

**** NOTICE TO LIQUOR LICENSE APPLICANTS ****

Disclaimer: This information is compiled to assist prospective applicants assess their ability to obtain a liquor license in the state of Idaho. For the purpose of the administration of this act the Director of the Idaho State Police shall make, promulgate and publish such rules and regulations as the said Director may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law and the provisions of this act, such rules and regulations so made and promulgated shall have the force of statute. Every licensee shall advise himself of such rules and regulations, and ignorance thereof shall be no defense.

The materials and assistance you receive from the Idaho State Police Alcohol Beverage Control Bureau are not a substitute for legal advice. If you have legal questions, you should consult with an attorney.

The following is some information to inform Priority List applicants and new liquor license applicants of the legal requirements concerning certain aspects for the issuance of new liquor by the drink licenses pursuant to the 21st Amendment of the U.S. Constitution, Article III, Sections 24 and 26 of the Idaho Constitution, Idaho Code Title 23, and IDAPA 11.05.01, "Rules Governing Alcohol Beverage Control".

Under the United States Constitution, Article XXI § 2: The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

The Idaho Constitution, Article III, Section 24

The first concern of all good government is the virtue and sobriety of the people, and the purity of the home. The legislature should further all wise and well-directed efforts for the promotion of temperance and morality.

The Idaho Constitution, Article III, Section 26 establishes the Idaho Legislature's POWER AND AUTHORITY OVER INTOXICATING LIQUORS.

From and after the thirty-first day of December in the year 1934, the legislature of the state of Idaho shall have full power and authority to permit, control and regulate or prohibit the manufacture, sale, keeping for sale, and transportation for sale, of intoxicating liquors for beverage purposes.

The Idaho Supreme Court holds that: A liquor license is a privilege, not a right; "the ability to sell alcohol is personal to the licensee; and that it is neither a right of property nor a contract between the state and the licensee." See *Nampa Lodge No. 1389 B.P.O.E. v. Smylie*, 71 Idaho 212, 229 P.2d 991 (1951); *Gartland v. Talbot*, 72 Idaho 125, 237 P.2d 1067 (1951); *McBride v. Hopper*, 84 Idaho 350, 372 P.2d 401 (1962); *Weller v. Hopper*, 85 Idaho 388, 379 P.2d 792 (1963); *Crazy Horse Inc., v. Pearce*, 98 Idaho 762, 572 P.2d 865 (1977); *Uptick*

Corp. v. Ahlin, 103 Idaho 364, 647 P.2D 1236 (1982); and *Fischer v. Cooper*, 116 Idaho 374, 775 P. 2d 1216 (1989).

The Idaho Legislature's DECLARATION OF POLICY -- RETAIL SALE OF LIQUOR, Idaho Code § 23-901:

It is hereby declared as the policy of the state of Idaho that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages and to eliminate certain illegal traffic in liquor now existing and to insure the entire control of the sale of liquor it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the director of the Idaho state police and the county commissioners and the councils of cities in the state of Idaho be empowered and authorized to grant licenses to persons qualified under this act to sell liquor purchased by them at state liquor stores at retail posted prices in accordance with this act and under the rules promulgated by said director and under his strict supervision and control and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this act. The restrictions, rules, and provisions contained in this act are enacted by the legislature for the protection, health, welfare and safety of the people of the state of Idaho and for the purpose of promoting and encouraging temperance in the use of alcoholic beverages within the state of Idaho.

Written Notification When A Priority List License Becomes Available, IDAPA 11.05.01.013.02:

When an incorporated city 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 license is offered to the next applicant in priority. An applicant accepting the 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.

FORM OF LICENSE -- AUTHORITY -- EXPIRATION -- LIMITATIONS, Idaho Code § 23-908:

(1) Every license issued ...shall set forth the name of the person to whom issued, the location by street and number, or other definite designation, of the premises, and such other information as the director shall deem necessary. If issued to a partnership, the names of the persons constituting such partnership shall be set forth in the application. If issued to a corporation or association, the names of the principal officers and the governing board shall be set forth in the application. Such license shall be signed by the licensee and prominently displayed in the place of business at all times. **Every license issued under the provisions of**

this chapter is separate and distinct and no person except the licensee (whether it is a registered business or individual) therein named except as herein otherwise provided, shall exercise any of the privileges granted there under. (Emphasis provided)

PERSONS NOT QUALIFIED TO BE LICENSED, Idaho Code § 23-910(5)

A person who does not hold a retail beer license under the state of Idaho is not qualified to hold a liquor license issued under the laws of the state of Idaho.

