

THE IMPACT OF ALCOHOLIC BEVERAGE CONTROL LAWS
IN THE HOTEL BUSINESS*

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Abstract

To regulate the responsible consumption of alcoholic beverages, address alcohol-related issues, and mitigate the potential damage resulting from excessive and inappropriate usage, governments have implemented and enforced laws and regulations over the course of decades. Currently, a range of legislation exists to govern and control the sale of alcoholic beverages. These include: (i) the Alcoholic Beverage Control Act B.E. 2551 (“Alcoholic Beverage Control Act”); (ii) the Excise Act B.E. 2560 (“Excise Act”); and (iii) the Mandate of the National Council for Peace and Order No. 22/2558, which encompasses measures to prevent and address problems associated with automobile and motorcycle racing, as well as the control of entertainment spots or similar venues (“NCPO No.22/2558”).

These laws and regulations oversee different facets of alcohol consumption: (i) addresses excise tax on alcohol and liquor license procedures; (ii) designates alcohol-free zones; (iii) regulates entertainment venues; and (iv) governs alcohol sales, drinking age, and advertisement. This research has identified a notable loophole affecting hotels’ ability to offer alcohol services.

Keywords: Alcoholic beverage control, Alcohol license, Alcohol zoning, Liquor license

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1. Introduction

The hotels offer various services and entertainment options to cater to the evolving lifestyles of consumers. These amenities may include event ballrooms, spas, fitness facilities, restaurants, bars, and nightclubs.

The hotels have recognized the need to include them as a permanent service in which the hotel operator, as an alcoholic beverage retail seller, is required to obtain an entertainment spot license if the operating hours is *after* midnight and liquor license or only the liquor license for operation of bar ends at midnight before actual operation of alcohol service as it is controlled goods.

To address these concerns, several laws are in place to control the consumption of alcoholic beverages, including the Alcoholic Beverage Control Act, the Excise Act, and the NCPO No.22/2558, collectively referred to as the “Controlling Laws”. These laws establish “zoning,” creating areas where no liquor license is granted. However, challenges persist within these Controlling Laws, impacting the hotel industry.

Following a thorough review and research of the pertinent issues, this research identifies three main issues impacting hotel bar operators under the Controlling Laws. Firstly, zoning provisions hinder liquor license issuance in certain areas, despite the target customers not being minors or students, as intended. Secondly, the Alcoholic Beverage Control Act and corresponding announcements impose strict trading hours and prohibited selling date regulations on alcoholic beverages. These measures burden hotel bar operators and may breach Thai Constitution B.E. 2560 on fair competition. Lastly, the monitoring measures applied to the hotel sector necessitate evaluation and improvement to ensure their effective enforcement and the prevention of potential loophole.¹ In summary, reevaluating restrictive provisions, introducing flexibility in liquor licensing, and adjusting excise legislation can contribute to better alcohol control and support businesses within the industry.²

2. General concept of alcoholic beverage control in other jurisdictions

2.1. Concept of alcoholic beverage control

Alcohol consumption can have significant social repercussions, leading to various problems that affect individuals, families, and communities. These issues encompass family disruption, work absenteeism, reduced productivity, financial difficulties, unintentional

¹ National Statistical Office, ‘The 2018 Accommodation Survey’ (2018) <http://www.nso.go.th/sites/2014/DocLib13/ด้านเศรษฐกิจ/สาขาวิชาการท่องเที่ยวและกีฬา/ที่พักโรงแรม/2561/Full_report.pdf> accessed 29 June 2023.

² National Statistical Office, ‘The 2020 Accommodation Survey’ (2020) <http://www.nso.go.th/sites/2014/DocLib13/ด้านเศรษฐกิจ/สาขาวิชาการท่องเที่ยวและกีฬา/ที่พักโรงแรม/2563/Full_report_63.pdf> accessed 29 June 2023.

injuries, traffic accidents, criminal behavior, domestic violence, and higher rates of abuse, homicide, and suicide. The impact of these problems extends beyond individuals and can negatively influence entire societies.

To address and mitigate the risks related to alcohol consumption, governments play a vital role in implementing measures to control and regulate its availability and use. These measures may include taxation, restrictions on marketing and advertising, age limitations, licensing requirements, public awareness campaigns, and support for treatment and rehabilitation programs. By implementing these alcohol control measures, governments aim to safeguard public health, encourage responsible drinking practices, and reduce the social and economic harms associated with alcohol-related issues.

Promoting responsible drinking behaviors, implementing effective alcohol control measures, and fostering a supportive environment for individuals struggling with alcohol misuse are crucial steps towards mitigating the negative impacts of alcohol on health, relationships, and society as a whole.³

2.2. Objectives of alcoholic beverage control

Alcohol control measures are imperative in safeguarding public health, mitigating alcohol-related harm, and promoting responsible drinking behaviors. These measures encompass a range of strategies, such as taxation to deter excessive consumption, restrictions on alcohol availability, strict enforcement of drinking age laws, and regulations governing alcohol advertising and promotion to minimize adverse influences.

The alcoholic beverage control policy seeks to create a regulatory framework that ensures the responsible and safe use of alcoholic beverages while mitigating the potential negative impacts on individuals and society.

