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Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

TO: Senators GUTHRIE, Bernt, Wintrow and,
Representatives CRANE, Young, Gannon

FROM: Ryan Bush - Principal Legislative Drafting Attorney

DATE: July 10, 2024

SUBJECT: Temporary Rule

IDAPA 11.05.01 - Rules Governing Alcohol Beverage Control - Adoption of Temporary Rule - Docket
No. 11-0501-2402

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Ryan Bush at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Paul Headlee, Deputy Director Matt Drake, Manager Keith Bybee, Manager April Renfro, Manager Norma Clark, Manager
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IDAPA 11 – IDAHO STATE POLICE
11.05.01 – RULES GOVERNING ALCOHOL BEVERAGE CONTROL
DOCKET NO. 11-0501-2402
NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2024.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 23-616, 23-932, 23-946(b), 23-1330, and 23-1408.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The temporary rule provides clarification to recently enacted Senate Bills 1364, 1381 and 1421, which will serve Idaho's liquor licensee's and industry in navigating Title 23 and providing the ability to make informative business decisions when selling or transferring a liquor license in the future.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate and necessary for the Alcohol Beverage Control Section to continue operation and to continue serving the Idaho businesses they support and serve.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There are no changes to the fees associated with this rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Captain Rocky Gripton, Idaho State Police, (208) 884-7062, rocky.gripton@isp.idaho.gov.

DATED this 10th day of June, 2024.

Lt Colonel Bill Gardiner
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 11-0501-2402
(Only Those Sections With Amendments Are Shown.)

11.05.01 – RULES GOVERNING ALCOHOL BEVERAGE CONTROL

010. DEFINITIONS.

01. Actual Use. Actual use constitutes when a liquor license is issued to a licensee and legitimate sales of liquor by the drink are being made on a weekly basis. (7-1-24)T

02. Business. Business means any operation to carry out the normal day to day activities to exercise the privilege of holding a liquor license and operating a premises, as defined in Section 23-902(15), Idaho Code, for the purposes of Section 23-903(16)(d) (15-18), Idaho Code. (7-1-24)T

~~**03. Licensed Premises.** Any premises for which a license has been issued under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. All areas included on the floor plan submitted to the Director with the licensee’s application for a license constitute the licensed premises. In the event of loss or move of the physical licensed premises, the licensee has ninety (90) days to secure and occupy a new premises in which to display the license. All licenses must be prominently displayed in a suitable premises and remain in actual use by the licensee and available for legitimate sales of alcoholic beverages by the drink. An additional sixty (60) days may be granted by the Director, upon petition by the license holder.~~ (3-23-22)(7-1-24)T

~~**02. New Licenses.** For purposes of Section 23-908(4), Idaho Code, a “new license” is one that has become available as an additional license within a city’s limits under the quota system after July 1, 1980. The requirement of Section 23-908(4), Idaho Code, that a new license be placed into actual use by the licensee and remain in use for at least six (6) consecutive months is satisfied if the licensee makes actual sales of liquor by the drink during at least eight (8) hours per day, no fewer than six (6) days per week.~~ (3-23-22)

034. Multipurpose Arena. (3-23-22)

a. For purposes of Section 23-944(3), Idaho Code, a Multipurpose Arena is a: (3-23-22)

i. Publicly or privately owned or operated arena, coliseum, stadium, or other facility where sporting events, concerts, live entertainment, community events, and other functions are presented for a ticketed price of admission or one whose premises are leased for private events such as receptions; (3-23-22)

ii. Facility that is licensed to sell liquor by the drink at retail for consumption upon the premises; and (3-23-22)

iii. Facility that has been endorsed by the director. (3-23-22)

b. A Multipurpose Arena facility must apply annually for an endorsement on its alcohol beverage license. (3-23-22)

c. To receive a Multipurpose Arena endorsement under this Section will require the facility to have food available including, but not limited to, hamburgers, sandwiches, salads, or other snack food. The director may also restrict the type of events at a Multipurpose Arena facility at which beer, wine, and liquor by the drink may be served. The director will also consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a Multipurpose Arena facility before the director will endorse the license. (3-23-22)

d. A licensee that applies for a Multipurpose Arena endorsement must submit with the application an operating/security plan to the director and the local law enforcement agency for review and approval. Once approved, the plan remains in effect until the licensee requests a change or the director determines that a change is necessary due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan. The plan must be submitted in a format designated by the director and contain all of the following elements: (3-23-22)

