

CAYMAN ISLANDS



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THE LIQUOR LICENSING (AMENDMENT) LAW, 2015

(LAW 21 OF 2015)

THE LIQUOR LICENSING (AMENDMENT) LAW, 2015

ARRANGEMENT OF SECTIONS

1. Short title and commencement
2. Amendment of section 2 of the Liquor Licensing Law (2000 Revision) - definitions
3. Amendment of section 3 - no intoxicating liquor to be sold without a licence except in certain cases
4. Amendment of section 4 - Licensing Boards and Districts
5. Amendment of section 5 - functions and conduct of the Boards
6. Amendment of section 7 - nature of a licence
7. Amendment of section 8 - qualifications of a licensee
8. Amendment of section 9 - requirements for licensed premises
9. Amendment of section 11 - hours for sale of alcoholic liquor
10. Amendment of section 12 - application for licences
11. Repeal of section 18 - death of a licensee
12. Repeal of section 29 - service of process on licensees
13. Amendment of section 33 - power to search premises
14. Repeal and substitution of section 34 - powers of Inspector
15. Insertion of section 42A - offence by body corporate
16. Amendment of section 44 - general penalty
17. Repeal and substitution of section 50 - power to make regulations
18. Amendment of the Schedule - Form 1 and Form 3
19. Transitional
20. Validation

CAYMAN ISLANDS

Law 21 of 2015.

I Assent

Helen Kilpatrick

Governor.

24th November 2015

**A LAW TO AMEND THE LIQUOR LICENSING LAW (2000 REVISION)
TO MODIFY THE LICENSING PROCEDURE TO ENABLE THE
LIQUOR LICENSING BOARD TO GRANT NEW LICENCES FROM
THE COMING INTO FORCE OF THAT PROVISION AND TO PUT IN
PLACE MORATORIA ON THE GRANTING OF NEW LICENCES FOR
SUCH PERIODS AS THE CABINET MAY STIPULATE BY ORDER; TO
REMOVE THE REQUIREMENT THAT LICENSED PREMISES
REMAIN OPEN FOR THE DURATION OF THE SPECIFIED HOURS;
AND FOR INCIDENTAL AND CONNECTED PURPOSES**

Enacted by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Liquor Licensing (Amendment) Law, 2015.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

Amendment of section 2
of the Liquor Licensing
Law (2000 Revision) -
definitions

2. The Liquor Licensing Law (2000 Revision), in this Law referred to as the “principal Law”, is amended in section 2 by -

- (a) deleting the definition of the word “applicant” and substituting the following definition -

“ “applicant” means a person or a business that makes an application for a licence under this Law;”;

- (b) deleting the definition of the word “Inspector”;
- (c) inserting in the appropriate alphabetical sequence, the following definitions -

“ “licensed premises” means a vehicle, vessel, moveable structure or part of any premises or any other designated outdoor space covered by a licence issued under this Law;

“trade officer” means a public officer in the Department of Commerce and Investment appointed as such.”.

Amendment of section 3
- no intoxicating liquor to
be sold without a licence
except in certain cases

3. The principal Law is amended in section 3 by repealing subsection (1) and substituting the following subsections -

“ (1) The disposal, exposure for sale or offer for sale of intoxicating liquor shall only be carried out -

- (a) by the holder of a licence under this Law;
- (b) by virtue of legal process or any law authorising or requiring the sale including bankruptcy, winding-up (including winding up of a deceased estate) and any sale under the Customs Law (2012 Revision);
- (c) where the intoxicating liquor is supplied for medicinal purposes on the prescription of a duly qualified medical practitioner; or
- (d) where the intoxicating liquor is sold or supplied to or in any lawfully constituted naval, military, air force, police force or volunteer force canteen or mess.

(1A) Any person who disposes, exposes for sale or offers for sale any intoxicating liquor in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(1B) The premises from which the intoxicating liquor is sold shall be licensed in accordance with this Law.”.

4. The principal Law is amended in section 4 by -

Amendment of section 4
- Licensing Boards and
Districts

- (a) repealing subsections (3) and (4) and substituting the following subsections -

“(3) The Board for Grand Cayman shall be comprised of -

- (a) the following persons appointed from the private sector by the Cabinet -
 - (i) a Chairman;
 - (ii) a Deputy Chairman; and
 - (iii) five other members from the private sector; and
- (b) the following public officers who shall hold office by virtue of their public service appointment -
 - (i) the Director of Commerce and Investment or designate;
 - (ii) the Director of Planning or designate; and
 - (iii) the Director of Environmental Health or designate.