Alcohol control measures shall include: (i) mitigating alcohol-related issues through high taxes, age limits, and availability restrictions; (ii) econometric methodologies to study the impact of price fluctuations on alcohol consumption; (iii) regulating alcohol availability from licensing, sales restrictions, and training; (iv) examining the impact of retail monopolies on alcohol consumption; (v) limiting sales times and outlets to reduce adverse effects; (vi) implementing a minimum drinking age; (vii) enhancing safety measures in licensed premises; (viii) using education and persuasion to prevent alcohol-related problems; (ix) restricting alcohol promotion in policies; and (x) early identification and treatment to reduce alcohol-related harm.⁴

³ Ausa Biggins, 'Campaigns for Solving Motorcycle Drunk Driving Behavior of Adolescents' (B.E. 2555) Journal of Communication and Innovation NIDA.

⁴ Director of Office of the Alcohol Control Committee Dr. Nipon Chinnanontvech, Government Role in Respect to the Alcohol Control Policy (22 November 2019).

The alcohol control policies have proven effective in reducing alcohol-related harms, but they also have drawbacks. Restrictions on alcohol availability, high taxes, and age limits can create challenges in enforcement and lead to illegal sales. Additionally, limiting alcohol outlets may hinder fair competition, and cultural norms can influence policy effectiveness. Policymakers must carefully balance public health goals and individual freedoms while considering specific societal contexts to ensure effective and sustainable alcohol control strategies.⁵

3. Comparative study on the impact of the laws of alcoholic beverage control in the hotel business of the United States, Australia, and Thailand

3.1. United States, California alcoholic beverage control Laws

3.1.1. Licensing

In the United States, specifically in California, operating a hotel requires obtaining a hotel license from the local city government. For example, in Chula Vista city, hotel operators must apply for a hotel license and display it prominently in a public area. Adhering to permit requirements is essential for hotel operators to avoid potential legal consequences.

The California Alcohol Beverage Control Act is structured into three parts: licensing, administration, and compliance. The licensing section outlines qualifications, application procedures, and deadlines for obtaining alcohol licenses. The administration part deals with complex cases, providing appeal options and setting conditions for approved licenses. The compliance section ensures adherence to regulations through routine inspections by peace officers. The California Alcohol Beverage Control Act aims to establish a comprehensive regulatory system, promoting responsible alcohol practices and safeguarding public safety in California.

The process of liquor license issuance under the California Alcohol Beverage Control Act is flexible, ensuring the protection of the rights of affected individuals and surrounding areas by providing a community and public based licensing approach; at the same time, the presence of alcoholic establishments in the community should not impact the welfare and enjoyment of the community. During the licensing pre-application phase, applicants must fulfill additional requirements as specified by the licensing authority, such as posting a Public Notice of Application, providing information for investigation, and notifying nearby residents.⁶

⁵ Mahidol University Institute for Population and Social Research, 'Alcohol Control Policies and Measures Still Not Strict and Sincere' (2010).

⁶ California Department of Alcoholic Beverage Control, License Application Process <<https://www.abc.ca.gov/licensing/apply-for-a-new-license/license-application-process/>> accessed 6 May 2023.

The California Alcohol Beverage Control Act allows applicants the right to appeal if disqualified from obtaining a liquor license based on factors that may affect the community, such as proximity to schools or churches. Applicants can demonstrate through a public hearing that their operation will not disrupt the community's enjoyment and peace. The California Department of Alcohol Beverage Control may grant the liquor license with certain conditions, such as limited operating hours, to address concerns fairly and reasonably.⁷

Conversely, if the proposed establishment may disturb community enjoyment, increase harm, or contribute to crime, impacted parties have the right to protest, considering aspects that affect the community. The California Alcohol Beverage Control Act ensures the rights and freedom of both parties to exercise their interests in a fair and reasonable manner.

3.1.2. Legal measures

The California Alcohol Beverage Control Act enforces various protocols on licensed establishments to ensure compliance, including age requirements for staff, limitations on alcohol consumption for those under 21, and prohibition of sales to visibly intoxicated individuals. "Decoy Operations" and the Decoy Shoulder Tap Program are used to prevent sales to minors.⁸ Alcohol sales between 2 a.m. and 6 a.m. are prohibited. The Responsible Beverage Service Training Program educates alcohol servers on responsible service to reduce alcohol-related harm.⁹

Non-compliance with the California Alcohol Beverage Control Act can lead to criminal charges for individuals, and significant fines and legal consequences for business owners involved in alcohol sales. Staying informed about evolving regulations and adhering to the California Alcohol Beverage Control Act requirements is crucial to maintaining legal compliance and avoiding penalties.¹⁰

⁷ California Department of Alcoholic Beverage Control, Hearing and Appeals Process <<https://www.abc.ca.gov/licensing/apply-for-a-new-license/license-application-process/hearingand-appeals-process/>> accessed 29 May 2023.

⁸ California Department of Alcoholic Beverage Control, Minor Decoy Program <<https://www.abc.ca.gov/enforcement/underage-drinking/minor-decoy-program/>> accessed 23 May 2023.