- i. How the Multipurpose Arena facility will prevent the sale and service of alcohol to persons under twenty-one (21) years of age and those who appear to be intoxicated; (3-23-22)
 - ii. The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served; (3-23-22)
 - iii. Training provided to staff who serve, regulate, or supervise the service of alcohol; (3-23-22)
 - iv. The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one (1) transaction; (3-23-22)
 - v. A list of event type/categories to be held in the facility at which alcohol service is planned, along with a request for the level of alcohol service at each event; and (3-23-22)
 - vi. Diagrams and designation of alcohol service areas for each type of event category with identified restrictions of minors. (3-23-22)
- e.** Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the director and local law enforcement office showing the date and time of each event during which alcohol service is planned. The licensee must notify the director and local law enforcement at least twenty-four (24) hours in advance of any events where alcohol service is planned that were not included in the monthly schedule. (3-23-22)
- f.** To prevent persons who are under twenty-one (21) years of age or who appear intoxicated from gaining access to alcohol, the director may require that an operating plan include additional mandatory requirements if it is determined that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one (21) years of age or who are apparently intoxicated from obtaining alcohol. (3-23-22)
- g.** If premises, licensed as a Multipurpose Arena, subsequently ceases to meet the qualifications of a Multipurpose Arena, the restrictions contained in Section 23-943, Idaho Code, apply and the posting of signs as provided for in Section 23-945, Idaho Code, is required. The licensee shall advise the director, by mail, that his premises no longer constitute a Multipurpose Arena, so that the license may be modified accordingly. (3-23-22)
- 05.** Owner. An owner as stated in Section 23-903 subsections 16-18, Idaho Code, may hold the privilege to a license as between that person and the state of Idaho, and is subject to the qualifications and restrictions contained in Idaho Code Chapters 9, 10 and 13 of Title 23. (7-1-24)T
- 046.** **Partition.** A partition, as used in Section 23-944 Idaho Code, is defined as a structure separating the place from the remainder of the premises. Access through the structure to the place will be controlled to prevent minors from entering the place. The structure must be: (3-23-22)
- a.** Permanently fixed from the premises ceiling to the premises floor. (3-23-22)
 - b.** Made or constructed of solid material such as glass, wood, metal or a combination of those products. (3-23-22)
 - c.** Designed to prevent an alcoholic beverage from being passed over, under or through the structure. (3-23-22)
 - d.** All partitions must be approved by the Director. (3-23-22)
- 057.** **Place.** For the purposes of Section 23-943, Idaho Code, "Place" as defined by Section 23-942(b), for a one (1) room restaurant without a barrier or partition, refers to the immediate bar area wherein there is seating alongside a counter or barrier that encloses bar supplies and equipment that are kept, and where alcoholic beverages are mixed, poured, drawn or served for consumption. (3-23-22)
- 068.** **Restaurant.** The term Restaurant, ~~as defined by~~ found in Sections 23-903c and 23-942(c), Idaho

Code, is further defined as an establishment maintained, advertised and held out to the public as primarily a food eating establishment, where individually priced meals are prepared and regularly served to the public, primarily for on-premises consumption. The establishment must also have a dining room or rooms, kitchen and cooking facilities for the preparation of food, and the number, and type of employees normally used in the preparing, cooking and serving of meals. Primarily as defined for the purposes of ~~Section 010~~ this section, also includes that the licensee must show to the director the following: ~~(3-23-22)~~(7-1-24)T

