

TITLE 23
ALCOHOLIC BEVERAGES

CHAPTER 6
PENAL PROVISIONS

23-601. VIOLATION OF DUTY BY OFFICERS AND EMPLOYEES OF DIVISION. Any officer or employee of the division who shall knowingly and willfully violate any of the provisions of this act, shall be guilty of a misdemeanor; and, upon conviction, shall be punishable by a fine of not less than three hundred dollars (\$300), nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment.

[23-601, added 1939, ch. 222, sec. 901, p. 465; am. 2009, ch. 23, sec. 48, p. 66.]

23-602. UNLAWFUL MANUFACTURE, TRAFFIC IN, TRANSPORTATION, AND POSSESSION OF ALCOHOL BEVERAGE. Except as authorized by title 23, Idaho Code, any person who shall have in possession, manufacture, transport, purchase, sell, or dispose of any alcohol beverage, including any distilled spirits, beer or wine, shall be guilty of a misdemeanor, and upon conviction shall be punished as otherwise provided by law. Upon conviction of a second or subsequent violation of this section, the defendant shall be punished by a fine of not less than three hundred dollars (\$300), nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than three (3) months, nor more than one (1) year, or by both such fine and imprisonment.

[23-602, added 1939, ch. 222, sec. 902, p. 465; am. 1999, ch. 59, sec. 2, p. 151.]

23-603. DISPENSING TO A PERSON UNDER THE AGE OF TWENTY-ONE YEARS. Any person who is eighteen (18) years of age or older who shall sell, give, or furnish, or cause to be sold, given, or furnished, alcohol beverage, including any distilled spirits, beer or wine, to a person under the age of twenty-one (21) years shall be guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) per violation, or by imprisonment in the county jail for a period not to exceed one (1) year, or by both such fine and imprisonment. A second or subsequent violation of this section by the same defendant shall constitute a misdemeanor and upon conviction thereof the defendant shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) per violation, or imprisonment in the county jail for a period not to exceed one (1) year, or by both such fine and imprisonment. Notwithstanding the provisions of section 19-4705, Idaho Code, moneys received pursuant to such fines shall be deposited in the substance abuse treatment fund, as created in section 23-408, Idaho Code. Upon conviction of any person for a violation of the provisions of this section, the court shall notify the director of the Idaho state police. The director shall review the circumstances of the conviction, and if the dispensing took place at a licensed establishment or other retailer or distributor, the director may take administrative action he considers appropriate against the licensee or business including suspension of the li-

cense for not to exceed six (6) months, a fine, or both such suspension and fine.

[23-603, added 1939, ch. 222, sec. 903, p. 465; am. 1972, ch. 330, sec. 2, p. 828; am. 1987, ch. 212, sec. 3, p. 450; am. 1999, ch. 59, sec. 3, p. 152; am. 1999, ch. 397, sec. 1, p. 1112; am. 2000, ch. 469, sec. 56, p. 1508; am. 2004, ch. 192, sec. 1, p. 602; am. 2007, ch. 141, sec. 4, p. 409.]

23-604. MINORS -- PURCHASE, CONSUMPTION OR POSSESSION PROHIBITED. Any person under twenty-one (21) years of age who shall purchase, attempt to purchase, or otherwise consume or possess any alcohol beverage, including any distilled spirits, beer or wine, shall be guilty of an infraction upon a first violation and shall be guilty of a misdemeanor upon a subsequent conviction and shall be punished according to the schedule set out in section 18-1502, Idaho Code.

[23-604, added 1999, ch. 397, sec. 2, p. 1113; am. 2016, ch. 344, sec. 4, p. 990.]