LICENSE TO SELL BEER AT RETAIL -- APPLICATION PROCEDURE AND FORM -- SHOWING OF ELIGIBILITY FOR LICENSE AND DISQUALIFICATIONS, under Idaho Code § 23-1010:

(1) Every person who shall apply for a state license to sell beer at retail shall tender the license fee to, and file written application for license with, the director.

(2) The application shall *affirmatively* show:

(a) That the applicant is the **bona fide owner of the business** which will be engaged in the sale of beer at retail and with respect to which license is sought;

(d) That the individual applicant, or each partner of a partnership applicant, or a corporation applicant or an association applicant is qualified to do business within the state of Idaho. (Emphasis provided)

INVESTIGATION OF APPLICATIONS, Idaho Code § 23-907:

Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application. In making the investigation required by this section the director shall have the power to investigate and examine the books and records of the licensee and any person having a financial interest in any business to be conducted on the licensed premises, including, but not limited to, their bank accounts, returns filed under the Idaho Property Relief Act, 1931, as amended, and any other sources of information deemed desirable by the director and not specifically prohibited by law.

RECORDS AND RETURNS OF LICENSEES -- INVESTIGATIONS AND EXAMINATIONS, Idaho Code § 23-1006:

An application for, and acceptance of a license by, a dealer, brewer, wholesaler or retailer *shall constitute consent to, and be authority for, entry by the director, or his authorized agents, upon any premises related to the licensee's business, or wherein are, or should be, kept, any of the licensee's books, records, supplies or other property related to said business, and to make the inventory, check and investigations aforesaid with relation to said licensee or any other licensee.* (Emphasis provided)

APPLICATION FOR LICENSES -- PENALTY FOR FALSE STATEMENTS, Idaho Code § 23-905:

Prior to the issuance of a license as herein provided, the applicant shall file with the director an application, in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises where the liquor is to be sold as may be required by the director. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths and shall be accompanied with the license fee herein required.

In addition to setting forth the qualifications required by other provisions of this act, the application must show:

(1) A detailed description of the premises for which a license is sought and its location.

(2) A detailed statement of the assets and liabilities of the applicant.

(3) The names and addresses of **all persons** who will have **any financial interest in any business to be carried on in and upon the licensed premises**, whether such interest results from open loans, mortgages, conditional sales contracts, silent partnerships, trusts or any other basis than open trade accounts incurred in the ordinary course of business, and the amounts of such interests.

(4) The name and address of the applicant, which shall include all members of a partnership or association and the officers, members of the governing board and ten (10) principal stockholders of a corporation.

(5) A copy of the articles of incorporation and bylaws of any corporation, the articles of association and the bylaws of any association, or the articles of partnership of any partnership.

(6) **If during the period of any license issued hereunder any change shall take place** in any of the requirements of subparagraph (3), (4), or (5) of this section, the licensee shall **forthwith** make a written report of such change to the director.

(7) If during the period of any license issued hereunder the licensee seeks to move his business from one premise to another in the same city, he may do so subject to the director's approval that the new premise is suitable for the carrying on of the business.

If any false statement is made in any part of said application, or any subsequent report, the applicant, or applicants, shall be deemed guilty of a felony and upon conviction thereof shall be imprisoned in the state prison for not less than one (1) year nor more than five (5) years and fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or both such fine and imprisonment. (Emphasis provided)

ACTUAL USE, under Idaho Code § 23-908 (4):

Each new license issued on or after July 1, 1980, **shall be placed into actual use by the original licensee at the time of issuance and remain in use for at least six (6) consecutive months or be forfeited to the state** and be eligible for issue to another person by the director after compliance with the provisions of section 23-907, Idaho Code. Such license shall not be transferable for a period of

two (2) years from the date of original issuance, except as provided by subsection (5)(a), (b), (c), (d) or (e) of this section. (Emphasis provided)

STATEMENT OF PURPOSE Idaho Code § 23-908 (4):

The purpose of 23-908(4) is to discourage speculation in liquor licensing by requiring the original holder of the license to put it into use immediately upon its receipt and to continue its use for six consecutive months **and by providing that the license will not be transferable for two years after its original issuance.** (Emphasis provided)

NEW LICENSE (REQUIREMENTS), IDAPA 11.05.01.010.03:

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.

REFUSAL TO ACCEPT OFFER OF LICENSE OR FAILURE TO COMPLETE APPLICATION FOR LICENSE, IDAPA 11.05.01.013.03:

An applicant refusing a license offered under this rule or an applicant who fails to complete his application may have his name placed at the end of the priority list upon his request. Should the applicant holding first priority refuse or fail to accept the license or to complete the application within the time specified, the applicant shall be dropped from the priority list, the deposit refunded, and the license offered to the applicant appearing next on the list. (3-8-06)