded	5.85	7.62
Haig and Haig Scotch	5.55	7.39
Seagram V.O. Canadian	5.40	7.14
Gordon's Gin	3.40	4.49
Carioca Rum	3.55	4.70
Coronet Brandy	4.25	5.48
Smirnoff Vodka	3.60	4.73

Source: The Liquor Handbook, 1965, p. 95.

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Resale Price Maintenance

Resale price maintenance works best for products which are highly advertised, nonperishable, widely distributed, relatively low priced, and not highly stylized or seasonal.⁴ When manufacturers of branded products which are generally good substitutes for each other prefer to maintain resale prices and when retailers cooperate in establishing and policing these prices, the effectiveness of resale price maintenance is enhanced. These conditions are more or less fulfilled in the alcoholic beverage industry, especially in distilled spirits and wines. Alcoholic beverages are promoted strongly in the various media, although the distilled spirits industry voluntarily refrains from using television to promote its products. Wines and beers, however, are promoted through television advertising. In 1964, more than \$200 million were spent for advertising time and space for alcoholic beverages. This represented about 1.5 per cent of the expenditures of consumers for these beverages, or about six cents per gallon of beverage consumed. This low figure reflects the large volume of beer consumed. For the other beverages alone, the figure is closer to thirty cents per gallon.

Alcoholic beverages are, for all practical purposes, nonperishable, and, depending upon the standards used, relatively low priced. This is particularly true of beer and wine, which are taxed at relatively low rates by the federal government. While consumers change their pattern of consumption from one season to another, this does not affect the quality of the shelved products; so there is no obsolescent factor motive in these patterns.

There are three main types of fair trade today; namely, voluntary resale price maintenance without the nonsigner clause, voluntary resale price maintenance with the nonsigner clause, and mandatory resale price maintenance. Voluntary resale price maintenance without the nonsigner clause⁵ tends to break down faster than voluntary resale price maintenance with the nonsigner clause,⁶ and the latter faster than mandatory resale price maintenance.⁷ The last is generally most effective, although one finds price breaking even under this type of law.

Before tracing briefly the legal history of resale price maintenance, it should be indicated that the strong support for resale price maintenance comes from the retail community--in the past, druggists and liquor dealers. Some manufacturers also are strong supporters of resale price maintenance. Most manufacturers give lip service to these laws, but unless forced to, either by retailers and

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wholesalers or as the result of a mandatory law, may do little to police violations. This, in effect, undermines the established prices. Many of the legal benchmarks in this field are the result of litigation involving distillers, and in 1945 the Federal Trade Commission observed that, "While the operation of Federal and State fair-trade laws has not proved as successful in the liquor business as had been hoped by its proponents, they have undoubtedly had considerable restraining influence on price competition within the liquor industry."⁸ This was written before the era of mandatory resale price maintenance.

In 1937, the Miller-Tydings amendment exempted resale price maintenance contracts from the Sherman Antitrust Act and the Federal Trade Commission Act and permitted the states to enact legislation sanctioning "fair trade" within their borders. Resale price maintenance is a device for vertical price fixing defined by the Federal Trade Commission in this manner: "Resale price maintenance is a system of pricing a trademarked, branded or otherwise identified product for resale in which, pursuant to laws legalizing such arrangements, the manufacturer, producer or brand owner, or his authorized agent, factor or wholesale distributor, prescribes by contract the minimum price or the resale price at which such product may be sold at wholesale, and the producer or manufacturer and his factors or wholesalers prescribe the minimum price or the resale price at which such a product may be sold at retail, in the specified state, or in a specified portion thereof, with the effect of legally binding all other distributors in the specified area to conform with such prices."⁹

Much controversy has surrounded the law and its enforcement since its inception. Separate legal decisions have (a) sanctioned state-enacted resale price maintenance laws (Old Dearborn Distributing Company v Seagram Distillers Corporation, 299 U.S. 183, 1936); (b) upheld the right of the seller within one state to sell below fair-trade prices to out-of-state buyers (Sunbeam Corporation v Wentling, 185 F. 2d 903, 1950); (c) struck down the use of nonsigner clauses in resale price maintenance contracts (Schwegmann Brothers v Calvert Distillers Corporation, 341 U.S. 384, 1951);¹⁰ and (d) permitted a reseller in a nonfair-trade state to sell fair-traded items in a fair-trade state at any price (General Electric Company v Masters Mailorder Company of Washington, D.C., Inc., 122 F. Supp. 797, D.C.N.Y., 1957).

The nonsigner clause was legalized by the McGuire Act, 15 U.S.C. 45 (1952).

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As of 1962, twenty-two states had fair trade laws including provisions for the use of the nonsigner clause; nineteen states had fair trade laws but the nonsigner clause was not sanctioned; and eight states either had not enacted fair trade laws or their laws had been declared illegal. There is no federal resale price maintenance law, although there have been repeated attempts to secure such legislation. In recent years, bills have been introduced to provide for federal resale price maintenance, allegedly for the purpose of stabilizing product quality.

Table 38

STATUS OF RESALE PRICE MAINTENANCE LAWS, LICENSE STATES 1966

Free Market	Voluntary Resale Price Maintenance		Mandatory Price Posting at One or More Trade Levels ^a	Mandatory Resale Price Maintenance or Mandatory Minimum Markup
	<u>Nonsigner Clause</u>			
	Yes	No		
Alaska	Arizona	Colorado	Georgia	Arkansas
District of Columbia	Illinois	Florida	Maryland	California
Nebraska	Mississippi	Louisiana	Massachusetts	Connecticut
Nevada	New Mexico	N. Dakota	Minnesota	Delaware
Texas	Wisconsin	S. Carolina	Missouri	Hawaii
		Wyoming	New Jersey	Indiana
			New York	Kansas
			Oklahoma	Kentucky
			S. Dakota	Rhode Island
				Tennessee

Source: Distilled Spirits Institute, Summary of State Laws and Regulations Relating to Distilled Spirits, 18th Edition, November 1966, passim.

^aPrice posting assists the enforcer in maintaining prices.

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So far, it has been implied that a businessman's interest in resale price maintenance stems only from an interest in keeping prices higher than they would be without it.¹¹ The case for fair trade, particularly as it relates to intoxicating liquor, is somewhat more complex and rests on five specific arguments.

1. Proponents hold that resale price maintenance is designed to foster prices which provide adequate margins at all distribution levels. An offshoot of this argument is that prices are kept stable through time and that price extremes are eliminated.
2. A second line of argument contends that the pricing policies of retailers are inimical to the interests of producers. Producers maintain that when some retailers use products as loss leaders, other retailers will give up those products; in addition, consumers will lose confidence in the quality of those products.
3. An additional argument for fair trade in the alcoholic beverage industry is couched in terms of the need to protect traditional patterns of distribution against the surging pressures of concentration. The small businessman needs adequate profit margins to continue in business; profit margins disappear under pressure of cutthroat competition.
4. Efficiency, the argument continues, is ensured through cross product competition and not only through product competition.
5. The last point to be made relates to competition. Fair traded items, it is said, must compete with other fair traded items and must also be price competitive with private label products. Prices, accordingly, must be sufficiently low to assure general consumer acceptance of branded merchandise.

The case against resale price maintenance in the alcoholic beverage industry, and in general, begins with its effect on prices. Under resale price maintenance, price competition tends to disappear. The problem is that price competition is thrown onto the backs of the manufacturers, who are sufficiently few in number to be wary of price competition. They fear retaliation and know not where price cuts will

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end. They, hence, favor sales competition which tends to be cost increasing rather than cost decreasing. Wholesalers and retailers are forced into the same pattern of behavior. The end result is not only a relatively high level of prices but a level that tends to be stabilized through time. The high level may not be as high as some extremely high prices which might exist in those shops reflecting extreme marketing conditions, and, similarly, they are certainly higher than the lowest prices which may prevail, again reflecting marketing conditions.¹² The fact that prices are stabilized through changing economic conditions suggests that the market mechanism which is supposed to work through changing prices is short circuited. High and rising prices are expected to attract new firms and new production, and, conversely, lower and falling prices are expected to reduce production and the number of firms in an industry. The argument then centers on the need for flexible prices which reflect production and marketing conditions, and this can be had only by allowing businessmen to determine independently prices at each trade level.

Closely related to the price argument is that of economic efficiency. Opponents point out that those in favor of resale price maintenance tend to couch their arguments in terms of two types of businesses: manufacturers who produce high-priced branded merchandise and small retailers. The opponents contend that manufacturers are not in the best position to know the myriad marketing situations at the wholesale and retail levels and hence are not in a position to know the best prices for these markets. Further, resale price maintenance ignores the rationale of the private market; namely, that prices should be free to reflect the differing economic efficiencies of different businesses. Volume stores, under a resale price maintenance system, are not able to pass along the savings resulting from marketing efficiencies to their customers. Customers, then, do not have the choice and hence cannot "vote" for efficient marketing arrangements as they would if price attracted them to a particular marketing form. In addition, the inefficient and high cost distributors are protected from competition and allowed to remain in business. A poor allocation of resources within the economy results as well as an unwarranted shift of income from consumers to businessmen.

Proponents of resale price maintenance laws argue that the laws are necessary to protect the brand name of products. But, say opponents of these laws, there are sufficient laws which grant protection to a manufacturer against infringement, or fraudulent use of his trademark. Is it really necessary to grant him additional protection in the private market? While it is true that branded merchandise may be sold at relatively low markups by some stores and consequently

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discontinued by others; this is the type of problem with which he is expected to concern himself. The selection of the best marketing channels is his decision to make, and this decision may affect the degree of consumer acceptance he may gain for his product.

Opponents of resale price maintenance, however, do not deny that there are business practices which may be inimical to some producers and distributors. A partial list of these includes price discrimination, sales of merchandise below invoice cost plus minimum efficient operating costs for the purpose of forcing competitors from the market, loss-leader selling for the purpose of expanding his market, and reduction of customary markups. The use of loss-leader selling if concentrated on one branded item may in fact reduce the number of retailers interested in handling that brand. Yet, if the brand has a reputation sufficiently high to be useful as a loss leader, this would seem to hurt other retailers more than it would hurt the manufacturer. Sporadic loss-leader selling and the reduction of customary markups which reflect marketing efficiencies can hardly be classed as undesirable since they reflect pricing decisions by the businessmen intimately involved in the trade levels at which these prices will prevail. These pricing decisions would seem to be healthy for the private enterprise system.

Continuous price cutting to levels below invoice costs and operating costs of efficient retailers may be considered "unfair". Remedies should be available but not a sweeping remedy which in effect permits vertical price fixing. Prohibition of sales below cost would seem to be a more appropriate prescription.

"Bait" and misleading advertising are retail practices usually cited as justifying resale price maintenance laws. These, too, are inimical to the welfare of producers and consumers, but can be corrected through appropriate categorical legislation.

The important aspect that should not be overlooked, say the opponents of resale price maintenance, is that independent businessmen must not be deprived of their right to determine their own margins and prices.

In retrospect, opponents note that resale price maintenance is not only vertical price fixing but horizontal price fixing across distribution levels. The latter results from the unwillingness of producers to compete with prices at the distribution levels. Where an industry is dominated by a few firms, it is usual for these firms to eschew price competition. To introduce resale price maintenance

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into this situation only means that the nonprice competitive pattern is congealed. Further, a new and costly structure of private and public enforcement is brought into play.

Most economists are unsympathetic to the concept of resale price maintenance. The Report of the Attorney General's National Committee to Study the Antitrust Laws¹³ and the British Board of Trade¹⁴ support their scepticism. The evidence suggests that resale price maintenance leads to generally higher and stable prices, a dampening of retail and wholesale efficiency, excessive distribution capacity, a reliance upon costly competition devices, an expensive system of price policing, and lower levels of output and employment than are possible without it.

Since resale price maintenance is designed to maintain higher prices for alcoholic beverages than would prevail without such a law, the questions uppermost in people's minds when the subject of a free market for these beverages is broached is, "How low will prices fall? Will lower prices stimulate liquor consumption? Will increased liquor consumption lead to an increase in anti-social behavior and alcohol-connected illnesses?" These are legitimate questions to which complete and accurate answers must be given. Let us, therefore, consider each in turn.

The Effect of Repeal of Resale Price Maintenance on Alcoholic Beverage Prices

The purpose of resale price maintenance is to prevent prices from declining as a result of wholesale and retail price competition. There is no intent to prevent resellers from charging prices higher than those promulgated by the brand owner.¹⁵ In practice, it is unusual for retailers to sell above the promulgated prices, especially where prices are posted and available for consumer inspection or when consumers have mistakenly understood or have come to accept the promulgated prices as the stipulated rather than the minimum prices. Resale price maintenance is most effective when it is needed least, in markets where goods are in short supply. It is not uninteresting that the mandatory resale price maintenance law in liquors in New York, for example, was introduced when liquor was in short supply at the end of World War II; consumers became accustomed to its application when there were virtually no downward pressures on prices resulting from the supply side. When supplies became ample, however, and manufacturers looked to expanding markets in which to sell these more ample supplies, three developments occurred; namely, price shading through

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"wheeling and dealing" for the established products, lower priced private label merchandise became a larger factor in the market, and a trading-up of consumers in terms of "quality" but at little or no increase in price. The best example of the last development is the move from neutral blends to straights in the whisky field.

The repeal of resale price maintenance for alcoholic beverages can be expected to reintroduce price competition between brands of alcoholic beverages and perhaps even intensify the latent cross product competition between beers, wines, and distilled spirits that now exists. Since supplies are ample at this time, prices would tend to fall. Would they fall to the levels of Washington, D.C. or other free markets? It is unlikely, for Hawaii is not only a very small market, but it has a law against sale below cost.¹⁶ Of course, if distiller prices fall significantly, wholesaler and retailers' prices are likely to drop also.

If and when resale price maintenance in alcoholic beverages is removed, it might serve as the point of departure for a revision of the wholesale pricing procedures. In most license states, resellers include in their markup base all of their out-of-pocket costs, including state taxes, which are levied at the wholesale level. They, therefore, take a markup on the tax. In Hawaii, they do not, as in the classic oligopoly case; no single wholesaler is sufficiently venture-some to take the step of altering the pricing procedure alone since he is not certain others would follow. Since everyone in the industry would be subject to the same stimulus of setting his own prices, one of the probing gambits might be the marking up of the tax. This would have the effect of increasing the base prices to retailers, assuming no drop for the present in the wholesalers' margins, so that price cutting by retailers might not be overly severe in terms of lower markups on invoice costs. The arithmetic of the situation might look as follows:

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	With Resale Price Maintenance	Without Resale Price Maintenance	
		Not Marking Up Tax	Marking Up Tax
Price to Wholesaler Including Transport Costs	\$40.00	\$40.00	\$40.00
Wholesaler Markup (15%)	6.00	6.00	7.79
State Liquor Tax (20%)	9.20	9.20	11.95
Price to Retailer	55.20	55.20	59.74
Retailer Markup			
30% with rpm	71.76	--	--
20% w/o rpm	--	66.24	71.69
Bottle Price to Consumer	\$5.98	\$5.52	\$5.97
Change From Resale Price Maintenance Situation	38%	7.6%	49.4%

Apparently, a drop of one-third in the markup percentage would reduce prices a little less than eight per cent not marking up tax. If the pricing procedures change to mark up the tax, then prices would change little, if at all. Of course, the extent to which prices would fall is difficult to forecast. The prices in the free market do not reflect only the lower margins of retailers but of wholesalers and distillers as well. A distiller might provide his wholesalers with larger depletion allowances (invoice charges are alleged by the distillers to be the same for all states), so that the wholesaler might receive allowances to reduce his base costs. He might then figure his base to be \$38.50 after allowing for a depletion allowance of \$1.50 per case. If the wholesaler decreased his markup to ten per cent and applied it to the tax, and the retailer decreased his markup to twenty per cent, the case of spirits which was originally \$40.00 for the wholesaler and \$5.98 a fifth to the consumer would turn out to have a bottle price to the consumer of \$5.43, or some 9.2 per cent less. From a revenue point of view, the State would receive as the liquor tax on the case \$10.86 instead of the original \$9.20. This would more than make up for the decrease in the general excise tax which would have dropped from \$0.24 to \$0.22. The picture would now look as follows for a case of fifths:

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	Current	After Repeal of Resale Price Maintenance With New Assumptions	Difference
	Per Case		
Distiller Price	\$40.00	\$38.50	-\$1.50
State Liquor Tax	9.20	10.86	+ 1.66
Wholesaler Markup	6.00	4.93	- 1.07
Price to Retailer	55.20	54.29	- 0.91
Retailer Markup	16.56	10.86	- 5.70
Price to Consumer	71.76	65.15	- 6.61

It is likely that if wholesalers and retailers are not to take any greater reductions in their margins than assumed above, the distillers will have to bear an even greater portion of the reduction than noted.

The closest situation to that of Hawaii is to be found in New York which removed distilled spirits from mandatory resale price maintenance in 1964. The law which effected this change, unfortunately, included a provision which prevented specific price advertising by retailers of distilled spirits prices. This provision in conjunction with the move by distillers to place their products under the protection of the State's general resale price maintenance law blunted the effect of the repeal. Prices, nevertheless, declined sporadically in terms of time and place so that The New York Times was able to report:

New Yorkers can save \$1 or \$1.50--and in some instance more--on a bottle of whisky, but only if they are adventurous and alert. Their problem is to find the relatively few package stores that have cut prices that much in defiance of suits and threats of suits by distillers.

A liquor industry spokesman said yesterday that a shoppers' spot check indicated that 15 to 20 per cent of the package stores in this city, Westchester and Nassau were undercutting the retail prices fixed by the distillers. Some stores are trimming as little as 20 cents a bottle; some are

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allowing 10 per cent off the bill; only a few are undercutting by \$1 or more a bottle.¹⁷

Prices in Hawaii might be expected to fall at least by ten per cent if resale price maintenance were removed.¹⁸ Consumption might increase slightly as a result--probably less than ten per cent.

Influence of Reduced Prices on Consumption

The fall in the price of a commodity usually is associated with an increase in the consumption of that commodity. The reason is that two factors come into play, an income factor and a substitution factor. The fall in price means that a particular quantity of that factor can be purchased for less income after the price decline than before, leaving the purchaser more income than before--more income with which to buy more of the product. In addition, the fall in price makes the product more attractive than other products whose prices did not fall, and hence a product which may now be substituted for other products. These factors determine the degree of price elasticity that a product has; that is, the effect on consumption of percentage change in price.

Studies of price elasticity for distilled spirits have yielded results which run from relatively inelastic to relatively elastic.¹⁹ This means that on the basis of the literature alone, it is not possible to tell whether a ten per cent decrease in the price of distilled spirits will increase the consumption of distilled spirits by more than ten per cent, ten per cent, or less than ten per cent. Julian Simon, of the University of Illinois, and this author lean toward a figure of less than ten per cent. Perhaps the experience of Hawaii in the past may be a better indicator of what one might expect in the future in Hawaii than the results of elasticity studies in other states. Unfortunately, Hawaiian experience is not adequately documented by consistent and reliable price and consumption statistics. Some efforts can be made, nevertheless, to see if a relationship pattern is discernible even if the relationship itself cannot be statistically defined.

General price changes for alcoholic beverages in Hawaii have been signalled as in other license states by changes in liquor tax rates. Unfortunately for the analysis, there have been few in the postwar period; the increase in 1948 from eight per cent of sales to twelve per cent merely reflected a change of tax base from the retail sale to the wholesale sale, and it was devised not to be an

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increase in rate. In chronological order, the next was an increase in the federal tax from nine dollars per proof gallon to ten dollars and fifty cents per proof gallon in November 1951; next, came a jump in the Hawaii tax from twelve per cent to sixteen per cent in 1957, and the last in July 1965, moved the tax rate up from sixteen per cent to twenty per cent. Beginning with the federal tax increase, these are experiences to be analyzed.

When the federal excises for alcoholic beverages were increased late in 1951 approximately seventeen per cent for distilled spirits and thirteen per cent for other beverages, prices at wholesale advanced about eleven per cent. In Hawaii, wholesale sales in 1950 were about \$14.2 million and in 1952 about \$15.9 million; when adjusted for population, the per capita wholesale sales amounted to about \$28.50 in the earlier year and \$30.75 in the later year. When the later year figure is reduced by ten per cent, the per capita comes to \$27.75. In other words, the volume of liquor purchased decreased some three per cent. This is indeed an example of inelasticity of demand. (The reader should recognize that these are rough approximations.)

The state liquor tax increase in Hawaii from twelve per cent ad valorem to sixteen per cent ad valorem occurred in July 1957. The consequent price change was in the order of six per cent. In 1956, per capita wholesale sales amounted to \$31.00 and in 1958 about \$29.00. Accordingly, this meant a drop of about six per cent in volume for unitary elasticity. Again, this is but a very crude attempt to measure price elasticity of demand for alcoholic beverage.

It is too soon to measure the impact of the change in the Hawaiian alcoholic beverage excise in 1965. With data through November 1965, wholesale sales were about four per cent below the level for the four months August through November of the year previous. This also shows great volume stability in the face of a price increase since there was some inventorying by retailers before the tax change. A more careful analysis will be possible later.

All signs point to a relatively inelastic demand curve for alcoholic beverages in Hawaii. A ten per cent drop in price would result in a consumption change in the magnitude of one-half or less of that percentage.

Any increase in liquor consumption as the result of a price decrease is of interest only to the extent that the increased consumption is, in effect, intemperate consumption or consumption that leads

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to intemperate behavior. It is recognized, however, that it is almost impossible to define intemperance, since average per capita consumption of distilled spirits for the nation has risen significantly since repeal, from 0.70 tax gallons in fiscal year 1935 to 1.4 tax gallons in fiscal year 1965. Per capita consumption of 1.4 tax gallons is apparently temperate consumption. For the same period and in wine gallons, per capita consumption of beer increased from 10.45 gallons to 16.2 gallons and wine from 0.30 gallons to 1.0 gallons.²⁰ The reader must recognize that the per capita consumption of alcoholic beverages may actually have changed little if at all in the period and that the entire increase may have been due to a greater proportion of the population drinking in 1965 as compared with 1935. It is generally conceded, however, that there has been some increase in alcohol intake and also that a greater proportion of the population consumes alcoholic beverages as compared with three decades ago. Antisocial behavior and health problems of alcoholic beverage drinkers are increasingly being subjected to scholarly scrutiny. Direct alcohol problems include public drunkenness, alcoholism, alcohol-affected automobile accidents, and alcohol-affected admissions to mental hospitals.²¹ Some recent statements regarding these problems are cited to underscore their complex nature rather than to suggest that there are or are not solutions. On alcoholisms:

The problem of alcoholism undoubtedly lies within man, or within his environment and his relations to it. If beverage alcohol can be considered a human resource, then one must learn why in some instances individuals, and even societies, misuse this resource to the extent that alcoholism develops. Sufficient knowledge about why some people become alcoholics and why some societies are more alcoholic than others must be accumulated.

It is becoming increasingly clear that we must talk in terms of "alcoholisms" rather than "alcoholism." Different alcoholisms have been described. They may have different causes which require different treatments and different preventive techniques. Perhaps some alcoholisms result from either inherited or acquired physiological disturbances. These disturbances would be such that the individual's body could not handle beverage alcohol in an ordinary manner. There are undoubtedly some alcoholisms that develop secondarily from deep emotional problems or conflicts. . . . Some alcoholisms may be purely situational; . . . Other alcoholisms may be more the result of inadequate social controls which allow the development of patterns of excessive drinking.²²

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The parameters of the problem have been estimated, although somewhat crudely. In the nation, the number of alcoholics is increasing, as is the rate.²³ According to Voss,²⁴ "In 1958 Hawaii ranked thirtieth in the rates of alcoholism state by state."²⁵ The rate per 100,000 for the nation in that year was 4,890 and in Hawaii 3,360. The data, however, appear inconclusive. One notices, for example, that in 1945 in Hawaii, the number of alcoholics is estimated to have been 7,049 for a rate of 2,800/100,000 and in 1958 12,726 for a rate of 3,770/100,000. But in intervening years, the number of alcoholics has been cited as high as 13,552 (1952) for a rate of 4,960/100,000. Other years of relatively high incidence are cited next in chronological order: 1947 with 10,221 for a rate of 3,920/100,000; 1949 with 10,769 and a rate of 4,080/100,000; 1954 with 12,579 and a rate of 4,450/100,000; 1955 with 12,806 for a rate of 4,350/100,000; and 1956 with 13,326 for a rate of 4,340/100,000. In 1957 only 11,866 are noted for a rate of 3,670/100,000. The Governor's Committee on Alcoholism reported in 1962 that "Using 5-year averages from 1940 to 1958, applied to the data contained in the 'Voss Report,' there has been a steady increase in this rate since World War II." At the same time, it is granted that ". . . it is not directly proportional to the rate of population growth in Hawaii."²⁶ Nevertheless, the lack of consistency in the data suggests that statistical techniques for estimating the number of alcoholics are perhaps more refined than the basic data to which they are applied.

In terms of admissions to treatment centers, the following data suggest two things; the numbers are not large and there has not been any startling increase in the total.

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Table 39

NEW ADMISSIONS TO THE HAWAII ALCOHOLIC CLINIC AND THE HAWAII STATE HOSPITAL 1955-1964^a

Year	New Admissions to the Hawaii Alcoholic Clinic ^b	New Admissions to Hawaii State Hospital--Alcohol Connected Illnesses ^c
1955	15	38
1956	50	28
1957	58	37
1958	58	32
1959	92	20
1960	122	27
1961	86	31
1962	97	17
1963	157	27
1964	116	13

Sources: Hawaii State Hospital files and
Annual Statistical Reports of the
Department of Health of Hawaii.

^aPlease note that the data cover different
months.

^bData are for calendar years.

^cData are for fiscal years.

If alcoholism is the term for describing chronic prostrating seizures brought on by the consumption of alcohol, drunkenness is its correlative for acute symptoms.²⁷ Perhaps surprisingly, the absolute number of arrests for drunkenness not only has not risen but has actually declined over the years in Honolulu, if police records can be used as a guide. For the decade 1955-1964, the numbers of arrests for drunkenness by the Honolulu police declined almost uninterruptedly. This occurred despite the more than fifty per cent increase in population and the alleged increase in the apparent per capita consumption of alcoholic beverages.

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Table 40

ARRESTS FOR DRUNKENNESS, AND DRIVING WHILE INTOXICATED HONOLULU, 1955-1964

Year	Drunkenness	Driving While Intoxicated
1955	2,152	139
1956	2,261	164
1957	2,063	136
1958	1,764	93
1959	1,709	37
1960	2,289	57
1961	3,115	78
1962	1,545	71
1963	1,520	137
1964	1,411	68

Source: Records of Honolulu Police Department.