⁹ California Department of Alcoholic Beverage Control, Responsible Beverage Service (RBS) Training Program <<https://www.abc.ca.gov/education/rbs/>> accessed 24 May 2023.

¹⁰ Saltsman & Jamieson A Partnership Including Professional Corporations Law Offices of Solomon, 'ABC Handbook' (2022) <https://ssjlaw.com/wp-content/uploads/SSJ_ABC_Handbook.pdf> accessed 24 May 2023.

3.2 Australia, New South Wales alcoholic beverage control laws

3.2.1 Licensing

In Australia, operating a hotel in Australia requires compliance with multiple laws and regulations at both the state and city levels. Each state governs and regulates hotel operations differently. For instance, in Queensland, a hotel commercial license is mandatory, whereas, in New South Wales, it is not required.

To operate a hotel with alcohol beverage services in New South Wales, individuals must obtain a liquor license allowing the retail sale of alcoholic beverages on the premises. Complying with the New South Wales Liquor Act 2007 and the New South Wales Liquor Regulation 2018 are essential, involving meticulous adherence to relevant sub-chapters and fulfilling legal requirements. This includes obtaining specific licenses for the premises and ensuring staff possess the required qualifications. By adhering to these regulations, hotel owners can ensure legal operation, promote responsible alcohol service, and prioritize the well-being of patrons and the community.¹¹

To obtain a liquor license for a proposed hotel, bar, or club premise in New South Wales, certain mandatory steps must be followed. These include preparing a Community Impact Statement that addresses potential impacts on the neighborhood and notifying relevant stakeholders, such as local authorities, police, and community groups. The Community Impact Statement, or “CIS”, should outline how stakeholder concerns were addressed, and modifications made to the proposal based on feedback. Failure to meet the notification obligations may lead to objections to the application.¹²

In designated regions, such as Sydney's CBD Entertainment and Kings Cross precincts in New South Wales, Cumulative Impact Areas are recognized due to their concentration of licensed establishments. These areas undergo Cumulative Impact Assessments to mitigate the resurgence of previous violence incidents. Certain types of establishments, including hotels in Cumulative Impact Areas, approvals are generally avoided by the authority for new higher-impact premises or extended trading hours within these areas.

¹¹ New South Wales Government, NSW Government Response to the “Statutory Review of the Liquor Act 2007 and the Gaming and Liquor Administration Act 2007” (NSW Government response – August 2014): <https://www.liquorandgaming.nsw.gov.au/documents/reports/GovernmentResponse_StatutoryReview_LA_GALAA.pdf> accessed 23 May 2023.

¹² New South Wales Government, Fact Sheet FS3076: How to Prepare a Category B CIS <https://www.liquorandgaming.nsw.gov.au/__data/assets/pdf_file/0007/858625/How-to-prepare-Category-B-CIS-V3-1-Sep-22.pdf> accessed 24 May 2023.

However, license applications demonstrating favorable social impacts and minimal associated risks hold greater prospects of being granted approval.¹³

3.2.2 Legal measures

The New South Wales Liquor Act 2007 also emphasizes important measures to reduce and prevent alcohol-related harms, considering both the preservation of local amenities and the integrity of industry participants. Standard trading hours for licensed premises are strictly regulated (i) Monday – Saturday from 5.00 a.m. - midnight; and (ii) 10.00 am. – 10.00 pm. on Sunday. The Responsible Service of Alcohol is a key requirement for licensees to ensure the responsible and professional sale and service of alcoholic beverages, promoting a safer environment and preventing intoxication.¹⁴ Selling or supplying alcohol to intoxicated individuals is prohibited.¹⁵ It also strictly prohibits the sale, distribution, or procurement of liquor for individuals under 18, and minors are barred from selling, providing, or serving alcohol on licensed premises. Specific signage is mandated within licensed facilities to communicate important information to patrons.¹⁶ These measures play a significant role in fostering a safer and more responsible alcohol environment within New South Wales.

Non-compliance with the New South Wales Liquor Act can result in suspension, revocation of license, criminal charges for individuals, and substantial fines and legal repercussions for business owners engaged in alcohol sales. It is essential for businesses to stay updated on changing regulations and strictly adhere to the requirements of New South Wales Liquor Act to ensure legal compliance and prevent potential penalties.

The alcohol control laws in California, USA and New South Wales, Australia are robust and incorporate legal measures that protect the interests of the community while preventing alcohol-related harms. These laws strike a balance between promoting fair trade and business operations while ensuring public health and safety. The study also highlights that the legal measures in these jurisdictions effectively address the potential harms from alcohol use.

¹³ Independent Liquor & Gaming Authority, Cumulative Impact Assessment — Sydney CBD Entertainment and Kings Cross Precincts (NSW Department): https://www.liquorandgaming.nsw.gov.au/_data/assets/pdf_file/0010/980389/gl4028-guideline-18-28-feb-2023.pdf > accessed 7 July 2023.

¹⁴ New South Wales Government, Responsible Service of Alcohol Course Handbook (2022) <<https://www.liquorandgaming.nsw.gov.au/documents/collateral/nsw-rsa-course-handbook-16-dec-2022.pdf>> accessed 25 May 2023.

