

IN THE SENATE

SENATE BILL NO. 1089

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO BEER AND WINE LICENSES; AMENDING SECTION 23-942, IDAHO CODE,  
2 TO REVISE THE DEFINITIONS OF "LICENSEE" AND "PLACE"; AMENDING SECTION  
3 23-1001, IDAHO CODE, TO REVISE THE DEFINITION OF "PREMISES" AND TO ADD  
4 A DEFINITION OF "MOBILE OR TEMPORARY FOOD COURT"; AMENDING SECTION  
5 23-1010, IDAHO CODE, TO PROVIDE REFERENCE TO MOBILE OR TEMPORARY FOOD  
6 COURT AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 10, TITLE 23,  
7 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 23-1011C, IDAHO CODE, TO  
8 PROVIDE FOR A LICENSE TO SELL BEER AT A PLACE; AMENDING SECTION 23-1303,  
9 IDAHO CODE, TO ADD A DEFINITION OF "MOBILE OR TEMPORARY FOOD COURT," TO  
10 REVISE THE DEFINITION OF "WINE BY-THE-DRINK LICENSE" AND TO MAKE TECH-  
11 NICAL CORRECTIONS; AMENDING CHAPTER 13, TITLE 23, IDAHO CODE, BY THE  
12 ADDITION OF A NEW SECTION 23-1307B, IDAHO CODE, TO PROVIDE FOR A LICENSE  
13 TO SELL WINE BY-THE-DRINK AT A PLACE; AND DECLARING AN EMERGENCY.  
14

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

16 SECTION 1. That Section 23-942, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 23-942. DEFINITIONS. The following definitions shall apply in the in-  
19 terpretation of the enforcement of this act:

20 (a) "Licensee" shall mean any person licensed to sell liquor by the  
21 drink at retail pursuant to the provisions of chapter 9, title 23, Idaho  
22 Code, and any person licensed to sell beer for consumption on the premises,  
23 which term shall include a mobile or temporary food court where sold pursuant  
24 to the provisions of chapter 10, title 23, Idaho Code, or county or municipal  
25 ordinance.

26 (b) "Place," as used in this act, means any room of any premises li-  
27 censed for the sale of liquor by the drink at retail wherein there is a bar and  
28 liquor, bar supplies and equipment are kept and where beverages containing  
29 alcoholic liquor are prepared or mixed and served for consumption therein,  
30 and any room of any premises licensed for the sale of beer for consumption on  
31 the premises wherein there is a bar and beer, bar supplies and equipment are  
32 kept and where beer is drawn or poured and served for consumption therein,  
33 which term shall include a mobile or temporary food court as defined in sec-  
34 tion 23-1001, Idaho Code.

35 (c) "Restaurant," as used in this act, means any restaurant, cafe, ho-  
36 tel dining room, coffee shop, cafeteria, railroad dining car or other eating  
37 establishment having kitchen and cooking facilities for the preparation of  
38 food and where hot meals are regularly served to the public.

39 SECTION 2. That Section 23-1001, Idaho Code, be, and the same is hereby  
40 amended to read as follows:

1 23-1001. DEFINITIONS. As used in this chapter:

2 (a) The word "beer" means any beverage obtained by the alcoholic fer-  
3 mentation of an infusion or decoction of barley, malt and/or other ingredi-  
4 ents in drinkable water.

5 (b) The word "brewer" means a person licensed to manufacture beer.

6 (c) "Certificate of approval" means a license issued to a person whose  
7 business is located outside of the state of Idaho, who sells beer to whole-  
8 salers or brewers located within the state of Idaho.

9 (d) The term "dealer" means a person licensed to import beer into this  
10 state for sale to a wholesaler.

11 (e) The word "director" means the director of the Idaho state police.

12 (f) The words "live performance" mean a performance occurring in a the-  
13 ater and not otherwise in violation of any provision of Idaho law.

14 (g) The word "person" includes any individual, firm, copartnership,  
15 association, corporation or any group or combination acting as a unit, and  
16 the plural as well as the singular number unless the intent to give a more  
17 limited meaning is disclosed by the context.

18 (h) The word "premises" means the building, mobile or temporary food  
19 court and contiguous property owned, or leased or used under government per-  
20 mit by a licensee as part of the business establishment in the business of  
21 sale of beer at retail, which property is improved to include decks, docks,  
22 boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios,  
23 poolside areas or similar improved appurtenances in which the sale of beer at  
24 retail is authorized under the provisions of law.

25 (i) The word "retailer" means a person licensed to sell beer to con-  
26 sumers at premises described in the license.