Unfortunately, comparisons with other jurisdictions within the nation are not reliable. Seldon Bacon noted that:

Arrest records concerning public drunkenness were described as having many weaknesses for purposes such as those of the present report. Records concerning arrests for driving while impaired or intoxicated are even more suspect. There are no pertinent studies. In fact, there are almost no studies at all of drinking and driving behavior. Publications in this field are limited to accident statistics and to reports on alcohol in test situations and its impact on certain bodily capacities.²⁸

The problem of fatal accidents accompanied by the use of alcohol is not shrugged off by Bacon, who notes that it is a matter of "major importance". In Honolulu, the accident statistics have been reported as shown in Table 41.

The problems of alcohol consumption in Hawaii, it is acknowledged, are less severe than those on the mainland, especially those of the industrialized states.

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Table 41

DRINKING INVOLVED IN TRAFFIC ACCIDENTS RELATED TO
SEVERITY OF ACCIDENT, CITY AND COUNTY OF
HONOLULU, 1962-1964

Year	Non-Traffic	Minor	Major	All Fatal	Fatal 1 Car Only
1962 ^a					
Total	727	1,943	6,252	60	29
Drinking Related	41	380	1,717	31	21
1963					
Total	838	2,488	6,558	53	19
Drinking Related	98	575	1,618	23	10
1964					
Total	937	2,554	7,175	68	30
Drinking Related	88	579	1,875	30	18

Source: Honolulu Police Department records.

^aJanuary - November 15 only.

Before leaving this subject, however, another facet of Hawaii's experience should be noted; namely, the unique consumption patterns and alcohol-related problems of Hawaii's population. It was noted above that the Oriental populations have lower alcohol consumption rates than the Caucasian and native Hawaiian elements in the population. It is not surprising, therefore, to find that their alcoholism rates are similarly lower respectively (Table 42).

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Table 42

ALCOHOLISM RATES BY SEX AND ETHNIC BACKGROUND
HAWAII, 1950-1960^a

Background	Rate of Alcoholism (per 100,000) Adults, 20 Years of Age or Older	
	Male	Female
Hawaiian	7,410	(440)
Caucasian	5,530	1,850
Chinese	(1,110)	(44)
Filipino	8,590	(--)
Japanese	5,790	520
Other	(4,910)	(2,550)
TOTAL	6,080	890
GRAND TOTAL BOTH SEXES	3,850	

Source: Harwin L. Voss, Alcoholism in Hawaii, p. 28.

Note: Figures in parentheses are less reliable than others since they are based on very few cases.

^aVoss combined data for year 1950, 1955, and 1960 for this table.

This ethnic influence is roughly reflected in the data for new admissions to the Alcoholism Clinic of the Department of Health, Division of Mental Health. This unit is the only state agency interested in the public health problem of alcoholism and offers out-patient care. Established in 1955, the clinic has experienced an annual caseload increase of thirty-six per cent.

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Table 43

NEW ADMISSIONS TO ALCOHOLISM CLINIC BY ETHNIC BACKGROUND 1955-1964

	Male	Female	Total	Rate Per 100,000 Population ^a
Caucasian	494	134	628	311
Hawaiian	12	2	14)	68
Part Hawaiian	56	11	67)	
Chinese	2	-0-	2	5
Filipino	16	1	17	25
Japanese	59	3	62	30
Puerto Rican	12	-0-	12	n.a.
Korean	4	2	6	n.a.
Negro	8	1	9	n.a.
Other	30	4	34	n.a.
TOTAL	693	158	851	

Source: Hawaii Department of Health,
Statistical Report, 1964, p. 118.

Note: Totals in original differed
slightly by one more male
than shown here and one less
female.

^aCalculated by author on basis of 1960 population
data.

Apparently, Caucasians are responsible for much of the alcoholism problem in Hawaii, for not only is this group's rate high, it also accounts for the largest number of cases. The Japanese, the other large ethnic group in Hawaii, has a significantly lower rate of new admissions to the clinic than the Caucasians in the period 1955-1964 and has a rate of admission one-tenth that of the latter group. Voss's data, however, suggest that the Japanese male has an alcoholism rate close to that of the Caucasian male. The lower rate for the Japanese as a group, according to Voss, stems from a significantly lower incidence among Japanese women compared with Caucasian women.

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Voss's study is the only authoritative analysis of the problem of alcoholism in Hawaii, and his conclusion is interesting, to wit, "Hawaii is fortunate in that the rate of alcoholism apparently has stabilized, if not declined, in recent decades. This is noteworthy, for it runs counter to the experience of other states."²⁹ Of special interest in this connection are the records of the Alcoholism Clinic which show a total of seventy new admissions in the period January to October 1965. Of this total, thirty-four persons, or forty-nine per cent, arrived in Hawaii after January 1, 1964. Local conditions, apparently, had little to do with approximately one-half of the cases entering the alcoholism records of Hawaii in 1965.

It would be misleading, indeed, to suggest that the use of beverage alcohol is without problems or that these problems involve no costs or that the costs are individually borne and hence of little interest or cost to society. Recent analyses of the extent of alcohol-connected problems in Hawaii while documenting the relatively low incidence of these problems in Hawaiian life, have also recognized the need for greater preventive and therapeutic action on the part of the State.³⁰

The importance of the survey to this study is apparent. The available data do not suggest in any way that the control system or that price controls in particular have affected the incidence of alcohol-connected problems in the Islands. It may be conjectured, therefore, that a change in the alcoholic beverage price control policy which might lead to lower effective prices for these products would contribute little if at all to the level or growth of alcohol-connected problems of the State.

Were mandatory resale price maintenance to be eliminated from the alcoholic beverage law in Hawaii, one might expect the following to occur over the ensuing twelve-month period:

1. An attempt by the alcoholic beverage industry to reinstate mandatory resale price maintenance and price posting.
2. Alcoholic beverage prices established at new, somewhat lower levels.
3. Different prices for the same brand at different stores in the State. Some might be higher than previous levels; most would be below levels under mandatory resale price maintenance.

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4. Some increase in sales and consumption of alcoholic beverages.
5. Some decrease in the number of retail package outlets for alcoholic beverages.
6. A decrease in the differential between prices for alcoholic beverages at military outlets and civilian outlets.
7. A slight decline in tax revenues from the liquor tax as price competition makes itself felt at the wholesale level.
8. An increasing interest on the part of the wholesaler to follow mainland policy of marking up state liquor excise taxes which is not done at present.
9. Increased use of "special" prices for branded products.
10. Little or no increase in anti-social behavior.

Chapter XII

SELECTED ECONOMIC PROBLEMS AND SUGGESTED SOLUTIONS

Statistics

Although some of the data are imprecise, there are more data generated by the production and consumption of alcoholic beverages probably than any other commodity.¹ These data derive more from the revenue interest of governments than from the desire of governments to acquire information about a product whose production and distribution they rigidly control. In fact, if the latter case obtained, the data might be gathered more carefully and compiled more meaningfully. Nevertheless, there are data for production of alcoholic beverages, data for their packaging, data for their distribution by states, and so forth. To the chagrin of this investigator and possibly some industry personnel, data have been included from Hawaii on "apparent consumption" of alcoholic beverages within its borders only since 1965; furthermore the data are based solely on shipments of distilled spirits to wholesalers in Hawaii.

The researcher, of course, is grateful that the industry collects data on "apparent consumption" of alcoholic beverages by states, but he tries to treat them as indicators rather than as facts. The industry is not unaware of the problems and these words are not to be treated as criticism of the job industry is doing. Rather, this is noted to apprise the reader of the limitations of the data. For example, the data of "apparent consumption" generally represent shipments to wholesalers or tax payments at the wholesaler level rather than consumption. Even in the monopoly states, apparent consumption can only be equated with retail sales. The timing of the consumption is unknown. A second difficulty in using these data stems from the fact that political boundaries upon which the reporting is based are not necessarily the boundaries within which the alcoholic beverages are "apparently consumed". The Distilled Spirits Institute, which serves as the gatherer and provider of statistics on distilled spirits, notes in its tables on the apparent consumption of distilled spirits that "The [1966] per capita consumption of 7.43 [wine gallons] reported . . . for the District of Columbia is not comparable with the per capita consumption listed for the several states. The D. C. figure represents gallonage sales in the City of Washington (including sales in the District to residents of the adjoining suburban areas of Virginia and Maryland and to transients) divided by the estimated population of the District only. . . . Sales in other metropolitan areas similar to Washington, such as, New York, Chicago, Los Angeles and Miami are not available" ² In other words,

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the apparent consumption reported for the District of Columbia is significantly overstated. If one is looking at sales, then the data are probably the best that can be found; for purposes of analyzing consumption, they are not good. Nor are they good for the same reasons for Hawaii, Nevada, Florida, New Hampshire, and many other states. In New Hampshire, summer transients purchase distilled spirits for in-state consumption and for out-of-state consumption. As in the case of Washington, D. C., price is the important factor that shapes the unusual pattern.³ The reader may appreciate the unique consumption pattern for New Hampshire by referring to the following statistics which show the seasonal pattern of its sales as contrasted with other monopoly states and the nation.

Table 44

DISTRIBUTION OF THE APPARENT CONSUMPTION OF DISTILLED SPIRITS, SELECTED AREAS, BY MONTHS 1966

	United States	17 Monopoly States ^a	New Hampshire
January	6.2	6.5	4.6
February	6.7	6.8	5.3
March	8.4	7.6	7.5
April	7.6	7.8	6.0
May	8.0	7.6	7.0
June	8.5	7.8	8.0
July	7.2	7.8	10.8
August	7.8	7.9	10.0
September	8.2	8.1	10.1
October	8.6	8.3	7.7
November	10.6 ^b	9.5 ^b	8.0
December	12.2	14.4	14.3
Per Capita (wine gallons)	1.57	1.26	3.33

Source: Distilled Spirits Institute, Apparent Consumption of Distilled Spirits 1955-1964 (Washington, D. C.: 1965).

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^aIncluding New Hampshire.

^bIncludes Mississippi for July to November; total includes July to December.

New Hampshire visitors apparently purchase distilled spirits during the summer months for immediate consumption and for their later consumption and possibly their friends' consumption back home.

An analogous problem was present in the consumption data for the states contiguous to Mississippi before that state became legally "wet" in 1966. Although Mississippi was legally dry, the federal government reported that there were 1,401 federally qualified retail liquor dealers in the State in the fiscal year 1966. It was common knowledge that national brands of liquor could be purchased in Mississippi. This means that branded liquor shipped into contiguous states found its way into Mississippi but for statistical purposes appeared as apparent consumption for the states into which it was first shipped. That this is so is suggested by data for Oklahoma and its surrounding states during the period in which Oklahoma moved from a dry to a wet state.

Table 45

APPARENT PER CAPITA CONSUMPTION OF DISTILLED SPIRITS SELECTED STATES, 1958-1961

(In wine gallons)

	1958	1959	1960	1961
All license states	1.38	1.43	1.44	1.46
Oklahoma	--	a	.79	.85
Texas	.83	.89	.81	.86
New Mexico	1.00	1.03	.96	.92
Colorado	1.23	1.35	1.35	1.47
Kansas	.91	.84	.84	.91
Missouri	1.34	1.30	1.20	1.22
Arkansas	.57	.64	.61	.62

Source: Distilled Spirits Institute, Apparent Consumption of Distilled Spirits 1955-1964 (Washington, D.C.: 1965).

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^aOklahoma legalized consumption of distilled spirits as of June 23, 1959, but data for consumption are not reported until 1960.

According to Table 45, in the year following Oklahoma's legalization of distilled spirits consumption, the per capita apparent consumption of distilled spirits in the states bordering on Oklahoma either remained the same or declined, while the per capita consumption for all license states increased.

For sumptuary purposes, data on consumption must measure what they purport to measure. Even allowing for the problems mentioned above, published data require reworking if they are to measure drinking habits. They must be recast in terms of the numbers who drink so that changes in gallonage can be analyzed to answer the questions:

When there is a change in the gallonage of alcoholic beverages consumed within a specific area,

1. Does this reflect changing numbers of consumers?
2. Does this reflect changing consumption per capita?
3. Or both 1 and 2?
4. In the case of Hawaii, when liquor is shipped for consumption to other Pacific islands does it enter Hawaiian consumption statistics?

Since Hawaii's liquor commissions are concerned with sumptuary rather than revenue considerations, it is imperative that Hawaii begin to develop consumption data for its population. These data are useful for tax analysis purposes also.

The State should establish a central statistics and research unit for the collection and dissemination of information about the sale and use of intoxicating liquor. Among the data collected on a continuing basis should be:

1. Wholesale sales of alcoholic beverages in terms of volume and value by beverage type and container size.⁴
(Monthly)

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2. Gross sales and profit margins for wholesale and retail liquor distributors. (Annually)
3. Data on the consumption of alcoholic beverages by households in terms of volume and value. (Annually)
4. Data on influence of consumption on behavior patterns, i.e. drunkenness, traffic accidents, alcohol-connected illnesses, etc. (Annually)

These data can serve as a basis for analytical studies. Without such studies, public policy in this field can only be haphazard.

See Appendix A for examples of forms used in other jurisdictions to gather some of the data suggested above.

The Economic Controls of Administration

The Commission

The several liquor commissions have raised profound questions concerning the basis of their regulations; namely, how much control should the State, the counties, and, in turn, the commissions, exercise over the production and distribution of alcoholic beverages within their borders? Alternatively stated, does a liquor commission have a function to serve thirty years after the relegalization of the production and consumption of alcoholic beverages? Behind these basic questions are many more specific ones, such as, does restrictive licensing affect consumption; if so, to what extent? Does price control affect consumption; if so, how and to what extent? These questions have great merit.

On a different level, the commissions must come to grips with such prosaic but persistent questions as, what should be the level of license fees? Should the fees be treated as revenue sources or should they just reflect administrative costs? Should the fees be used for sumptuary purposes, such as the restraining of larger enterprises in favor of smaller enterprises? Conversely, should they be used to restrict entry?

The administration of Hawaii's intoxicating liquor laws through the county governments does permit a gap in leadership--the direction of gathering and compiling statistics. The liquor commissions have a positive role to play on behalf of the industry they regulate, the

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government in general, and the citizens of the State, in the field of information gathering and dissemination. For example, in the field of statistics, the commissions should collect data so that industry for marketing purposes, government for sumptuary purposes (knowledge of consumption trends) and revenue purposes (knowledge of price and consumption for tax impact analyses), and citizens in general for the knowledge of the contributions and possible problems connected with an important industry in its midst.

From the point of view of dissemination, the information gathered as sketched above could be analyzed and reported to the various interested parties. The information would be of equally great importance in the development of a curriculum for the schools which would place the alcoholic beverage industry in its appropriate context, one similar to that of any other industry, in order that young people may grow up with a mature appreciation of the industry.

Fees and Taxes

Fees

Fees and taxes may be levied for two purposes, sumptuary or control purposes, and revenue purposes.

Both fees and taxes may be used to raise revenue as well as to effect public control. The pattern of liquor control almost invariably has included both fees and taxes. Fees, however, must be separated from taxes because their effects are different. Theoretically, fees do not enter the pricing situation, while taxes do. Hence, fees, it is contended, can be used to siphon away profits occasioned by a grant of monopoly power, e.g., through a license in a manner not possible through a tax.

Hawaii's liquor commissioners, although primarily interested in the sumptuary aspects of their powers, do have the power to establish fees for the various licenses they issue, except in the cases of permits for solicitors or representatives of manufacturers or wholesalers who are authorized to take orders for shipment to a county in which the manufacturer or wholesaler is not licensed. The annual fees for such permits are set by general state law at \$5 for alcohol, \$75 for beer and wine, and \$125 for other liquor.⁵ When they assumed local responsibility for the levels of these fees in 1965,⁶ some commissions altered them from the levels previously set by the State.

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As a result of this permissive "home-rule" law, the nonstandard fees now stand as follows:

<u>Class and Kind of License</u>	<u>Honolulu</u>	<u>Hawaii</u>	<u>Maui</u>	<u>Kauai</u>
Manufacturer				
Beer	Gross sales: \$2,000,000 or less - \$600 Over \$2,000,000 - \$1,200	\$300	\$300	\$300
Wine	Gross sales: \$2,000,000 or less - \$300 Over \$2,000,000 - \$600	300	300	300
Wine from fruits grown in the State	\$ 60	48	48	48
Alcohol	180	150	150	150
Other	Gross sales: \$2,000,000 or less - \$600 Over \$2,000,000 - \$1,200	480	480	480
Wholesale				
General	Gross sales: \$500,000 or less - \$900 Over \$500,000 to \$1,000,000 - \$1,200 Over \$1,000,000 to \$2,000,000 - \$1,500 Over \$2,000,000 - \$1,800	\$900	\$900	\$900
Beer and Wine	Gross sales: \$1,000,000 or less - \$360 Over \$1,000,000 - \$720	240	240	240
Alcohol	\$ 48	24	24	12

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<u>Class and Kind of License</u>	<u>Honolulu</u>	<u>Hawaii</u>	<u>Maui</u>	<u>Kauai</u>
Retail				
General	Gross sales: \$25,000 or less - \$420 Over \$25,000 to \$50,000 - \$540 Over \$50,000 to \$75,000 - \$660 Over \$75,000 to \$125,000 - \$900 Over \$125,000 to \$200,000 - \$1,200 Over \$200,000 - \$1,500	\$420 or 1% of gross sales, whichever is larger	\$420 or 1% of gross sales, whichever is larger	\$420
Beer and Wine	\$300	\$180 or 1% of gross sales, whichever is larger	\$180 or 1% of gross sales, whichever is larger	180
Alcohol	24	\$ 12	\$ 12	12
Dispensers				
General	\$480 or 3/4 of 1% of gross sales, whichever is larger, not to exceed \$7,500	\$420 or 1% of gross sales, whichever is larger	\$420 or 1% of gross sales, whichever is larger	\$420 or 3/4 of 1% of gross sales, whichever is larger
Beer and Wine	\$300 or 3/4 of 1% of gross sales, whichever is larger	\$150 or 1% of gross sales, whichever is larger	\$150 or 1% of gross sales, whichever is larger	\$150 or 3/4 of 1% of gross sales, whichever is larger
Beer	\$150 or 3/4 of 1% of gross sales, whichever is larger	\$90 or 1% of gross sales, whichever is larger	\$90 or 1% of gross sales, whichever is larger	\$90 or 3/4 of 1% of gross sales, whichever is larger
Club	\$300 or 3/4 of 1% of gross sales, whichever is larger	\$240 or 1% of gross sales, whichever is larger	\$240 or 1% of gross sales, whichever is larger	\$240 or 3/4 of 1% of gross sales, whichever is larger
Vessel	\$ 60	\$ 60	\$ 60	\$ 60
Additional vessel, per day	\$ 25	\$ 20	\$ 20	\$ 20

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<u>Class and Kind of License</u>	<u>Honolulu</u>	<u>Hawaii</u>	<u>Maui</u>	<u>Kauai</u>
Special, per day	\$ 12	\$ 10	\$ 10	General - \$25 Beer and wine - 18 Beer - 12
Cabaret	\$1,200 or 1% of gross sales, whichever is larger	\$560 or 1% of gross sales, whichever is larger	\$560 or 1% of gross sales, whichever is larger	\$560 or 3/4 of 1% of gross sales, whichever is larger ^a

^aFee for a dispenser, cabaret, or club license on Kauai where the population within a 2-mile radius of the premises is less than 1,000 is 1/2 of the fee established or 3/4 of 1% of gross sales, whichever is larger.

The underlying policy decision that faces each liquor commission in the exercise of its fee-setting authority is whether or not fees should be used as a revenue raising device. The level of fees, generally throughout the State, has borne a reasonable relationship to the objective of yielding sufficient income to meet the operational costs and expenses of the commissions. The subject, however, has its controversial elements, and it is not strange that some commissioners are attracted to the fee as a revenue raising device. They are not alone. Consider, for example, the range of fees, and the implicit range of motivations for these fees, now in effect for the wholesaling of distilled spirits (Table 46).

Taxes

Alcoholic beverage production and sale have long been remunerative tax bases in this and other countries. In the United States, the scientific approach to this taxation may be attributed to the economist David A. Wells.⁷ After prohibition, federal, state, and local governments introduced taxation as both control and revenue measures. The growth in revenues from \$593.6 million in 1934 to almost ten times that, \$5.7 billion, in 1965⁸ suggests that revenue considerations may now be uppermost in legislators' minds when they review the subject of alcoholic beverage control.

Table 46

ANNUAL WHOLESALE LICENSE FEES IN LICENSE STATES FOR
SALE OF DISTILLED SPIRITS^a
1966

States		Fees
Alaska	\$ 500-\$5,000	Depending on gross sales
Arizona	250	
Arkansas	700	
California	276	
Colorado	1,000	
Connecticut	2,400	
Delaware	2,500	
District of Columbia	2,475	
Florida	350- 1,250	Each establishment or branch. County fee same as state.
Georgia	State- 1,000	Local - Incorporate municipality or county, not more than \$5,000.
Hawaii	--	Set by each county's liquor commission.
Illinois	150	
Indiana	2,000	
Kansas	1,250	City or township may levy fee not over amount of state fee.
Kentucky	1,000	City may levy fee of twice state fee.
Louisiana	2,000	Parish and municipality may levy fee up to \$500.
Maryland	1,250 1,500	Wine and liquor Beer, wine and liquor
Massachusetts	2,000- 5,000	As set by commission.
Minnesota	3,000	
Missouri	250	County and city of St. Louis may levy fee not over state fee; municipality and city of St. Louis not over 1-1/2 state fee.
Nebraska	500	
Nevada	250	County and city may levy additional fee.
New Jersey	3,000	
New Mexico	1,200 950 700	All alcoholic liquor Spiritous liquor and wine Spiritous liquor only

Table 46 (continued)

States		Fees
New York	\$ 5,000	
North Dakota	500-\$1,000	As determined by city or village.
Oklahoma	2,000	City may levy fee not over state fee.
Rhode Island	3,000	
South Carolina	10,000	
South Dakota	5,000	
Tennessee	1,000	City or county may levy \$500 fee.
Texas	1,250	County and municipality may levy fee of 1/2 state fee.
Wisconsin	500	

Source: Distilled Spirits Institute, Abstracted from Summary of State Laws and Regulations Relating to Distilled Spirits, Eighteenth Edition, November 1966, pp. 82-84. Retail license fees and additional detail on wholesale license fees are found in these pages.

^a Retail license fees also differ by state.

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While the level of alcoholic beverage taxation is not a focus of this paper, revenue aspects of the various control systems cannot be ignored. In 1965, the 17 monopoly states collected \$655.56 million in state revenue, while the 34 license states⁹ collected \$1,005 million in net state alcoholic beverage control revenues.¹⁰ If sales taxes and local revenues are included, the data are swelled as follows: monopoly states collected \$679.6 million total for a per capita revenue of \$11.91 and the license states \$1,152.9 million total for a per capita revenue of \$8.43.

To obtain this high level of revenues from intoxicating liquor, the monopoly states had to engage in major business operations. They bought, for example, in 1965, \$929 million of alcoholic beverages and incurred \$79.5 million in sales costs. In addition, they had administrative costs of \$27.5 million, while those of the 34 license states were only \$25.5 million. A summary of alcoholic beverage revenues for selected states follows (Table 47).

It is not clear that the license states could not increase their alcoholic beverage revenues if they so desired, but it is doubtful that they could increase their tax rates sufficiently to obtain revenues commensurate with the profits gained from the liquor business by the monopoly states.¹¹ On the other hand, the numbers preceding do not tell the entire story. No state in the Union is now in such dire economic straits that it has to enter the alcoholic beverage business for financial reasons. While financial necessity may be grounds for establishing a monopoly system, it is recommended that considerable study be devoted to the advantages and disadvantages before such a system were embraced. Even as a matter of control policy, further investigation is recommended. For the purposes of this study, a guiding tenet has been the interest of the legislature in providing more individual freedom for its citizens in the alcoholic beverage field, not less. Consequently, the monopoly system for Hawaii has not been considered a realistic alternative to the present arrangement.

It is recommended that fee levels remain at levels sufficient to cover administrative expenses, but no higher, and that tax policy be geared to revenue needs with due regard to the tax impact on prices and the consequences of changed liquor prices. For this latter recommendation, more information than is now collected would be desirable.

Table 47

PUBLIC REVENUES FROM ALCOHOLIC BEVERAGES, SELECTED STATES
AND AVERAGE FOR ALL LICENSE STATES
1965

	Hawaii	North Dakota	Rhode Island	Average All License States ^a
Population	711,000	652,000	891,000	4,143,848
State and Local Revenue (mil.)	\$ 5.2	\$ 5.35	\$ 9.5	\$ 35.0
Per Capita Revenue	7.29	8.21	10.64	8.43
State License Fees	107	197,895	84,700	2,432,371
State ABC Taxes (mil.)	4.6	3.7	3.9	19.9
Miscellaneous State ABC Income	--	--	2,044	943,432
Gross State Receipts (mil.)	4.6	3.9	8.7	31.2
Cost of State ABC Administration	7,000 ^b	74,000	128,000	772,308
Net State ABC Revenue (mil.)	4.6	3.85	8.5	30.45
General Sales Tax (mil.)	c	--	4.7	7.6
Local ABC Revenue	547,108	1,500,000	946,029	4,480,941
State and Local Revenue	5,184,407	5,350,658	9,477,585	34,935,770

Source: Distilled Spirits Institute, Public Revenues from Alcoholic Beverages, 1965, pp. 8, 10-11.

^aCalculated by author.

^bUnderstated by cost of administration at county level.

^cHawaii does have an excise tax at retail which was not reported in the data from which this table has been excerpted.

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Diversion of Intoxicating Liquor Sales in Hawaii

Hawaii does not have a "moonshine" problem (the illegal production of alcoholic beverages), nor does it have a "bootleg" problem (the illegal transport of liquor into its midst). The State is faced, however, with the diversion of civilian purchases of alcoholic beverages from civilian distribution channels to military distribution channels by which the purchaser avoids or evades the burden of two taxes, currently a twenty per cent ad valorem tax levy and a three and one-half per cent general excise.¹²

Local government and federal officials agree that illegal liquor traffic is virtually unknown in the Islands. Data for a recent five-year period suggest that Hawaii can be relatively unconcerned about the moonshine and bootleg problems.

Table 48

LIQUOR LAW ENFORCEMENT STATISTICS UNITED STATES AND HAWAII 1960-1964

Fiscal Year	United States National Total		Leading State ^a		Hawaii	
	Stills		Stills		Stills	
	Seized	Arrests	Seized	Arrests	Seized	Arrests
1960	8,290	9,797	1,527 ^b	1,722	0	5
1961	6,826	8,983	1,099 ^b	1,317	0	0
1962	6,886	8,726	1,111 ^b	1,347	1	2
1963	6,213	8,153	965 ^c	1,146	0	0
1964	6,837	7,897	1,159 ^d	619	0	0

Source: Alcohol and Tobacco Summary Statistics,
various fiscal years, U.S. Treasury
Department, Internal Revenue Service.

^aIn terms of stills seized.

^bNorth Carolina.