¹⁵ New South Wales Government, GL4003: Intoxication guidelines <<https://www.liquorandgaming.nsw.gov.au/documents/gl/gl4003-intoxication-guidelines.pdf>> accessed 25 May 2023.

¹⁶ New South Wales Government, Liquor Signage Comparison Toolkit <https://www.liquorandgaming.nsw.gov.au/_data/assets/pdf_file/0011/954380/Liquor-Signage-Comparison-Toolkit.pdf> accessed 25 May 2023.

3.3 Thai alcoholic beverage control laws

3.3.1 Hotel Act B.E. 2547

In order to operate a hotel business in Thailand, obtaining a hotel license under the Hotel Act is essential.¹⁷ The Hotel Act primarily aims to ensure public order and tourist safety.¹⁸ If a hotel offers food and beverage services, separate licenses for food processing and alcoholic beverages are also required. Hotels operating bars, nightclubs, or entertainment spots after midnight must comply with the Entertainment Spot Act, which regulates and controls all entertainment venues in Thailand, including those within hotels.

3.3.2 Entertainment Spot Act B.E.2509

Operators of entertainment spots, including hotel entertainment spots, must obtain licenses and adhere to specific conditions outlined in the Entertainment Spot Act, provided that the operation of hotel bar ends *after* midnight. These conditions focus on maintaining customer and public well-being, covering aspects like operating hours, age restrictions, and security measures. The act empowers authorities to conduct inspections, monitor compliance, and take necessary actions to enforce its provisions, thereby preventing unlawful activities and maintaining public order in the entertainment industry.¹⁹

3.3.3 Alcoholic Beverage Controls Act B.E. 2551

The Alcoholic Beverage Controls Act establishes a regulatory framework for controlling alcoholic beverage activities. It aims to reduce alcohol-related harms and promote public health by addressing potential negative implications. In addition to the Hotel Act, hotels with bars offering alcoholic beverage services as part of their offerings are also mandated to conform to the provisions stipulated within this Act.

The Alcoholic Beverage Control Act enforces legal measures that prohibit the sales and consumption of alcohol beverages to individuals under 20 years of age and in specific locations like schools and temples. It also restricts sales during certain religious dates and trading hours, from 11:00 a.m. to 2:00 p.m. and 5:00 p.m. to midnight. Furthermore, the Act strictly prohibits the display of alcoholic beverage tradenames or trademarks in advertising.²⁰

¹⁷ Hotel Act B.E. 2547, Section 15.

¹⁸ Hotel Act B.E. 2547, Sections 13-14.

¹⁹ Summary Description Entertainment Spot Act B.E. 2509 <<http://report.dopa.go.th/laws/document/3/335.pdf>> accessed 30 May 2021.

²⁰ Suthimas Chandeang, 'Summary of Alcoholic Beverage Control Act B.E.2551 ' (March - April B.E. 2552) 6 Julnithi Journal, Office of the Secretariat of the Senate <https://www.senate.go.th/assets/portals/93/fileups/272/files/Sub_Jun/6new/new29.pdf> accessed 28 December 2022.

3.3.4 Excise Act B.E. 2560

The Excise Act primarily focuses on taxation, licensing controls, and zoning restrictions (e.g., schools or temples) for alcoholic beverages to strike a balance between revenue generation and public health objectives. Ministerial regulations are issued to address negative externalities associated with alcohol consumption, such as healthcare expenses and environmental impact. In order to operate a hotel bar, a liquor license is required, and it must be obtained before the opening date, adhering to the criteria set forth in the Ministerial regulations. Therefore, the Ministerial Regulations of Excise Act dated 12 September 2017 does not permit the proposed liquor license outlet to be located in a zoning area or prohibited place as specified in respective laws, such as the Alcoholic Beverage Control Act and NCPO No.22/2558.²¹

The proximity of a hotel to a prohibited area or zoning area can have a substantial influence on its eligibility to acquire a liquor license, thereby affecting its operations and business prospects. If a hotel is situated in close proximity to a prohibited area or zoning area, it may not meet the necessary criteria for obtaining a liquor license, resulting in the rejection or modification of its license application.

3.3.5 NCPO No.22/2558

NCPO No.22/2558 specifically addresses automobile and motorcycle racing, entertainment venues, zoning areas, and similar services. It includes provisions regulating the sale and consumption of alcoholic beverages in these venues or zoning areas, aiming to address issues of disorderly conduct and youth-related problems. It also prohibits liquor licensing and alcohol sales near educational institutions to close potential loopholes in existing alcohol control laws.²²

This research identifies that there are three main issues impacting hotel bar operators under the Controlling Laws: zoning provisions hindering liquor license issuance, strict regulations on trading hours and prohibited selling dates, and the need for enhanced monitoring measures in the hotel sector. Addressing these issues requires reconsidering provisions, introducing flexibility in liquor licensing, and enhancing enforcement for effective alcohol control and support to businesses in the industry.²³

²¹ Ministerial Regulation Date 12 September 2018 Regarding the Liquor License Permission, Section 5 (1).

²² Waranist Lamyai, 'Assessment of the Strategic Plan, National Alcohol Policy (2011 - 2020)'

²³ Office of the Council of State's Memorandum No.889/2564 Regarding the Establishment Venue or Establishment outlet that operates exceeding the time prohibited by applicable laws.

