

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 445

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO WINE; AMENDING SECTION 23-1303, IDAHO CODE, TO REVISE A DEFINITION,  
2 TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING  
3 SECTION 23-1325, IDAHO CODE, TO PROVIDE FOR PERSONALIZED LABELS UNDER  
4 CERTAIN CONDITIONS, TO PROVIDE FOR CUSTOMIZED PRIVATE LABELS UNDER CER-  
5 TAIN CONDITIONS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION  
6 23-1328, IDAHO CODE, TO PROVIDE EXCEPTIONS TO PROVISIONS REGARDING LABELS  
7 FOR PERSONALIZED LABELS AND CUSTOMIZED PRIVATE LABELS AS SET FORTH  
8 IN SPECIFIED LAW, TO PROVIDE THAT A WINERY MAY SELL CERTAIN PRODUCTS, TO  
9 PROVIDE AN EXCEPTION TO PROVISIONS REGARDING DISTRIBUTOR REQUIREMENTS  
10 AS TO RETAILERS FOR PERSONALIZED LABELS AND CUSTOMIZED PRIVATE LABELS  
11 AND TO MAKE TECHNICAL CORRECTIONS.  
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Section 23-1303, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16 23-1303. DEFINITIONS. (1) The following terms as used in this chapter  
17 are hereby defined as follows:

18 (a) "Customized private label" means a wine container label, affixed  
19 by a winery or vintner, that meets the minimum mandatory label re-  
20 quirements set forth by federal law and regulations adopted pursuant  
21 thereto, and that is customized for a hotel or restaurant that holds a  
22 retail wine license that wants to have a special label appear on the con-  
23 tainer, provided that the label is approved by the alcohol and tobacco  
24 tax and trade bureau of the United States department of the treasury. A  
25 customized private label may contain trade names, trademarks, words,  
26 images, symbols or other marks identifying the hotel or restaurant to  
27 which the bottled container is delivered.

28 (b) "Dessert wine" means only those wines that contain more than six-  
29 teen percent (16%) alcohol by volume, but do not exceed twenty-four  
30 percent (24%) alcohol by volume, are grape-based, and are fortified  
31 through the addition of sugar, wine and distilled alcohol such as a  
32 grape or fruit brandy. Dessert wine as defined herein shall not be  
33 deemed to be a spirit-based beverage for the purposes of paragraph (g)  
34 of this subsection. Dessert wine as defined in this subsection shall  
35 not include marsala or aromatized wines such as vermouth, quinquina and  
36 americano.

37 (bc) "Director" means the director of the Idaho state police.

38 (ed) "Distributor" means a person to whom a wine distributor's license  
39 has been issued.

40 (de) "Domestic produced product" means wine at least seventy-five  
41 percent (75%) of which by volume is derived from fruit or agricultural  
42 products grown in Idaho.

1 (f) "Hard cider" means any alcoholic beverage containing not more than  
2 sixteen percent (16%) alcohol by volume obtained by the fermentation of  
3 the natural sugar content of pome fruit.

4 (g) "Hotel" means a premises that includes a building or structure  
5 kept, used, maintained or advertised as an inn, hotel, motel, bed and  
6 breakfast, or public lodging house, or place where sleeping accommo-  
7 dations are furnished for hire to transient guests, whether with or  
8 without meals, in which more than ten (10) rooms, or in the case of a bed  
9 and breakfast more than four (4) rooms, are used for the accommodation  
10 of such guests.

11 (eh) "Importer" means a person to whom a wine importer's license has  
12 been issued.

13 (fi) "Live performance" means a performance occurring in a theater and  
14 not otherwise in violation of any provision of Idaho law.

15 (gj) "Low proof spirit beverages" means any alcoholic beverage con-  
16 taining not more than fourteen percent (14%) alcohol by volume obtained  
17 by distillation mixed with drinkable water, fruit juices and/or other  
18 ingredients in solution. These products shall be considered and taxed  
19 as wine. Spirit-based beverages exceeding fourteen percent (14%) al-  
20 cohol by volume shall be considered as liquor and sold only through the  
21 division system.

22 (hk) "Person" includes an individual, firm, copartnership, associa-  
23 tion, corporation, or any group or combination acting as a unit, and  
24 includes the plural as well as the singular unless the intent to give a  
25 more limited meaning is disclosed by the context in which it is used.