(4) The Board for Cayman Brac and Little Cayman shall be comprised of -

- (a) the following persons appointed from the private sector by the Cabinet -
 - (i) a Chairman;
 - (ii) a Deputy Chairman; and
 - (iii) three other members from the private sector; and
- (b) the following public officers who shall hold office by virtue of their public service appointment -
 - (i) the Director of Commerce and Investment or designate;
 - (ii) the Director of Planning or designate; and
 - (iii) the Director of Environmental Health or designate.

(4A) The Chairman, Deputy Chairman and other Board members referred to in subsections (3) and (4) shall hold office at the Cabinet’s pleasure for such period not exceeding four years as the Cabinet may determine and shall be eligible for re-appointment.”; and

- (b) repealing subsection (9) and substituting the following subsections -

“(9) The Department of Commerce and Investment is designated as the Secretariat to the Board.

(9A) The Secretariat shall be responsible for the day to day administration of the Board and, to the extent of the authority delegated to it by the Board, shall be responsible for the carrying out of the administrative duties of the Board, and shall provide the secretary who shall record and keep the minutes of all meetings, proceedings and decisions of the Board.

(9B) Members of the Board may participate in a meeting of the Board by means of a conference telephone, computer or similar equipment providing real time communication and allowing the participants in the meeting to communicate with each other at the same time, and participation by such means shall constitute presence in person at the meeting of the Board.

(9C) The Board may, subject to this Law, make such rules as it thinks fit to regulate its procedures, its own internal management and the procedures and management of any subcommittee of the Board and at its first meeting shall approve and adopt standing orders that will govern procedure in connection with its meetings.”.

Amendment of section 5
- functions and conduct
of the Boards

5. The principal Law is amended in section 5 by repealing subsection (14) and substituting the following subsection -

“(14) For the purposes of this section, “decision” includes any electronic record or transcript of votes or decisions made during a meeting that takes place by means of conference telephone, computer or similar equipment.”.

Amendment of section 7
- nature of a licence

6. The principal Law is amended in section 7 as follows -

- (a) in subsection (1), by inserting after the words “A licence is a permit to” the words “a business,”;
- (b) in subsection (2), by inserting after the word “Persons” the words “or businesses”;
- (c) by repealing subsection (3); and

- (d) in subsection (4), by deleting the words “persons other than the licensee” and inserting the words “persons other than the holder of the licence or the licence holder’s employees”.

7. The principal Law is amended in section 8 by repealing subsections (1) and (2) and substituting the following subsection -

Amendment of section 8
- qualifications of a
licensee

“(1) A Board shall not grant a licence to an applicant unless it is satisfied that the applicant has paid the fee prescribed for the grant of a licence under this Law and -

- (a) has a valid trade and business licence issued under the Trade and Business Licensing Law (2007 Revision);
- (b) subject to subsection (1A), is a company that is registered under section 80 of the Companies Law (2013 Revision); or
- (c) subject to subsection (1B), is an applicant for an occasional licence except where the applicant is a company described under subsection (b).

(1A) An applicant, including an applicant for an occasional licence, that is a company described under subsection (1)(b) shall provide the following when applying for a licence under this Law -

- (a) evidence of registration under section 80 of the Companies Law (2013 Revision);
- (b) a bank reference for the applicant;
- (c) where the licensed premises is located in a public place, evidence of the approval of the relevant authority to dispose of intoxicating liquor in that place; and
- (d) where relevant, evidence of compliance with the laws relating to pensions, health insurance, labour relations, environmental health or fire safety.