4. Problems with the laws of alcoholic beverage control in the hotel business in Thailand

Based on this research there are legal issues surrounding the Controlling Laws, and the studies have identified the following problems that have had an impact on the hotel business:

4.1. Licensing problem

4.1.1 Zoning areas from NCPO No.22/2558

The zoning areas outlined in the NCPO No.22/2558 encompass a range of locations, including educational institutions, dormitories, and their surrounding areas. These designated areas explicitly prohibit the establishment of alcoholic beverage-serving establishments and the sale and consumption of alcoholic beverages.²⁴ This regulation aim to prevent the sale of alcohol to minors, maintain order in public places, regulate the behavior of intoxicated individuals, and reduce the risks associated with excessive alcohol consumption.

As a result, alcoholic beverage-serving establishments located within these designated zoning areas are precluded from obtaining liquor licenses. This has resulted in a significant reduction in incidents of disorderly conduct, underage drinking, and the issuance of new liquor licenses near educational institutions. This research delves into the complex interplay between zoning regulations, alcoholic beverage control legislation, and the interests of hotel bar operators. It conducts an in-depth analysis of the regulatory approaches in California and New South Wales concerning alcoholic beverage control within designated zoning areas.

In California, the California Alcoholic Beverage Control Act adopts a balanced approach benefiting both business owners and local communities. It requires applicants to comply with certain licensing conditions, such as maintaining distance from schools and residential areas. However, applicants can demonstrate that their liquor license will not adversely affect residents' morals and property use.²⁵

However, the community and public-based licensing, as seen in New South Wales, offers an alternative solution to address high-impact areas or designated zoning areas. The Cumulative Impact Assessment strategy²⁶ allows for careful evaluation of new liquor license applications in these areas, considering potential negative impacts on the community. It encourages public input and feedback to ensure responsible and sustainable

²⁴ The letter of zoning area definition and description under Mandate of National Council for Peace and Order No. 22/2558 made and released by the Excise Department. <<https://www.excise.go.th/cs/groups/public/documents/document/dwnt/mjuy/~edisp/uatucm252004.pdf>>.

²⁵ Business and Professions Code Sections 23300 – 23355.

²⁶ Liquor Act 2007, Sections 72A – 72H.

liquor license provisions. The New South Wales authority takes a cautious approach to high-risk venues, requiring applicants to demonstrate significant community benefits beyond standard requirements. This approach protects the rights of hotel bars and other establishments while enhancing business opportunities in high-impact areas.

To create a fair approach, consider exempting licensed hotels from the zoning provision in Section 6 of NCPO No.22/2558. Hotel bars are typically safer, and operators are responsible for preventing disorderly conduct.

4.1.2 Licensing application and approval process

The licensing process must strictly adhere to the provisions in the framework, including zoning requirements outlined in the Ministerial Regulations dated 12 September 2017 determining the liquor license issuance procedure under the Excise Act. However, applicants face limited opportunities to defend their case, especially in zoning areas, leading to challenges and unfair trade competition.

It is essential to acknowledge that hotel bars are often located in private zones, causing minimal disruption to the community. However, the current process of obtaining a liquor license for hotel premises within zoning areas lacks flexibility and fairness, making it difficult to obtain approval despite the limited impact on the surrounding community.

For example, California Alcoholic Beverage Control Act adopts a community and public-based approach, involving local communities and stakeholders such as police departments, sheriff's offices, municipal councils, and planning departments to assess potential harm to the community before granting a license. This process ensures that applicants are permitted to operate a business and sell alcohol at the proposed location, increasing transparency and accountability in the licensing process.

In New South Wales, the process of liquor license application adopts a community and public-based approach through the requirement of a Community Impact Statement (CIS). This statement provides a comprehensive assessment of the potential impact of a liquor license on the surrounding neighborhood and areas, addressing related issues and concerns. Its purpose is to enable the authority to make well-informed decisions regarding license approval, particularly for higher-risk categories like bar, hotel, and club. By involving the local community and considering their perspectives, the CIS aims to ensure fairness and accountability in the granting of liquor licenses.

These examples illustrate the efficacy of incorporating measures that consider the interests and concerns of both business owners and the local community. By adopting similar community and public-based licensing approaches within the Thai regulatory framework, it would be feasible to achieve a harmonious balance between economic interests and the preservation of social order and public welfare.

4.1.3 Discretionary power of authority

This study emphasizes that the wide discretionary authority of government agencies in granting liquor licenses, as outlined in the Ministerial Regulations dated 12 September 2017 under the Excise Act, is excessively stringent and restrictive. This lack of flexibility poses challenges for licensed liquor outlets or hotels.

The discretionary power in granting liquor licenses does not comply with the rule of law, particularly the principle of proportionality. The current approach lacks consideration of necessity and proportionality in administrative decisions. Necessity requires choosing the least intrusive measures that protect individual rights and state interests. Proportionality demands a balance between public and private sector benefits and interests. When discretionary decisions cause significant harm with minimal benefits, they violate the rule of law.²⁷

4.2 The alcoholic beverage control regulations problem

The alcoholic beverage control regulations are another significant problem identified in this study as the provision under the Controlling Laws effect the hotel bar operator.