^cSouth Carolina.

^dAlabama.

SELECTED ECONOMIC PROBLEMS AND SUGGESTED SOLUTIONS

In testimony before the State's Senate Committee on Ways and Means and House Committee on Governmental Financing, on April 9, 1965, the director of taxation indicated a continued opposition to increasing the wholesale liquor tax in these words:

Your Director of Taxation has previously testified against proposals to increase the state wholesale liquor tax. The objection was made that any substantial increase would cause a further disparity between prices for liquor sold on military reservations and at retail in the civilian community which could tend to increase the illegal sales of such liquor to civilians by those privileged to purchase at the clubs and post exchanges on military bases.

The director went on to say that his department did not have any idea as to the volume of diversion of military liquor to civilian use.

The director might have taken a different tack and supported the tax increase by arguing that the increased revenue would have given the government both an increased incentive in terms of preventing tax monies from being diverted in this way and increased revenue to develop a staff whose job it was to close the channels of diversion. There is a great deal to be said for not attempting to expand needlessly the law enforcement staffs of government. Nevertheless, it is clear from a study of the Department of Taxation (Comparative Retail Liquor and Beer Prices, Civilian and Military, dated April 8, 1965) that under the 16 per cent liquor excise, a considerable disparity already existed between military and civilian prices, a disparity large enough to be attractive to most consumers of alcoholic beverages. For a sample of national brands there was a price advantage for the military sale of almost 28 per cent for bonded whisky, 26 per cent for gin, and 38 per cent for beer (six packs). It is doubtful that greater incentives than these are needed to prompt diversion. While the factors limiting diversion may indeed be nothing more than (a) availability of "contacts" and (b) convenience, it may be conjectured that a greater price advantage would cause those not now buying through the military to seek out "contacts" more diligently and to consider present inconveniences outweighed by larger savings.

The extent of military sales, the bulk of which is probably legitimately purchased for consumption of military personnel, is measured in the next set of statistics (Table 49).

Tax exempt (military) sales grew in the 1955-1964 period from less than ten per cent of the value of wholesale sales to 17.3 per cent of the value. Was this to be expected? Is this an inordinate increase in tax exempt sales?

Table 49

WHOLESALE SALES OF ALCOHOLIC BEVERAGES
HAWAII, 1955-1964

Year	Total and Exempt Taxable Sales (000)	Taxable (000)	Tax Exempt ^a (000)	Tax Exempt as Per Cent of Total
1955	\$19,194	\$17,386	\$1,808	29.4%
1956	19,753	17,525	2,228	11.3
1957	21,138	18,504	2,634	12.5
1958	20,690	17,683	3,007	14.5
1959	23,317	19,827	3,490	15.0
1960	25,019	21,250	3,769	15.1
1961	25,836	22,064	3,772	14.6
1962	26,632	22,639	3,993	15.0
1963	27,526	23,063	4,463	16.2
1964	30,198	24,981	5,217	17.3

Sources: Hawaii Department of Taxation and
Oahu Retail Liquor Dealers Association.

^a Does not include purchases by military from suppliers outside of Hawaii. The Oahu Retail Liquor Dealers Association has estimated that at least two million cases of beer are imported directly by the military and that the figures for sales to the military by Hawaiian wholesalers are understated by ten per cent. See statement of Association before Senate Committee on Ways and Means and the House Committee on Governmental Financing, April 23, 1965.

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Tax exempt sales of alcoholic beverages rose faster than the growth of military personnel, including dependents, in the period 1955 to 1964. The growth of tax exempt sales may not have been anticipated, but it is far from inordinate. On a per capita basis, tax exempt sales (divided through by military personnel and their dependents) increased from \$20.78 in 1955 to \$43.48 in 1964, while taxable sales (divided through by civilian population not including dependents of military personnel) rose from \$38.55 to \$41.15. The failure of the taxable sales to rise may in part be due to a diversion of purchases from civilian outlets to military outlets. Yet, on a per capita basis, the 1964 figure of \$43.48 for tax exempt sales does not seem inordinate in light of the taxable sales figure of \$41.15. (There remains the possibility of understatement of tax exempt sales as a result of direct purchases from outside of the State.)

The next question to arise is whom does the diversion affect? First, civilian consumers are affected. Those civilians who purchase from military sources have the ability to reduce their expenditures because of the lower military prices for a given volume of alcoholic beverages or to increase their consumption for a given expenditure, or both. To the extent that subterfuge is involved, there is an element of undermining specific laws and respect for laws in general.

Many of those who maintain that they are affected adversely and that there is a way of correcting the situation do so on the supposition that sales now diverted from normal commercial channels in Hawaii will somehow be repatriated. The supposition may indeed be erroneous. At the present time, retailers and the State apparently are adversely affected by the diversion of sales, retailers because of the lower volume of sales and profits resulting from the diversion and the State because of the excise tax losses from the liquor excise and the general excise. Wholesalers now supply the Hawaiian military outlets with most of their distilled spirits,¹³ and, as a result, are not unhappy with the present arrangement. Whether retail sales are through normal commercial channels or through military posts makes little difference to wholesalers' total sales. They are affected to the extent that they charge lower unit prices on "bulk" sales to the military than on the smaller lot sales to commercial retailers, but these lower prices are supposed to reflect lower billing and shipping costs. To the extent that sales are price elastic at all, the lower military prices may induce larger total retail sales and hence their sales may be somewhat larger than they would be if all sales were at the higher markup and higher tax commercial sales. Also, if the situation were altered, so that sales to the military were no longer tax exempt, wholesalers maintain that the military would buy directly from distillers on the mainland or from

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wholesalers on the mainland whose sales to the military were tax exempt.¹⁴

Retailers of alcoholic beverages would not have their lot improved through the imposition of the tax on wholesale sales to the military for the reasons cited above. Their interests apparently are better served by a stricter observance of the federal directive that prices of alcoholic beverages be within ten per cent of the going civilian prices. But even a ten per cent saving is likely to divert sales where it is not terribly inconvenient for the buyer. Retailers also ask for greater control of purchases by commanding officers. This would be in line with military directives which state:

Diversion, to unauthorized persons of packaged alcoholic beverages purchased by members of the Armed Forces in authorized sales outlets, is a serious offense and where substantiated will be punished.¹⁵

and

All alcoholic beverages so sold will be for the personal use of the individual purchaser. The resale, exchange, or use as a gift is prohibited. In no case may sales be made to any individual who has combined orders and is purchasing for other persons. This does not prohibit a purchaser from serving drinks as a host.¹⁶

If control of alcoholic beverages on other military posts is any indicator of the reception that a petition for greater control would have, then the petition is liable to fall on deaf ears. This is not to imply that the military is unwilling to cooperate where alcoholic beverage problems exist, but there seems to be no serious problem in Hawaii. The dimensions of the problem, when placed in perspective, tend to shrink. Consider, for example, that one military post which claims to have an orderly distribution system for its personnel permits a total of 11 quarts of distilled spirits to be purchased monthly by a qualified individual. If in 1964, the 52,000 military personnel stationed in Hawaii each had purchased 11 quarts of distilled spirits monthly, the annual bill at wholesale would have amounted to more than \$27 million. The actual tax exempt sales for all alcoholic beverages in Hawaii that year were only \$5 million when valued at wholesale, and all wholesale sales, tax exempt and taxable, were only \$30 million. This is a sobering perspective.

In the 1963 Hawaii legislative session, Senate Bill 23 would have removed the tax exemptions now granted to liquor and other products under legislative acts in 1951, 1953, and 1955. The bill was vetoed by the governor. State policy is unlikely to be revised

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in the near future, for it is apparent that the sources of supply open to the military would make it possible for military purchases to be diverted from Hawaiian suppliers to out-of-state suppliers, thereby thwarting the intention of those who would remove the exemption in the cause of raising state tax revenues. The 1964 Department of Taxation study alluded to earlier also concluded that there would be a significant unemployment effect.¹⁷ The present policy, therefore, within the framework of a closer working relationship between the State and local military authorities seems to be eminently workable.¹⁸ Hawaii's licensing arrangements whereby liquor is retailed through multiproduct outlets do have value here. Few retailers are liable to serious economic difficulty even if there is further diversion of alcoholic beverage purchases from commercial to military outlets. Their other products tend to cushion the impact of this loss of sales. Those stores which retail alcoholic beverages only, however, are subject to continuing harm.

The removal of resale price maintenance will probably contribute to lower prices and remove a portion of the advantage now enjoyed by the tax exempt product. This price reduction alone, however, will not be sufficiently large to alter significantly the present distribution of sales as between military and civilian outlets.

It is recommended that Hawaii not remove the tax advantage now enjoyed by the military in its purchases of alcoholic beverages from local wholesalers. Instead, the various liquor commissions should meet periodically with military authorities in the interest of (1) having the military introduce more stringent controls to contain military liquor to bona fide military personnel and functions, and (2) having the military institute a pricing policy wherein military prices are within ten per cent of local prices. Since the military is pledged to tight liquor control, constructive measures may well result from a dialogue between the military and civilian authorities on this matter.

Industry Problems

It is incorrect to consider an industry as a group comprised of persons of identical interests. Trade level differences create differences of opinion; divergent opinions even appear within the same trade level. In the liquor industry, all trade levels agree that prohibition is an evil thing and that liquor taxes run it a close second. Beyond that, it is not easy to find concurrence. Even the popular bug-a-boo "government regulation" is a "now and then" thing for the liquor industry, depending upon whether government is enforcing

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prices, regulating credit practices, establishing standards of product identity, controlling promotional practices, etc. This digression merely illustrates the difficulty of approaching the subject of industry problems from a single vantage point. Each sector, therefore, is treated separately.

Distillers, Vintners, and Brewers

The interest of the producer beyond the obvious "being in business to make profit", is the sale of his product at profitable prices. Producers in many American industries manufacture and market products in various price lines so as to appeal to persons in various income classes. Their pricing tactics, which also involve quality adjustment tactics, are geared to the mass markets, so that when unique circumstances interfere with their tactics, there is little chance for adjustments. This is the case with the Hawaiian liquor tax. As now levied, the wholesaler must pay to Hawaii a tax equal to twenty per cent of the value of his alcoholic beverage sales. (Prior to 1949, the tax of eight per cent was levied at the retail level. After that date, for administrative purposes, the tax was shifted to the wholesale level and raised to 12 per cent.) All other states levy a specific duty (a tax sum per unit of product) rather than, as Hawaii, an ad valorem duty (a percentage of the sales price). The ad valorem duty results in a larger sum from the higher priced product than from the lower priced product, although the percentage burden is the same. This larger sum in turn is compounded at the retail level where a percentage markup is applied. This taxing practice, in effect, gives a price advantage to the lower priced product not intended by the producer and possibly adversely affects his sales of his higher priced products.

The rationale of the producer might be expressed best by reference to the cost calculations for the lower and the higher priced distilled spirits (Table 50).

In the words of one interested party:

I know that most of the people connected with the liquor industry in Hawaii do not like the "ad valorem" tax which is imposed by Hawaii on liquor. This tax is the only one of its kind imposed on liquor, since all other license states levy a specific excise tax on a gallonage basis. The ad valorem tax only serves to widen the price differential between higher-priced and lower-priced goods.

Table 50

ESTIMATED COSTS OF PRODUCING A 'C' CLASS NEUTRAL
BLEND AND AN 'A' CLASS NEUTRAL BLEND
CIRCA 1964

	'C' Class	'A' Class
Whisky Content	35%	40%
Grain Neutral Spirits	65%	60%
Proof	86 ^o	86 ^o
<u>Analysis Based on Cost of</u> <u>a Case of Fifths</u>		
Cost of Whisky	\$ 0.72	\$ 1.40
Cost of Spirits	.40	.37
Bottling Costs and Blending Ingredients	2.00	2.00
Federal Taxes		
Rectifying	.62	.62
Excise	21.67	21.67
Distiller Sales and Administrative Costs		
Sales Staff	.86	1.29
Advertising	2.88	4.32
General Administration	.70	.70
Distillers Costs	28.85	32.37
Transportation	.50	.50
State Tax		
Average	4.78	4.78
Hawaii	5.87	6.57
COST TO RETAILER		
Average	\$34.13	\$37.65
Hawaii	35.22	39.44

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While the example above stressed the price advantage gained by a low-priced spirit over a high-priced spirit as a result of the ad valorem tax, from the distillers' point of view perhaps an even greater problem is the advantage now secured by the lower priced wines and beers. (Those distillers owning wineries may be less concerned.) The data suggest, however, that the fears may be unfounded, since in 1964 on a per capita basis Hawaiians "consume" only 8.3 per cent less distilled spirits than did the Americans on average, 49.6 per cent less wine, and 31.4 per cent less beer.

Vintners and brewers presumably are less concerned with the ad valorem tax than distillers, even though their higher priced products carry a higher dollar tax burden than their lower priced products.

Since the producer has ample margins on high-priced products with which to absorb any price reduction he might make to increase the competitiveness of his high-priced products, there seems little justification for Hawaii to change its taxing practices at the present time. He might be discomforted in having to establish a special price system for Hawaii. Meanwhile, there are no data to suggest that Hawaii is any more of a market for low-priced alcoholic beverages than other markets in the nation. The recommendation, therefore, is to leave the present system of taxation unaltered.

Wholesalers

Wholesalers, too, prefer a specific excise rather than an ad valorem tax on alcoholic beverages. The economic basis of this position is that their earnings are adversely affected to the extent that consumers prefer on the basis of price alone the lower priced alcoholic beverages to the higher priced products. Their markups are percentage markups, so that the higher priced products yield higher absolute profits per unit of product than the lower priced products. The recommendation above on this problem holds here, too.

Another area of concern for wholesalers is credit. They would like to see a credit law which parallels the federal law. In addition, wholesalers find that they are liable for the state tax when a retailer falls into bankruptcy, although from the former's vantage point, the sale is not bona fide. A further problem involves the transfer of debts in cases of retail license transfers. Apparently, new owners may refuse to pay debts of old owners; wholesalers would like to see the commissions insure that debts are dissolved before licenses are transferred.

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Hawaii distributors would prefer greater latitude in promoting their brands at the retail level. California, for example, permits wholesalers and distillers to furnish on-premise advertising materials without limit and decorations up to \$15 excluding installation costs. Hawaii prohibits window sign brand advertising but does allow the commissions discretion to accept inside advertising material.

Reference has been made to the tax revenue and retail sales problems which have resulted from the level of liquor taxation in Hawaii. In some states, alcoholic beverage sales are alleged to be diverted from legal to illegal sources as a consequence of a high level of local taxation. In Hawaii, illegal production of alcoholic beverages is not considered a problem, but the diversion of alcoholic beverages earmarked for military use alone to civilian use has caused consternation in the past. Wholesalers, on the other hand, do not object to continuing a tax exemption for military sales since part of their profit and employment are underwritten by these sales.

In the Hawaii market for distilled spirits, the "private label" apparently is making inroads on the established brands. This is occurring despite the alleged loyalty of some ethnic groups to particular brands. The "private label", of course, is a phenomenon that has been growing in the post World War II period in many trade lines, not only in liquor. It has developed under the umbrella of resale price maintenance laws which permits a nonadvertised product to secure a significant price advantage, partially as a result of the growth of chain retailers who market products under their own names at prices lower than the established brands, and partially as a result of manufacturers' search for markets for production for which they do not have established markets. For whatever reason, that sector of the market that is sufficiently price and quality conscious to be adventurous are finding that satisfaction can be obtained from some private label merchandise.

The Hawaii liquor consumer finds an additional inducement to purchase private label alcoholic beverages; namely, the added price differential conferred upon the lower priced product by the ad valorem tax.

The Hawaii liquor market is not large, judging from recent estimates. Here are estimates of apparent consumption estimates prepared by one of the industry's trade publications. Data are presented for the ten largest and the ten smallest state liquor markets to illustrate Hawaii's place in the picture (Table 51).

Table 51

APPARENT CONSUMPTION OF DISTILLED SPIRITS WITH TEN LARGEST
AND TEN SMALLEST STATE LIQUOR MARKETS AND
NUMBER OF WHOLESALE DEALERS, 1964

Rank		Total Distilled Spirits ^a (000 Cases)	Wholesale Dealers ^b	
			Liquor	Beer
1	California	13,322	634	262
2	New York	12,213	201	578
3	Illinois	6,886	199	365
4	New Jersey	5,057	84	154
5	Pennsylvania (M)	4,982	50	1,724
6	Ohio (M)	4,861		
7	Florida	4,517	122	90
8	Michigan (M)	4,065		
9	Massachusetts	3,905	119	25
10	Texas	3,636	64	567
41	Hawaii	366	31	4
42	New Mexico	355	31	1
43	Montana (M)	344		
44	North Dakota	320	11	45
45	Utah (M)	300		
46	Vermont (M)	287		
47	South Dakota	283	6	50
48	Idaho (M)	269		
49	Alaska	251	11	11
50	Wyoming (M)	188		

Sources: The Liquor Handbook, 1965, p. 26 and U.S. Treasury, Internal Revenue Service, Alcohol and Tobacco Summary Statistics, Fiscal Year 1964, p. 2.

^aCalendar year 1964. (M) = Monopoly state.

^bFiscal year 1964.

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Wholesalers, nevertheless, find present arrangements not particularly irksome, although the matters mentioned above if attacked to their advantage would be encouraging. They would also welcome closer relationships with the commissions which regulate them.

Recommendations regarding wholesaler problems must start with the suggestion that commissions originate and carry on a continuing dialogue with the members of the industry. Once the barriers are down, solutions will follow more easily for some of the problems listed above. Greater promotional latitude, easing of credit restrictions, and problems of retailer license transfers creating a more realistic approach to the problem of the transfer of retail licenses in cases of indebtedness seem not insurmountable.

Retailers

Retailers of alcoholic beverages are divided into two major groups; namely, those selling for on-premise consumption and those for off-premise consumption. Each has his special problems, so each will be treated separately.

On-Premise Retailers. Those who sell alcoholic beverages by the drink find little with which to argue in the Hawaii liquor law. They, too, welcome a chance for closer cooperation with the administrator of the laws, feeling that their unique problems might be solved better through a continuing working relationship rather than through hearings procedures. This reflects, perhaps, a greater concern with the manner in which the laws are administered than with the laws themselves. It should not be inferred that no substantive problems exist. There is the matter, for instance, of the current labor shortage for restaurant help. The industry would like to be able to make greater use of those in the labor force who are below the legal drinking age. At the same time that they wish to make greater use of these people, they also want a wider license for the use of their facilities, that is, they would prefer not to have to obtain a special license for the serving of liquor in spaces in which liquor is not ordinarily served, e.g., banquet spaces in hotels. It is clear that to employ more employees of nondrinking age conflicts with the wish to expand the coverage of physical facilities by a licensee. This may be a matter of administration rather than law, although there is a temptation for licensees to treat every administrative decision as a precedent rather than, as is sometimes the case, a unique accommodation to an industry situation.

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As with the wholesalers, there is good reason to recommend a closer relationship, one of a more positive nature, between commissions and those regulated. This does not mean that the commission's or public's viewpoint can be exchanged with the industry. Understanding on both sides is the key to more constructive regulation.

In different vein, it is possible to list a whole host of industry grievances which are of picayune nature and which need no lengthy replies here. The industry wants but should not have a spokesman on the commissions. The industry wants equal treatment for its members, not discriminatory treatment. Clearly, state rules with local flexibility are requested by the industry; does local flexibility invite discriminatory treatment? Registration of employees and the serving of minors are likely to be perennial problems alleviated only through enlightened regulation and industry tolerance.

Off-Premise Retailers. Off-premise retailers have a longer list of grievances than do other levels of the industry. First, they are concerned about the permissive licensing of off-premise dealers. Second, they resent the regulations which stimulate sales of liquor to civilians through military outlets. Incidentally, this involves the level of taxation. Third, they, too, object to the ad valorem tax which diverts sales from high margin products to lower margin products and to private label merchandise. Fourth, the stores that deal in liquor exclusively see a growing threat to their existence in the expanding drug and grocery chains on the Islands which also retail liquor, mainly low-priced private brands. They find a fifth problem in the administration of the rules and regulations which hamper the efficient stocking and marketing of liquor by multiproduct retailers. Sixth, they object to the "inadvertent" administration which permits on-premise outlets to sell packaged liquors on Sunday when they are prevented from doing so.

Neither the retailers nor the wholesalers find any reason to complain about current pricing arrangements, although they recognize that listed prices are not always maintained. The most commonly cited evidence of pricing breaches is the allegation that some retailers incorrectly include the four per cent general retail excise in the listed price of the alcoholic beverages they sell while others correctly add the four per cent to the listed price.

Taking these requests in order, one can sympathize with but do little for businessmen who resent the intrusion of competitors. Permissive licensing should continue. The truth of the matter is that fewer liquor retailers will be able to remain in business as exclusive dealers in liquor if price competition returns to the industry.

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Multiple product dealers will further dominate the industry. Care should be taken to limit the number of outlets owned by any one individual or corporation so that retailing does not become oligopolized.

The second problem involving diversion of purchases from civilian to military channels has been dealt with above, as has the third problem involving the ad valorem tax system. The fourth matter concerning multiple product stores seems to be a problem to be handled in the private market. Apart from the problem of concentration of the retailing industry, Hawaii probably is safer with liquor retailed through such outlets. The next grievance involving the cumbersome rules and regulations governing the handling of liquor in multiple product outlets is best settled through negotiation. A solution that will serve the public's interest and simplify the matter probably has to be worked out on a trial and error basis. The last grievance involves packaged liquor sales on Sunday. The state legislature might well place the package store on par with the on-premise outlet, either through liberalizing the former's hours or restricting the latter's ability to sell packaged liquor.

As for problems of price, it is strongly recommended that they be left to the private market.

Chapter XIII
SUGGESTED RECODIFICATION OF
THE HAWAII INTOXICATING LIQUOR LAW

Chapter ____
Intoxicating Liquor Control Law

PART I. GENERAL PROVISIONS

Section -1. Purpose. The purpose of this chapter is to encourage temperance in the use of intoxicating liquor by controlling, supervising, and regulating the manufacture, importation, sale, distribution, and use of intoxicating liquor for the protection of public health, safety, and welfare.

Comment: This section would serve to clarify intermittent confusion about the basic purpose of the intoxicating liquor law as an incident of the police powers. It differs from comparable sections in other states' liquor laws by specifying that use of intoxicating liquor is subject to control, supervision, and regulation. The chapter title is consistent with the purpose of the law.

Section -2. Definitions. In this chapter, unless the context otherwise requires:

(1) "Alcohol" means the product of distillation of any fermented liquid, whether rectified or not, whatever may be the origin thereof, and synthetic ethyl alcohol but does not mean denatured or other alcohol which is considered nonpotable under the customs laws of the United States.

(2) "Beer" means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley or other grain, malt, and hops in water.

(3) "Club" means any organization established for purposes of a social, patriotic, political, or athletic nature, or the like, but not for profit or for the carrying on of a business, trade, avocation, or profession for profit; having a regular membership to all of whom is charged monthly or quarterly dues; employing a full-time steward; and from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof or any assets, income, or earnings of the organization except for services actually rendered to it. "Club" also means the establishment so operated and its premises.

SUGGESTED RECODIFICATION

(4) "Coordinator" means the state intoxicating liquor control coordinator.

(5) "County" means the county in respect of which each liquor control authority has jurisdiction under this chapter; provided that in the county of Kalawao liquor may be sold only by such persons and only under such conditions as are permitted or prescribed from time to time by the department of health.

(6) "Director" means the director of the liquor control authority of each county.

(7) "Hotel" means a commercial establishment consisting of one or more buildings and grounds which is operated as a business for profit; which offers to the public and provides for compensation, accommodations including lodging and food to travelers and guests whether transient or permanent; and which contains such number of rooms designated to be used for sleeping accommodations for travelers and guests as the liquor control authority prescribes by rule.

(8) "Intoxicated person" means a person who is deprived of reasonable self-control because of intake of alcohol.

(9) "Inspector" means any inspector or investigator of the liquor control authority for the county in which the liquor control authority has jurisdiction.

(10) "License" means any license granted under this chapter.

(11) "Licensee" includes the holder of a license and every agent and employee of the holder of a license.

(12) "Liquor" or "intoxicating liquor" includes alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, and wine; and also includes any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and in whatever form and of whatever constituency, and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes.

(13) "Liquor control authority" means the respective liquor control authority of each county, including any licensing, rule-making, and adjudicatory bodies established within the liquor control authority by county charter or ordinance.

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(14) "Mayor" means the respective mayor of each county.

(15) "Minor" means any person below the age of (eighteen) years.

(16) "Original package" means a package or container, containing liquor, as it existed at the time of its delivery by the manufacturer or the wholesale dealer for convenience in transportation and sale.

(17) "Person" is defined as provided in section 1-24.

(18) "Person habituated to the excessive use of alcohol" means a person who repeatedly and compulsively uses alcohol to an extent which interferes with his personal, social, family, or economic life.

(19) "Premises" or "licensed premises" means the premises in respect of which a license has been or is proposed to be issued.

(20) "Regulation" or "rule" means a rule or regulation promulgated by the liquor control authority in conformity with chapter 6C and approved by the mayor of the county for carrying out the purpose of this chapter.

(21) "Sell" or "to sell" includes to solicit and receive an order for; to have or keep or offer or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; to traffic in; and the term "sale" includes every act of selling as herein defined. "Delivery for value" includes delivery by a licensee's vehicle or the vehicle of a licensee's agent.

(22) "Seller" includes an agent and employee of a seller; and any person who, in the State, whether acting as agent or representative of a nonresident principal or otherwise, solicits the placing of or takes, receives, or forwards orders for liquor to be shipped into the State from any place without the State to be delivered to customers, by direct shipment or otherwise.

(23) "Wine" means any beverage coming within the definition of wine contained in the United States Revenue Act of 1918 (Act of February 24, 1919) and acts amendatory thereof, and sake.

(24) "Written" or "writing" includes printing and typewriting.

Comment: Most of the definitions are derived from section 159-1, Revised Laws of Hawaii 1955, and twelve of the terms are defined without substantial departure from existing

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definitions, viz., "alcohol", "beer", "county", "license", "licensee", "liquor" or "intoxicating liquor", "original package", "premises" or "licensed premises", "sell" or "to sell", "seller", "wine", and "written" or "writing".

Some of the revised definitions are intended to reflect general changes in government structure and operations, e.g., the office of mayor provided for in all of the county charters, administrative establishment of liquor investigators in addition to liquor inspectors, and application of the Administrative Procedure Act to commission rules and regulations; and others are intended to conform to legislative drafting standards such as the deletion of substantive law from the definition of "club", the requirements for issuance of a club license being more appropriately placed in Section -22. The definition of "club" is further clarified to make it consistent with conditions for charters of nonprofit corporations.