(1B) An applicant for an occasional licence shall provide the following when applying for a licence under this Law -

- (a) evidence of the status as a Caymanian, if any, of -
 - (i) the applicant, where the applicant is an individual;
 - (ii) any individual who has a legal or beneficial interest in the company, where the applicant is a company; or

- (iii) each partner who is a partner in the firm, where the applicant is a firm;
- (b) a police clearance certificate for -
 - (i) the applicant where the applicant is an individual;
 - (ii) any individual who has a legal or beneficial interest in the company, where the applicant is a company; or
 - (iii) each partner who is a partner in the firm, where the applicant is a firm;
- (c) a bank reference for the applicant;
- (d) where the licensed premises is located in a public place, evidence of the approval of the relevant authority to dispose of intoxicating liquor in that place;
- (e) where relevant, evidence of compliance with the laws relating to pensions, health insurance, labour relations, environmental health or fire safety; and
- (f) where the applicant is a company that is not Caymanian owned and controlled and not exempt from the Local Companies Control Law (2015 Revision), a licence under that Law.

(1C) The Board may take steps to carry out due diligence procedures with regards to any director or any person who has a beneficial interest in a trade or business for which an application for the grant or renewal of a licence is made under this Law.

(1D) The Board on receipt of a police clearance or on the carrying out of due diligence procedures may make such determinations regarding the grant or refusal of an application for a licence as it sees fit and shall provide reasons for its determinations.”.

Amendment of section 9
- requirements for
licensed premises

8. The principal Law is amended in section 9 as follows -

- (a) by repealing subsection (2) and substituting the following subsection -

“(2) A moratorium on the granting of new licences in the Islands may be made by the Cabinet by Order published in the Gazette, such Order appointing the date of commencement and

expiration of the moratorium and different dates may be appointed in relation to different categories of licences.”; and

(b) by renumbering the second subsection “(3)” as subsection “(5)”.

9. The principal Law is amended in section 11 by repealing subsection (4) and substituting the following subsection -

Amendment of section 11 - hours for sale of alcoholic liquor

“(4) Every licensee is permitted, save in exceptional and unforeseen circumstances, to open the licensed premises for the sale of intoxicating liquor to the public at any time during the specified hours and may, in addition, open the licensed premises at any time during the permitted hours.”.

10. The principal Law is amended in section 12 by inserting after subsection (3) the following subsections -

Amendment of section 12 - applications for licences

“(4) An application for a licence may be made by way of such medium as may be provided by the Department of Commerce and Investment for the purpose of the electronic processing of applications under this Law.

(5) The Cabinet may make regulations to provide for the electronic processing of applications by the Board.”.

11. The principal Law is amended by repealing section 18.

Repeal of section 18 - death of a licensee

12. The principal Law is amended by repealing section 29.

Repeal of section 29 - service of process on licensees

13. The principal Law is amended in section 33 as follows -

Amendment of section 33 - power to search premises

- (a) in subsection (1), by inserting after the words “The Commissioner, any Justice” the words “, trade officer”; and
- (b) by inserting after subsection (1) the following subsections -

“(1A) Notwithstanding the provisions in subsection (1), the Commissioner or a trade officer may, at the request of the Board, inspect any licensed premises and shall, upon carrying out that inspection, report in writing to the Board at the meeting following that inspection giving an opinion as to whether the licensed premises are being used or maintained in accordance with this Law.

(1B) The Board shall be assisted by the Commissioner or the Commissioner's designate in the carrying out of duties under this section.”.

Repeal and substitution
of section 34 - powers of
Inspector

14. The principal Law is amended by repealing section 34 and substituting the following section -

“Powers of
trade officer

34. (1) The Board shall be assisted by such trade officers as are necessary for the purposes of this Law.

(2) Subject to subsection (3), trade officers shall have all the rights, powers, privileges and immunities of a constable when discharging their duties under this Law.

(3) A trade officer shall have the authority and power to carry out such instructions as may be given by the Board or the Department of Commerce and Investment in accordance with this Law and may exercise on behalf of the Board or the Department, any powers granted to the Board by this Law.

(4) The Chief Officer of the ministry with responsibility for commerce or the Chief Officer's designate shall assign such officers of the Department as is considered necessary, to perform the duties of trade officers under this Law.

(5) Each officer assigned under this section shall be provided with an identification card prepared and signed by the Chief Officer or the Chief Officer's designate and the identification card shall contain the photograph of the respective officer.

(6) The Director of the Department shall have the same rights, powers, privileges, and immunities conferred on a trade officer under subsection (2) when discharging duties under this Law.

(7) A trade officer, on proof of identity, may enter on and inspect any licensed premises in the Islands or any place within the curtilage of such premises at any time when the business is open to the public for the sale of intoxicating liquor, for the purpose of detecting any breach of this Law or of any licence, and shall forthwith report any such breach to the Board.