- a. An established menu identifying the individually priced meals for consumption; (3-23-22)
- b. Food service and preparation occurs on the premises by establishment employees; (3-23-22)
- c. Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; (3-23-22)
- d. The licensee must demonstrate to the satisfaction of the Director, through appropriate 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%) , or at least sixty percent (60%) for resort city restaurant liquor licenses as set forth in Section 23-903c., Idaho Code. of the establishment's consumable purchases are derived from purchases of food and non-alcoholic beverages. ~~(3-23-22)~~(7-1-24)T

079. Stock Transfer. For the purposes of Section 23-908, Idaho Code, the sale or exchange of stock in a closely held corporation holding a license is deemed a transfer of the license. ~~However, the sale or exchange of shares in a family corporation among family members, is not a transfer.~~ ~~(3-23-22)~~(7-1-24)T

10. Transfer. Any change to a person as defined in Section 23-902(13), Idaho Code, who owns, operates, or leases an alcohol beverage license as a privilege granted by ABC except the transfer conditions set forth in Section 23-903(16)(c), Idaho Code. ~~(7-1-24)T~~

011. GENERAL PROVISIONS.

01. Delegation of Authority to License Alcoholic Beverages. The Director hereby delegates his authority for the licensing of establishments which sell alcoholic beverages, as contained in Title 23, Chapters 9, 10, and 13, Idaho Code, to the, Alcohol Beverage Control Bureau, Idaho State Police. All applications and inquiries concerning alcoholic beverage licenses must be directed to the Alcohol Beverage Control Bureau. The Alcohol Beverage Control Bureau provides forms for all applications and inquiries. Nothing contained herein interferes with the Director's supervisory authority for alcoholic beverage licensing. (Section 67-2901(4), Idaho Code). (3-23-22)

02. Authority to Stagger the Renewal of Licenses to Sell Alcohol. For the purposes of Sections 23-908, 23-1010 and 23-1316, Idaho Code, the Director may adjust the renewal month to accommodate population increases. Renewal months vary by county and are available on the Alcohol Beverage Control website. (3-23-22)

03. Premises Loss, License Display, and Actual Use Requirement. ~~(7-1-24)T~~

a. In the event of loss or move of the physical licensed premises, or reversion under Section 23-903(17), Idaho Code, a the licensee has one hundred eighty (180) days to secure and occupy a new premises in which to display the license. An additional sixty (60) days may be granted by ABC, upon petition by the license holder. ~~(7-1-24)T~~

b. All licenses must be prominently displayed in suitable premises and remain in actual use. ~~(7-1-24)T~~

04. Notification of Renewals and Administrative Actions. For the purposes of Section 23-903(18)(e), Idaho Code, the owner and lessee must include in the lease agreement a primary email contact to which the renewal notice, filings, and payment of administrative actions will be sent. ~~(7-1-24)T~~

012. TRANSFER OF ALCOHOLIC BEVERAGE LICENSES.

01. Transfer of License Subject to Sanctions. The Director of the Idaho State Police may deny the transfer of an alcoholic beverage license which is subject to possible disqualification, revocation or suspension under the provisions of Title 23, Chapters 9, 10, and 13, Idaho Code, or these rules, when an action has been filed to such effect before the Idaho State Police pursuant to Sections 23-933, 23-1037 or 23-1331, Idaho Code. (3-23-22)

~~**02. Death or Incapacity of Licensee.** In the event of the incapacity, death, receivership, bankruptcy, or assignment for the benefit of creditors of a licensee, his guardian, executor, administrator, receiver, trustee in bankruptcy, or assignee for benefit of creditors may, upon written authorization from the Alcohol Beverage Control Bureau, continue the business of the licensee on the licensed premises for the duration of the license or until the business is terminated. Any person operating the licensed premises under this regulation must submit a signed agreement that he will assume all of the responsibilities of the licensee for operation of the premises in accordance with law. A person operating licensed premises under the regulation must demonstrate to the satisfaction of the Alcohol Beverage Control Bureau that he is qualified to hold an alcoholic beverage license. A guardian, executor, administrator, receiver, trustee in bankruptcy, or assignee for benefit of creditors may renew or transfer a license so held, in the same manner as other licensees, subject to the approval of the Alcohol Beverage Control Bureau. (Sections 23-908(1), 23-1005A, and 23-1317, Idaho Code). (3-23-22)~~