In the definition of "minor", the age qualification is bracketed to indicate that the legislature may determine that the existing age qualification of twenty should be retained. The definition of "person" is incorporated from the general definitions of chapter 1, Revised Laws of Hawaii 1955, and excludes the existing liquor law inclusion of agents, servants, and employees of persons since the scope of the draft Intoxicating Liquor Control Law, and of the existing law, covers persons other than licensees. It is noted that "licensee" and "seller" both include agents and employees. The definition of "public place" is deleted as unnecessary; the term is used only once in the existing law, section 159-84, Revised Laws of Hawaii 1955.

Two terms, "addicted to the excessive use of intoxicating liquor" and "under the influence of liquor" are replaced by definitions taken from the new mental health law, chapter 81, Revised Laws of Hawaii 1955, and termed "intoxicated person" and "person habituated to the excessive use of alcohol". The replacement is consistent with new state programs in the public health field of drunkenness and alcoholism.

Three new definitions are added--"coordinator", a new state office to coordinate those aspects of the Intoxicating Liquor Control Law which are of primary state interest, as contrasted to the police powers of primary county interest, and to implement cooperation among the county liquor control authorities;

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"director", an office generally equivalent to the existing office of liquor commission secretary; and "hotel" defined for the purposes of the new class of hotel liquor license.

The "liquor control authority" would replace existing liquor commissions in each county.

Section -3. Exceptions, limitations; penalty. (a) This chapter does not apply to any of the following articles after they have been manufactured and prepared, as prescribed in this section, for distribution and sale:

(1) Denatured alcohol or denatured rum produced and used as provided by law.

(2) Medicinal preparations manufactured in accordance with formulas prescribed by the Pharmacopoeia of the United States or the National Formulary that are unfit for use for beverage purposes.

(3) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(4) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(5) Flavoring extracts and syrups that are unfit for use as a beverage or for intoxicating beverage purposes.

(6) Vinegar and preserved sweet cider.

(b) (1) Any person who manufactures any of the articles listed in subsection (a) may purchase and possess liquor for that purpose, but he shall not sell, use, or dispose of any such liquor except as an ingredient of the articles authorized to be manufactured.

(2) No person shall use more alcohol in the manufacture of any extract, syrup, or article listed in items (a) (2), (3), and (4) that may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained in it and for its preservation.

(3) No person shall knowingly sell any article listed in items (a) (1), (2), (3), and (4) for beverage purposes or any extract or syrup for intoxicating beverage purposes and no person shall sell any of the same under circumstances from which he might reasonably deduce

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the intention of the purchaser to use them for such purposes.

(c) Sections -55 to -57 with respect to analyses and samples for the purpose of finding if an article listed in subsection (a) conforms with the descriptions and limitations of this section and sections -98 to -104 with respect to seizure, including arrest, condemnation, replevin, claims, and appeals, shall apply to the articles listed in subsection (a) and to a person who manufactures or sells any of the articles.

(d) Violation of paragraph (b) (1) or (2) is a first degree intoxicating liquor control law violation. Violation of paragraph (b) (3) is a second degree intoxicating liquor control law violation.

Comment: This section is derived from section 159-2, Revised Laws of Hawaii 1955. The redrafted section is divided into four subsections, to (a) list the excepted articles, (b) define violations, (c) integrate the procedures for analyses and for search and seizure with the general procedural sections which reflect recent constitutional law developments, and (d) integrate the penalties for violations into the general scheme for criminal penalties.

Section -4. Quality of liquor; penalty. All liquor at any time manufactured or sold in the State shall be of pure quality according to any applicable standard established under the laws of the United States and shall be unadulterated with any mixture of noxious, deleterious, or poisonous substance.

Violation of this section is a second degree intoxicating liquor control law violation.

Comment: This section is derived from section 159-72, Revised Laws of Hawaii 1955, with style changes, adaptation to the general scheme for criminal penalties, and removal into part I dealing with general provisions since it applies to all liquor whether or not manufactured or sold under a license.

Section -5. Prohibitions, penalty. (a) No person shall at any time under any circumstances:

(1) Consume any liquor on any public highway or any public sidewalk.

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(2) Consume any liquor on the premises of a licensee or on any premises connected with the licensed premises, whether purchased on the licensed premises or not, except as authorized by the terms of the license.

(3) Offer or give any liquor as a prize at any store, shooting gallery, theater, carnival, circus, bazaar, game, or entertainment or at any public amusement or other place of public accommodation or public gathering.

(b) Violation of this section is a second degree intoxicating liquor control law violation.

Comment: This section is derived from subsections 159-77 (a)(1) and (4) and the first paragraph of section 159-84, Revised Laws of Hawaii 1955. These violations apply to all persons, licensed and nonlicensed and adult and minor.

Section -6. Prohibitions involving minors, penalty. (a) No adult shall purchase any liquor for the consumption or use of any minor who is not his child or spouse or furnish or give any liquor to any minor who is not his child or spouse.

(b) No minor shall purchase any liquor and no minor shall have any liquor in his possession or custody in any motor vehicle on a public highway or in any place of public accommodation, public gathering, or public amusement or at any public beach or public park; provided that this subsection shall not apply to possession or custody of liquor by a minor (1) in the course of delivery pursuant to the direction of his parents; (2) in connection with his authorized participation in stage productions or religious ceremonies requiring such possession or custody; or (3) for the purpose of his personal medication as prescribed by a physician.

(c) No minor shall falsify any identification or use any false identification or identification of another person or of a fictitious person in order to purchase liquor or to be employed to sell or serve liquor on licensed premises.

(d) Violation of this section is a second degree intoxicating liquor control law violation.

Comment: Subsection (a) of this section is derived from section 159-101, Revised Laws of Hawaii 1955, modified to include the

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furnishing or giving of liquor by an adult to a minor and to exclude from criminal liability a parent or spouse of a minor. Subsections (b) and (c) proscribe possession of liquor by a minor and the use of false identification by a minor in order to purchase liquor or to be employed to sell or serve liquor on licensed premises.

SECTION -7. Liquor consumption on unlicensed premises prohibited, when. (a) No person who keeps or maintains any restaurant or other premises where food, beverages or entertainment are sold or provided for compensation, or to which members of the public, or members of an organization, resort for food, refreshment, or entertainment, and who is not a licensee under this chapter, shall promote, encourage, aid, or permit the consumption of liquor on the premises, except during the hours between which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located.

(b) No person who is present at any restaurant or other premises where food, beverages, or entertainment are sold or provided for compensation, or to which members of the public, or members of an organization, resort for food, refreshment, or entertainment, and which premises are not licensed under this chapter, shall consume any liquor on the premises, except during the hours between which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located.

(c) No person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are sold or provided for compensation, shall sell or provide any food or beverages to or for any of the following persons knowing that the person has, or is about to obtain, liquor for consumption by him on the premises:

(1) any minor, (2) any intoxicated person, (3) any disorderly person, (4) any person known to be a person habituated to the excessive use of alcohol, or (5) any person, for consumption in any motor vehicle on the premises; provided, that the sale of or providing of food or beverages to or for a minor shall not be a violation of this subsection if, at the time, the person so selling or providing food or beverages was misled by the appearance of the minor and the attending circumstances into honestly believing that the minor was of legal age and the person acted in good faith, and it shall be incumbent upon the person to prove that he so acted in good faith.

(d) Within the meaning of this section the word "premises" includes any vessel as well as any place, with or without a structure thereon, and the hours between which licensed premises of dispensers

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are permitted to be open for the transaction of business means the hours during which dispensers are permitted to keep open their premises for the sale, service, and consumption of liquor, or any of them.

Comment: This section is derived from section 159-4, Revised Laws of Hawaii 1955, with minor style changes.

PART II. ADMINISTRATION

Section -10. Coordinator. The governor shall appoint, without regard to the provisions of chapters 3 and 4, a state intoxicating liquor control coordinator who shall serve at the pleasure of the governor as the state coordinator of intoxicating liquor control law, programs, activities, and research. The coordinator shall be selected on the basis of his training and experience in a supervisory, consultative, or administrative position related to the field of intoxicating liquor control. The office of state liquor control coordinator shall be within the department of regulatory agencies for administrative purposes and the coordinator shall serve in an advisory capacity to the director of regulatory agencies on matters within the scope of this chapter. The coordinator's salary shall be within the range of salaries paid deputy directors of the departments of the state government, and he shall be a member of the state employees' retirement system and shall be included under the operations of the federal social security program or any other state or federal employee benefit program generally applicable to officers and employees of the State. He may hire clerical and professional staff necessary to carry out the duties of the coordinator, subject to chapters 3 and 4.

Comment: This section creates the office of state intoxicating liquor control coordinator, provides for appointment and removal by the governor, sets the qualifications and the salary range for the coordinator, and places the office in the department of regulatory agencies for administrative purposes. The administrative placement recognizes the close relationship of various aspects of intoxicating liquor control to the responsibilities of the department of regulatory agencies in such matters as consumer protection and business licensing. The title of "coordinator" reflects the several inter-departmental concerns about intoxicating liquor, e.g., the departments of the attorney general, taxation, education, health, social services, planning and economic development, transportation, and labor and industrial relations. The coordinator is not given a set term of office but is made to serve at the governor's pleasure although at a

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relatively high salary in order to attract to the position well-qualified specialists and to provide efficient machinery for removal from a position that is extremely sensitive. The authorization of a staff for the coordinator contemplates such kinds of assistants as economists, lawyers, doctors, or statisticians.

Section -11. Duties of the coordinator. The coordinator shall:

(1) Serve as consultant to the governor on matters relating to intoxicating liquor.

(2) Coordinate the programs of state agencies concerned with intoxicating liquor, including, but not limited to, the departments of the attorney general, regulatory agencies, taxation, education, health, social services, planning and economic development, transportation, and labor and industrial relations.

(3) Coordinate the programs of the county liquor control authorities with respect to intoxicating liquor control laws that are required to be uniform throughout the State.

(4) Cooperate with the county liquor control authorities in developing legislative and administrative recommendations consistent with the purpose of this chapter and report annually to the governor and the legislature regarding the recommendations.

(5) Conduct annual meetings of the county liquor control authorities and state agencies concerned with intoxicating liquor.

(6) Determine whether or not a recommendation shall be made for the initial issuance of a manufacturer's or a wholesale dealer's license.

(7) Compile statistical data from the county liquor control authorities and from state agencies and establish the criteria for information to be furnished and included in the data.

Comment: The office of state intoxicating liquor control coordinator, as described by its duties, would provide the machinery for harmonizing statewide programs in which intoxicating liquor is or should be an important consideration such as mental health, rehabilitation of persons in state institutions, highway safety, pure food and drug

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protection, public education, and manufacturing and overseas trade. Without infringing upon the comprehensive police powers of the county liquor control authorities, the functions of the coordinator would bolster the autonomy of the liquor control authorities by furnishing them a direct line of communication to the state government which is of particular importance for a county agency responsible for administering one state law with serious implications for other state laws. The coordinator would also implement the uniform application of those intoxicating liquor control laws which are required to be uniform, be responsible for the annual liquor control authority meetings which would be expanded to include state agencies, and collect pertinent statistical data. The sixth listed duty, pertaining to the coordinator's recommendation on the initial issuance of a manufacturer's or wholesale dealer's license, would make available to the county licensing agency information about statewide interests, for instance economically significant factors, that would help the county liquor control authorities to determine the advisability of issuing such licenses.

Section -12. Intergovernmental cooperation. The executive heads of state departments and agencies and liquor control authority chairmen and directors shall cooperate with the coordinator in providing information requested by him for the discharge of his duties; provided that no law with respect to confidentiality of information shall be violated by this section.

Comment: This section supplies implementation for the coordinator's duty to compile statistical data with safeguards for confidential records of government agencies.

Section -13. Liquor control authorities. There shall be a liquor control authority for each of the counties. The members of each liquor control authority shall be appointed and removed by the mayor with the advice and consent of the legislative body of the county. The liquor control authority shall consist of such number of members and the members shall serve for such terms as prescribed by county charter or ordinance. Not more than a bare majority of the members of the liquor control authority shall belong to the same political party. Any vacancy shall be filled for the remainder of the unexpired term. The members of the liquor control authority shall be allowed expenses, including travel expenses, necessary in the performance of their duties but shall be allowed compensation for services only if and to the extent provided by county charter or ordinance.

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Each member shall be a citizen of the United States and shall have resided in the county for which appointed for at least three years immediately preceding the date of his appointment.

No person shall be a member of any liquor control authority who during the term of his appointment is, or becomes engaged, or is directly or indirectly interested, in any business for the manufacture or sale of liquor or who advocates or is or becomes a member of, or is identified or connected with, any organization or association which advocates prohibition, or who serves as an officer or committee member of any political party organization or who is an elected officer of the state or county government or who presents himself as a candidate for election to any public office. The mayor shall enforce this paragraph by causing the removal of the disqualified member whenever any such disqualification appears. The disqualifications in this paragraph are in addition to the requirements set forth in any county code of ethics.

Each member of the liquor control authority, before entering upon the duties of his office, shall take and subscribe to an oath or affirmation that he will faithfully perform the duties according to law, which written oath or affirmation shall be filed with the mayor of the county.

Comment: This section is derived from section 159-10, Revised Laws of Hawaii 1955, but modified, in the larger part to accommodate "home rule" administration of the present county liquor commissions. The counties are thus authorized to provide by charter and ordinance for the organization and size of their liquor control authority, terms of office, and compensation, if any. The basic grounds for disqualification of a member are expanded to pre-"home rule" specifications which include disqualification for an officer or committee member of a political party organization; but all disqualifications are limited to the term of office of a liquor control authority member. The oath of office requirement is also redrafted to permit affirmations.

Section -14. Duties of the liquor control authority. Each liquor control authority shall, subject to this chapter, and in the manner prescribed by county charter and ordinance:

(1) Provide for the organization and operation of the liquor control authority to carry out the purpose of this chapter in conformity with law.

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(2) Maintain an office for the transaction of its business during business hours.

(3) Provide for the holding of meetings and hearings including the requirements of the notice to be given of meetings and hearings and the quorum and voting requirements for determination of any matter before a meeting or hearing.

(4) Cause complete records to be kept of all of its proceedings and acts with reference to all of its business and pertaining to all licenses issued, suspended, and revoked, all moneys received as license fees and otherwise, all disbursements by the liquor control authority or under its authority, and all information required to be kept by the coordinator; and to keep all of these records and information in the office of the liquor control authority and to make them open to the examination of the public.

(5) Submit a full report to the mayor on or before September 30 of each year. The report shall include an account of all activities, business, and operations of the liquor control authority during the preceding year which shall be coterminous with the fiscal year of the county, and such matters of information and comment as the mayor prescribes. The liquor control authority shall also furnish copies of the report to the legislative body of the county, the county director of finance, and such other county offices as are provided for by law and to the coordinator.

(6) Provide for regular examination and reporting of the accounts of the liquor control authority by the county director of finance.

(7) Pay weekly or oftener into the general fund of the county all fees and other moneys collected or received by the liquor control authority pursuant to this chapter.

(8) Cooperate with the coordinator with respect to (a) intoxicating liquor control laws that are required to be uniform throughout the State, (b) development of legislative and administrative recommendations consistent with the purpose of the chapter, (c) participation in the annual meetings of the liquor control authority, and (d) furnishing information for the compilation of statistical data.

(9) Appoint and remove a director and inspectors and clerical or other assistants, all of whom shall be subject to chapters 3 and 4 and to the civil service and classification laws of the county, prescribe their duties, and fix their compensation, and engage the

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services of experts and persons engaged in the practice of a profession if deemed expedient.

Comment: This section consolidates various administrative and organizational duties of the present liquor commissions set forth in sections 159-11 to 159-16, Revised Laws of Hawaii 1955, with modifications consistent with "home rule" and other proposed changes in the administrative structure of intoxicating liquor control agencies.

Section -15. Administrative procedure. Each liquor control authority shall comply in every respect with the requirements of chapter 6C in addition to any other administrative procedure requirements imposed by this chapter or by county charter or ordinance.

Comment: This section incorporates by reference the Hawaii Administrative Procedure Act and at the same time permits the addition of other procedural safeguards through the intoxicating liquor control law and through county charter and ordinance. It is intended that the Hawaii Administrative Procedure Act apply to all matters, including public information, rules, declaratory judgments on rules, declaratory rules, contested cases, evidence, decisions and orders, restrictions on decision-making officers, judicial review, and appeals.

Section -16. Payment of expenses. All expenses of the liquor control authority, including any expenses and compensation of its members and expenses and salaries of its employees, shall be paid in the manner provided by law out of the general fund of the county.

Comment: This section is derived from the second sentence of section 159-15, Revised Laws of Hawaii 1955, with the word "subordinates" replaced by the word "employees". The first sentence of section 159-15 is rearranged as item (7) of Section -14 above.

Section -17. Jurisdiction and powers. (a) The liquor control authority, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter and to its county charter and ordinances that are consistent with this chapter:

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(1) To grant, refuse, suspend, cancel and revoke any license for the manufacture, importation, or sale of liquor.

(2) To control, supervise, and regulate the manufacture, importation, and sale of liquor.

(3) To adopt, amend, and repeal rules, not inconsistent with this chapter, that are found appropriate for the carrying out of the purpose and requirements of this chapter, for the administration of the liquor control authority, and for the conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the liquor control authority; which rules, when approved by the mayor and by any other office whose approval is required by county charter or ordinance and promulgated and filed as provided in chapter 6C, shall have the force of law.

(4) To limit the number of licenses of any class or kind within the county and within any given locality of the county when in the judgment of the liquor control authority the limitations are appropriate for the carrying out of the purpose of this chapter.

(5) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement for any indemnity deemed appropriate to the case.

(6) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which hours shall be uniform throughout the county as to each class respectively.

(7) To prescribe all forms to be used for fulfilling the requirements of this chapter not otherwise provided for in this chapter and the character and manner of keeping books, records, and accounts to be kept by licensees in any matter pertaining to their business, except those matters which are subject to federal law or to the state liquor tax law.

(8) To prescribe the character and extent of all advertisements, posters, or signs which may be posted or maintained in or about any licensed premises or which a licensee may cause to be distributed or published in connection with liquor or with his licensed premises.

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(9) To investigate violations of this chapter, through its inspectors or otherwise, and to report violations to the prosecuting officer for prosecution; to hear and determine complaints against any licensee; to subpoena and examine witnesses under oath and require the production of, and examine any of the books, papers, and records of any licensee which may pertain to his business under his license or which pertain or may pertain to any matter at any hearing or investigation by or before the liquor control authority.

(10) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of dispensers' and hotel licenses.

(11) To prescribe, by rule, the term of licenses, the total or prorated amount and the payment of annual license fees, and the amount of filing fees.

(b) The liquor control authority and each member of it shall have the same powers respecting the administering of oaths and affirmations, compelling the attendance of witnesses, the production of documentary evidence, the taking of testimony, and examining witnesses as are possessed by a circuit judge at chambers.

(c) The exercise by the liquor control authority of the power, authority, and discretion granted by this chapter shall be final in each case and shall not be reviewable by or appealable to any court except as otherwise provided in this chapter or chapter 6C.

Comment: This section is derived from section 159-16, Revised Laws of Hawaii 1955, with adjustments to accommodate new "home rule" administrative structures; to reflect inter-governmental differentiation of authority as in specifying that the record-keeping prescriptions of the liquor administration do not apply to matters within the jurisdiction of the federal government or the state department of taxation; to rearrange certain powers, such as placing the appointment and hiring powers of the liquor administration within Section

-14 above dealing with administrative and organizational duties; to accord with modern administrative techniques, such as divesting the members of the liquor administration of the investigatory power now given to members of the liquor commissions; and to add new powers, such as the power to regulate advertisements.

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Section -18. Service of subpoenas; witnesses fees; attendance and examination; perjury. (a) Any inspector may serve any subpoena issued by the liquor control authority.

Every witness attending or testifying at any hearing of the liquor control authority in response to a subpoena issued by it shall be paid as provided for in section 222-7. If a witness is subpoenaed by direction of the liquor control authority, his fees shall be paid out of any funds which may be set aside for the expenses of the liquor control authority and, if the witness is subpoenaed on behalf of any interested party, his fee shall be paid by that party.

(b) If any person who is subpoenaed as a witness to attend before the liquor control authority, or to produce any books, papers, or records called for by the process of the liquor control authority, fails or refuses to respond thereto, or refuses to answer questions propounded by any member of the liquor control authority or its counsel material to the matter pending before the liquor control authority, the circuit court of the circuit within which the licensed premises involved are situated, upon request of the liquor control authority, may compel obedience to any process of the liquor control authority and require the witness to answer questions put to him as aforesaid, and to punish, as a contempt of the court, any refusal to comply therewith without good cause shown.

(c) False swearing by any witness before the liquor control authority shall constitute perjury and be punished as such, and whenever the liquor control authority is satisfied that a witness has sworn falsely in any hearing or investigation before it, it shall report the same to the prosecuting officer for prosecution.

Comment: This section is derived from sections 159-18 and 159-20, Revised Laws of Hawaii 1955, combined and with minor style changes.

Section -19. Delegation. The liquor control authority may delegate to the director any power imposed by this chapter except the powers to grant, refuse, suspend, and revoke licenses; to adopt, amend, and repeal rules; to limit the number of licenses; to fix the hours between which licensed premises may be open for the transaction of business; and any powers with respect to hearing and determining complaints against any licensee.

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Comment: This explicit authorization for the delegation of powers to the director of each county's liquor control authority is intended to increase efficiency of day-to-day operations and eliminate the present pattern of delayed action for the most routine matters which must await final action from the liquor commission. This section is drafted in a manner to permit each county's liquor control authority to determine which of the delegable powers will in fact be delegated and to prohibit the delegation of those essential powers delegation of which would constitute abdication.

PART III. LICENSES AND PERMITS, GENERAL PROVISIONS

Section -20. License required for manufacture, sale, or importation of liquor, penalty. (a) It shall be unlawful for any person, not having a valid license, to manufacture, sell, or offer or expose or keep for sale, any liquor, except as otherwise provided in this chapter.

(b) It shall be unlawful for any person, not having a valid wholesale dealer's license or a valid manufacturer's (including rectifier's) license, to import any liquor from without the State, except as otherwise provided in this chapter.

(c) A license shall authorize the licensee to deal only with the kind of liquor and to engage only in the class of liquor business transactions specified in the license.

(d) Violation of this section is a first degree intoxicating liquor control law violation.

Comment: This section is derived from section 159-3, Revised Laws of Hawaii 1955, excluding the special requirements pertaining to liquor manufactured in the State, which requirements are more appropriately placed in the new Section -54. Subsection -20(c) is redrafted to accord more comprehensively with the limitations of licenses. The penalty provision is added.

Section -21. No license issued, when. No license shall be issued under this chapter:

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(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 liquor control authority to be a fit and proper person to have a license.

(2) To a corporation the officers and directors of which, or any of them, would be disqualified under paragraph (1) of this section for obtaining the license individually, or a stockholder of which, owning or controlling twenty-five per cent or more of the outstanding capital stock would be disqualified under paragraph (1) of this section from obtaining the license individually.

(3) Unless the applicant files with the liquor control authority a certificate signed by the director of taxation, showing the payment in full of all state delinquent taxes, penalties, or interest.

(4) To any applicant 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 this chapter.

(5) To an applicant who is, or is a relative of, an officer or employee of any liquor control authority or police department in the State. For the purpose of this section, "relative" means parent, child, brother, sister, uncle, aunt, nephew, niece, parent-in-law, step-parent, step-child, step-brother, step-sister, half-brother, half-sister, husband, or wife.

Comment: This section is derived from section 159-45, Revised Laws of Hawaii 1955, with style changes and with the addition of a new statutory criteria for qualification for licensing to help assure independence of licensees from the personnel of the liquor control authorities and police departments.

Section -22. Licenses, classes. Licenses may be granted by the liquor control authority as follows:

Class 1. Manufacturers' licenses. A license for the manufacture of liquor authorizes the licensee to manufacture the liquor specified in the license and to sell the liquor at wholesale in original packages to any person who holds a license to resell the liquor, and to sell draught beer in any quantity to any person for private use and consumption. Under this license no liquor shall be consumed on the premises except as authorized by the liquor control authority. Of this class there shall be the following kinds: (a) beer; (b) wine; (c) wine manufactured from grapes or other fruits grown in the State;

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(d) alcohol; (e) other specified liquor. It shall be unlawful for any holder of a manufacturer's license to have any interest whatsoever in the license or licensed premises of any other licensee.

Class 2. Wholesale dealers' licenses. A license for the sale of liquors at wholesale authorizes the licensee to import and sell only to licensees or to others who are by law authorized to resell but are not by law required to hold a license, the liquors specified in the license in quantities not less than five gallons at one time if sold from or in bulk containers or not less than one gallon if bottled goods. This license authorizes the licensee to sell draught beer in quantities not less than five gallons at one time to any person for private use and consumption. Under this license no liquor shall be consumed on the premises except as authorized by the liquor control authority. Of this class there shall be the following kinds: (a) general (includes all liquors except alcohol); (b) beer and wine; (c) alcohol. If any wholesale dealer solicits or takes any orders in any county other than that where his place of business is located, such orders may be filled only by shipment direct from the county in which the wholesale dealer has his license, or by direct shipment from outside the State on indent orders. Nothing in this paragraph shall prevent a wholesaler from selling liquors to post exchanges, ships service stores, army or navy officers' clubs, or like organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation passenger service between any two or more ports in the State, or to aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

Class 3. Retail dealers' licenses. A license to sell liquors at retail authorizes the licensee to sell the liquors specified in the license in their original packages. Under this license no liquor shall be consumed on the premises except as authorized by the liquor control authority. Of this class there shall be the following kinds: (a) general (includes all liquors except alcohol); (b) beer and wine; (c) alcohol.

Class 4. Dispensers' licenses. A dispenser's license authorizes the licensee to sell liquors specified in the license for consumption on the premises. Under this license, the premises shall not include any room or facility designated to be used for sleeping accommodations for travelers or guests or any room or facility maintained for the lodging of travelers or guests. Of this class there shall be the following kinds: (a) general (includes all liquors except alcohol); (b) beer and wine; (c) beer.

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Class 5. Hotel licenses. A hotel license authorizes the licensee to sell liquors for consumption on the premises and may be granted only to a person who is licensed to conduct a hotel business. This license shall be general only (includes all liquors except alcohol).

Class 6. Club licenses. A club license authorizes the licensee to sell liquors to members of the club and to guests of the club enjoying the privileges of membership, for consumption only on the premises kept and operated by the club, and also authorizes any bona fide club member to keep in his private locker on the club premises a reasonable quantity of liquor, if owned by himself, for his own personal use and not to be sold, and which may be consumed only on the premises. This license shall be general only (includes all liquors except alcohol) and may be granted only to a club which has been in existence for a year or longer prior to its application for a license.