23-604A. MINORS -- LIMITED USE IMMUNITY. (1) Any person under twenty-one (21) years of age who, acting in good faith and for a medical emergency:

(a) Is a person seeking or needs emergency medical assistance for himself or others;

(b) Remains on the scene until emergency medical assistance or law enforcement officers arrive; and

(c) Cooperates with emergency medical assistance and law enforcement personnel at the scene;

shall have limited use immunity such that evidence obtained solely as a result of the person having sought, received or rendered emergency medical services as set forth in this section may not be used against the person for any violation of section 23-604 or 23-949, Idaho Code, for consuming or possessing an alcoholic beverage.

(2) The provisions of this section shall have no applicability to the prosecution of any criminal charges other than the consumption or possession of an alcoholic beverage by a person under twenty-one (21) years of age under section 23-604 or 23-949, Idaho Code, and shall not prevent a prosecution based on evidence not obtained as described in subsection (1) of this section.

[23-604A, added 2016, ch. 346, sec. 1, p. 998.]

23-605. DISPENSING TO DRUNK. Any person who sells, gives, or dispenses any alcohol beverage, including any distilled spirits, beer or wine, to another person who is intoxicated or apparently intoxicated shall be guilty of a misdemeanor.

[23-605, added 1939, ch. 222, sec. 905, p. 465; am. 1999, ch. 59, sec. 4, p. 152.]

23-606. FALSE PROCUREMENT OF PERMIT OR LICENSE. Any person who procures, or attempts to procure, a permit or license under the provisions of title 23, Idaho Code, by false or fraudulent representations, or under a false or fictitious name, shall be guilty of a misdemeanor.

[23-606, added 1939, ch. 222, sec. 906, p. 465; am. 1999, ch. 59, sec. 5, p. 152.]

23-607. ADVERTISING. Except as permitted by federal statute and regulations, there shall be no public advertisement or advertising of alcoholic liquors in any manner or form within the state of Idaho.

(1) No person shall publish, exhibit, or display or permit to be displayed any other advertisement or form of advertisement, or announcement, publication, or price list of, or concerning any alcoholic liquors, or where, or from whom the same may be purchased or obtained, unless permitted so to do by the regulations enacted by the division and then only in strict accordance with such regulations.

(2) This section of the act shall not apply however:

(a) To the division.

(b) To the correspondence or general communications of the division, or its agents and employees.

A violation of this section shall constitute a misdemeanor.

[23-607, added 1939, ch. 222, sec. 907, p. 465; am. 2009, ch. 23, sec. 49, p. 66; am. 2012, ch. 113, sec. 15, p. 315.]

23-608. ADDED PENALTY -- FORFEITURE OF LICENSE OR PERMIT -- TRANSMISSION OF RECORD. Whenever, in any court in this state, a defendant is convicted of a violation of title 23, Idaho Code, or of any law of this state relating to alcohol beverages including distilled spirits, beer or wine, or in any case in which it appears that the crime was committed while the defendant was under the influence of alcohol beverages, it shall be the duty of the court to include in its judgment the forfeiture of any license or permit issued to the defendant by the division or the Idaho state police pursuant to title 23, Idaho Code, and the court shall forthwith transmit to the issuing authority a certified copy of its judgment.

[23-608, added 1939, ch. 222, sec. 908, p. 465; am. 1999, ch. 59, sec. 6, p. 152; am. 2000, ch. 469, sec. 57, p. 1508; am. 2009, ch. 23, sec. 50, p. 66.]

23-610. POSSESSION OF LIQUOR NOT SUBJECT TO REGULATION BY DIVISION -- ILLEGAL -- EXCEPTIONS. It shall be unlawful for any person, who is not a licensee as defined in chapter 9, title 23, Idaho Code, to possess more than two (2) quarts of alcoholic liquor that has not been subjected to regulation by the division, except public carriers transporting alcoholic liquor for the division. All licensees as defined in chapter 9, title 23, Idaho Code, shall have liquor to which is affixed the official seal or label prescribed by the liquor division.