27 (j) The word "theater" means a room, place or outside structure for per-  
28 formances or readings of dramatic literature, plays or dramatic representa-  
29 tions of an art form not in violation of any provision of Idaho law.

30 (k) The word "wholesaler" means any person licensed to sell beer to  
31 retailers, wholesalers, permittees or consumers and distribute beer from  
32 warehouse premises described in the license.

33 (l) "Mobile or temporary food court" means a facility that has one (1)  
34 or more vendors serving food including, but not limited to, hamburgers, hot  
35 dogs, sandwiches, salads and other snack foods that shall contain a place  
36 in close proximity to food vendors, which is an area where bar supplies and  
37 equipment are kept and where beer and wine are poured or served for consump-  
38 tion and contains a partition that is a structure separating the place from  
39 the remainder of the premises. Access to the structure shall be controlled  
40 to prevent minors from entering the place and shall be designed to prevent  
41 alcoholic beverages from being passed over, under or through the structure.  
42 The partition design and use must be approved by the director.

43 (m) All other words and phrases used in this chapter, the definitions of  
44 which are not herein given, shall be given their ordinary and commonly under-  
45 stood and acceptable meanings.

46 SECTION 3. That Section 23-1010, Idaho Code, be, and the same is hereby  
47 amended to read as follows:

48 23-1010. LICENSE TO SELL BEER AT RETAIL -- APPLICATION PROCEDURE AND  
49 FORM -- SHOWING OF ELIGIBILITY FOR LICENSE AND DISQUALIFICATIONS. (1) Every

1 person who shall apply for a state license to sell beer at retail shall tender  
2 the license fee to, and file written application for license with, the di-  
3 rector. The application shall be on a form prescribed by the director which  
4 shall require such information concerning the applicant, the premises for  
5 which license is sought and the business to be conducted thereon by the ap-  
6 plicant as the director may deem necessary or advisable, and which shall en-  
7 able the director to determine that the applicant is eligible and has none of  
8 the disqualifications for license, as provided for in this section. If the  
9 applicant is applying for a license solely for a theater that is presenting  
10 live performances as those terms are defined in section 23-1001, Idaho Code,  
11 the application shall so state. Such information shall include the follow-  
12 ing:

13 (a) The name and place of residence of the applicant and length of his  
14 residence within the state of Idaho, and if the applicant is a partner-  
15 ship, the names, places of residence and lengths of residence within the  
16 state of Idaho of each partner, and, if the applicant is a corporation or  
17 association, the date and place of incorporation or organization, the  
18 location of its principal place of business in Idaho and the names and  
19 places of residence of its officers, directors or members of its govern-  
20 ing board, and of the person who manages or will manage the business of  
21 selling beer at retail;

22 (b) The particular place for which the license is desired, designating  
23 the same by a street and number, if practicable, or by such other apt de-  
24 scription as definitely locates such place, and the name of the owner of  
25 the premises, which shall include a mobile or temporary food court for  
26 which the license is sought;

27 (2) The application shall affirmatively show:

28 (a) That the applicant is the bona fide owner of the business which will  
29 be engaged in the sale of beer at retail and with respect to which li-  
30 cense is sought;

31 (b) That the condition of the place, ~~or~~ building or mobile or tempo-  
32 rary food court wherein it is proposed to sell beer at retail conforms  
33 to all laws and rules of the state of Idaho and to the ordinances of the  
34 county and municipality applicable thereto relating to public health  
35 and safety and to the zoning ordinances of the municipality applicable  
36 thereto;

37 (c) That there is no stamp or permit outstanding and in force which  
38 has been issued to any person by the United States government for the  
39 premises for which license to sell beer at retail is sought which stamp  
40 or permit denotes payment of any special tax imposed by the United  
41 States government on a retail dealer in liquor or wines, unless said  
42 premises are premises for which a retail license for sale of liquor  
43 by-the-drink, issued under the provisions of chapter 9, title 23, Idaho  
44 Code, is in force and effect;

45 (d) That the individual applicant, or each partner of a partnership  
46 applicant, or a corporation applicant or an association applicant is  
47 qualified to do business within the state of Idaho;

48 (e) That the applicant, if an individual, is not less than nineteen (19)  
49 years of age;

1 (f) That within three (3) years immediately preceding the date of  
2 filing the application the applicant has not been convicted of the vio-  
3 lation of any law of the state of Idaho, any other state, or of the United  
4 States, regulating, governing or prohibiting the sale, manufacture,  
5 transportation or possession of alcoholic beverages or intoxicating  
6 liquors, or, within said time, suffered the forfeiture of a bond for  
7 failure to appear in answer to charges of any such violation;

8 (g) That within five (5) years immediately preceding the date of filing  
9 the application the applicant has not been convicted of any felony or  
10 paid any fine or completed any sentence of confinement therefor within  
11 said time;

12 (h) That within three (3) years next preceding the date of filing said  
13 application the applicant has not had any license provided for herein,  
14 or any license or permit issued to the applicant pursuant to the law  
15 of this state, or any other state, or of the United States, to sell,  
16 manufacture, transport or possess alcoholic beverages or intoxicating  
17 liquors, revoked.