Class 7. Vessel licenses. A general license may be granted to the owner of any vessel performing a regular water transportation passenger service between any two or more ports in the State for the sale of liquors (other than alcohol) on board the vessel while in the waters of the State; provided the sales are made only while the vessel is en route, and only for consumption by passengers on board. If the vessel has a home port in the State the license shall be issuable in the county where the home port is situated, otherwise in the city and county of Honolulu. If on any vessel for which no license has been obtained under this chapter any liquor is sold or served within three miles of the shore of any island of the State the same shall constitute a violation of this chapter.

Class 8. Additional vessel licenses. A general license may be granted to the owner of any vessel which does not fall within class 7 for the sale of liquor (other than alcohol) on board the vessel while in any port of the State. Such sales shall be made only for consumption by passengers and their guests on board the vessel. This license shall be issuable in each county where such sales are to be made and the application for the license may be made by any agent representing the owner.

Class 9. Special licenses. A special license may be granted for the sale of liquors specified in the license for consumption on the premises for a period not to exceed one calendar day on any occasion and under such conditions as may be approved by the liquor control authority. Of this class there shall be the following kinds: (a) general (includes all liquors except alcohol); (b) beer and wine; (c) beer.

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Sections -36 to -38, -40, and -41 do not apply to classes 7 to 9.

A temporary license of any class and kind specified in this section may be granted under the following conditions:

(1) The premises shall have been operated under a license of the same class and kind issued by the liquor control authority for a period of at least one year immediately prior to the date of filing of the application for temporary license.

(2) The license of the same class and kind then in effect for the premises shall be surrendered in the manner and at the time the liquor control authority directs.

(3) The applicant for temporary license shall have filed with the liquor control authority an application for the transfer to him of the license of the same class and kind then in effect for the premises.

(4) The application for temporary license shall be accompanied by a license fee in the amount prescribed by the liquor control authority. If the application is denied or withdrawn, the fee which accompanied the application shall be refunded in full.

(5) A temporary license shall be for a period of not more than sixty days. The license may be renewed at the discretion of the liquor control authority for an additional sixty days upon payment of the additional fee prescribed by the liquor control authority and upon compliance with all conditions required.

(6) A temporary license is a conditional license and authorizes the licensee to purchase liquor only by payment in currency or certified check before or at the time of delivery of the liquor to him.

(7) Sections -31, -33, and -35 to -41 do not apply to any application for temporary license.

(8) Notwithstanding any other provision of law, a temporary license may be revoked or suspended summarily at any time if the liquor control authority determines that good cause for revocation or suspension exists. Sections -80 and -81 do not apply to temporary licenses.

Comment: This section is derived from section 159-30, Revised Laws of Hawaii 1955. The licenses are reclassified to eliminate

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reference to the existing Class 2 license for agents on which a permanent moratorium was placed by legislative action in 1965 and to add the new Class 5 license for hotels.

Section -23. Special privileges, exclusion from license requirement. The following special privileges are granted notwithstanding anything in this chapter to the contrary:

(1) Any person arriving in the State may bring with him for private use and consumption and not for resale, any liquor not exceeding one gallon, without securing a license.

(2) Any religious organization may import or receive into the State sacramental wine for use in the religious rites of the religious organization without securing a license.

(3) Any consul general, consul, or vice consul of any foreign country may import or receive into the State, for private use and consumption, any liquor without securing a license.

Comment: This section is derived from section 159-32, Revised Laws of Hawaii 1955, with some changes in style and modernization of wording.

Section -24. Place of business; exception; solicitors' and representatives' permits; fees. (a) A license issued under this chapter authorizes the doing of the business licensed only at the place described in the license, which shall be known as the licensed premises, except in case of a removal with the prior written consent of the liquor control authority indorsed on the license. No change of premises under any issued license shall be allowed unless the doing of business on the new premises is authorized in the same manner as provided by this chapter for approval of any original premises; provided that the holder of any manufacturer's license or any wholesale dealer's license issued by the liquor control authority of any county may, through authorized solicitors or representatives, solicit and take orders for direct shipment for liquor in permitted quantities in any other county.

(b) Any person desiring to act as the authorized solicitor or representative of a manufacturer or wholesale dealer in any county shall apply to the liquor control authority of the county in which he proposes to act for a permit to act as a solicitor or representative.

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The application for a solicitor's or representative's permit shall state the name of the applicant; his age, residence, and place of business; and the name and address of the manufacturer or wholesale dealer he represents and shall be accompanied by a statement from the manufacturer or wholesale dealer to the effect that the applicant has been appointed as its solicitor or representative.

(c) All sales and all orders taken for liquor by any solicitor or representative shall be subject to the rules of the liquor control authority for the county within which the sales are made or orders taken.

No solicitor or representative shall have, own, or control any liquor for sale.

(d) The fees for solicitors' and representatives' permits shall be for each license year commencing July 1 and ending on the succeeding June 30, or fraction thereof, shall be renewable each July 1, and shall be in the following amounts:

(1) A solicitor or representative of a manufacturer of or wholesale dealer in alcohol who solicits or takes orders, for direct shipment, for alcohol in permitted quantities in any county in which the manufacturer or wholesale dealer is not licensed for the sale of alcohol, \$5;

(2) A solicitor or representative of a manufacturer of or wholesale dealer in beer and wine who solicits or takes orders, for direct shipment, for beer and wine in permitted quantities in any county in which the manufacturer or wholesale dealer is not licensed for the sale of such liquor, \$75;

(3) A solicitor or representative of a manufacturer of other liquor or of other liquors in addition to beer and wine, or a solicitor or representative of such wholesale general dealer, who solicits or takes orders, for direct shipment, for such liquor in permitted quantities in any county in which the manufacturer or wholesale dealer is not licensed for the sale of such liquor, \$125.

(e) Anything in this chapter to the contrary notwithstanding, the fees in this section shall be revised only by an act of the legislature.

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Comment: This section is derived from section 159-39, Revised Laws of Hawaii 1955, with some changes in style and the deletion of the requirement that an applicant for a solicitor's or representative's permit state his nationality because the requirement is not relevant to the determination of whether or not a permit should be granted or renewed.

Section -25. Conditions of licenses. Every license issued under this chapter shall contain the condition that it is subject to all of the provisions of this chapter and of any other laws applicable to the business of the licensee, whether in existence at the time of the issue of the license or enacted or amended from time to time thereafter, and to all applicable rules of the liquor control authority as they exist or as adopted or changed from time to time.

Comment: This section is derived from section 159-38, Revised Laws of Hawaii 1955, with minor style changes.

Section -26. Transfer of licenses; penalty. No license issued under this chapter shall be transferable or be transferred within one year of its original issuance, except for good cause shown to the satisfaction of the liquor control authority. No license issued under this chapter shall be transferable or be transferred except upon written application to the liquor control authority by the proposed transferee, and after prior inspection of the premises, reference to and report by an inspector, and a public hearing held by the liquor control authority not less than fourteen days after one publication of notice thereof, but without sending notice of the hearing by mail to persons being the owners or lessees of real estate situate within the vicinity of the premises and without the right to such owners or lessees to protest the transfer of a license. Where a license is held by a partnership, the liquor control authority may, notwithstanding the other provisions of this section, transfer the license upon the death or withdrawal of a member of the partnership to any remaining partner or partners without publication of notice and without public hearing. Except as otherwise provided in this section, the same procedure shall be followed in regard to the transfer of a license as is prescribed by this chapter for obtaining a license. Sections -30 to -38 and section -40, except where inconsistent with this section, apply to such transfers. The word "applicant", as used in sections -30 to -38 and in section -40, includes each such proposed transferee, and the words, "application for a license or for the renewal of a license", as used in sections -30 to -38 and in section -40, include an application for the transfer of a license.

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At any hearing to consider the transfer of a license, the liquor control authority shall consider the application and any objections to the granting of the transfer, and hear the parties in interest. It shall inquire into the propriety of each transfer and determine whether the proposed transferee is a fit person to hold the license. It may approve a transfer or refuse to approve a transfer, and the refusal by the liquor control authority to approve a transfer shall be final and conclusive, unless an appeal is taken as provided in chapter 6C.

If any licensee without approval by the liquor control authority transfers to any other person his business for which his license was issued, either openly or under any undisclosed arrangement, whereby any person other than the licensee comes into possession or control of the business, or takes in any partner or associate whom the liquor control authority may deem to be an unfit or improper person to hold a license in his own right, the liquor control authority may in its discretion suspend or cancel the license.

If the licensee is a corporation, a change in ownership of any outstanding capital stock shall not be deemed a transfer of a license; provided that in the case of a change in ownership of twenty-five per cent or more of such stock or in the case of a change in ownership of any number of shares of such stock which results in the transferee becoming the owner of twenty-five per cent or more of the outstanding capital stock, the corporate licensee shall, within five days from the date of the transfer, notify the liquor control authority in writing. The liquor control authority may in its discretion suspend or revoke the license of such corporation upon its failure or refusal to so notify the liquor control authority of the transfer. The liquor control authority may thereupon, if it finds the transferee an unfit or improper person to hold a license in his own right pursuant to section -21, in its discretion revoke the license or suspend the license until such time as a retransfer or new transfer of such capital stock is effected to a fit or proper person pursuant to section -21, but in no case may such suspension period exceed thirty days, unless extended by the liquor control authority for good cause shown, and the liquor control authority may order the licensee to effect such retransfer or new transfer and notify the liquor control authority in writing. If at the end of such suspension period or extension thereof, a retransfer or new transfer has not been effected the liquor control authority shall revoke the license.

If a licensee closes out the business for which the license is held during the term for which the license was issued, he shall within five days from the date of closing out, give the liquor control

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authority written notice thereof and surrender his license for cancellation.

Comment: This section is derived from section 159-41, Revised Laws of Hawaii 1955, with minor style changes.

Section -27. Inspection of premises; inspectors' police powers. Inspectors have all the powers of police officers in enforcing this chapter and the rules adopted by the liquor control authority and may without warrant visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his license on the premises, including any examination of the books and records of the licensee; provided no inspection by an inspector shall be made of any premises at any other time or private dwelling occupied exclusively as such or of any hotel guest room used for sleeping accommodations for travelers and guests except pursuant to a search warrant as provided in chapter 255.

Comment: This section is derived from section 159-19, Revised Laws of Hawaii 1955, but the right of inspection is curtailed from the present absolute right of any member of the liquor commission or any inspector to inspect at any time, without notice, and without a search warrant, any part of the premises of every licensee. The redrafted section would limit the right of inspection to inspectors, limit the time of inspection to the time during which the licensee is exercising his license privileges, and require a search warrant for inspections at other times and for inspections of private dwellings and hotel guest rooms.

Section -28. Sales of alcohol. No alcohol shall be sold, bartered, or otherwise furnished by any person whether holding a license to manufacture or sell alcohol under this chapter or not, except to a person holding a license to resell alcohol, or to a person holding a purchase permit from the liquor control authority to purchase alcohol.

A permit to purchase alcohol may be issued by the liquor control authority, without a fee or charge, to any person holding a license under the laws of the State to sell poisonous drugs, or to any person who in the opinion of the liquor control authority requires the use of alcohol for a pharmaceutical or other purposes in the bona fide treatment of patients of the person, or for rubbing, cleansing, or as a preservative, or for any bona fide scientific purpose, but in no case for use for beverage purposes.

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On every sale of alcohol the seller, after first being satisfied that the person presenting a permit is the person named in the permit, shall make a record on the permit and sign it showing the name of the purchaser, the date, the quantity sold, and the purpose declared as to the intended use by the purchaser. The seller shall also keep a separate record of the same matters. If in any permit there is a prescribed limit as to the quantity purchasable thereunder at any one time or in the aggregate in any given period of time, the permit shall not be honored beyond its terms.

The liquor control authority may, by rules, where deemed appropriate, provide for the sale of alcohol upon prescriptions of duly licensed physicians in lieu of the permit provisions of this section.

Comment: This section is derived from section 159-36, Revised Laws of Hawaii 1955, with minor style changes.

PART IV. PROCEDURE FOR OBTAINING LICENSE

Section -30. Prior inspection. No license shall be granted under this chapter unless and until the liquor control authority has caused a thorough inspection to be made of the premises upon which the proposed business is to be conducted and is satisfied as to its fitness and that all other general and special conditions and proposed methods of operation under the license are suitable for carrying on the business in a reputable way.

Comment: This section is derived from section 159-50, Revised Laws of Hawaii 1955, with minor style changes.

Section -31. Public hearing. No license shall be granted except after a public hearing held by the liquor control authority upon notice as prescribed in this chapter; provided that sections -36 to -40 shall not apply to the holder of a wholesale dealer's general license, or a retail dealer's general license or a dispenser's general license, who applies for a different kind of license within the class of his existing license, on the same premises, or to the holder of a dispenser's beer and wine license who applies for a dispenser's beer license, on the same premises, or to any licensee whose licensed premises have been demolished and replaced by another building on the same premises and who applies for the same or lesser kind of liquor license previously held by him on those premises.

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Comment: This section is derived from section 159-51, Revised Laws of Hawaii 1955, with minor style changes.

Section -32. Application; penalty for false statements.
Every application for a license or for the renewal of a license or for the transfer of a license shall be in writing, signed and, except for the renewal of a license, verified by the oath or affirmation of the applicant, or in the case of a corporation or unincorporated association by the proper officers thereof, or in the case of a partnership by a majority of the general partners thereof, made before any official authorized by law to administer oaths and affirmations, and shall be addressed to the liquor control authority, and set forth:

(1) The full name, age, and place of residence of the applicant; and if a copartnership the names, ages, and respective places of residence of all the partners; if a coporation or joint stock company, its full name and the names of its officers and directors, and the names of all stockholders owning twenty-five per cent or more of the outstanding capital stock; and if any other association of individuals, the names, ages, and respective places of residence of its officers and the number of its members.

(2) A particular description of the place or premises where the proposed license is to be exercised, so that the exact location and extent thereof may be clearly and definitely determined.

(3) The class and kind of license applied for.

(4) Any other matter or information pertinent to the subject matter which may be required by the rules of the liquor control authority.

If any false statement is knowingly made in any application which is verified by oath or affirmation, the applicant, and in the case of the application being made by a corporation, association, or club, the persons signing the application, shall be guilty of perjury, and shall be subject to the penalties prescribed by law for that offense. If any false statement is knowingly made in any application which is not verified by oath or affirmation, the person or persons signing the application shall be guilty of a second degree intoxicating liquor law violation.

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Comment: This section is derived from section 159-52, Revised Laws of Hawaii 1955, with minor style changes.

Section -33. Filing fees with applications. A filing fee in the amount established by the respective liquor control authorities shall be paid with any application for an initial issuance of a license or for a transfer of a license; provided that a filing fee is not required with an application for a license or transfer of a license of the following classes and kinds: (1) manufacturer of wine from grapes or other fruits grown in the State; (2) manufacturer of alcohol; (3) retail alcohol; (4) vessel; (5) additional vessel; (6) special.

Where a license is granted, the filing fee deposited with the application shall become part payment of the fee required for the license. Where an application is denied or withdrawn, the filing fee paid shall become a realization of the county.

Comment: This section is derived from section 159-53, Revised Laws of Hawaii 1955, with minor style changes and deletion of reference to agents' licenses and to repealed sections.

Section -34. Reference to inspector. Upon the filing of any application the director shall indorse on it the date of filing. If no patent disqualification of the applicant or certain valid objection to the granting of the application is apparent initially and if all requirements relative to the filing of the application appear to have been complied with, the chairman of the liquor control authority shall refer the application to the inspector for investigation and report.

Comment: This section is derived from section 159-54, Revised Laws of Hawaii 1955, with minor style changes and accommodation to the new administrative structure of the liquor commissions.

Section -35. Report by inspector. On every application referred to him under section -34 the inspector shall report in writing to the liquor control authority and, if the application is for a license of any class other than class 7, class 8, or class 9, the report shall show:

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(1) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions.

(2) If the application is made by a person who has held a prior license for the same or any other premises within the two previous years, a statement as to the manner in which the premises have been operated and the business conducted under the previous license.

(3) The locality of any church, chapel, or school in the neighborhood, if any.

(4) The number, position, and distance from the premises, in respect of which a license is applied for, of any other licensed premises in the neighborhood.

(5) The number of licenses of the same class or kind already issued and being lawfully exercised within the county.

(6) Whether or not in the opinion of the inspector the applicant is a fit and proper person to have a license and the reason for the inspector's opinion.

(7) Whether or not the applicant is for any reason disqualified by any provision of this chapter from obtaining or exercising a license; and whether or not he has complied with all the requirements of this chapter relative to the making and filing of his application.

(8) Any and all other matters and things which in the judgment of the inspector pertain to or affect the matter of the application or the issuance or the exercise of the license applied for.

A copy of the inspector's report shall be furnished the applicant not less than forty-eight hours before any hearing is had upon the application.

Comment: This section is derived from section 159-55, Revised Laws of Hawaii 1955, with minor style changes and with the addition that the inspector is required to show in his report the reason for his opinion of whether or not an applicant is a fit and proper person to have a license.

Section -36. Notice. Upon the filing of the inspector's report upon any application the liquor control authority may hold a preliminary hearing and upon preliminary hearing it may deny the application. If no preliminary hearing is had or if the application

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is not denied upon a preliminary hearing, the liquor control authority shall fix a day for the public hearing of the application, other than an application for a class 7, class 8, or class 9 license, or an alcohol license, and shall publish notice of the hearing at least once in each of two consecutive weeks (two insertions) in some newspaper published in the English language in the county having a general circulation in the county, the date of the hearing to be not less than twenty-one days after the first publication. The notice shall require that all protests or objections against the issuance or renewal of the license applied for shall be filed with the director at or before the time of hearing. Before making the publication the liquor control authority shall collect from the applicant the cost of making the publication or require a deposit to cover the cost. Immediately upon the fixing of a day for the public hearing of the application, other than an application for a class 7, class 8, or class 9 license, or any alcohol license, the applicant shall send a notice setting forth the time and place of the hearing on the application by registered mail, or by certified mail with the return receipt requested, or by certified mail with the return receipt requested and with delivery to addressee only, to a majority of the persons who are owners or lessees holding under recorded leases, of real estate situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate, not less than twenty-one days prior to the date set for the hearing of the application; and before the hearing the applicant shall file with the liquor control authority an affidavit as to such mailing of notice. Notice by mail may be addressed to the last known address of the person concerned or to the address as shown in the last tax return filed by him or his agent or representative.

Comment: This section is derived from section 159-56, Revised Laws of Hawaii 1955, with minor style changes.

Section -37. Protests. A protest against the granting or renewal of a license applied for may be filed with the liquor control authority by any registered voter for the election precinct within which the applicant proposes to establish or continue his business under the license applied for, or by any person who is an owner or lessee under a recorded lease of real estate situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate.

Comment: This section is derived from section 159-57, Revised Laws of Hawaii 1955, with minor style changes.

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Section -38. Hearings. Upon the day of public hearing on an application, or any adjournment thereof, the liquor control authority shall consider the application and any protests and objections to the granting thereof, and hear the parties in interest, and shall within fifteen days thereafter give its decision granting or refusing the application; provided that if a majority of the registered voters authorized to protest under section -37 or a majority of the persons authorized as owners or lessees of real estate to protest under section -37 or have filed or caused to be filed their protests against the granting of the license upon the original application therefor, or if there appears any other disqualification under this chapter, the application shall be refused. Otherwise, the liquor control authority may in its discretion grant or refuse the license; may grant a license to one person in preference to another, without reference to any priority in the order of filing of the applications; and may of its own motion, or on the suggestion of any member or of the inspector, even though the inspector may have previously approved the application, take notice of any matter or thing which in the opinion of a majority of its members would be a sufficient objection to the granting of a license; but if the objection is one to which the applicant should be given a reasonable time to answer, a continuance shall be granted; provided that in any case where any person affected by such decision petitions the liquor control authority for a rehearing of the application and on oath or affirmation alleges facts and grounds for consideration which were not formerly presented or considered, or any other matter of fact which in the judgment of the liquor control authority seems sufficient to warrant a rehearing, a rehearing shall be granted by the liquor control authority. When a rehearing is allowed, notice of it shall be given to the applicant and to his opponents, by publication or otherwise as the liquor control authority directs.

Comment: This section is derived from section 159-58, Revised Laws of Hawaii 1955, with style changes and with additional rights to applicants for continuances of hearings and for rehearings. Under existing law the liquor commission has discretion in granting a continuance to an applicant, even when an objection to the application is one to which the applicant should be given a reasonable time to answer and also has discretion in granting a rehearing on the basis of facts and grounds that were not formerly presented or considered; the redrafted section makes such continuances and rehearings mandatory.

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Section -39. Coordinator's recommendation on applications for manufacturers' and wholesale dealers' licenses. (a) Upon the filing of an application for the original issue of a manufacturer's or a wholesale dealer's license, other than alcohol, the director shall mail a copy of the application to the coordinator for his determination of whether or not to recommend granting of the license.

(b) On every application for a manufacturer's license or a wholesale dealer's license referred to him under this section, the coordinator shall, not less than one calendar week before any hearing is had upon the application, report in writing to the liquor control authority with a recommendation favoring or opposing granting of the license and shall mail a copy of the report to the applicant.

(c) Every recommendation made by the coordinator under this section shall relate to statewide interests and shall be supported by facts.

(d) For the purpose of the public hearings had on applications for manufacturers' licenses and wholesale dealers' licenses, other than alcohol, the coordinator shall be a party in interest.

(e) The liquor control authority shall consider the recommendation of the coordinator in arriving at its decision to grant or refuse an application for a manufacturer's license or a wholesale dealer's license, other than alcohol, but a decision to grant or refuse such a license shall not be reviewable or appealable on the grounds alone that the decision is not consistent with, or is contrary to, the recommendation of the coordinator.

Comment: This is a new section setting forth the procedures, applicability, and the weight of one of the functions ascribed to the new office of state intoxicating liquor control coordinator. Statewide interests affected by manufacturers' and wholesale dealers' licenses would include such matters as the state liquor tax, economic development, economic planning, foreign and interstate trade, the foreign trade zone, and the like.

Section -40. Further application. If any applicant for a license has at any time been refused a license on the ground that he is not a fit person to hold a license, no application by him shall be considered for one year after the refusal or one year after the last refusal if there have been more than one refusal. If an application is refused because a sufficient number of protests have been

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filed and sustained as provided in section -38, no other application shall be considered for the same person for the same premises within one year after the refusal. In any other case where an application is refused, no other application by the same person for the same premises shall be considered within a period of ninety days after the refusal.

Comment: This section is derived from section 159-59, Revised Laws of Hawaii 1955, with minor style changes.

Section -41. Renewals. Other than for good cause the renewal of an existing license shall be granted upon the filing of an application and the payment of applicable fees.

Comment: This section is derived from section 159-60, Revised Laws of Hawaii 1955, with the addition of the requirement of fees for license renewals.

Section -42. Reduction or increase in area of licensed premises. The liquor control authority may, in its discretion, permit the reduction or the increase in the area of the licensed premises of any licensee. Whenever any reduction or increase is permitted, an appropriate endorsement shall be made upon the license.

Comment: This section is derived from section 159-61, Revised Laws of Hawaii 1955, with minor style changes.

PART V. DUTIES OF AND SUPERVISION OVER LICENSEE

Section -50. Posting of license. Every license issued and in effect under this chapter shall at all times be conspicuously posted and exposed to view, convenient for inspection, on the licensed premises.

Comment: This section is derived from section 159-70, Revised Laws of Hawaii 1955, with deletion of the statement that failure to comply may result in license suspension or revocation. Since the violation by a licensee of any provision of the intoxicating liquor control law is grounds for license suspension or revocation or for the imposition of a reprimand or fine, the deleted sentence is unnecessary, in addition to being not quite accurate.

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Section -51. Condition of premises. All premises licensed or proposed to be licensed shall be constructed, arranged, furnished, equipped, maintained, and operated in the manner prescribed by the liquor control authority.

Comment: This section is derived from section 159-71, Revised Laws of Hawaii 1955, with minor style changes.

Section -52. Unauthorized liquor. No licensee shall have or keep any liquor for sale or consumption on or in connection with his licensed premises except as authorized by his license and by rule of the liquor control authority. Any unauthorized liquor found on licensed premises shall be subject to summary seizure and may be condemned, forfeited, and disposed of as provided in sections -97 to -104.

Comment: This section is derived from section 159-40, Revised Laws of Hawaii 1955, with style changes and with authorization for the liquor control authority to provide by rule for the personal possession of liquor by hotel resident managers and hotel guests and for the sale and delivery of liquor by the bottle by holders of retail dealers' licenses to hotel resident managers and hotel guests.

Section -53. Labels on liquor containers; penalty. Every person manufacturing any liquor for sale under this chapter shall securely and permanently attach to every container thereof, as the same is manufactured, a label stating the name of the manufacturer or, in lieu thereof, if he does business under another name, stating the other name and stating the kind and quantity of liquor contained therein. Every container containing liquor for sale by any person holding a wholesale or retail license shall have securely and permanently attached to it such a label. In addition to the foregoing requirements, all such labels shall conform in all respects to the then existing federal laws and regulations regarding such labels.

Before attaching any label containing the name by which the manufacturer does business, in lieu of the manufacturer's name, the manufacturer shall first register the business name under chapter 204. The manufacturer shall furnish to the liquor control authority written confirmation of the registration and such other information as may be deemed necessary or appropriate by the liquor control authority to enable it to establish and maintain records to properly identify the manufacturer, its name or names by which it does business,

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and the liquor manufactured. The records so established and maintained shall be available for public inspection.

Violation of this section is a second degree intoxicating liquor control law violation.

Comment: This section is derived from section 159-73, Revised Laws of Hawaii 1955, with minor style changes and with the addition of a specific criminal penalty provision.

Section -54. Requirements for labeling, designating, or selling certain liquor; penalty. (a) No person shall label, designate, or sell any liquor using the word "Hawaii", "Hawaiian", or "Aloha State" unless the liquor is wholly manufactured in the State.

(b) No person shall label, designate, or sell any rum using the words "Hawaii Rum", or "Hawaiian Rum" unless the rum shall have been aged for at least two years from the date of distillation.

(c) Violation of this section is a second degree intoxicating liquor control law violation.

Comment: This section is derived from the third and fourth paragraphs of section 159-3, Revised Laws of Hawaii 1955, with style changes, the addition of a specific criminal penalty provision, and removal into part V where it logically follows other labeling requirements.

Section -55. Analyses; penalty. Whenever the liquor control authority or an inspector has reason to believe or suspect, on complaint or otherwise, that any liquor being manufactured or which is possessed or kept for sale by any licensee is or may be impure or adulterated or otherwise not conformable to any lawful requirement as provided in section -4, the liquor control authority or inspector or other person authorized in writing by the liquor control authority or by the inspector may secure a sample thereof for analysis. Upon the sample being obtained, as though by ostensible purchase or otherwise, the person procuring the sample shall immediately disclose to the licensee his office or authority and purpose, and in case the procurer is a person other than the inspector he shall then deliver to the licensee a copy of the written order for the procurement of the sample. The bottle or other container containing the sample shall then immediately be sealed by the procurer thereof before being taken from the premises of the licensee and the licensee may also attach his seal to the bottle or other container containing the sample.