This research also examines how the Controlling Laws, in terms of: (i) monitoring aspect under Alcoholic Beverage Control Act, and particularly the (ii) licensing regulations under the Ministerial Regulations dated 12 September 2017 determining the liquor license issuance procedure under Excise Act, do not sufficiently guarantee fundamental rights and liberties under those existing in the Thai Constitution B.E. 2560.

Thai Constitution B.E. 2560, through Section 25, guarantees the rights and liberties of the Thai people, subject to limitations on national security, public order, good morals, and the rights of others. Section 26 emphasizes protecting individuals from laws that violate their rights and must meet specific conditions to ensure fairness, reasonableness, and respect for human dignity. Additionally, Section 40 grants equal rights for pursuing occupations and businesses, promoting economic opportunities without interference.

This research suggests conducting a comprehensive review and evaluation of the alcoholic beverage control laws, considering Section 77²⁸ of the Thai Constitution B.E. 2562

²⁷ Office of the Council of State Working group to study and draft rules on discretion of state officials, Introduction to Discretion of Government Officials (Office of the Council of State no publication date) <<https://www.krisdika.go.th/data/article77/filenew/03-4-1.pdf>> accessed 27 May 2023.

²⁸ Thai Constitution B.E. 2560, Section 77. Para 2.

“..... When the law has come into force, the State should undertake an evaluation of the outcomes of the law at every specified period of time, for which consultation with stakeholders shall be conducted, with a view to developing all laws to be suitable to and appropriate for the changing contexts.”

and Section 34²⁹ of the Act on Legislative Drafting and Evaluation of Law B.E. 2562. The aim is to reassess the consequences of law enforcement, including whether it aligns with its objectives, justifies the burden on the state and individuals, and identifies any potential unfair effects on individuals.

4.3 Monitoring problems

Inadequate monitoring hinders the effective management of alcohol-related concerns. It is recommended to adopt comprehensive monitoring systems and introduce additional legal measures to encourage responsible alcohol practices within hotels.

4.3.1 Date and time

The problem of prohibited dates, as identified in this study, poses a significant challenge for hotel bar operators in Thailand. The restrictions on sales dates imposed on the Announcements issued under Alcoholic Beverage Control Act can have adverse effects on hotel operations. Alcoholic beverage control laws impact operations, with 30.8% reporting negative effects and 31.6% relying on alcohol sales for revenue.³⁰

Examples are the prohibition of the sale of alcoholic beverages on certain religious holidays,³¹ such as Magha Puja Day, Visakabucha Day, Asanhabucha Day, Khaophansa Day, and Okphansa Day, with exceptions for duty-free shops at airports. Additionally, the trading hours for alcoholic beverage shall be 11:00 a.m. and 2:00 p.m., and from 5:00 p.m. to midnight, excluding sales at airports and licensed entertainment venues governed by the Entertainment Spot Act.³²

²⁹ Act on Legislative Drafting and Evaluation of Law B.E. 2562, Section 34 “The evaluation of outcomes shall be carried out at least every five years during the period of enforcement of that law or in other recurring time period as prescribed in the Ministerial Regulation or when one of the following cases applies:

- (1) receive a petition or recommendation letter from relevant organisations or from the people and the Minister who has charge and control opines that such a petition or recommendation letter is reasonable;
- (2) received a recommendation from the Law Reform Commission;
- (3) other cases as prescribed prescribed in the Ministerial Regulations.”

³⁰ Superpoll Limited, ‘Complete Report Urgent Poll Project (POLL) Public Opinion Against the Demands of Business Groups to Amend the Alcoholic Beverage Control Law’ (November 2017) <<https://cas.or.th/wp-content/uploads/2019/07/62.60-AC-0024-SUPER-POLL-โพลเร่งด่วน-กลุ่มธุรกิจเรียกร้อง-2.pdf>> accessed 28 June 2023.

³¹ Announcement of the Prime Minister’s Office Subject: Determining the Date Prohibiting the Sale of Alcoholic Beverages (No. 3) B.E.2558 dated 5 February 2015, Section 2.

³² Announcement of the Prime Minister’s Office Subject: Determining the Time Prohibiting the Sale of Alcoholic Beverages B.E.2558 dated 6 January 2015, Section 1.

The research recommends the addition of necessary provisions to exempt hotels as venues for sales and consumption during specific dates and periods.