18 (3) To determine qualification for a license, the director shall also  
19 cause an investigation which shall include a fingerprint-based criminal  
20 history check of the Idaho central criminal history database and the federal  
21 bureau of investigation criminal history database. Each person listed as an  
22 applicant on an initial application shall submit a full set of fingerprints  
23 and the fee to cover the cost of the criminal history background check for  
24 such person with the application.

25 (4) The affirmative showing required with respect to an applicant under  
26 paragraphs (e), (f), (g) and (h) of subsection (2) of this section shall also  
27 be required to be made with respect to each partner of a partnership appli-  
28 cant and to each incumbent officer, director or member of the governing board  
29 of a corporation or association applicant.

30 (5) The application must be subscribed and sworn to by the individual  
31 applicant, or by a partner of a partnership applicant, or by an officer or  
32 manager of a corporation or association applicant, before a notary public or  
33 other person authorized by law to administer oaths.

34 (6) If an applicant shall be unable to make any affirmative showing re-  
35 quired in this section or if an application shall contain a false material  
36 statement, knowingly made, the same shall constitute a disqualification for  
37 license and license shall be refused. If license is received on any appli-  
38 cation containing a false material statement, knowingly made, such license  
39 shall be revoked. If at any time during the period for which license is is-  
40 sued a licensee becomes unable to make the affirmative showings required by  
41 this section, license shall be revoked, or, if disqualification can be re-  
42 moved, the license shall be suspended until the same shall be removed. The  
43 procedure to be followed upon refusal, revocation or suspension of license  
44 as herein provided for shall be in accordance with the procedure set forth in  
45 this act.

46 (7) All licenses shall expire at 1:00 o'clock a.m. on the first day of  
47 the renewal month which shall be determined by the director by administra-  
48 tive rule and shall be subject to annual renewal upon proper application.  
49 The director will determine the renewal month by county based on the num-  
50 ber of current licenses within each county, distributing renewals through-

1 out the licensing year. The director may adjust the renewal month to accom-  
 2 modate population increases. Each licensee will be issued a temporary li-  
 3 cense to operate until their renewal month has been determined. Thereafter,  
 4 renewals will occur annually on their renewal month. Renewal applications  
 5 for licenses accompanied by the required fee must be filed with the direc-  
 6 tor on or before the first day of the designated renewal month. Any licensee  
 7 holding a valid license who fails to file an application for renewal of the  
 8 current license on or before the first day of the designated renewal month  
 9 shall have a grace period of an additional thirty-one (31) days in which to  
 10 file an application for renewal of the license. The licensee shall not be  
 11 permitted to sell beer at retail during the thirty-one (31) day extended time  
 12 period unless and until the license is renewed.

13 SECTION 4. That Chapter 10, Title 23, Idaho Code, be, and the same is  
 14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 15 ignated as Section 23-1011C, Idaho Code, and to read as follows:

16 23-1011C. BEER LICENSE AT A MOBILE OR TEMPORARY FOOD COURT. A license  
 17 to sell beer at a place within a mobile or temporary food court as defined  
 18 in section 23-1001, Idaho Code, shall be granted as long as the owner of the  
 19 place pays all the required fees provided by law for the license, passes the  
 20 necessary qualifications for the issuance of the license and adheres to the  
 21 provision of this title regarding the sale, transporting and storing of al-  
 22 cholic beverages. A license issued may be revoked or suspended as provided  
 23 in this chapter.

24 SECTION 5. That Section 23-1303, Idaho Code, be, and the same is hereby  
 25 amended to read as follows:

26 23-1303. DEFINITIONS. (1) The following terms as used in this chapter  
 27 are hereby defined as follows:

28 (a) "Dessert wine" means only those beverages that are designated  
 29 or labeled, pursuant to the federal alcohol administration act, as  
 30 "sherry," "~~m~~Madeira" or "port," which contain more than sixteen percent  
 31 (16%) alcohol by volume, but do not exceed twenty-one percent (21%)  
 32 alcohol by volume. Dessert wine as defined herein shall not be deemed  
 33 to be a spirit-based beverage for the purposes of paragraph (g) of this  
 34 subsection.