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The inspector shall cause the sample so obtained to be immediately delivered with the seal or seals unbroken to the food commissioner or analyst or some other competent analyst employed by the liquor control authority who shall make an analysis of the liquor and shall send a certified report of the analysis to the inspector, who shall immediately file the report with the director.

If the sample analyzed is found pure and unadulterated and conformable with all legal requirements for the liquor as provided in section -4, the certificate referred to in the preceding paragraph shall so state, and the liquor control authority shall pay to the licensee a sum equal to the value of the sample, and if requested by the licensee the director shall furnish him a copy of the analysis.

If the certificate of analysis shows the sample to be impure or adulterated or contrary to any legal requirement as provided in section -4, the licensee shall be prosecuted for manufacturing or selling forbidden liquor in violation of section -4.

Comment: This section is derived from section 159-74, Revised Laws of Hawaii 1955, with style changes; deletion of the authorization of liquor commission members to take samples of liquor from licensees for the purposes of having analyses made; clarification that the analyses provisions relate to the manufacture, as well as the sale, of liquor that does not meet quality standards; and cross reference to section -4, dealing with the standards for quality of liquor and criminal penalties.

Section -56. Tampering with samples; penalty. No person shall tamper with any sample of liquor taken for analysis under section -55. Violation of this section is a first degree intoxicating liquor control law violation.

Comment: This section is derived from section 159-75, Revised Laws of Hawaii 1955, with style changes and conformity with the criminal penalty scheme.

Section -57. Refusal of samples (penalty). No licensee shall refuse to deliver or accede to the taking of any sample of liquor for analysis upon disclosure of the procurer's authority as provided by section -55. (Violation of this section is a second degree intoxicating liquor control law violation.)

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Comment: This section is derived from section 159-76, Revised Laws of Hawaii 1955, with style changes. The criminal penalty provision is bracketed because under existing law violation of this section is not subject to the standard penalty scale of \$1,000 and one year or \$500 and six months but to a special penalty of a \$500 fine. Since this section applies only to licensees who are, in any event, subject to the imposition of a \$500 administrative fine, it is questionable if the additional criminal penalty should be provided and if so, if it should be a special penalty or a fine only.

Section -58. Prohibitions. At no time under any circumstances shall any licensee:

(1) Sell or deliver any liquor or furnish any liquor on the licensed premises on election days during the hours election booths are open for voting.

(2) Sell or furnish any liquor to (a) any minor, (b) an intoxicated person, (c) any person known to the licensee to be a person habituated to the excessive use of alcohol, or (d) any person for consumption in any motor vehicle on the licensed premises; provided that the sale of liquor to a minor shall not be a violation of this paragraph if, in making the sale to a minor the licensee was misled by the appearance of the minor and the attending circumstances into honestly believing that the minor was of legal age and the licensee acted in good faith, and it shall be incumbent upon the licensee to prove that he so acted in good faith.

(3) Permit the consumption of liquor on the licensed premises or on any premises connected with the licensed premises, whether purchased on the licensed premises or not, except as authorized by the terms of the license.

(4) Permit any liquor to be sold or served by any minor upon any licensed premises (, except in such individually specified licensed establishments found to be otherwise suitable by the liquor control authority in which an approved program of job training and employment for dining room waiters and waitresses is being conducted in cooperation with the University of Hawaii, or the state community college system, or a federally sponsored manpower development and training program, under arrangements which ensure proper control and supervision of employees).

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(5) Knowingly permit any intoxicated person or disorderly person to be or remain in or on the licensed premises.

(6) Fail immediately to prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any person on the licensed premises.

(7) Sell any draught beer unless upon the faucet, spigot, or outlet wherefrom the beer is drawn there is attached a clear and legible notice, placard, or marker which states in the English language the name or brand adopted by the manufacturer of the draught beer, so situated as to be clearly legible for a distance of at least ten feet from such spigot, faucet, or outlet, to a purchaser with normal vision.

Comment: This section is derived from section 159-77, Revised Laws of Hawaii 1955, with style changes. The re-drafted section limits the prohibitions to restrictions on, and requirements relating to, the business, conduct, and acts of licensees, in accord with the title of part V, "Duties of and Supervision over Licensees". Prohibitions in the existing section that apply to persons other than licensees are replaced in part I, dealing with general provisions. The existing prohibition against sales and delivery of liquor on Sundays is deleted. It presently authorizes the liquor commissions to provide by rule for clubs and dispensers to sell liquor and also for delivery of draught beer. No valid rationale is apparent for the unequal treatment of licensees, with an absolute Sunday "blue law" applying only to certain sales and deliveries. In addition to the business hardships for the affected licensees, the Sunday prohibitions may actually operate to thwart the goal of moderate consumption by encouraging drinking at bars rather than in the social atmosphere of a home. The prohibition against sales and deliveries during voting hours is clarified to include the furnishing of liquor on licensed premises, and that prohibition is maintained in the interest of preserving the integrity of the election process. The bracketed portion of item (4) would be superfluous if the legal minimum drinking age is reduced to 18.

Section -59. Certain forms of payment prohibited; penalty.
No licensee shall receive from a person in payment or as a consideration for liquor sold or furnished to the person any wearing apparel, tools, implements of trade or husbandry, household goods, furniture, or provisions, either by way of sale or barter, directly or indirectly,

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or receive from any person any such article in pawn or pledge for liquor.

Violation of this section is a second degree intoxicating liquor control law violation.

Comment: This section is derived from section 159-80, Revised Laws of Hawaii 1955, with minor style changes and conformity with the criminal penalty scheme.

Section -60. No action for debt. No person except a licensed manufacturer or licensed wholesale or retail dealer or his heirs, executors, administrators, trustees, or assigns with respect to sales regularly made under his license shall recover by any process of law any debt or demand on account of the sale on credit of any liquor, nor on any note or like obligation given in payment for liquor; provided that nothing in this section shall be construed to prevent the holder of a club license from permitting checks or statements for liquor to be signed by members or by bona fide guests enjoying the privileges of membership and charged to the account of the members or guests in accordance with club by-laws; or to prevent the holder of a hotel license from permitting checks or statements for liquor to be signed by registered guests of the hotel and charged to the accounts of the guests; or to prevent the extension of credit by the holder of a retail dealer's, dispenser's, hotel, or club license to the holder of a credit card which authorizes the person holding the card to charge goods or credits.

Comment: This section is derived from section 159-81, Revised Laws of Hawaii 1955, with the additional recognition of the common business practices used by clubs and hotels in billing their members and guests and of the widespread use of credit cards.

Section -61. Payment of liquor tax to be made. Whenever liquor is purchased by the holder of a retail dealer's, dispenser's, hotel, club, or vessel license from the holder of a manufacturer's or wholesale dealer's license, the amount added to the price on account of the tax imposed by chapter 124, as provided by section 124-5, shall be paid by the purchaser within twenty days after the end of the month in which each purchase has been made. On the failure to make any such payment within such time the liquor control authority may in its discretion suspend the license of the purchaser for a period of not more than ten days for the first failure and not more than twenty days for any subsequent failure.

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The holder of a manufacturer's or wholesale dealer's license shall report the failure of a purchaser to comply with this section to the liquor control authority of the county in which the purchaser holds a license, in order that the suspensions provided by this section may be enforced. Any holder of a manufacturer's or wholesale dealer's license who fails to make such report may likewise be subject to the suspensions hereinabove provided.

Comment: This section is derived from section 159-82, Revised Laws of Hawaii 1955, with minor style changes.

Section -62. Advertising; premiums, gifts, etc. (a) The liquor control authority shall by rule prescribe the character and extent of all advertisements, posters, and signs be posted or maintained by a licensee in or about his licensed premises which may or which a licensee may cause to be distributed or published in connection with liquor or with his licensed premises; provided that in promulgating rules to implement this section, the liquor control authority shall be guided by, and its rules shall not conflict with, the regulations of the Internal Revenue Service for the purpose of carrying out 27 U.S.C.A. 205(f) of the Federal Alcohol Administration Act; and provided the word "saloon" shall not be used in any advertisement, poster, or sign to describe the liquor business or the licensed premises of any licensee.

(b) No licensee shall, directly or indirectly, or through any subsidiary or affiliate, give any premium or free goods of liquor or other merchandise in connection with the sale of any liquor or give any premium or free goods of liquor in connection with the sale of other merchandise.

Comment: This section is derived from section 159-44 and the second paragraph of section 159-84, Revised Laws of Hawaii 1955, with style changes. The section relates entirely to regulation of licensees, and the prohibition against offering or giving liquor as a prize is removed to part I, General Provisions. The advertising provisions are extended to make advertising regulation by the liquor control authority mandatory instead of a mere grant of authority to the liquor commission under existing law; and to include distribution and publishing of advertising by the licensee as well as advertisements in or about the licensed premises. Guidelines are provided for the rules relating to advertising by reference to the advertising provisions of the Federal Alcohol Administration Act.

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Section -63. Sham operations under club license; supervision. Whenever the liquor control authority is of the opinion that any holder of a club license is not conducting the business under the club license in good faith, or that the club premises are not continuously kept suitably arranged, furnished, equipped, and actually and reputably operated as a club, or that the apparent or claimed manner of operation of the club as such is only nominal or pretended or amounts to a sham or subterfuge under which liquor is being sold as the principal object of the club, the license may be summarily suspended pending a hearing why it should not be revoked.

Comment: This section is derived from section 159-33, Revised Laws of Hawaii 1955, with minor style changes. This section is the first of four sections dealing with certain classes of licenses in contrast to the preceding sections in this part dealing with all classes of licenses.

Section -64. Special conditions, club licenses. No liquor shall be sold under a club license to any person not a bona fide member of the club nor a bona fide guest of the club enjoying the privilege of membership, but a member or a guest enjoying the privileges of membership may purchase liquor for consumption on the premises by its own bona fide guests. No guest of a member or of a guest enjoying the privileges of membership shall purchase or be permitted to purchase liquor on the premises.

The liquor control authority may by regulations require the keeping and posting of lists of the members of a club and the keeping and production of records as to membership and the registration of guests.

No liquor shall be sold or kept for sale at any club except by the club itself pursuant to its license. If any liquor is sold or kept on the club premises for sale or barter by any member, employee, or person other than the club itself, the club shall be deemed to be selling without a license whether it holds its own license or not.

Comment: This section is derived from section 159-34, Revised Laws of Hawaii 1955, with minor style changes.

Section -65. Special conditions, retail dealers' licenses. If the premises for which a retail dealer's license is issued are not used exclusively for the sale of the liquors specified in the license, then a space upon the premises shall be set aside specially for the sale of such liquors.

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Comment: This section is derived from section 159-35,
Revised Laws of Hawaii 1955, with minor style changes.

Section -66. Special conditions, manufacturers' and whole-sale dealers' licenses. No person holding a manufacturer's license or a wholesale dealer's license shall:

(1) Own, hold, or be or become interested in or connected with the liquor business of any other licensee who is authorized to sell liquor for consumption on his premises.

(2) Control, employ, manage, or financially assist in any manner any other licensee who is authorized to sell liquor for consumption on his premises.

(3) Hold any interest in any premises on which liquor is sold for consumption on the premises unless the holding of such interest is permitted under regulations of the liquor control authority or a statement thereof has been filed with the liquor control authority and has not been disapproved by it.

(4) Sell any liquor at wholesale prices without invoicing the vendee's license number, except where the vendee, although authorized to resell, is not required by law to hold a license, in which case the invoice shall fully indicate the vendee's identity.

This section shall not be held to prohibit the granting of the credits ordinarily extended with respect to the sale of liquors by a person holding a manufacturer's or a wholesale dealer's license.

Comment: This section is derived from section 159-42,
Revised Laws of Hawaii 1955, with minor style changes.

Section -67. Entry for inspection of premises; penalty.

(a) Every inspector and any police officer may, without warrant, at any time during which the licensee is exercising the privileges authorized by his license on the premises, enter any licensed premises and inspect them and any part of them, including any examination of the books and records of the licensee, to ascertain whether or not all conditions of the license and this chapter are being complied with; provided no such inspection shall be made of any premises at any other time or of any private dwelling occupied exclusively as such or of any hotel guest room used for sleeping accommodations for travelers and guests except pursuant to a search warrant as provided in chapter 255.

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(b) No licensee nor any of his employees shall hinder, obstruct, or prevent an inspector or a police officer or any person called by an inspector or police officer to his aid from entering the licensed premises as provided in subsection (a) nor shall any licensee or any of his employees or any other person oppose, obstruct, or molest an inspector or police officer in the performance of his duties as provided in subsection (a).

(c) Whenever an inspector or police officer, having demanded admittance into any licensed premises as provided in subsection (a) and having declared his name and office, is not admitted by the licensee or the person in charge of the premises, the inspector or police officer may forcibly break into and enter the premises.

(d) Violation of this section is a first degree intoxicating liquor control law violation.

Comment: This section is derived from section 159-78, Revised Laws of Hawaii 1955, with the rights of entry and inspection modified in the same manner as noted in the comment to Section -27.

Section -68. Arrest. Any inspector or police officer who observes any violation by any person of this chapter or of any rule or regulation of the liquor control authority, shall forthwith arrest the person without a warrant. Whenever any violation of this chapter or of the regulations of the liquor control authority occurs in the presence of any licensee, or any inspector or police officer, upon request of the licensee the inspector or police officer may assist the licensee in arresting any patron for the violation.

Comment: This section is derived from section 159-79, Revised Laws of Hawaii 1955, with minor style changes.

Section -69. Exclusion of intoxicated person from premises; penalty. Every intoxicated person who enters any premises licensed for the sale of liquor, or remains there after having been requested by the licensee or any person in his employ to leave the premises, shall be guilty of a second degree intoxicating liquor control law violation.

Comment: This section is derived from section 159-83, Revised Laws of Hawaii 1955, with minor style changes.

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PART VI. REVOCATION AND CANCELLATION OF LICENSE

Section -80. Revocation or suspension of license; penalty, reprimand; hearing. The liquor control authority may revoke any license at any time issued, or suspend the right of the licensee to use his license, or assess and collect a penalty or reprimand the licensee, either for the violation of any condition of the license or of this chapter or of any applicable rule or regulation, or upon the conviction at law of the licensee of any violation of this chapter or of any other law relative to his license or the proper exercise thereof, or of any violation of law in any other respect on account whereof the liquor control authority may deem him to be an unfit or improper person to hold a license.

In every case where it is proposed to revoke or suspend the exercise of any license or assess and collect a penalty for any cause other than a conviction at law of the licensee as above specified, the licensee shall be entitled to notice and hearing in conformity with chapter 6C, the notice to be given at least five days before the hearing, except that any special license shall be subject to summary revocation for any violation of or evidence of intent to violate the proper exercise thereof, without hearing before the liquor control authority; provided that the exercise of a license shall in no case be suspended or revoked for any violation (other than a conviction at law of the licensee as above specified) based upon the personal observation of any inspector, unless written notice of the violation charged to have occurred shall have been given to the licensee within ten days after the alleged violation occurred, and the licensee shall have been given a hearing upon the charge not more than ten nor less than five days after the giving of notice of the alleged violation.

At the hearing, before final action is taken by the liquor control authority, the licensee shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present any facts showing that the alleged cause or causes for the proposed action do not exist, or any reasons why no penalty should be imposed. The testimony taken at the hearing shall be under oath and recorded stenographically, or by machine, but the parties shall not be bound by the strict rules of evidence; certified copies of any transcript and of any other record made of or at the hearing shall be furnished to the licensee upon his request and at his expense.

Any order of revocation or suspension or reprimand imposed by the liquor control authority upon the licensee shall be in addition to any penalty that might be imposed upon the licensee upon his

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conviction at law for any violation of this chapter. No licensee shall be subject to both the penalty assessed and collected by the liquor control authority and to revocation or suspension of license. The amount of penalty assessed and collected by the liquor control authority from any licensee for any particular offense shall not exceed the sum of \$500.

Whenever the service of any order or notice shall be required by this section the service shall be made in the following manner: by serving a certified copy of the notice or order upon the holder of the license wherever he may be found in the circuit wherein he is licensed, or, if he cannot be found after diligent search, by leaving a certified copy thereof at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein; and if the holder of the license cannot be found after diligent search, and service cannot be made, then service may be made by posting a certified copy of the notice or order in a conspicuous place on the licensed premises and depositing another certified copy thereof in the registered mail of the United States post office, postage prepaid, addressed to the holder of the license at his last known residence address; provided that in the case of a licensed corporation or unincorporated association service may be made upon any officer thereof.

Comment: This section is derived from section 159-90, Revised Laws of Hawaii 1955, with minor style changes and with deletion of the provision authorizing a reprimand, penalty, or license suspension or revocation "for any other cause deemed sufficient by the commission". In view of the vast discretionary powers vested in the liquor commissions generally, there is no need for such an open-ended ground for a commission to impose administrative penalties.

Section -81. Appeals. Any licensee aggrieved by any order assessing, or providing for the collection of, a penalty or by any order suspending or revoking any license may appeal from the order in the manner provided in chapter 6C to the circuit court of the circuit in which the liquor control authority making the order has jurisdiction. (The hearing in the circuit court shall be de novo and the judgment of the court shall be subject to review by the supreme court.) (The hearing in the circuit court shall be conducted without a jury, shall be confined to the designated record on appeal, and shall be subject to review by the supreme court.)

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Comment: This section is derived from section 159-91, Revised Laws of Hawaii 1955, with the first bracketed section continuing the existing system of judicial review by trial de novo, a proceeding which has the characteristics of an original hearing and requires the exercise of the court's judgment not only on questions of law but on the merits as well. The second bracketed section is an alternative to the first and provides for judicial review by certiorari which confines the court's review to the record and restricts its consideration to the question of whether or not the adjudicatory body of the liquor control authority in reaching its determination acted within the law. With a new administrative structure in the counties to achieve the due process furnished by separation of powers, or at least separation of functions, there is more reason to consider the advantages of review by certiorari. In either case, the review process is governed by chapter 6C, Revised Laws of Hawaii 1955.

Section -82. Reports to prosecuting officers. When the revocation or suspension of any license is by reason of any violation of law, the liquor control authority shall report the facts to the prosecuting officer for prosecution.

Comment: This section is derived from section 159-92, Revised Laws of Hawaii 1955, with minor style changes.

Section -83. Forfeiture of fee paid. When any license is revoked and cancelled by the liquor control authority the fee paid for the license shall be forfeited to the county as respects the unexpired portion of the fee paid for the license.

Comment: This section is derived from section 159-93, Revised Laws of Hawaii 1955, with minor style changes.

Section -84. Bankruptcy, insolvency, death. If a licensee becomes a legally adjudicated bankrupt, or makes an assignment for the benefit of his creditors, or dies, before the expiration of the term of his license, his trustee in bankruptcy, assignee, executor, or administrator, as the case may be, may, with the consent of the liquor control authority, continue to exercise the license for the purpose of closing the affairs of the estate; but if not so continued within forty-five days the liquor control authority shall cancel the license.

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Comment: This section is derived from section 159-94, Revised Laws of Hawaii 1955, with minor style changes.

Section -85. Cancellation. If the use of the premises covered by any license becomes lost to the licensee by reason of being sold under foreclosure proceedings, or a civil execution, or other legal process, or for any other cause, which forces a cessation of the business of the licensee on the premises under the license, other than by a revocation or suspension of his license, and no proper permission is obtained by the licensee to continue his business under the license at some other place, the liquor control authority shall cancel the license.

Comment: This section is derived from section 159-95, Revised Laws of Hawaii 1955, with minor style changes.

Section -86. When sale without license authorized. When a license is revoked or cancelled, the licensee may with the permission of and upon the conditions set by the liquor control authority sell intoxicating liquors then in his possession within sixty days, or within such additional time allowed by the liquor control authority, unless under this chapter the liquors are seized or forfeited.

Any bank, trust company, or financial institution owning or possessing intoxicating liquor which was acquired in the ordinary course of its business, may sell the intoxicating liquor with the permission of and upon conditions set by the liquor control authority.

Any person acting as administrator, executor, or guardian of a licensee's estate or any receiver, assignee for benefit of creditors or trustee in bankruptcy of a licensee may sell the stock of intoxicating liquor with the permission of and upon conditions set by the liquor control authority, except as otherwise provided in this chapter.

Any insurance company, or any common carrier acting as an insurer for losses to persons shipping intoxicating liquor, may take possession of and sell the intoxicating liquor, the containers of which have been damaged by fire or otherwise, with the permission of and upon conditions set by the liquor control authority.

Any person in possession of a stock of lawfully acquired intoxicating liquor under a foreclosure proceeding, proceedings for enforcement of a lien, civil execution, or under any other proceeding or process, may sell the intoxicating liquor with the permission of and

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upon conditions set by the liquor control authority.

Comment: This section is derived from section 159-96, Revised Laws of Hawaii 1955, with minor style changes.

PART VII. GENERAL VIOLATIONS, PENALTIES, AND PROSECUTIONS

Section -90. Manufacture or sale without license; penalty. No person, acting in person or by or through any agent or employee, shall manufacture, sell, or offer or expose or keep for sale any liquor, either directly or indirectly or upon any pretense, or by any subterfuge, except as authorized by this chapter. Violation of this section is a first degree intoxicating liquor control law violation.

Comment: This section is derived from section 159-100, Revised Laws of Hawaii 1955, with style changes.

Section -91. Other violations; penalty. Any person who violates this chapter or any rule or regulation in effect by authority of this chapter, whether or not a penalty is referred to in connection with the violation, and for which violation no penalty is specifically prescribed, shall be guilty of a second degree intoxicating liquor control law violation.

Comment: This section is derived from section 159-101, Revised Laws of Hawaii 1955, with style changes and with the removal of specific violations into the new Section -6.

Section -92. Penalty schedule, degrees. (a) Any person convicted of a first degree intoxicating liquor control law violation prescribed in this chapter shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) Any person convicted of a second degree intoxicating liquor control law violation prescribed in this chapter shall be fined not more than \$500 or imprisoned not more than six months, or both.

Comment: This section maintains the existing range of penalties.

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Section -93. Attorneys for the liquor control authorities. The county legal officer assigned in each county to the liquor control authority shall be the legal adviser of the liquor control authority and the county prosecutor shall prosecute and defend every action and proceeding involving matters under its jurisdiction and shall prosecute every violation of this chapter and every suit for the condemnation of property or liquor seized under this chapter and also prosecute or defend every other suit or proceeding which may arise in connection with such seizure.

Comment: This section is derived from section 159-102, Revised Laws of Hawaii 1955, with style changes and with implementation of the "home-rule" concept by leaving the assignment of county legal officers to the liquor control authorities to county law.

Section -94. Attorneys for inspectors and employees of the liquor control authorities. Whenever any inspector or other employee of the liquor control authority is prosecuted for any crime or sued in any civil cause for acts done in the performance of his duty as an inspector or employee, he shall be represented and defended (1) in any such criminal proceeding by an attorney to be employed and paid by the liquor control authority and (2) in any such civil cause by the county legal officer assigned in the county to the liquor control authority which the inspector or employee is serving.

Comment: This section is derived from section 159-102.01, Revised Laws of Hawaii 1955, with style changes and changes to be consistent with the preceding section.

Section -95. Determination whether acts done in performance of duty. The determination of whether the acts of an inspector or other employee of the liquor control authority, when he is being prosecuted or sued, were done in the performance of his duty, so as to entitle him to be represented and defended by an attorney provided for in section -94 shall be made by the liquor control authority after consultation with the county legal officer assigned to the liquor control authority, who may make a recommendation to the liquor control authority in respect thereof if he so desires, and such determination shall be conclusive for that purpose only.

Comment: This section is derived from section 159-102.02, Revised Laws of Hawaii 1955, with style changes and accommodation to the "home-rule" assignment of attorneys to the liquor control authorities.

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Section -96. Prosecutions not to exclude other remedies affecting license or goods. The provisions in this chapter for the imposition upon any licensee of the penalties by fine or imprisonment for any violation of this chapter or of any rule or regulation made under this chapter having the force of law shall be in addition to and independent of any other right of the liquor control authority under this chapter to effect a suspension or revocation of the license of the licensee or to reprimand or impose a fine on the licensee and shall also be in addition to and independent of any proceeding to effect the forfeiture of any liquor or other property belonging to the licensee as provided for by this chapter.

Comment: This section is derived from section 159-103, Revised Laws of Hawaii 1955, with minor style changes and updating by inclusion of reference to the existing authority of the liquor commission to administer reprimands and fines as well as license suspensions and revocations.

Note: The remaining sections, -97 to -104, follow sequentially sections 159-104 to 159-111, Revised Laws of Hawaii 1955, with no changes except for modernization and consistency of form, style, and terminology.

Section -97. Presumptive evidence. In any prosecution under this chapter, the fact that any person engaged in any kind of business holds a license from the government of the United States in the name of himself or any other person to manufacture or sell intoxicating liquors or that he has or keeps in or about his place of business a receipt or a stamp showing payment of a special tax levied under the laws of the United States upon the business of manufacturing or selling intoxicating liquors shall be deemed competent evidence that the person is manufacturing or selling the liquors or is keeping them for sale.

Section -98. Search warrants; seizure. If any person makes complaint, supported by oath or affirmation, before any magistrate or judge, setting forth facts sufficient to show probable cause that any liquor is being manufactured or kept or deposited for sale or distribution contrary to law within his jurisdiction in any house, premises, or place, or that any such liquor is lodged or contained in any vehicle for transportation by land, water, or air, the magistrate or judge shall issue a warrant, directed to any sheriff, chief of police, or police officer, commanding him to search the premises, place, or vehicle described in the complaint. If any intoxicating liquor is found therein under circumstances warranting the belief of

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the officer that it is being manufactured or is intended for sale or distribution contrary to law, the officer acting under the warrant shall seize and convey the liquor and any land vehicle in which it is found to some place of security and keep the same until final action is had.

When, in case of any entry as aforesaid, it is found that liquor is being manufactured there contrary to this chapter the officer may likewise seize and convey the liquor to some place of security and keep it until final action is had.

Section -99. Seizure without warrant. If any inspector or police officer has information which causes him to believe that liquor is kept or deposited in any place mentioned in section -98, except a dwelling house, or is kept or concealed in any conveyance, container, baggage, or clothing which is in course of transportation along any highway, for sale or distribution contrary to law, and if he has reason to believe that the delay which would be necessitated by the procurement of a search warrant would result in the loss, destruction, or concealment of the evidence of such violation of law, he may forthwith, without warrant, search the suspected place, vehicle, or container; and if he finds liquor there under circumstances warranting the belief that it is intended for sale or distribution contrary to law, he shall seize and convey the liquor, including any vehicle in which it is found, to some place of security, and keep the same until final action is had. The officer shall forthwith, after the seizure, make written complaint under oath or affirmation, setting forth the facts before a magistrate or judge having competent jurisdiction.