4.3.2 Legal measures

Legal measures under the Controlling Laws are not relatively covering all aspects; they need certain improvement in terms of prevention of alcohol use by minors, responsible servers, training program for servers, and intoxication management. Good legal measure could be from California and New South Wales laws, *as follows*:

Firstly, the legal measures for operation of the premises. The legal measures pertaining to the licensed entertainment spots should apply to hotel bars which are categorized as a similar type of entertainment spot regardless if its trading hours ends before or after midnight. The research findings indicate that the legal categorization of hotel bars as entertainment spots lacks clarity, leading to challenges in their regulation. The existing legal framework does not fully encompass the operation of hotel bars, resulting in the enforcement of NCPO No.22/2558 to regulate these establishments. However, a comprehensive review and potential amendment of the relevant laws are necessary to ensure proper regulation and monitoring of hotel bars, while also promoting responsible serving practices and supporting tourism promotion objectives.³³

Secondly, the Alcoholic Beverage Control Act should enhance the legal measures concerning minors and alcohol consumption, the existing legal framework should be amended and expanded beyond limiting alcohol consumption to those aged 20 and verifying identification cards. Additional measures should be introduced, including the implementation of zoning regulations and penalties for those who sell alcohol to minors. This is necessary as the existing legal framework falls short in adequately mitigating the potential risks associated with all alcohol-related harms to minors. Moreover, an additional legal measure must be established to effectively prevent the supply of alcohol beverages to minors., such as the decoy program of California law to randomly buy alcohol beverages at an alcoholic premise by volunteer minors supervised by government officials to ensure the licensed premise does not sell alcohol to minors. And to have the “tap shoulder” program from California law, in order to prevent an adult buying alcohol beverage for minors.

In New South Wales, it is required by law to display signage at the premise in a different scenario such as: (i) to display the signage for not permitting a person under age of 20 to enter the licensed premise during the trading hours; and (ii) to display a signage

³³ The Office Memo Council of State Regarding the Establishments open for service in a manner similar to entertainment spot under Clause 4 of the Mandate of the National Council for Peace and Order No. 22/2558, dated 22 July 2015 (according to the completed matter No. 92/2560) P6.

that allow a person under age of 20 to the license premise with guardian.³⁴ This is a legal measure that gives notice to a patron or minor not to enter to the licensed premise, otherwise they are subject to an offense and penalty.

Lastly, the research emphasizes the significance of responsible server programs for alcoholic beverages as a highly effective measure in preventing alcohol-related harms. In accordance with the California Alcoholic Beverage Control Act³⁵ and New South Wales Liquor Act³⁶, licensed premises are mandated to have servers who have undergone proper training and hold valid certifications in responsible serving. The study demonstrates that responsible server training plays a crucial role in significantly reducing alcohol-related harms within the premises by effectively preventing intoxication.

4.4.1 Recommendations

4.4.1 Review and evaluation of existing controlling Law

This research sheds light on how the current provisions in the Controlling Laws, specifically regarding monitoring measures under the Alcoholic Beverage Control Act and licensing regulations under the Ministerial Regulations dated 12 September 2017 determining liquor license issuance procedure under the Excise Act, may not adequately safeguard fundamental rights and liberties as enshrined in the Thai Constitution B.E.2560. Periodic review of alcoholic beverage regulations is crucial to ensure their relevance amidst changing societal dynamics. The hotel industry seeks government support for tourism, facing challenges from these laws. Since these alcoholic beverage control laws have been in effect for over 5 years, flexibility and updates are necessary to adapt to evolving social contexts and lifestyles.

This research suggests to conduct a review and evaluation of these alcoholic beverage control laws in accordance with Section 77 of the Thai Constitution B.E.2560,³⁷ in association with Section 34³⁸ of the Act on Legislative Drafting and Evaluation of Law

³⁴ New South Wales Government, Fact Sheet FS3078: Liquor Law Signs <<https://www.liquorandgaming.nsw.gov.au/documents/fs/fs3078-liquor-law-signs.pdf>> accessed on 23 June 2023.

³⁵ California Department of Alcoholic Beverage Control, Responsible Beverage Service (RBS) Training Program <<https://www.abc.ca.gov/education/rbs/>> accessed 24 May 2023.

³⁶ Liquor Regulation 2018, Section 63.

³⁷ Thai Constitution B.E. 2560, Section 77. Para 2.

“..... When the law has come into force, the State should undertake an evaluation of the outcomes of the law at every specified period of time, for which consultation with stakeholders shall be conducted, with a view to developing all laws to be suitable to and appropriate for the changing contexts.”

³⁸ Act on Legislative Drafting and Evaluation of Law B.E. 2562, Section 34 “The evaluation of outcomes shall be carried out at least every five years during the period of enforcement of that law or in other

B.E. 2562, to re-assess the consequences of law enforcement and whether: (i) the result of such law is in accordance to its objective; (ii) it worth the burden incurred to the state and the individuals; and (iii) any effects that cause unfairness to individuals. By doing so, a more balanced and fairer regulatory framework can be established, striking an optimal balance between public welfare and individual rights, in which the hotel business or hotel bar will not be limited to fairly doing business.

4.4.2 Amendment of licensing regulation

The current process of obtaining a liquor license for hotel premises in a zoning area provides limited opportunities for success and lacks fairness, as the supervision conducted by officials under the licensing legislation lacks flexibility. It is suggested to adopt the community and public based licensing approach from the California Alcoholic Beverage Control Act to the Thai legal framework to reduce the current problem in licensing and create less burdens and difficulties to the hotel operator.