[23-610, added 1939, ch. 222, sec. 910, as added by 1947, ch. 178, sec. 1, p. 435; am. 2009, ch. 23, sec. 51, p. 66; am. 2009, ch. 282, sec. 3, p. 851; am. 2010, ch. 19, sec. 3, p. 33; am. 2010, ch. 79, sec. 7, p. 137.]

23-611. OFFICERS MAY SEIZE ILLEGAL ALCOHOLIC LIQUOR. The director of the Idaho state police or any of his agents, any sheriff, constable or other peace officer who shall find any liquor, possessed, manufactured, transported, purchased, sold or disposed of by any person in violation of the provisions of this act, or any other laws of the state of Idaho, may forthwith seize and remove the same and keep the same as evidence, and upon conviction of the person, the said liquor and all packages and receptacles containing the same shall be forfeited to the state of Idaho and, in addition, persons so violating this act shall be subject to the other penalties herein prescribed.

[23-611, added 1939, ch. 222, sec. 911, as added by 1947, ch. 178, sec. 2, p. 435; am. 2012, ch. 113, sec. 17, p. 315.]

23-612. BEER, WINE OR OTHER ALCOHOLIC BEVERAGES ON PUBLIC SCHOOL GROUNDS. Every person who possesses or consumes any beer, wine or other alcoholic beverage while present at any public school function on the property of a school district is guilty of a misdemeanor. Persons under twenty-one (21) years of age who are found to be in violation of the provisions of this section because of their age shall be punished according to section 18-1502, Idaho Code.

[23-612, added 1980, ch. 389, sec. 1, p. 989; am. 1981, ch. 222, sec. 5, p. 413; am. 1982, ch. 110, sec. 4, p. 313; am. 1987, ch. 212, sec. 4, p. 450; am. 1990, ch. 344, sec. 1, p. 929.]

23-614. PROHIBITED ACTS -- MISDEMEANORS -- PENALTIES. (1) It shall be unlawful for a licensee or his agent or employee to knowingly allow or engage in any of the following kinds of conduct on his licensed premises:

(a) Any live conduct or entertainment by any person whose genitals, female areola, anal cleft, anus, or pubic hair are exposed or who is wearing transparent clothing that reveals the genitals, female areola, anal cleft, anus, or pubic hair;

(b) Any live conduct or entertainment that includes sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any act that includes the penetration, however slight, by any object into the genital or anal opening of a person's body;

(c) Any live conduct or entertainment that simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any act that simulates the penetration, however slight, by any object into the genital or anal opening of a person's body;

(d) Any live conduct or entertainment that includes the fondling of the breasts, buttocks, anus, vulva, or genitals;

(e) Individuals who are personally present and wearing or using any clothing or device that exposes in any way simulated genitals, female areola, anal cleft, anus, or pubic hair; or

(f) The showing of films, still pictures, electronic reproductions or other visual reproductions which are in violation of chapter 41, title 18, Idaho Code (indecency and obscenity), or are in violation of federal law regarding pornography, indecency or obscenity.

(2) Supervision. It shall be unlawful for a licensee to fail to supervise in person or through a manager the business for which a permit is issued.

(3) Exception. With the exception of subsection (1)(b) above, this section does not apply to any theatrical or artistic performance which, when considered as a whole and in the context that it is used, expresses matters of serious literary, artistic, scientific or political value and is:

(a) Held at a theater, concert hall, art center, museum, event center, or any other establishment or venue licensed under title 23, Idaho Code, and is held out to the public as predominately offering and which does offer such performances; or

(b) Held at a theater, concert hall, art center, museum, event center, or any other establishment or venue that does not fall within subsection (3)(a) above and is not predominately used to serve alcohol with live entertainment regulated under subsection (1)(a) through (e) of this section, but has a valid license under title 23, Idaho Code, and, if

required by the city or county, a valid permit from the city or county to serve alcohol at such performance; and

(c) Is not in violation of chapter 41, title 18, Idaho Code (indecent and obscenity), or in violation of federal law regarding pornography, indecent or obscenity.