Section -100. Arrest; abettors. The owner, keeper, and any person having the custody of any liquor or property seized as provided in sections -98 and -99 shall be forthwith arrested without necessity of warrant and brought before the magistrate or judge having jurisdiction in the premises. If the owner or keeper of the liquor seized as aforesaid is unknown to the officer making the seizure, or if no person is found in the apparent possession or custody of the liquor, the officer may arrest and bring before the magistrate or court the owner or occupant of the building, place, or premises, or the driver, operator, or other person in charge of the conveyance in which the liquor is found, if such person is known or can be ascertained. Any person who has knowingly engaged in, aided, assisted, or abetted the manufacture, obtaining, keeping or sale of such liquor contrary to law, or has been privy thereto, or has knowingly permitted the use of any place, building, premises, or conveyance for such unlawful purpose, shall be guilty of a second degree intoxicating liquor control law violation.

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Section -101. Condemnation of property or liquor; disposition. Any still, plant, or other equipment shown to have been used for the manufacture of liquor in violation of this chapter and any liquor manufactured or sold in violation of this chapter shall be subject to summary seizure as herein provided or to subsequent seizure, and may be condemned and adjudged forfeited to the State, in addition to any penalty separately provided for such violation, the same to be enforced by appropriate legal proceedings in the name of the State. All such property and liquor so condemned and forfeited may be ordered by the magistrate or court having jurisdiction (1) to be wholly or partially destroyed, or (2) to be sold, wholly or partially, for the account of the county wherein the same were seized; provided that the magistrate or court may order any such liquor, if suitable, to be delivered to the department of health for distribution to any public institution for use therein for medicinal purposes. The order of the magistrate or court with respect to such property or liquor shall be effectively executed by the shieriff or his deputy, or by the chief of police or his deputy, or by any police officer, within such time as may be fixed in the order but not exceeding sixty days. If any person, whether or not an officer or employee of the State or any county, takes, disposes of, or uses in any manner or to any extent, any of such property or liquor otherwise than as herein provided, he shall be guilty of a second degree intoxicating liquor control law violation.

Section -102. Replevin. If any property or liquor seized under this chapter is made the subject of a writ of replevin, the liquor shall nevertheless not be delivered to the claimant, but shall be held by the officer having it in custody until the final determination of the action, whereupon it shall be delivered to the claimant if the judgment is in his favor, otherwise to the officer having authority to receive and dispose of it as condemned property. No proceeding for the condemnation of liquor seized as aforesaid shall be delayed or stayed by proceedings in replevin thereof, but the same shall proceed to final judgment as if replevin had not been begun; provided that execution shall be stayed pending final decision of any issue in replevin.

Section -103. Claims. If the owner or possessor of any property or liquor seized under this chapter appears and makes claim to the same, he shall file with the magistrate or court, before whom the proceedings are pending, his claim in writing, setting forth his interest therein, and the reason why it should not be adjudged forfeited. He shall also give bond in favor of the State sufficient in amount and sureties, approved by such magistrate or court, conditioned that such claim will be diligently prosecuted and that if it is

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decided against him he will pay the costs awarded against him. If the judgment is against the claimant, the property and liquor and all containers thereof shall be adjudged forfeited and disposed of as provided in this chapter and judgment shall be rendered against the claimant for all costs of the proceedings incurred after the filing of his claim.

Section -104. Appeals. An appeal shall be allowed to any claimant of property or liquor seized as aforesaid from the judgment of the magistrate or court in the same manner as appeals are allowed in other cases before such tribunals. If the claimant fails to appear and prosecute diligently his appeal, or fails to secure a reversal of the judgment in the appellate court, the judgment appealed from shall be carried out.

Summary

The suggested recodification of the Hawaii Intoxicating Liquor Law, set forth as the Intoxicating Liquor Control Law, serves to identify the gist of the discussions and conclusions presented in the earlier chapters.

The recodification follows the general arrangement of the existing law, divided into the same seven parts of General Provisions; Liquor Commissions (or Administration); Licenses and Permits, General Provisions; Procedure for Obtaining License; Duties of and Supervision over Licensee; Revocation of License (or Revocation and Cancellation of License); and General Violations and Prosecutions (or General Violations, Penalties, and Prosecutions). Some provisions are shifted from one part to another in an attempt to reorder logically the results of the extensive piecemeal amendment processes of the past thirty-five years. The draft also attempts to update Hawaii's liquor laws in the technical sense of modernizing and clarifying certain statutory language, correcting ambiguities, and aiding internal consistency.

The administrative provisions are drafted to reflect the "home-rule" powers of the counties over the existing liquor commissions; the structure of the county governments and their charter coverage of the liquor commissions; general principles of public administration; and the concern of the state government in matters relating to intoxicating liquor. The new office of state intoxicating liquor control coordinator would provide a cohesive device that could prevent centrifugal forces of home rule from turning a law of statewide applicability into four inconsistent varieties of the law. On the other hand, the

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coordinator would be in a position to provide valuable research and advisory services to the county liquor administrations as well as to the various other government agencies with responsibilities that relate to intoxicating liquor and its use.

The liquor commissions, restyled as liquor control authorities, would be directed towards greater emphasis upon their policy-making role, rather than, as is the case now, in detailed administrative functions. Specific provisions to this end include (1) a statement of the purpose of the Intoxicating Liquor Control Law; (2) divesting the members of the liquor control authorities of investigatory and inspection powers and authorizing the exercise of these powers only by trained inspectors or police officers; (3) expanding control of the liquor control authorities over advertising by licensees; (4) suggesting, as an alternative proposal, that appeals from orders imposing penalties against licensees or suspending or revoking licenses be by certiorari rather than by trial de novo; and (5) provision for the delegation of certain powers to the director, or, under existing law, the liquor commission executive secretary.

In the matter of licensing, the innovative feature is deletion of the cabaret class of license and the creation of a new class of license for hotels along with accommodating provisions in other sections made to fit the nature of the hotel business. For instance, inspectors would not have a right of entry to inspect guest rooms in a hotel except with a warrant.

Inspectors' powers of entry and inspection are further curtailed to prohibit the exercise of these powers unless with a warrant as to any licensed premises during the hours when the licensee is not open for business and as to any dwelling.

The liquor control authorities and licensees would be assisted in supervising conduct of their patrons by clarification that any person who violates the Intoxicating Liquor Control Law is liable to criminal penalty.

In addition to prohibiting the purchase of liquor by minors, the draft would also prohibit possession of liquor by minors and the use of false identification by minors in order to purchase liquor or in order to be employed to sell or serve liquor on licensed premises.

The draft brackets the age of minority at eighteen in deference to strong arguments for continuing "junior prohibition" under the existing age qualification of twenty.

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Several of the new proposals are of great importance to the licensees and the liquor industry. It is proposed that the Sunday "blue law" be deleted, to permit the sale of liquor by the bottle on Sundays, but selling or delivering liquor or furnishing it on licensed premises is prohibited on election days during polling hours.

The draft proposal deletes all provisions relating to minimum consumer resale prices and price posting, following the analysis and recommendation detailed in this report.

Other proposed changes are pointed out in the Comments following each section of the suggested recodification.

FOOTNOTES

Chapter I

1. Before colonization, intoxicating beverages, such as corn-beers and pulque from fermented maguay sap were known south of the Rio Grande. "But in the bulk of what is now the United States and Canada, neither carbohydrate-rich squash nor abundant wild grapes and berries had inspired fermented drinks." J. C. Furnas, The Life and Times of the Late Demon Rum (New York: G. P. Putnam's Sons, 1965), p. 29. The book is a colorful history of the temperance movement and traces the changes in American attitudes toward alcohol from colonial times to passage of the eighteenth amendment while reappraising the social phenomenon of prohibition.
2. Kava (Piper methysticum), pronounced "'awa" in the Hawaiian language, is a shrub four to twelve feet tall with green jointed stems and heart-shaped leaves, native to Pacific islands. The beverage is prepared by chewing, or pounding, washed and scraped pieces of the root, mixing the comminuted particles with water and straining. Margaret Titcomb, "Kava in Hawaii," Journal of the Polynesian Society, 57 (2) (June, 1948), 106.
3. Mary K. Pukui and Samuel H. Elbert, Hawaiian-English Dictionary (Honolulu: University of Hawaii Press, 1957). "Do you swear that you are determined to foreswear always the intoxicants, such as rum, wine, 'awa, tobacco, and every other kind of intoxicant?"
4. Sess. Laws of Hawaii 1932, Act 66. It is reported (Titcomb, p. 167) that in 1930 pieces of root could ordinarily be purchased at the market.
5. At one time licenses were awarded by public auction within each taxation district. The schedule of upset prices was \$1,000 for the district of Honolulu, \$500 for each of the districts of Hilo and Wailuku, \$250 for the district of Lahaina and \$100 for each of the other districts. Rev. Laws of Hawaii secs. 1335-1342 (1905).
6. Ralph S. Kuykendall, The Hawaiian Kingdom, 1778-1854 (Honolulu: University of Hawaii Press, 1947), p. 161.
7. Ibid.
8. Proclamation of October 7, 1829.
9. Kuykendall, p. 137.
10. Ibid., pp. 162-163.
11. Ibid., p. 163.
12. Hawaiian Islands (Kingdom) Penal Code, ch. XLI, sec. 1 (1869). "Whoever shall sell, give, purchase or procure for, and in behalf of any native of this kingdom, or for his use, any spiritous liquor, or other intoxicating drink or substance, shall be punished by a fine not exceeding \$200; and in default of the payment of such fine, by imprisonment at hard labor for a term not exceeding two years."
13. Ralph S. Kuykendall and A. Grove Day, Hawaii: A History (New York: Prentice-Hall, 1948), p. 108.
14. Lawrence H. Fuchs, Hawaii Pono: A Social History (New York: Harcourt, Brace and World, 1961), p. 28.
15. Rev. Laws of Hawaii ch. 103 (1905).
16. 48 U.S.C.A. 493 (1952).
17. The Eighteenth Amendment to the United States Constitution became effective at midnight January 16-17, 1920, after ratification by the necessary thirty-six states.
18. Peter Odegard, Pressure Politics (New York: Columbia University Press, 1928), p. 139, fn. 33; cf. Lorrin A. Thurston, "The Liquor Question in Hawaii--What Should Be Done About It," Paper read before the Honolulu Social Science Association, 1909?
19. U. S., Congressional Record, 61st Cong., 1st Sess., 1909, 44, Parts 1 and 3, 390, 2427; 2nd Sess., 1910, 45, Parts 2, 3 and 5, 1517, 3132, 3264, 4920-4924, 5107.
20. S. J. Res. 80, 36 Stat. 878 (1910). The question to be submitted to the electors was: "Shall the legislature to be elected in November, nineteen hundred and ten, be requested to pass, at its first regular session, a law prohibiting the manufacture or sale within the Territory of intoxicating, spiritous, vinous, and malt liquors, except for medicinal and scientific purposes."
21. Thomas G. Thrum, Hawaiian Almanac and Annual for 1911 (Honolulu: 1910), pp. 174-175 gives the following returns for the election of July 26, 1910:

Hawaii	1601 against	542 for prohibition
Maui	1398 "	471 " "
Oahu	4003 "	934 " "
Kauai	509 "	315 " "

Waimea and Laupahoehoe on Hawaii were the only two localities that returned a majority in favor of prohibition.
22. 40 Stat. 560, ch. 84 (1918) prohibited the sale, manufacture and importation of intoxicating liquor in the Territory of Hawaii during the period of the war. It also provided that repeal of the Act would be submitted to vote within two years after the conclusion of peace.
23. 42 Stat. 223, ch. 134, sec. 3 (1921).
24. 48 Stat. 467, ch. 88 (1934).
25. Eileen O'Brien, "A Toast to Imitation," Paradise of the Pacific, 57 (2) (February, 1945), 33-34. The products were Beverage Products' "Five Islands," Hawaiian Products' "99," Pacific Rectifier's "Club Special" and Hawaiian Distillers' "Aloha;" and were described as "unpalatable but government-inspected."
26. Hawaii, Journal of the Territorial Senate, 1933, Committee of the Whole Report No. 7, p. 490, hereafter cited as Senate Journal and date.
27. Hawaii, Journal of the Territorial House of Representatives, 1933, Standing Committee Report No. 487, pp. 1429-1430, hereafter cited as House Journal and date.

28. It is of interest to note that a liquor tax was not included in the legislative program to provide additional revenue in the grave financial crisis.
29. Senate Journal, Special Session 1933, Special Committee Report No. 8, pp. 427-428.
30. House Journal, Special Session 1933, Standing Committee Report No. 109, pp. 549-550.
31. Hawaii's first comprehensive civil service law was not enacted until 1939 (Sess. Laws of Hawaii 1939, Act 187).
32. The evils of the tied-house system in the pre-prohibition era was a major cause for the adoption of the Eighteenth Amendment to the United States Constitution. The tied-house relationship found brewers, distillers and wholesalers financing the saloons, thereby controlling the saloonkeepers. The undesirable consequences of this arrangement included putting saloonkeepers under pressure to stimulate sales while the distiller, brewer, or wholesaler, being an absentee owner, had no concern for the social disruption resulting from the forced stimulated sales.
33. Sess. Laws of Hawaii 1937, Act 223; Rev. Laws of Hawaii ch. 205, pt. I (1955), as amended.
34. House Journal, 1939, pp. 1022-1023.
35. Senate Journal, 1939, p. 1100.
36. Senate Journal, Special Session 1941, p. 236; House Journal, Special Session 1941, p. 429.
37. Senate Journal, Special Session 1941, pp. 439-440; House Journal, Special Session 1941, pp. 889-890.
38. Sess. Laws of Hawaii 1947, Act 20; the Act became law by Act 24, Sess. Laws of Hawaii Spec. Sess. 1941.
39. House Journal, 1949, pp. 1818-1819.
40. The Act was so extended by the governor.
41. The exemption expired May 11, 1965.
6. The Twenty-First Amendment of 1933: "Section 1. The 18th article of amendment to the constitution of the United States is hereby repealed. Section 2. Transportation or importation into any state, territory or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof is hereby prohibited."
7. 48 C.J.S. Intoxicating Liquors, sec. 33 (1947).
8. Ibid., secs. 33-57.
9. Some analyses list a fifth type, the Combination or Integrated System containing features from each of the other four types of systems. See Manitoba, Canada, Liquor Enquiry Commission, Report (Winnipeg: 1955), pp. 118-206.
10. Furnas, p. 341.
11. The arguments are summarized from the following: Jacob B. Taylor, "The Monopoly System of Liquor Control--An Appraisal After Seven Years," Address before the National Alcoholic Beverage Control Association, Mobile, Alabama, March 31, 1941; Stanley Berr, "Private Enterprise in the Liquor Industry," Address before the National Conference of State Liquor Administrators, April 29, 1941; George M. Stout, "Monopoly vs. Private Enterprise," National Liquor Review (September, 1945); "State Monopoly Systems of Liquor Control" (Legislative Reference Bureau, University of Hawaii, Request No. 16, February, 1947) (Typewritten); Charles G. Schnur, "Advantages of the Monopoly System," Address before the National Alcoholic Beverage Control Association, Boca Raton, Florida, April 1947; Robert W. Coyne, "Cooperation of DSI with Control States," Address before the National Alcoholic Beverage Control Association, Phoenix, Arizona, April 29, 1960.
12. Local option is a system intended to provide by election for voters to express on the ballot "their opinions not only on the basic question whether the public interest is best served by permitting or prohibiting the existence of a legal business in alcoholic beverages, but also whether the standard of operation of that business in the voting area warrants its continued existence in that jurisdiction." Joint Committee of the States to Study Alcoholic Beverage Laws, p. 7.

Chapter II

1. Salvatore Pablo Lucia (ed.), Alcohol and Civilization (New York: McGraw-Hill, 1963).
2. New York (State), Moreland Commission on the Alcoholic Beverage Control Law, The Relationship of the Alcoholic Beverage Control Law and the Problems of Alcohol, Study Paper No. 1 (New York: 1963), pp. 1-2.
3. Joint Committee of the States to Study Alcoholic Beverage Laws, Alcoholic Beverage Control: An Official Study (Rev.; Washington: 1960), pp. 5-6.
4. J. C. Furnas, The Life and Times of the Late Demon Rum (New York: G. P. Putnam's Sons, 1965), p. 341.
5. The Eighteenth Amendment of 1919: "Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited. Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."
13. The committee was made up of representatives of The National Alcoholic Beverage Control Association, representing the monopoly states, and of The National Conference of State Liquor Administrators, representing the license states, with

During the year 1966, there were 1,253 local option elections held in eighteen states at the end of the year, 88.9 per cent of the population, based on the 1960 federal census, lived in areas where the sale of liquor was legal (total population - 179,323,175; "wet" population - 159,423,940; "dry" population - 19,899,235). 1966 Annual Statistical Review (Washington: Distilled Spirits Institute, 1967), pp. 51-61.

collaboration of an industry advisory group, including representatives from The Distilled Spirits Institute, the Licensed Beverage Industries, the National Association of Alcoholic Beverage Importers, The United States Brewers Foundation and the Wine Institute.

14. "Acts that are mala prohibita, as distinguished from acts that are mala in se, are wrong, not in and of themselves, but only because they are prohibited." Joint Committee of the States to Study Alcoholic Beverage Laws, p. 59, fn. 14.
15. Alcoholic beverage control.

Chapter III

1. Some states have more than one organizational unit.
2. Nevada and Wyoming.
3. Utah appears to be the exception with a monopoly system authorizing sale of liquor by the package only at state stores exclusively and with no provision for local option.
4. Arizona, California, Hawaii, Nevada, North Dakota, Oklahoma, South Carolina, Utah, and Wyoming.
5. Arkansas, California, Connecticut, Delaware, Florida, Montana, New Hampshire, Oklahoma, Pennsylvania, and South Carolina.
6. Colorado, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Rhode Island, South Dakota, Texas, Vermont, and Wisconsin.
7. Alabama, Arizona, California, Colorado, Iowa, Maine, Mississippi, New Hampshire, Oklahoma, Pennsylvania, South Carolina, Texas, and Vermont.
8. The characteristics based on local authority in the matters of license issuance, license revocation, and other regulatory powers are not pertinent in North Carolina, Utah, Virginia, and West Virginia where liquor is sold by the package only at state stores exclusively.
9. Julius Stone, "The Twentieth Century Administrative Explosion and After," California Law Review, 52 (3) (August, 1964), 513.
10. Peter Woll, Administrative Law; the Informal Process (Berkeley: University of California Press, 1963).
11. Territory v. Fung, 34 H. 52, 58 (1936).
12. See chapter II.
13. Rev. Laws of Hawaii sec. 159-16(e) (1955).
14. Kenneth Culk Davis, Administrative Law Treatise, Vol. I (St. Paul, Minn.: West Publishing, 1958), sec. 2.15.
15. Sess. Laws of Hawaii 1963, Act 172.
16. Hawaii, Legislature, Senate, Committee on Judiciary, 2nd Legislature, General Sess. 1963, Standing Committee Report 101 and Committee on Government Relations and Efficiency, Standing Committee Report 188; House, Committee on County and Municipal Affairs, Standing Committee Report 1003.
17. Public Administration Service, State and Local Government Relationships in the State of Hawaii (Chicago: 1962).
18. Charters for all counties are not in effect or ratified to become effective shortly.
19. There were one carry-over commissioner for the City and County of Honolulu and two for the County of Kauai. It should also be noted that before the "home rule" measure became effective, the counties of Hawaii, Kauai, and Maui had three-member commissions, and after "home rule" all counties had five-member commissions.
20. Sess. Laws of Hawaii 1965, Act 31, effective July 1, 1965.
21. Hawaii, Legislature, House, Committee on Judiciary, 3rd Legislature, General Sess. 1965, Standing Committee Report 593.
22. Hawaii, Legislature, Senate, Committee on Judiciary, 3rd Legislature, General Sess. 1965, Standing Committee Report 451.
23. For the purposes of this discussion, a commission is considered to be a different body when one or more of its commissioners is replaced.
24. An example of the search for purpose is found in Honolulu (City and County), Department of Finance, A Review of the Honolulu Liquor Commission Organization (Honolulu: 1965), p. 5:

The major long-range goals of the Honolulu Liquor Commission have been expressed as follows:

-- To restrict participation in the liquor business to honest, able, and qualified persons and to prevent the intrusion of anti-social influences in the industry.

-- To continue development and maintenance of an effective enforcement program to promote temperance and moderation in the use of alcoholic beverages and to foster respect for the Commission and (to obtain compliance with) the laws it administers.

The purpose of citing these goals in this study is twofold: 1) to invite attention to the premise that these are in fact the reasons for the existence of the organization; and 2) if accepted as the long-range goals of the organization, to direct organizational planning and management improvements to the attainment of these objectives.
25. All of the county liquor commissions are in compliance with the Act. See A. Sonia Faust, Compliance of County Agencies with the Hawaii Administrative Procedure Act, Report No. 3 (Honolulu: University of Hawaii, Legislative Reference Bureau, 1968).
26. Maui Charter ch. 10, sec. 8-10.3. See also Hawaii Charter ch. 3, sec. 7-3.3.

27. These powers are not provided in Alabama, Georgia, Indiana, Iowa, Massachusetts, Nevada, New Hampshire, Utah (except in cases of fraud), Vermont, and Washington, according to the Joint Committee of the States to Study Alcoholic Beverage Laws, Alcoholic Beverage Control: An Official Study (Rev.; Washington: 1960), pp. 91-97.
28. See p. 16 supra for governor's veto message which the legislature overrode. Until the amendment of 1941, there was no appeal from the actions of the liquor commissions. See also In the Matter of the License of Lyle G. Sprinkle and Kenneth K. Chow, 40 H. 485 (1954).
29. Quoting Walter Gellhorn and Clark Byse, Administrative Law (4th ed.; Brooklyn, N.Y.: Foundation Press, 1960), p. 214, who also stated "Reliance is better placed upon internal controls in the agency and responsibility to the executive or legislature and the careful selection of personnel as a means of keeping agencies within the bonds of their authority," at 215.
30. Philip M. Eisenberg, William J. Kupinse, Jr. and William W. Weber, "Administrative Procedure Legislation Among the States," Cornell Law Quarterly, 49 (4) (Summer, 1964), 634, 649.
31. Joint Committee of the States to Study Alcoholic Beverage Laws, pp. 23-24.
32. In 1967, the Fifteenth Annual Conference of the Hawaii Liquor Commissions was held in Honolulu; by convention, the Conference is held by rotation among the counties.
7. New York Times, October 12, 1967, reported that the five-year study was carried out at Stanford University with a \$1 million grant from the National Institute of Mental Health and was published as Alcohol Problems: A Report to the Nation by the Oxford University Press.
8. Joint Committee of the States to Study Alcoholic Beverage Laws, Sales of Alcoholic Beverages to Minors, pp. 26-27.
9. Ibid., pp. 26-28.
10. Distilled Spirits Institute, Summary of State Laws and Regulations Relating to Distilled Spirits (16th ed.; Washington: 1962).
11. Rev. Laws of Hawaii sec. 159-101 (1955), sets the maximum penalty at a \$500 fine or six months imprisonment, or both.
12. Duane C. Buchholz, The Control of Intoxicating Liquor in Wyoming, Vol. I: A Proposed System of Minor Identification, for the Judiciary Committee, Wyoming Legislative Council Research Rept. No. 63-3 (Cheyenne: 1962), pp. 35-36.
13. Rev. Laws of Hawaii sec. 159-77(a)(1) (Suppl. 1965), provides, "At no time under any circumstances shall any liquor . . . be consumed on any public highway or any public sidewalk; . . ."
14. Rev. Laws of Hawaii sec. 159-101 (1955), sets the maximum penalty at a \$500 fine or six months imprisonment, or both.
15. Rev. Laws of Hawaii sec. 159-45 (1955).
16. Rev. Laws of Hawaii sec. 159-77(a)(5) (1955).
17. Hawaii, Commission on Manpower and Full Employment, Commission Findings: On Easing Employment of Minors in Licensed Liquor Premises: On Amendment of Rule 8 Governing the Honolulu Liquor Commission (Honolulu: 1966), pp. 12-13.
18. Ibid., p. 68.
19. Sess. Laws of Hawaii 1965, Act 181, provides that no Class 2 agents' licenses shall be issued or renewed after June 30, 1965. No such license had been issued for several years.
20. Rev. Laws of Hawaii sec. 159-30 (1955), as amended by Sess. Laws of Hawaii 1967, Act 105.
21. 14 Corpus Juris Secundum 1194.
22. Joint Committee of the States to Study Alcoholic Beverage Laws, Uniform Standards for Advertising of Alcoholic Beverages in Newspapers and Magazines: An Official Study (Washington: 1963).
23. Ibid., p. 66.
24. Rev. Laws of Hawaii sec. 159-44 (1955).
25. Rule 34(f), City and County of Honolulu; Rule 1.28(f), County of Hawaii; Rule 27(g), County of Maui.
26. Rev. Laws of Hawaii sec. 159-17(e)(1) (1955).
27. Rev. Laws of Hawaii ch. 51 (1955).
28. Rev. Laws of Hawaii secs. 289-14 to 289-16.3 (1955).

Chapter IV

1. Joint Committee of the States to Study Alcoholic Beverage Laws, Sales of Alcoholic Beverages to Minors: An Official Study (Cleveland: 1952), p. 7.
2. The chairman of the Manitoba (Canada) Liquor Enquiry Commission observed, "The United Kingdom once had it as low as 14 years of age and even in Manitoba at one time in its early history this age limit for liquor sales to minors was in effect. A more ancient authority, Plato, was of the view that it should be 30." Report (Winnipeg: 1955), p. 613.
3. New York (State), Legislature, Report of the Joint Legislative Committee for the Study of the Alcoholic Beverage Control Law, Legislative Document (1963), No. 43.
4. U. S., Congress, Senate, Subcommittee on Fiscal Affairs of the Committee on the District of Columbia, Hearings, 89th Cong., 2d Sess., 1966.
5. M. N. Chappell et al., Use of Alcoholic Beverages Among High School Students (Hempstead, N. Y.: Hofstra College, Hofstra Research Bureau, 1953; J. L. Miller and R. Wahl, Attitudes of High School Students Toward Alcoholic Beverages (Madison, Wis.: University of Wisconsin, Bureau of Economics, Sociology and Anthropology, 1956).
6. The study was carried out under the guidance and technical control of the Research Advisory Committee of the Louis M. Wakoff Research Center of the Staten Island Mental Health Society, Inc.
7. New York Times, October 12, 1967, reported that the five-year study was carried out at Stanford University with a \$1 million grant from the National Institute of Mental Health and was published as Alcohol Problems: A Report to the Nation by the Oxford University Press.
8. Joint Committee of the States to Study Alcoholic Beverage Laws, Sales of Alcoholic Beverages to Minors, pp. 26-27.
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16. Rev. Laws of Hawaii sec. 159-77(a)(5) (1955).
17. Hawaii, Commission on Manpower and Full Employment, Commission Findings: On Easing Employment of Minors in Licensed Liquor Premises: On Amendment of Rule 8 Governing the Honolulu Liquor Commission (Honolulu: 1966), pp. 12-13.
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20. Rev. Laws of Hawaii sec. 159-30 (1955), as amended by Sess. Laws of Hawaii 1967, Act 105.
21. 14 Corpus Juris Secundum 1194.
22. Joint Committee of the States to Study Alcoholic Beverage Laws, Uniform Standards for Advertising of Alcoholic Beverages in Newspapers and Magazines: An Official Study (Washington: 1963).
23. Ibid., p. 66.
24. Rev. Laws of Hawaii sec. 159-44 (1955).
25. Rule 34(f), City and County of Honolulu; Rule 1.28(f), County of Hawaii; Rule 27(g), County of Maui.
26. Rev. Laws of Hawaii sec. 159-17(e)(1) (1955).
27. Rev. Laws of Hawaii ch. 51 (1955).
28. Rev. Laws of Hawaii secs. 289-14 to 289-16.3 (1955).