As a result, this research suggests to revise the: (a) NCPO No.22/2558, Section 6 to exempt licensed hotel under the Hotel Act from the zoning area; and (b) the Ministerial Regulations dated 12 September 2017 determining the liquor license issuance procedure under the Excise Act, to have additional measures in the approval process which are: (i) to exempt a licensed hotel under the Hotel Act from prohibited places to sales of alcoholic beverage as well as the zoning area in Section 5 (2); and (ii) to have a community and public based licensing approach as part of the liquor license approval process in Section 6.³⁹

4.4.3 Amendment of Alcoholic Beverage Control Act

Firstly, this research suggests imposing duties on entertainment spots under the Entertainment Spot Act as necessary for promoting safe consumption and responsible servers. Suggest amending the Alcoholic Beverage Control Act, in Chapter IV, Alcoholic

recurring time period as prescribed in the Ministerial Regulation or when one of the following cases applies:

- (1) receive a petition or recommendation letter from relevant organisations or from the people and the Minister who has charge and control opines that such a petition or recommendation letter is reasonable;
- (2) received a recommendation from the Law Reform Commission
- (3) other cases as prescribed prescribed in the Ministerial Regulations.”

³⁹ Kamnuan Ungchusak, Phonthep Wichitkunakorn, Sawitree Assanangkornchai, Srirat Lapyai, Muhammad Fahmi Talee, Aratchamon Pichetworakul, Orathai Waleewong, Pornphol Thethong, Samai Korthinthakhom, Surasak Chaisong, Udomsak Sae-Gaw, ‘Policy Recommendations for Alcohol Control Measures in Thailand’ (2022) Vol.1 No.4 October - December 2022 Thai Health Promotion Journal.

Beverage Control, adding additional provisions to impose liability of hotel bar or similar establishments as a whole for general management of the premises as follows:⁴⁰

Minors: (i) prohibiting the employment of individuals under 18 years of age in a licensed establishment, and (ii) restricting entry of individuals under 20 years of age, who are not employees, from entering the premises during business hours.

Intoxication: (i) prohibiting entry of individuals who are visibly intoxicated or behaving inappropriately or are unconscious during business hours, and (ii) refraining from selling liquor to customers who are intoxicated to the point of exhibiting disorderly behavior or impaired consciousness.

Licensed establishment management: (i) regulating performance to prevent obscene or indecent behavior, (ii) enforcing specified opening-closing hours in accordance with the law, (iii) verifying the age of all individuals entering the establishment through official identification, (iv) preventing drug-related offenses within the premises, (v) prohibiting the presence of weapons, (vi) promptly reporting incidents to administrative or police officials, (vii) facilitating inspections by administrative or police officers, and (viii) conducting business in a manner that upholds peace, order, and good morals.⁴¹

Secondly, it is recommended that licensed hotels be exempted from the Announcement the Prime Minister's Office issued under the Alcoholic Beverage Control Act dated 5 February 2015 that prohibits the sale of alcoholic beverages on certain religious holidays, Section 2, and the Announcement of Prime Minister's Office issued under the Alcoholic Beverage Control Act dated 6 January 2015 that set specific time frames for alcohol sales, from 11:00 a.m. - 14:00 p.m., and from 17:00 p.m. to midnight in Section 1, and propose new trading hours for consumption in licensed hotels from 10:00 a.m. to 1:00 a.m. as an additional provision in Section 1.⁴²

Lastly, to ensure safe and responsible alcohol consumption in hotel bars, it is crucial to implement additional monitoring measures to the Alcoholic Beverage Control Act in Chapter IV, Alcoholic Beverage Control Section, as follows:⁴³

Legal measures related to minors: (i) a decoy program, similar to California's, (ii) and the implementation of mandatory signage, as seen in New South Wales.

Legal measure related to intoxication: Incorporating a responsible server program. This program requires servers and bartenders at licensed premises to undergo training and obtain certification in responsible serving practices, the goal is to enhance the protection

⁴⁰ Thai Constitution B.E. 2560, Section 77.

⁴¹ Paisan Limsathit and Jumpon Daengsakul, 'Full Report on "Study of Laws and Policies for Controlling Alcoholic Beverages in Foreign Countries to Propose Improvements of Alcohol Control Act B.E. 2551' (2021) 167 – 174 < <https://cas.or.th/?p=9990> > accessed 30 July 2023.

⁴² Phonthep Wichitkunakorn, 'Policy Recommendations for Alcohol Control Measures in Thailand' (n39).

⁴³ Ibid.

of minors and ensure the responsible supply and consumption of alcoholic beverages within the licensed premises.

5. General conclusions

To address current issues in monitoring and legal measures within the Alcoholic Beverage Control Act, Ministerial Regulations dated 12 September 2017 determining the liquor license issuance procedure under the Excise Act, and NCPO No.22/2558, this study recommends adopting aspects of the California Beverage Control Act and the New South Wales Liquor Act to harmonize alcohol control and equitable business practices in the hotel sector. This involves periodic assessments and adaptable policies for a sustainable regulatory framework. zoning regulations should exempt licensed hotels for more suitable alcohol license locations. Simplifying license applications via a community-based approach enhances transparency and fairness in decision-making. Providing hotels with flexibility in alcohol sale dates corresponds responsibly to events and demand. Introducing additional monitoring measures, like responsible server training and a minor decoy program, is advisable. Engaging stakeholders and conducting impact evaluations are essential for effective implementation.