

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 bev-
 2 erages on the premises, the same being served and prepared by
 3 employees of the establishment;

4 (vi) Has stoves, ovens, refrigeration equipment or such
 5 other equipment on the premises that are usually and nor-
 6 normally found in establishments of its type; and

7 (vii) Can demonstrate through business records that the es-
 8 tablishment is advertised and held out to the public as pri-
 9 marily a food eating establishment, or that at least forty
 10 percent (40%) of the establishment's consumable purchases
 11 are derived from purchases of food and nonalcoholic bev-
 12 erages.

13 (in) "Retailer" means a person to whom a retail wine license has been
 14 issued.

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

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

22 (lq) "Theater" means a room, place or outside structure for perfor-
 23 mances or readings of dramatic literature, plays or dramatic represen-
 24 tations of an art form not in violation of any provision of Idaho law.

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

28 (ns) "Wine" includes table wine and dessert wine, unless the context
 29 requires otherwise.

30 (ot) "Wine by the drink license" means a license to sell table wine or
 31 dessert wine by the individual glass or opened bottle at retail, for
 32 consumption on the premises only.

33 (pu) "Wine distributor's license" means a license issued by the di-
 34 rector to a person authorizing such person to distribute table wine or
 35 dessert wine to retailers within the state of Idaho.

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

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

45 (sx) "Winery license" means a license issued by the director authoriz-
 46 ing a person to maintain a winery.

47 (2) All other words and phrases used in this chapter, the definitions of
 48 which are not herein given, shall be given their ordinary and commonly under-
 49 stood 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.