26 (l) "Personalized label" means a wine container label, affixed by a  
27 winery or vintner, that meets the minimum mandatory label requirements  
28 set forth by federal law and regulations adopted pursuant thereto, and  
29 that is customized for a particular or unique consumer of wine who wants  
30 to have a special label appear on the container, provided that the label  
31 is approved by the alcohol and tobacco tax and trade bureau of the United  
32 States department of the treasury. A personalized label may contain  
33 trade names, trademarks, words, images, symbols or other marks identi-  
34 fying the consumer to whom the bottled container is delivered.

35 (m) "Restaurant" means a premises that is:

36 (1) A hotel;

37 (2) A railroad dining car; or

38 (3) Any other restaurant, café, coffee shop, cafeteria or other  
39 establishment maintained, advertised and held out to the public as  
40 primarily a food eating establishment, where individually priced  
41 meals are prepared and regularly served to the public, primarily  
42 for on-premises consumption, provided that such establishment:

43 (i) Has a dining room or rooms;

44 (ii) Has a kitchen and cooking facilities, or other area  
45 used for the preparation of food;

46 (iii) Has the number and type of employees normally used in  
47 the preparing, cooking and serving of meals;

48 (iv) Has an established menu identifying the individually  
49 priced meals, food items and, if any, nonalcoholic beverages  
50 for consumption;

1           (v) Serves and prepares food and, if any, nonalcoholic beverages on the premises, the same being served and prepared by employees of the establishment;

2           (vi) Has stoves, ovens, refrigeration equipment or such other equipment on the premises that are usually and normally found in establishments of its type; and

3           (vii) Can demonstrate through business records that the establishment is advertised and held out to the public as primarily a food eating establishment, or that at least forty percent (40%) of the establishment's consumable purchases are derived from purchases of food and nonalcoholic beverages.

4           (~~i~~n) "Retailer" means a person to whom a retail wine license has been issued.

5           (~~j~~o) "Retail wine license" means a license issued by the director, authorizing a person to sell table wine and/or dessert wine at retail for consumption off the licensed premises.

6           (~~k~~p) "Table wine" shall mean any alcoholic beverage containing not more than sixteen percent (16%) alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

7           (~~l~~g) "Theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

8           (~~m~~r) "Vintner" means a person who manufactures, bottles, or sells table wine or dessert wine to importers for resale within this state other than a licensed "winery" as herein defined.

9           (~~n~~s) "Wine" includes table wine and dessert wine, unless the context requires otherwise.

10          (~~o~~t) "Wine by the drink license" means a license to sell table wine or dessert wine by the individual glass or opened bottle at retail, for consumption on the premises only.

11          (~~p~~u) "Wine distributor's license" means a license issued by the director to a person authorizing such person to distribute table wine or dessert wine to retailers within the state of Idaho.

12          (~~q~~v) "Wine importer's license" means a license issued by the director to a person authorizing such person to import table wine or dessert wine into the state of Idaho and to sell and distribute such wines to a distributor.

13          (~~r~~w) "Winery" means a place, premises or establishment within the state of Idaho for the manufacture or bottling of table wine or dessert wine for sale. Two (2) or more wineries may use the same premises and the same equipment to manufacture their respective wines, to the extent permitted by federal law.

14          (~~s~~x) "Winery license" means a license issued by the director authorizing a person to maintain a winery.

15          (2) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and accepted meanings.

1 SECTION 2. That Section 23-1325, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 23-1325. FINANCIAL INTEREST IN OR AID TO RETAILERS PROHIBITED -- CER-  
4 TAIN AID PERMITTED. (1) It shall be unlawful for any importer, distributor,  
5 vintner or winery, directly or indirectly, or through an affiliate, sub-  
6 sidiary, officer, director, agent or employee:

7 (a) To have any financial interest in any licensed retailer's business,  
8 or to own or control any real property upon which a licensed retailer  
9 conducts his business, except that this subsection ~~(1)(a)~~ shall not ap-  
10 ply to any winery, as defined in section 23-1303, Idaho Code, or to prop-  
11 erty that has been owned or controlled continuously for more than one  
12 (1) year prior to July 1, 1975; or

13 (b) To aid or assist any licensed retailer by giving such retailer, or  
14 any employee thereof, any discounts, premiums or rebates in connection  
15 with any sale of wine; or

16 (c) To aid or assist any retailer by furnishing, giving, renting, lend-  
17 ing or selling any equipment, signs, supplies, wine menus or wine lists,  
18 services, or other thing of value ~~which~~ that may be used in conducting  
19 the retailer's retail wine business, except as expressly permitted by  
20 this chapter; or

21 (d) To enter into any lease or other agreement with any retail licensee  
22 to control the product or products sold by such retailer; or

23 (e) To provide for any rental or other charge to be paid to or by the re-  
24 tailer for product display or advertising display space.