29. U. S., Department of Commerce, Advertising Advisory Committee to the Secretary of Commerce, Self-Regulation in Advertising (Washington: U. S. Government Printing Office, 1964), p. 30.
30. Ibid., pp. 18, 31, 34.
31. Ibid., p. 31.
32. Robert O. Jolin, "Uniformity in the Regulation of Liquor Advertising," Twenty-Eighth Annual Meeting of the National Conference of State Liquor Administrators (Baltimore: 1962), p. 18.
33. New York Times, October 12, 1967; the study is published as Alcohol Problems: A Report to the Nation by the Oxford University Press.
34. See chapter 3, Administration of Hawaii's Intoxicating Liquor Law.
35. Rev. Laws of Hawaii sec. 6C-3 (1955).
36. Rev. Laws of Hawaii sec. 6C-5 (1955).
37. The time he can open his premises for business, the time he must close his business, the days of doing business, the way he keeps his business records, who he employs, his employment practices, the minimum prices he charges for liquor sales, the kind of advertising he uses, the furnishing and maintenance and structure of his business premises, the extent of increase or reduction in the area of his premises.
38. Virgil W. Coopridge, "Legal Questions in the Operation of the Licensing Systems," Law and Contemporary Problems, 7 (Autumn, 1940), 621, 644.
39. The Hawaii and Maui commissions, by rule and commission proceedings, control the content of entertainment provided at licensed establishments as to "lewdness"; the attitude of the Honolulu and Kauai commissions is, in general, that this is a matter for police action and court determination.

Chapter VI

1. "Federal Excise Taxes on Alcoholic Beverages" (U. S., Treasury Department, June, 1948), pp. 9-10, 40 and 66. (Mimeographed).
2. Ibid., p. 35.
3. Production data which follow are for fiscal years ending June 30, and are found in U. S., Internal Revenue Service, Alcohol and Tobacco, Summary Statistics, Fiscal Year 1964 (Washington: U. S. Government Printing Office, 1965), passim.
4. U. S., Congress, Temporary National Economic Committee, Investigation of Concentration of Economic Power, Hearings; Pt. 6: Liquor Industry, 76th Cong., 1st Sess., 1939, pp. 2516-2517, 2522-2526 and 2542-2561.
5. See Harold L. Wattel, "The Whisky Industry" (unpublished Ph.D. dissertation, New School for Social Research), p. 486, for fuller discussion of costs.
6. Apart from taxes which account for fifty per cent or more of the retail value of lower-priced distilled spirits.

7. U. S., Bureau of the Census, Statistical Abstract of the United States, 1964 (85th ed.; Washington: U. S. Government Printing Office, 1964), p. 847. Hereafter cited as Statistical Abstract and date.
8. These estimates are based on data found in Brewers Almanac, 1965 (New York: United States Brewers Association, 1965) and The Liquor Handbook, 1965.
9. A complete analysis of resale price maintenance in liquor is to be found in a later section of this study.
10. It is probably true that if these prices existed in all markets, they would lead to bankruptcy on the part of distillers even if there were a significant increase in consumption. Distillers have never explained publicly why or how these prices can be so low.
11. Statistical Abstract, 1965, p. 797.
12. Wine Advisory Board, Wine Institute Bulletin, No. 1327, May 14, 1965, p. 14.
13. Statistical Abstract, 1965, p. 879.

Chapter VII

1. Calculated from data drawn from U. S., Bureau of Census, 1963 Census of Business, Wholesale Trade, Hawaii, BC63-WA13, pp. 13-5 and 13-6.

Chapter VIII

1. The reader is referred to Distilled Spirits Institute's 1964 Annual Statistical Review, p. 48A, and its Summary of State Laws and Regulations Relating to Distilled Spirits (18th ed.: 1966), for details of these restrictions by state.
2. U. S., Bureau of the Census, 1963 Census of Business, Retail Trade, Merchandise Lines, Pacific States, BC63-RS, pp. 7k-208ff.
3. Hawaii Newspaper Agency, 1963 Consumer Analysis (Honolulu: 1963), pp. 43-47.
4. Retail sales as reported by Director of Taxation.
5. Estimated from wholesale sales reported by Director of Taxation.

Chapter IX

1. U. S., Bureau of the Census, Statistical Abstract of the United States, 1951 (72nd ed.; Washington: U. S. Government Printing Office, 1951), p. 775. Hereafter cited as Statistical Abstract and date.
2. Statistical Abstract, 1964, p. 793.
3. The Liquor Handbook, 1965, p. 28.
4. See Raymond G. McCarthy (ed.), Alcohol Education for Classroom and Community (New York: McGraw-Hill, 1964), chaps. 8-10, and Harold L. Wattel, "The Whisky Industry" (unpublished Ph.D. dissertation, New School for Social Research), pp. 202-343.
5. The salesman who drinks in the company of a potential customer so that he may sell his product may be considered to be economically motivated.

High income does not cause alcoholic beverage consumption, although it may make it possible.

6. Type of gallon not indicated. A wine gallon is defined as containing 231 cubic inches. A proof gallon is a wine gallon of an alcoholic mixture containing 50 per cent of ethyl alcohol by volume. A tax gallon refers to the unit of spirits subject to the federal excise tax. A gallon of 100 proof would be one wine gallon and a gallon of 110 proof would be 1.1 wine gallons. Spirits of less than 100 proof are treated as 100 proof. This last measure applies to withdrawal of spirits from bond.
7. U. S., Department of Labor, Bulletin, July, 1898, p. 518.
8. The reader is reminded that most statistics on intoxicating liquor consumption are built up from estimates of wholesale sales. They are not even accurate reflections of retail purchases and consequently less accurate reflections of consumption. Problems inherent in these data are inventories, purchases in one area for consumption in another, and consumption by transients. In growth situations, it is impossible to determine whether more people are consuming liquor or just that those who drink are drinking more. In budget studies in the field where questions are directed toward drinking or purchasing, they suffer less from these difficulties.
9. The methodology used by the newspaper in these studies cannot be verified as reliable. This particular series began in 1953 and terminated in 1960.
10. Hawaii is considered to have a relatively high consumption of beer but in 1961 estimates of apparent per capita consumption for the states in which these urban areas are located showed the following: Hawaii 9.0 gallons, New York 18.7 gallons, California 14.5 gallons, and District of Columbia 20.9 gallons. The national average that year was 15.0 gallons. Brewers Almanac, 1965 (New York: United States Brewers Association, 1965), p. 56. One may conjecture that the relatively high price of liquor in Hawaii tends to cloud the picture, but it would seem that the overstatement would be no greater than about ten per cent.
11. Private national market research corroborates the general conclusion that expenditures for and consumption of distilled spirits, for example, increase with income. Time Research Report #1204 covering nonfarm households in 1960 found that the per cent of households drinking or serving whisky increased from 23 per cent for those under \$4,000 to 68 per cent for those with \$10,000 or more. See page 4 of the report.
12. U. S., Bureau of Labor Statistics, Survey of Consumer Expenditures, 1960-61; Consumer Expenditures and Income, Honolulu, Hawaii, 1961, BLS Report No. 237-78, Supplement 1 (Washington: 1963), p. 5.
13. The Bureau suggests that the answer to the paradox is to be found in the importance of the sample weights:

. . . the Bureau's data show that within each specific income bracket, those with comparatively modest educational attainment tend to

show higher expenditures for alcoholic beverages than those with more schooling. The paradox, mathematically speaking, can be resolved by examining the weights (per cent of families); as education increases, the higher income families affect the average more significantly. Thus families in the highest three income classes account for about one-tenth of the eight or less years of education; one-fourth of high school; 40 per cent for college; and better than 60 per cent with over 16 years of education. Because dollar expenditures rise with income, the average expenditures by educational attainment rise despite the contrary showing when income is held constant. Whatever error is attributable to sampling or reporting, there is not a simple mathematical error so far as we know. . . . We would consider income the predominant influence and educational attainment a related, but subordinate, influence on spending for alcoholic beverages. Letter from Bureau of Labor Statistics to author dated March 8, 1966.

14. Time Marketing Services, Liquor Customer Characteristics (1961), p. 8.
15. "An Analysis of Alcohol Consumption Patterns on Oahu" (Economic Research Center, University of Hawaii, prepared for Liquor Commission, City and County of Honolulu, June, 1961), p. 22. (Mimeographed).
1. Belatedly since the beverages had been declared legal some five years earlier.
2. Belatedly since the mandatory resale price law on which Hawaii's is based was enacted in New York State some ten years earlier.
3. The tax rate change from eight per cent to twelve per cent on July 1, 1949, was not meant as an increase. The base was changed from retail sales to wholesale sales so that the rate change merely compensated for the smaller base.
4. U. S., Bureau of the Census, Statistical Abstract of the United States, 1965 (86th ed.; Washington: U. S. Government Printing Office, 1965), p. 434. Data for Hawaii are somewhat less than reported by Hawaii's Director of Taxation.
5. Hawaii, Journal of the Territorial House of Representatives, 1955, p. 648 and Hawaii, Journal of the Territorial Senate, 1955, p. 567.
6. Sess. Laws of Hawaii 1955, Act 34.
7. The county commissions seem not to have added to their staffs for the policing of the pricing regulations. The fact that some retailers absorb the retail excise tax suggests a lack of uniformity in administration.

Chapter X

Chapter XI

1. Hawaii, Legislature, Senate, Committee on Judiciary, 4th Legislature, General Sess. 1967, Standing Committee Report 317. See also Senate Standing Committee Report 37 and House Standing Committee Report 806.

2. A negative elasticity is not unknown but it is unique and not to be expected.
 3. Clark Byse in his article, "Alcoholic Beverage Control Before Repeal," Law and Contemporary Problems, 7 (4) (Autumn, 1940), 546, states:
 . . . there are few, if any, indications that colonial legislatures consciously used the taxing power for purposes of restrictive social control. Despite the pervasive control imposed upon liquor sellers, colonial liquor regulation was not designed to interfere with deeply rooted social customs.
 4. Vernon A. Mund, Government and Business (3rd ed.; New York: Harper and Brothers, 1960), pp. 411-412.
 5. Minimum prices established by the manufacturer for all trade levels and policed by him but only for those who are signatories to a fair trade contract.
 6. The nonsigner clause makes the minimum prices binding on all resellers at the various trade levels whether the reseller is a signatory to a fair trade contract or not.
 7. Minimum prices established by the manufacturer for all trade levels but policed by the state. One finds this type of law only in the field of alcoholic beverages. The implication is that the State has a vested interest in keeping prices higher than they would be in a competitive market.
 8. U. S., Federal Trade Commission, Report on Resale Price Maintenance (Washington: U. S. Government Printing Office, 1945), p. 406.
- For the reader who is interested in delving deeper into the evidence and analyses, the following volumes are recommended:
- U. S., Federal Trade Commission, Report on Resale Price Maintenance;
- U. S., Congress, House, Committee on Interstate and Foreign Commerce, Fair Trade, Hearings, 85th Cong., 1st Sess., 1958;
- U. S., Congress, Senate, Committee on Interstate and Foreign Commerce, Fair Trade, Hearings, 85th Cong., 1st Sess., 1958;
- U. S., Congress, House, Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, Quality and Price Stabilization, Hearings, 87th Cong., 2d Sess., 1962;
- U. S., Congress, House, Committee on Interstate and Foreign Commerce, Quality Stabilization, Hearings, 88th Cong., 1st Sess., 1963;
- E. T. Grether, Price Control Under Fair Trade Legislation;
- Vernon A. Mund, Government and Business;
- Leonard W. Weiss, Economics and American Industry (New York: Wiley and Sons, 1961).
9. U. S., Federal Trade Commission, Report on Resale Price Maintenance, pp. xxvi-xxvii.
 10. A nonsigner clause legally binds distributors who have not specifically contracted to observe minimum established prices to do so. The National

Wholesale Druggist Association maintains that the nonsigner clause is the only practical method of enforcing resale price maintenance contracts. See its The Basis and Development of Fair Trade (3rd ed.; 1955), foreword.

11. This section summarizes the material in the New York (State), Moreland Commission on the Alcoholic Beverage Control Law, Resale Price Maintenance in the Liquor Industry, by Harold L. Wattel, Study Paper No. 5 (New York: 1963), pp. 17ff.
12. Given the imperfections of most markets, changes at the margin are not sufficient to create a single price in "a market" for a single product.
13. U. S., Attorney General, Report of the National Committee to Study the Antitrust Laws (Washington: U. S. Government Printing Office, 1955), p. 154.
14. Great Britain, Board of Trade, Report of the Committee on Resale Price Maintenance, Cmd. 7696 (London: His Majesty's Stationery Office, 1949), pp. 33-34 and A Statement on Resale Price Maintenance, Cmd. 8274 (London: His Majesty's Stationery Office, 1951), p. 11.
15. Note that South Carolina is the only license state that prescribes a maximum markup, ten per cent at wholesale and twenty-five per cent at retail.
16. At the present time, the law prohibiting sales below cost in Hawaii has resulted in practically no litigation. Perhaps there would be a renewed interest in the law were resale price maintenance to be repealed. See Rev. Laws of Hawaii secs. 205-4 to 205-13 (1955).
17. New York Times, April 1, 1966. This author forecast a decline of twenty per cent if a completely free market existed, in Study Paper No. 5 for the New York State Moreland Commission on the Alcoholic Beverage Control Law. A later New York Times report, December 27, 1966, stated, "Some of the stores are taking 15 per cent off, while others are cutting prices as much as 30 per cent. Prices by the case often are cut even more drastically."
18. See fn. 16 above and discussion.
19. New York (State), Moreland Commission on the Alcoholic Beverage Control Law, Resale Price Maintenance, pp. 53, 64-65 and 67-68; Karl B. Marx, Tobacco, Alcoholic Beverages and Pari-Mutuel Taxes, Report of the Commission on Revenue, State of Illinois (Springfield: 1963), pp. 729ff; and Julian Simon, "The Price Elasticity of Liquor in the U. S., and a Single Method of Determination" (University of Illinois, n.d.). (Mimeographed).
20. U. S., Bureau of the Census, Pocket Data Book, USA, 1967 (Washington: U. S. Government Printing Office, 1966), p. 25. These data have been used for consistency of source. A tax gallon is similar to a wine gallon for spirits of 100° proof or less but is greater for spirits of greater than 100°.
21. This section is drawn from New York (State), Moreland Commission on the Alcoholic Beverage Control Law, The Relationship of the Alcoholic Beverage Control Law and the Problems of Alcohol, Study Paper No. 1 (New York: 1963).
22. John R. Philip, "Alcoholism: A Public Health Problem," Alcohol Education for Classroom and

Community, ed. Raymond G. McCarthy (New York: McGraw-Hill, 1964), pp. 213-214.

23. Harwin L. Voss, Alcoholism in Hawaii (Honolulu: University of Hawaii, Economic Research Center, 1961), pp. 9-14.
24. Ibid., p. 15.
25. Ibid., pp. 12 and 15.
26. Hawaii, Governor's Committee on Alcoholism, Report on Alcoholism in the State of Hawaii (Honolulu: 1962), p. 10.
27. Berton Roueche, Alcohol, p. 99.
28. New York (State), Moreland Commission on the Alcoholic Beverage Control Law, The Relationship of the Alcoholic Beverage Control Law, p. 36. The reader may wish to review this 56-page publication in its entirety for it attempts to survey the pertinent data in the field in nontechnical language.
29. Voss, p. 64.
30. Voss (p. 66), for example, recommended the establishment of a Commission whose objectives would be: "1. To promote preventive education on alcoholism, 2. to support and direct research on the problem of alcoholism, 3. to promote and assist rehabilitation facilities and programs for alcoholics, and 4. to cooperate with and assist organizations engaged in rehabilitation programs and services." These recommendations are supplemented by detailed recommendations on the implementation of a program. The State's Department of Health, following the lead of Voss and the 1962 Governor's Committee on Alcoholism, recommended in a 1965 report seven steps toward an overall program to combat alcoholism. Six of the recommendations would add to the State's expenditures, and ranged from a provision for increased funds for the Alcoholism Clinic to improved research and education programs.

Chapter XII

1. Automobiles and tobacco products may be close competitors for the honors.
2. The national per capita figure for 1966 was 1.57 wine gallons. Distilled Spirits Institute, Apparent Consumption of Distilled Spirits, 1957-1966 (Washington: 1967).
3. Washington, D. C. is a license area and there is no resale price maintenance in effect. Prices average about one dollar per fifth lower than areas with mandatory resale price maintenance. New Hampshire is a monopoly state with a low markup policy.
4. The collection of statistics of sales is a relatively easy endeavor and does not in the case of Hawaii require that the State relinquish its present taxing procedure. A method, however, must be found to collect systematically in a simple fashion, the data needed for analysis of sales. In fact, the reconstruction of the ad valorem receipts on a product basis would provide Hawaii with a far greater potential for analysis than any other license state.
5. Rev. Laws of Hawaii sec. 159-39 (1955).
6. Rev. Laws of Hawaii sec. 159-16(k) (1955).
7. Appointed Chairman of the Revenue Commission created by Congress, March 5, 1865. Viewing the results of the Commission, he wrote:

... it may be said, without the possibility of challenge or contradiction, that in the whole history of political economy, finance, and jurisprudence there never was a result that so completely demonstrated the value of careful scientific investigation in connection with legislation [of July 1868].

David A. Wells, Practical Economics, pp. 201 and 210-211.
8. Distilled Spirits Institute, Public Revenues from Alcoholic Beverages, 1965 (Washington: 1966).
9. Mississippi, though legally dry, was included because it did have liquor revenues.
10. Sales taxes and local revenue not included.
11. Private enterprise may point to other benefits obtainable from a system of private distribution such as the contributions, financial and non-financial, of independent businessmen to their communities. In addition, profits of independent enterprises and the income of proprietors swell the income tax revenues of states with such levies.
12. Tax avoidance implies the discovery of a legal loophole which obtains in this situation; tax evasion implies illegal nonpayment of tax which does not apply here directly. The purchase of liquor by a civilian from a military person who had originally purchased the liquor on base does give the action an evasive or illegal cast.
13. The military tends to import beer and wine into the Islands in their own ships.
14. Hawaii, Department of Taxation, Tax Research and Planning, Economic Impact of Local Sales to the Federal Government (Honolulu: 1964), p. 12. Army Regulation No. 210-65 carries this warning: Open messes are Federal instrumentalities and are immune from direct State and local taxation and regulation. Any attempt by a State or locality to tax or to regulate the acquisition or sale of alcoholic beverages by open messes (other than as contemplated in this regulation) will be referred immediately to the appropriate Staff Judge Advocate. Contact with State or local authorities concerning such attempted taxation or regulation will be undertaken only by Judge Advocate Personnel, after express authorization from the Chief, Procurement Law Division, Office of the Judge Advocate General. Pt. 8b.
15. U. S., Department of Defense, Alcoholic Beverage Control, Directive No. 1330.15, May 4, 1964, p. 4.
16. Army Regulation No. 210-65, Installations, Alcoholic Beverages, Headquarters, Department of the Army, 12 October 1964, p. 5.
17. Hawaii, Department of Taxation, Tax Research and Planning, Economic Impact of Local Sales, p. 13.

State of New York - Department of Taxation and Finance
Miscellaneous Tax Bureau
Albany, N.Y. 12226

RETURN OF TAX ON WINES, LIQUORS, ALCOHOL AND DISTILLED OR RECTIFIED SPIRITS

Please Print or Type

Name of Distributor	Post Office Address	Tax Registration Number
Month for which return is made	Manufacturer or Importer	SLA License Number

BEVERAGE INVENTORIES AND PURCHASES	Liquors, Alcohol, Distilled or Rectified spirits and wine containing more than 24% alcohol by volume	Liquors containing not more than 24% alcohol by volume	Wines					
	Natural Sparkling	Artificially Carbonated Sparkling	Still					
1. Gallons on hand at beginning of month _____								
2. Gallons imported and/or received (Use Schedule A and B) _____								
3. Total _____								
4. DEDUCT gallons on hand at end of month _____								
5. DIFFERENCE _____								
6. Plus or Minus - Loss and Waste* _____								
7. Gallons to be accounted for (Sales and Use) _____								

DISTILLERS, RECTIFIERS, BLENDERS AND FORTIFIERS OF WINE Use Form MT-103.1 For Reporting Above Inventories and Purchases

SALES IN GALLONS OF LIQUORS, ALCOHOL, SPARKLING OR STILL WINES									
DEDUCT NON-TAXABLE									
8. Purchases from others in which tax was included in purchase price (Use Schedule B) _____									
9. Sales to Customers outside of N.Y. State (Schedule C) _____									
10. Sales without tax within New York State (Schedule D) _____									
11. TOTAL DEDUCTIONS _____									
12. BALANCE (Item 7 minus Item 11) Net Gallons Taxable _____									
13. Tax on Liquors, Alcohol and Distilled or Rectified Spirits _____ @ \$1.50 per gal.									
14. Tax on Liquors Containing not more than 24% of Alcohol by Volume _____ @ .50 per gal.									
15. Tax on Natural Sparkling Wines _____ @ .40 per gal.									
16. Tax on Artificially Carbonated Sparkling Wines _____ @ .20 per gal.									
17. Tax on Still Wines _____ @ .10 per gal.									
18. TOTAL TAX DUE _____									
19. PRIOR RETURNS - DEDUCT OVERPAYMENT IN RED - ADD UNDERPAYMENT IN BLACK* _____									
20. PENALTIES _____									
21. NET TAX DUE - MAKE CHECKS PAYABLE TO NEW YORK STATE TAX COMMISSION _____									

DO NOT WRITE IN THESE SPACES - OFFICE USE ONLY

Information at source compiled - 122.1 _____
 Information at source compiled - 122.2 _____ Return audited _____

I hereby certify that this is a true and complete return to the best of my knowledge and belief.

DO NOT USE THIS BLOCK

County _____ State _____
Date _____ 196____
Signature _____
Official Title _____

--	--

* Explain fully on separate sheet

FILE THIS RETURN IN DUPLICATE

INSTRUCTIONS FOR FILLING OUT AND FILING YOUR BEVERAGE TAX RETURN FORM MT-103

DISTILLERS, RECTIFIERS, BLENDERS AND/OR FORTIFIERS OF WINE USE MT-103.1 AND ATTACH SECURELY TO FORM MT-103. (Form MT-103.1 covers items 1 to 7 inclusive on Form MT-103, and is designed for use only by Distillers, Rectifiers, Blenders and/or Fortifiers of Wine. Instructions for executing Form MT-103.1 will be found on reverse side of such form.)

All gallonage on this report to be reported in wine gallons.

This return must be made out in triplicate but filed in duplicate; the buff and pink copies must be forwarded with remittance to the office of the Miscellaneous Tax Bureau, State Campus, Albany, N.Y. 12226, retain white copy for your files.

Returns must be filed not later than the 20th day of the month following that for which the report is made. Any report filed after due date is subject to a penalty of 5% for the first month, and additional penalties thereafter.

- Item 1. Place in proper column gallons on hand at the beginning of month for each classification of beverage. Do not include alcoholic beverages held in Bonded Warehouses.
- Item 2. Show total gallons purchased during the month using Schedules A and B. Instructions for filling out Schedules A and B given below.
- Item 3. Total of gallons at Items 1 and 2.
- Item 4. Total gallons on hand at end of month.
- Item 5. Difference Line 3 minus Line 4.
- Item 6. A deduction may be taken here from figure at Line 5 for loss and breakages on the premises. This deduction, subject to bureau approval, must be explained in detail on separate sheet.
- Item 7. This figure is the total gallons to be accounted for, (total sales and/or use).
- Item 8. Show the totals of Schedule B, tax paid purchases.
- Item 9. Show the totals of Schedule C, out-of-state sales. Instructions for filling out Schedule C given below.
- Item 10. Show the totals of Schedule D. Instructions for filling out Schedule D given below.
- Item 11. The total of the deductible Items at lines 8, 9 and 10.
- Item 12. Balance after deducting Item 11 from Item 7.
- Items 13 to 17 inclusive. Compute tax on the gallonage at Item 12 at the rates shown.
- Item 18. Total of Items 13 to 17 inclusive.
- Item 19. Add or deduct any overpayment or underpayment in previous returns. Also include any debit or credit memoranda sent to you from the Miscellaneous Tax Bureau. Attach explanation.
- Item 20. Add penalty assessment for delinquent filing of current or previous returns.
- Item 21. Net tax due. Draw check payable to the State Tax Commission.

Instructions for filing Schedules A, B, C, D.

SCHEDULE A - FORM MT-103.2

Report all purchases made by you during the month on which the New York State tax was not paid. Add in this Schedule all alcoholic beverages on which the New York State tax was not paid and returned to you for credit by your customers. Deduct all alcoholic beverages which you returned to your dealer for credit which were originally purchased New York State tax free. Report as one item total purchases or returns from each source. Include withdrawals from bonded warehouses, listing each withdrawal separately by release number and name of warehouse.

SCHEDULE B - FORM MT-103.3

Report all purchases made by you during the month on which the New York State tax was paid. Add in this schedule all alcoholic beverages on which the New York State tax was paid and returned to you for credit by your customers. Deduct alcoholic beverages which you returned to your dealer for credit which were originally purchased New York State tax paid. Report as one item total purchases or returns from each source.

SCHEDULE C - FORM MT-103.4

Report all sales made to customers outside New York State on which an interstate commerce movement was necessary to complete the transaction, using a separate Schedule for each State.

SCHEDULE D - FORM MT-103.5

Report all tax free sales of alcoholic beverages imported from a foreign country and sold by the original importer in the original package of importation to customers within New York State.

Sales to customers who have obtained permission from the State Tax Department to purchase tax free alcoholic beverages.

Sales of liquors and wines between wineries and/or distillers.

Sales of alcoholic beverages shipped from a point outside New York State direct to customers' premises in this State.