(8) Any person who prevents the entry of, or obstructs a trade officer in the execution of any duty upon any licensed premises or any place within the curtilage thereof, commits an offence.”.

15. The principal Law is amended by inserting after section 42 the following section -

“Offence
by body
corporate

42A. Where an offence under this Law is committed by a body corporate, any person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to have committed the offence unless the person proves -

Insertion of section 42A
- offence by body
corporate

- (a) that the offence was committed without the person's consent or connivance; and
- (b) that the person exercised all such reasonable diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's function in that capacity and to all circumstances.”.

Amendment of section 44 - general penalty

16. The principal Law is amended in section 44 by inserting after subsection (3) the following subsection -

“(4) The Cabinet may, by regulations, provide for administrative fines in place of the penalties provided for offences under this Law.”.

Repeal and substitution of section 50 - power to make regulations

17. The principal Law is amended by repealing section 50 and substituting the following section -

“Power to make regulations 50. (1) The Cabinet may make regulations for giving effect to the objects and purposes of this Law and providing for the responsible sale, distribution, service and consumption of liquor in the Islands.

(2) Notwithstanding the generality of the provisions in subsection (1), the Cabinet may, by way of regulations provide for the training of licensees, servers and any person involved in the sale, distribution, service and consumption of liquor in the Islands.

(3) The forms in the Schedule may be amended by way of regulations made pursuant to subsection (1).”.

Amendment of the Schedule - Form 1 and Form 3

18. The principal Law is amended in the Schedule by -

(a) repealing Form 1 and substituting the following Form -

“Form 1

(Section 12(1))

APPLICATION FOR A LIQUOR LICENCE

I,-----
----- aged-----
----- of-----
----- and being -

- (a) the holder of business licence No._____ under the Trade and Business Licensing Law (2007 Revision);
- (b) exempted from holding a business licence by virtue of section 3 of the Trade and Business Licensing Law (2007 Revision);
- (c) the applicant for an occasional licence,
(Tick the applicable option)

am applying to the Liquor Licensing Board for a-----
----- licence for the period beginning on the-----
-----day of -----, 20---, and
ending on the thirtieth September following. I undertake to keep
my premises open for service to the public during the following
hours -

Weekdays:-----
----- Sundays:-----

The address of the proposed licensed premises is
.....
.....

Where the licensed premises is a sea-going vessel, the
name/registration of the sea-going vessel is
.....
.....

The name and address of the captain is
.....

Where different from the captain, the name and address of the
owner is
.....

(Fill in the applicable options)

I enclose certificates of the Commissioner of Police, the Chief Fire
Officer, Chief Medical Officer and the Executive Secretary of the
Central Planning Authority as to the suitability of the premises. A
plan of the premises with bars, storage spaces, entrances and toilet
facilities marked thereon is attached. A Treasury receipt for the
prescribed fee is also enclosed.

(Applicant's signature)";

- and
(b) repealing Form 3 and substituting the following Form -

“Form 3

(Section 7(1))

LIQUOR LICENCE

This is to certify that-----
- is the holder of----- licence under the Liquor
Licensing Law (2000 Revision) which licence expires on the 30th
September, 20---. The licence applies to the licensed premises at --
----- /the sea-going vessel named/registered----
----- . The said licensed premises may open to the
public for the sale of----- during the
following hours: ----- and may
open during other permitted hours under this Law.
The following special conditions apply to this licence -----

--

Name and Signature of Chairman of the Board.

Transitional

19. The holder of a licence shall have a period of grace up to 30th September, 2018, unless the licence is revoked earlier by the Liquor Licensing Board, during which period the holder of the licence shall be exempt from the requirement to be licensed under the Trade and Business Licensing Law (2007 Revision).

Validation

20. (1) All acts carried out in good faith by the Board or by any person authorized by the Board in purported exercise of powers conferred under the former Law to grant retail category liquor licences for which the relevant licensed premises were moveable structures are validated and all such licences granted in good faith under the former Law are validated and taken to have been lawfully granted.

(2) In this section, “former law” means the Law in force immediately before the coming into force of section 6 of the Liquor Licensing (Amendment) Law, 2015.”.

Passed by the Legislative Assembly the 22nd day of October, 2015.

J. O’Connor - Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.