02. Events Not Implicating the One Transfer Law Restriction. When any of the events occur pursuant to Sections 23-908(5)(a),(b), (d), and (e), 23-903(16-18), Idaho Code, a person must apply with ABC pursuant to Section 23-905, Idaho Code, within thirty (30) days. (7-1-24)T

a. The owner must give written notice to the agency within fifteen (15) days of the end of the license lease per Section 23-903(17), Idaho Code. (7-1-24)T

b. Any licensee that elects to apply the provisions of Section 23-903(18), Idaho Code, must notify ABC of such declaration via the lease agreement submitted with the application for transfer to the lessee. (7-1-24)T

03. Transfer Fees if Applicable. Options to purchase an incorporated city liquor license shall submit the required transfer fee when the application to transfer occurs. A refund may be requested if the option to purchase is not exercised at the end of the term. (7-1-24)T

034. Authorization to Transfer and Assignment of Privilege to Renew. Any person applying to renew a liquor license who was not the licensee at the applicable premises for the preceding year, must submit with the application to renew, a written Authorization to Transfer and Assignment of Privilege to Renew signed by the current licensee. (3-23-22)

045. Temporary Permits. When application for transfer of an alcoholic beverage license has been made, the Alcohol Beverage Control Bureau, in its discretion, may authorize issuance of a temporary permit during the review of the application, during which time the applicant for transfer may conduct business as a temporary permit holder. The permit holder, in accepting the temporary permit, is responsible for complying with all statutes and rules pertinent to the sale of alcoholic beverages. Sanctions against such permit holder, whether civil, administrative, or criminal lies with the permittee, and acceptance of the permit constitutes a waiver of any defenses by permit holder based upon the fact that the permit holder is not, technically, a licensee. The Alcohol Beverage Control Bureau may withdraw a temporary permit it has issued pursuant to this rule at any time without hearing or notice. (3-23-22)

056. Product Replacement and Credit. Any beer or wine products removed from the licensed retailer's premises by a wholesaler/distributor for quality control or public health are not considered to be a violation of Section 23-1033 or 23-1325, Idaho Code, which prohibit aid to the retailer or of Sections 23-1031 or 23-1326, Idaho Code, which prohibit extension of credit to a retailer, if: (3-23-22)

a. The packages or kegs are replaced with identical product and quantity; or (3-23-22)

b. In the instance of replacement of a partial keg of beer or wine, a credit to be redeemed on subsequent alcoholic beverage purchases by the retailer is given for the value of the unused portion; or (3-23-22)

c. In the instance of removal of product for which the identical product or quantity thereof is not immediately available to the wholesaler/distributor at the time of removal of the product, a credit is given. The credit

shall be redeemed on subsequent alcoholic beverage purchases by the retailer; or (3-23-22)

d. In the case of a licensed establishment which is in operation no less than two (2) months and no more than nine (9) months of each year, prior to its period of closure, it is apparent that product will become outdated or spoiled before the date of re-opening, a wholesaler/distributor may remove product from the retailer's premises and may give a credit to the retailer. Such credit shall be redeemed on subsequent alcoholic beverage purchases by the same retailer. (3-23-22)

e. Credit is given to a retailer for the amount paid by the retailer at the time of purchase of the product being removed by the wholesaler/distributor. (3-23-22)

067. Expiration of Licenses. When a county or city has, pursuant to Sections 23-927 and/or 23-1012, Idaho Code, passed an ordinance extending the hours of sale of liquor and/or beer to two o'clock a.m. (2:00 a.m.), all liquor and/or beer licenses in that county expire at two a.m. (2 a.m.), on the first of the renewal month of the year following their issuance. (Section 23-908(1), Idaho Code). (3-23-22)

078. Maintenance of Keg Receipts. Licensees shall retain a copy of all completed keg receipts required by Section 23-1018, Idaho Code, for a period of six (6) months. (3-23-22)

09. Continuous Operation Facilities Licenses. An existing license issued under Section 23-903(8), Idaho Code, before July 1, 2028, may be renewed annually and may be transferable through sale or lease. (7-1-24)T