25 (2) An importer, distributor, vintner or winery as an incident to mer-  
26 chandising in the ordinary course of business, and if available to all li-  
27 censed retailers without discrimination, may sell to a retailer equipment,  
28 supplies or clothing ~~which~~ that may be used in conducting the retailer's re-  
29 tail wine business. A winery, vintner, importer or distributor may not sell  
30 such equipment or supplies at a price, or under terms, intended or designed  
31 to encourage or induce the retailer to use products of the seller to the ex-  
32 clusion of the products of other wineries, vintners, importers or distribu-  
33 tors. In no event shall the sales price of such equipment or supplies be less  
34 than the reasonable value of such equipment or supplies.

35 (3) Notwithstanding the provisions of subsection (2) of this section,  
36 a vintner, winery, importer or distributor, as an incident to merchandising  
37 in the ordinary course of business, and if available to all retailers without  
38 discrimination, may lend, give, furnish or sell to a retailer, the following  
39 items:

40 (a) Those services, equipment, brochures and recipes authorized under  
41 the provisions of sections 23-1325A and 23-1325B, Idaho Code;

42 (b) Signs, posters, placards, designs, devices, decorations or graphic  
43 displays bearing advertising matter and for use in windows or elsewhere  
44 in the interior of a retail establishment. The importer, distributor,  
45 vintner or winery shall not directly or indirectly pay or credit the re-  
46 tailer for displaying such materials or for any expense incidental to  
47 ~~their~~ its operation;

48 (c) Newspaper cuts, mats or engraved blocks for use in retailer's ad-  
49 vertisements;

1 (d) Items such as sport schedules, posters, calendars, informational  
2 pamphlets, decals and other similar materials for display at the point  
3 of sale which bear brand advertising for wine prominently displayed  
4 thereon, and which items are intended for use by the retailer's cus-  
5 tomers off the licensed premises and which items are made available to  
6 the retailer's customers for such purpose;

7 (e) Temporary signs or banners displaying a vintner's, winery's or dis-  
8 tributor's name, trademark or label, which signs may be permitted to be  
9 temporarily displayed on the exterior portion of the retailer premises  
10 in connection with a special event, in accordance with such rules relat-  
11 ing thereto as may be established by the director.

12 (4) A distributor may perform services incident to or in connection  
13 with the stocking, rotation and restocking of wine sold and delivered to such  
14 licensed retailer on or in such licensed retailer's storeroom, salesroom  
15 shelves or refrigerating units, including the marking or remarking of con-  
16 tainers of such wine to indicate the selling price as established by the  
17 retailer and to the arranging, rearranging, or relocating of advertising  
18 displays referred to in this section. A distributor may, with the permis-  
19 sion of the retailer and in accordance with space allocations directed by  
20 the retailer, set, remove, replace, reset or relocate all wine upon shelves  
21 of the retailer. Labor performed or schematics prepared by the distributor  
22 relating to conduct authorized pursuant to the provisions of this subsection  
23 ~~(4)~~ shall not constitute prohibited conduct.

24 (5) An importer, distributor, vintner or winery may furnish or give to  
25 a retailer authorized to sell wine for consumption on the licensed premises,  
26 for sampling purposes only, a container of wine, containing not more than  
27 sixty-four (64) ounces, not currently being sold by the retailer, and which  
28 container is clearly marked "NOT FOR SALE--FOR SAMPLING PURPOSES ONLY."

29 (6) A licensed winery may aid or assist a licensed retail wine outlet  
30 which retails exclusively the wine product of that winery and which outlet  
31 is wholly owned and operated by that winery. Two (2) or more wineries may  
32 use the same location for their respective retail wine outlets provided each  
33 outlet holds a separate retail wine license or wine by the drink license.