(4) A violation of any of the provisions of this section by any agent, employee, or other person in any way acting on behalf of a licensee shall constitute a misdemeanor, and upon conviction such person shall be fined not less than the sum of one hundred dollars (\$100) nor more than the sum of three hundred dollars (\$300), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment. Any court in which a judgment of conviction is entered shall certify a copy thereof to the director, and the director shall thereupon commence administrative proceedings. The director shall review the circumstances and may take action he considers appropriate against the licensee including suspension of the license for not to exceed six (6) months, a fine, or both such suspension and fine or may revoke the license.

(5) In addition to misdemeanor violations or other criminal proceedings instituted under this section, upon sufficient proof to the director, the director shall take administrative action as provided in subsection (4) of this section against any licensee in the event any person is found to have committed any of the above proscribed acts. The proceedings shall be in accordance with provisions of the administrative procedure act.

[23-614, added 2017, ch. 280, sec. 3, p. 732.]

23-615. RESTRICTIONS ON SALE. No person licensed pursuant to title 23, Idaho Code, or his or its employed agents, servants or bartenders shall sell, deliver or give away, or cause or permit to be sold, delivered, or given away, or allowed to be consumed, any alcohol beverage, including any distilled spirits, beer or wine, to:

(1) Any person under the age of twenty-one (21) years, proof of which shall be a validly issued state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military identification card bearing a photograph and date of birth, or a valid passport.

(2) Any person actually, apparently or obviously intoxicated.

(3) An habitual drunkard.

(4) An interdicted person.

Any person under the age of twenty-one (21) years, or other person, who knowingly misrepresents his or her qualifications for the purpose of entering licensed premises or for obtaining alcohol beverages from such licensee shall be equally guilty with such licensee and shall, upon conviction thereof, be guilty of a misdemeanor.

[23-615, added 1999, ch. 59, sec. 8, p. 154.]

23-616. ALCOHOL WITHOUT LIQUID DEVICE -- POWDERED ALCOHOL. (1) As used in this section:

(a) "Alcohol without liquid device" means any machine, device or process that mixes an alcoholic product with oxygen or another gas to produce vaporized alcohol for the purpose of consumption through inhalation.

(b) "Powdered alcohol" means any powder or crystalline substance containing alcohol that is produced for direct use or reconstitution.

"Powdered alcohol" does not include alcoholic nonbeverages listed in section 23-504, Idaho Code.

(c) "Vaporized alcohol" means an alcoholic product created by mixing alcohol with oxygen or another gas to produce a vapor or mist for the purpose of consumption through inhalation.

(2) A person shall not use or offer for use, possess, purchase, sell or offer for sale an alcohol without liquid device or powdered alcohol. No person licensed pursuant to title 23, Idaho Code, or his or its employed agents, servants or bartenders shall use or offer for use, possess, purchase, sell or offer for sale an alcohol without liquid device or powdered alcohol.

(3) The Idaho state police may promulgate rules to allow for the possession, sale or use of an alcohol without liquid device or powdered alcohol by certain hospitals, universities, or pharmaceutical or biotechnology companies for bona fide research or medical purposes.

(4) A person who violates this section shall be guilty of a misdemeanor. Upon conviction or a finding of guilt of a second or subsequent violation of this section, the defendant shall be punished by a fine of not less than three hundred dollars (\$300), nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

(5) Any violation of the provisions of this section by a person licensed pursuant to title 23, Idaho Code, shall constitute grounds for the suspension and revocation of any and all such licenses issued to such person.

(6) An alcohol without liquid device or powdered alcohol as defined in this section and except as in this section authorized is hereby declared to be a public nuisance and in this title is referred to as a liquor nuisance pursuant to section 23-701, Idaho Code.

[23-616, added 2006, ch. 254, sec. 1, p. 792; am. 2016, ch. 277, sec. 1, p. 765.]