35 (b) "Director" means the director of the Idaho state police.

36 (c) "Distributor" means a person to whom a wine distributor's license  
 37 has been issued.

38 (d) "Domestic produced product" means wine at least seventy-five per-  
 39 cent (75%) of which by volume is derived from fruit or agricultural  
 40 products grown in Idaho.

41 (e) "Importer" means a person to whom a wine importer's license has been  
 42 issued.

43 (f) "Live performance" means a performance occurring in a theater and  
 44 not otherwise in violation of any provision of Idaho law.

45 (g) "Low proof spirit beverages" means any alcoholic beverage contain-  
 46 ing not more than fourteen percent (14%) alcohol by volume obtained by  
 47 distillation mixed with drinkable water, fruit juices and/or other in-

1        ingredients in solution. These products shall be considered and taxed as  
2        wine. Spirit-based beverages exceeding fourteen percent (14%) alcohol  
3        by volume shall be considered as liquor and sold only through the divi-  
4        sion system.

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

9        (i) "Retailer" means a person to whom a retail wine license has been is-  
10       sued.

11       (j) "Retail wine license" means a license issued by the director, au-  
12       thorizing a person to sell table wine and/or dessert wine at retail for  
13       consumption off the licensed premises.

14       (k) "Table wine" shall mean any alcoholic beverage containing not more  
15       than sixteen percent (16%) alcohol by volume obtained by the fermenta-  
16       tion of the natural sugar content of fruits or other agricultural prod-  
17       ucts containing sugar whether or not other ingredients are added.

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

21       (m) "Vintner" means a person who manufactures, bottles, or sells ta-  
22       ble wine or dessert wine to importers for resale within this state other  
23       than a licensed "winery" as herein defined.

24       (n) "Wine" includes table wine and dessert wine, unless the context re-  
25       quires otherwise.

26       (o) "Wine by-the-drink license" means a license to sell table wine or  
27       dessert wine by the individual glass or opened bottle at retail, for  
28       consumption either on the premises only or at a mobile or temporary food  
29       court.

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

33       (q) "Wine importer's license" means a license issued by the director  
34       to a person authorizing such person to import table wine or dessert wine  
35       into the state of Idaho and to sell and distribute such wines to a dis-  
36       tributor.

37       (r) "Winery" means a place, premises or establishment within the state  
38       of Idaho for the manufacture or bottling of table wine or dessert wine  
39       for sale. Two (2) or more wineries may use the same premises and the same  
40       equipment to manufacture their respective wines, to the extent permit-  
41       ted by federal law.

42       (s) "Winery license" means a license issued by the director authorizing  
43       a person to maintain a winery.

44       (t) "Mobile or temporary food court" is a facility that has one (1) or  
45       more vendors serving food including, but not limited to, hamburgers,  
46       hot dogs, sandwiches, salads and other snack foods that shall contain a  
47       place in close proximity to food vendors, which is an area where bar sup-  
48       plies and equipment are kept and where beer and wine are poured or served  
49       for consumption and contains a partition that is a structure separating  
50       the place from the remainder of the premises. Access to the structure

1        shall be controlled to prevent minors from entering the place and shall  
2        be designed to prevent alcoholic beverages from being passed over, un-  
3        der or through the structure. The partition design and use must be ap-  
4        proved by the director.

5        (2) All other words and phrases used in this chapter, the definitions of  
6        which are not herein given, shall be given their ordinary and commonly under-  
7        stood and accepted meanings.

8        SECTION 6. That Chapter 13, Title 23, Idaho Code, be, and the same is  
9        hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
10        ignated as Section 23-1307B, Idaho Code, and to read as follows:

11        23-1307B. WINE BY-THE-DRINK LICENSE AT MOBILE OR TEMPORARY FOOD  
12        COURT. A license to sell wine by-the-drink at a place within a mobile or tem-  
13        porary food court as defined in section 23-1303, Idaho Code, shall be granted  
14        as long as the owner of the place pays all the required fees provided by law  
15        for the license, passes the necessary qualifications for the issuance of the  
16        license and adheres to the provision of this title regarding the sale, trans-  
17        porting and storing of alcoholic beverages. A license issued may be revoked  
18        or suspended as provided in this chapter.

19        SECTION 7. An emergency existing therefor, which emergency is hereby  
20        declared to exist, this act shall be in full force and effect on and after its  
21        passage and approval.