013. PRIORITY LISTS.

01. Priority Lists for Incorporated City and Resort City Restaurant Liquor Licenses. The Alcohol Beverage Control Bureau maintains a priority list of applicants for those cities in which no incorporated city liquor license is available. A separate list is maintained for each city. A person, partnership, or corporation desiring to be placed on a priority list shall file a completed application for ~~an incorporated city~~ liquor license, accompanied by payment of one-half (1/2) of the annual license fee. Such application need not show any particular building or premises upon which the liquor is to be sold, nor that the applicant is the holder of any license to sell beer. Priority on the list is determined by the earliest application, and each succeeding application is placed on the list in the order received. (3-23-22)(7-1-24)T

02. Written Notification. When an incorporated city or a resort city restaurant liquor license becomes available Alcohol Beverage Control offers it in writing to the applicant whose name appears first on the priority list. ~~If the applicant does not notify the Alcohol Beverage Control Bureau in writing within ten (10) days of receipt of the notice of his intention to accept the license~~ The applicant shall have ten (10) days from the date of the receipt of the Notice of License Availability to declare their intention to accept the license. If the applicant fails to comply with this requirement, the license is offered to the next applicant in priority. (7-1-24)T

a. An applicant accepting the incorporated city license shall have a period of one hundred eighty (180) days from the date of receipt of Notice of License Availability in which to complete all requirements necessary for the issuance of the license. Provided, however, that upon a showing of good cause the Director of the Idaho State Police may extend the time period in which to complete the necessary requirements for a period not to exceed ninety (90) days. (3-23-22)(7-1-24)T

b. An applicant accepting the resort city restaurant license shall have a period of ninety (90) days from the date of receipt of Notice of License Availability in which to complete all requirements necessary for the issuance of the license. No extensions will be allowed for this license type. (7-1-24)T

03. Refusal to Accept Offer of License or Failure to Complete Application for License. (7-1-24)T

a. Where a resort city restaurant liquor license is available, an applicant must choose one (1) of the following: (7-1-24)T

i. To remain on the priority waiting list for an incorporated city license; (7-1-24)T

- ii. Proceed with the application for the resort city restaurant liquor license; or (7-1-24)T
- iii. Request a refund of the priority waiting list fee. (7-1-24)T

b. An applicant ~~who refusing refuses~~ a license offered under ~~this these~~ rules or an applicant who ~~fails is unable~~ to meet the statutory requirements for licensing, or to complete ~~his the~~ application may have ~~his their~~ name placed at the end of the priority list upon ~~his~~ request. (7-1-24)T

c. ~~Should the~~An applicant holding first place on the priority list who refuses or fails to accept ~~the either~~ license type or to complete the application within the time specified, ~~the that~~ applicant will be ~~dropped removed~~ from the priority list, the fee shall be ~~deposit~~ refunded, and the license offered to the applicant appearing next on the list. (3-23-22)(7-1-24)T

04. Limitations on Priority Lists. An applicant shall hold only one position at a time on each incorporated city priority list. An applicant must be able to demonstrate to the Director the ability to place an awarded license into actual use as required by Section 23-908(4), Idaho Code and these rules. An applicant for a place on an incorporated city liquor license priority list may not execute an inter vivos transfer or assignment of his place on the priority lists. For the purposes of this rule, “inter vivos transfer or assignment” means the substitution of any individual; partnership; corporation, including a wholly owned corporation; organization; association; or any other entity for the original applicant on the waiting list. An attempt to assign inter vivos a place on an incorporated city liquor license priority list shall result in the removal of the name of the applicant from the lists. An applicant, however, may assign his or her place on an alcoholic liquor license priority list by devise or bequest in a valid will. A place on an incorporated city liquor license priority list becomes part of an applicant’s estate upon his or her death. (3-23-22)

05. Priority Lists Where Licenses Are Available. The Alcohol Beverage Control Bureau will not maintain a list for a city in which a liquor license is available, nor for a city that does not permit retail sale of liquor. (3-23-22)