34 (7) Nothing in this section or in this act shall prohibit a winery or  
35 vintner from furnishing wine with a personalized label to a consumer upon the  
36 request or order of the consumer, nor shall this section or this act prohibit  
37 a distributor, importer or retailer from aiding or assisting a vintner or  
38 winery in the delivery of a wine product with a personalized label to a con-  
39 sumer upon the request or order of the consumer, provided that:

40 (a) The consumer pays all costs associated with the development, pro-  
41 duction and application of the personalized label;

42 (b) The wine product available under the personalized label must oth-  
43 erwise be available to Idaho retailers and consumers under another la-  
44 bel, and the wine product available under the personalized label must be  
45 sold for at least the same price as the wine product under its generally  
46 available other label;

47 (c) The winery or vintner providing the personalized label must keep a  
48 record of all personalized label sales for two (2) years from the date of  
49 sale, and such record must include, at a minimum, the name of the person  
50 buying the wine product, the quantity of wine product ordered and de-

1 livered, the date of sale and delivery, the price of the wine product,  
 2 the cost of production of the wine product and personalized label, and a  
 3 specimen of the personalized label; and

4 (d) The records maintained pursuant to paragraph (c) of this subsection  
 5 shall be made promptly available to the director for inspection upon the  
 6 director's request or demand.

7 (8) Nothing in this section or in this act shall prohibit a winery or  
 8 vintner from furnishing wine with a customized private label to a hotel or  
 9 restaurant with a retail wine license upon the request or order of the hotel  
 10 or restaurant, nor shall this section or this act prohibit a distributor or  
 11 importer from aiding or assisting a vintner or winery in the delivery of a  
 12 wine product with a customized private label to a hotel or restaurant with  
 13 a retail wine license upon the request or order of the hotel or restaurant,  
 14 provided that:

15 (a) The hotel or restaurant pays all costs associated with the develop-  
 16 ment, production and application of the customized private label;

17 (b) The wine product available under the customized private label must  
 18 otherwise be available to Idaho retailers and consumers under another  
 19 label, and the wine product available under the private customized la-  
 20 bel must be sold for at least the same price as the wine product under its  
 21 generally available other label;

22 (c) The winery or vintner providing the customized private label must  
 23 keep a record of all customized private label sales for two (2) years  
 24 from the date of sale, and such record must include, at a minimum, the  
 25 name of the person buying the wine product, the quantity of wine product  
 26 ordered and delivered, the date of sale and delivery, the price of the  
 27 wine product, the cost of production of the wine product and customized  
 28 private label, and a specimen of the customized private label; and

29 (d) The records maintained pursuant to paragraph (c) of this subsection  
 30 shall be made promptly available to the director for inspection upon the  
 31 director's request or demand.

32 (9) Every violation of the provisions of this section by an importer,  
 33 distributor, vintner or winery in which a licensed retailer shall have  
 34 actively participated shall constitute a violation on the part of such li-  
 35 icensed retailer.

36 SECTION 3. That Section 23-1328, Idaho Code, be, and the same is hereby  
 37 amended to read as follows:

38 23-1328. RETAILER'S NAME ON LABELS ~~PROHIBITED~~ -- DISCRIMINATION AMONG  
 39 RETAILERS PROHIBITED. (1) Except as authorized by section 23-1325(7) and  
 40 (8), Idaho Code, nNo label on a wine container shall be used or placed thereon  
 41 which indicates that a retailer is the producer or the bottler thereof or  
 42 which contains the name of a retailer in any manner, ~~except in the case of~~  
 43 wineries.

44 (2) A winery licensed under this chapter, ~~in which case such winery~~ may  
 45 sell a product processed and bottled by or for that winery upon satisfaction  
 46 of all terms and conditions of this chapter relating to licensure for retail  
 47 sale of wine.

48 (3) Except with regard to wine containers marked with a personalized  
 49 label or customized private label, nNo distributor shall restrict the sale

1 of wine for which the distributor has filed a price schedule in accordance  
2 with the provisions of this act to one (1) retailer or to a retail premises  
3 under common ownership or associated together in, by, or through a buying or-  
4 ganization or agency ~~which~~ that represents a common identity to the public;  
5 nor shall such distributor refuse to sell or distribute wine to a retailer  
6 on terms and conditions different from those terms and conditions upon which  
7 said distributor sells or distributes wine to other retailers.