

CONCERNS WITH ALCOHOL LICENSING BILL SB 1040

There were many concerns with this bill last year (Senate Bill 1332) and the current bill, SB1040. Some of the major overall concerns are that there will be a glut of liquor licensed establishments throughout the State. This will do one of two things. It will either reduce the volume of sales from current establishments, negatively impacting businesses and therefore the overall economy, or it will create more opportunity for people to drink liquor, leading to more health issues, driving under the influence issues, etc. Either way, this is a bad idea.

Additionally, if this bill were to pass, it would create a patchwork of regulations across the state that would be different, not only from city to city or city to county, but it would create different regulations for State licensed establishments as opposed to municipal licensed establishments. In essence, all 201 incorporated cities and all 44 counties along with the state could have different regulations. Since nearly 2/3 of the cities in Idaho do not have their own police departments, it would be incumbent on the Sheriffs to enforce all of these municipal regulations in those cities. Add to that the fact that if there is not a contract for enforcement of city ordinances with the Sheriff, the Sheriff will have no authority to enforce liquor regulations within that City.

Additionally, this could create an additional number of liquor licenses coming from existing eating establishments, (particularly chain restaurants) that could sell and transfer their state licenses then apply and receive a city or county license and carry on business as usual. This would now create two licenses instead of one.

Finally, this bill would devalue the existing State licenses to a point that could potentially bankrupt some license holders. Some license holders have used their licenses as collateral for bank loans to open their establishments. The devaluation of this licenses could cause banks to call the notes in and close existing businesses.

Below, I have detailed some of the issues with the bill as it is currently written.

Page 4, Section 1, 23-217: There is no fiscal impact listed for the increased percentage of discount for State Licensed premises buying from the dispensary. Additionally, this creates disparate treatment for new license holders who would only receive half as much discount. This would not come close to offsetting the devaluation of the State Licenses.

Page 5, Section 2, 23-603: This is the first of many proposed changes that would create inconsistent actions or regulations based on city or county rules. Additionally, this section requires the court to notify the “responsible authority” for violations. How will the court know who the “responsible authority” really is?

Page 7, Section 5, 23-605: The first amendment changes “intoxicated or apparently intoxicated” to “obviously intoxicated.” Obvious to whom? This is a very subjective standard. The addition to this statute creates mandatory minimum and maximum sentencing as well as another instance

of inconsistency due to the “responsible authority” language as well as the court notifying the “responsible authority.”

Page 8, Section 6, 23-617: This entire section requires the local authorities to do all of the work, but mandates written warnings for the first two offenses. This becomes an unfunded mandate for enforcement.

Page 9, Section 7, 23-901: This section again provides for inconsistent rules across the board from city to city and county to county.

Page 10, Section 9, 23-902(3): This definition requires a restaurant to provide a “complete meal.” There is no definition of a “complete meal.” Later in this definition is exempts “luncheonettes, drive-ins, sandwich shops and other similar uses.” What are “other similar uses?” What is to say that none of these listed can provide a “complete meal?”

Page 11, Section 8, 23-902(14): This further allows inconsistency in rules from jurisdiction to jurisdiction.

Page 13, Section 12, 23-905(3): This is another addition that will allow for inconsistent rules and regulations.

Page 14, Section 15, 23-908: The previous section allows for local elections to provide for “dry cities or counties.” This section states that even if the voters approve a dry city or county, any State liquor licensed establishment will still be able to operate regardless of the voters’ decision.

Page 15, Section 18, 23-910: This is another section that will allow for inconsistent rules and regulations.

Page 15, Section 19, 23-911: This section requires the investigation by the city or county of applicants. Who does the investigation? What expertise is required? Who pays for the investigation? Cities can direct their police departments to do an investigation, but the County Commissioners do not have that authority over a Sheriff. Additionally, subsection 3 creates a felony violation for false statements, potentially impacting the courts and gives minimum and maximum sentencing in a day when mandatory minimum sentencing is coming under fire.

Page 16, Section 20, 23-912(1): This section will allow for different rules for State license holders as opposed to municipal license holders.

Page 17, Section 21, 23-913(1): This provides for a minimum in an annual license fee for municipal licenses, but does not set a maximum fee. This fee is four times the fee for an annual state license for the largest possible populated city. Additionally, seasonal resorts that are state licensed may be pro-rated, but a seasonal eating establishment with a city or county license must pay the entire amount.

Page 18, Section 22, 23-915(2): This was taken from current statute, but the language here needs to be updated and more clearly defined with regards to “decency and morality.”

Page 21, Section 26, 23-919(6): This sets the fee for transferring a state license at 10% of the purchase price or “the cost of good will.” What is the “cost of good will”? This is not defined in the statute or in Black’s Law Dictionary.

Page 22, Section 27, 23-920: This prohibits licenses from being transferred if there are liens from the State Tax Commission or the Department of Labor. What about other liens?

Page 26, Section 38, 23-928: This shortens the time that a catering permit is valid from five (5) days to three (3) days.

Page 28, Section 44, 23-933: This section makes it the duty of Sheriffs for any licenses that are not served by a police department to enforce the provisions of this act. The problem is that if a Sheriff has no contract with an incorporated city, they do not have the authority to enforce local ordinances. Therefore, some cities could have no one with enforcement authority to enforce this act.

Page 29, Section 45, 23-1203: This mandates that servers all be trained, but how available the training will be.

Page 30, Section 45, 23-1205: Even though an establishment may have a city or county license, if they violate section 23-1203, the administrative fine appears to go to the State. Additionally, if a person has a city or county license, who is supposed to insure that all servers are in compliance? Since they won’t have a state license, one cannot expect the State Police to do these compliance checks.

Page 37, Section 54, 49-307(9)(b): As long as we are amending this section and talking about alcohol, we should add that the passenger must be sober as well.