

IN THE SENATE

SENATE BILL NO. 1144

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO REGULATION OF ALCOHOL; PROVIDING LEGISLATIVE FINDINGS; REPEAL-  
2 ING SECTION 23-614, IDAHO CODE, RELATING TO PROHIBITED ACTS AND PENAL-  
3 TIES FOR THOSE ACTS; AMENDING CHAPTER 6, TITLE 23, IDAHO CODE, BY THE AD-  
4 DITION OF A NEW SECTION 23-614, IDAHO CODE, TO PROVIDE PROHIBITED ACTS  
5 BY A PERMITTEE OR HIS AGENT OR EMPLOYEE, TO REQUIRE SUPERVISION, TO PRO-  
6 VIDE EXCEPTIONS, TO PROVIDE PENALTIES AND TO PROVIDE FOR ADMINISTRATIVE  
7 ACTION; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.  
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. LEGISLATIVE FINDINGS. The legislature finds that based  
11 upon, but not limited to, the testimony of law enforcement officers, expert  
12 studies, judicial decisions, and analyses of those studies and decisions  
13 that establishments predominately in the business of offering the sale of  
14 alcohol with live sexually oriented entertainment create or enhance unde-  
15 sirable secondary effects that include criminal and other unlawful activi-  
16 ties that have regularly and historically occurred in connection with such  
17 establishments. Those effects include prostitution, drug use, breaches of  
18 the peace, assaults, and sexual conduct involving contact between perform-  
19 ers or other employees and patrons. Secondary effects also include impacts  
20 to both residential and commercial property, including depressed property  
21 values that harm economic development in the surrounding area or neighbor-  
22 hoods.

23 SECTION 2. That Section [23-614](#), Idaho Code, be, and the same is hereby  
24 repealed.

25 SECTION 3. That Chapter 6, Title 23, Idaho Code, be, and the same is  
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
27 ignated as Section 23-614, Idaho Code, and to read as follows:

28 23-614. PROHIBITED ACTS -- MISDEMEANORS -- PENALTIES. (1) It shall be  
29 unlawful for a licensee or his agent or employee to knowingly allow or engage  
30 in any of the following kinds of conduct on his licensed premises:

31 (a) Any live conduct or entertainment by any person whose genitals, fe-  
32 male areola, anal cleft, anus, or pubic hair are exposed or who is wear-  
33 ing transparent clothing that reveals the genitals, female areola, anal  
34 cleft, anus, or pubic hair;

35 (b) Any live conduct or entertainment that includes sexual inter-  
36 course, masturbation, sodomy, bestiality, oral copulation, flagella-  
37 tion, or any act that includes the penetration, however slight, by any  
38 object into the genital or anal opening of a person's body;

39 (c) Any live conduct or entertainment that simulates sexual inter-  
40 course, masturbation, sodomy, bestiality, oral copulation, flagella-

1 tion, or any act that simulates the penetration, however slight, by any  
2 object into the genital or anal opening of a person's body;

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

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

8 (f) The showing of films, still pictures, electronic reproductions or  
9 other visual reproductions which are in violation of chapter 41, title  
10 18, Idaho Code (indecent and obscenity), or are in violation of federal  
11 law regarding pornography, indecent or obscenity.

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

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

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

22 (b) Held at a theater, concert hall, art center, museum, event center,  
23 or any other establishment or venue that does not fall within subsection  
24 (3) (a) above and is not predominately used to serve alcohol with live  
25 entertainment regulated under subsection (1) (a) through (e) of this  
26 section, but has a valid license under title 23, Idaho Code, and, if  
27 required by the city or county, a valid permit from the city or county to  
28 serve alcohol at such performance; and

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

32 (4) A violation of any of the provisions of this section by any agent,  
33 employee, or other person in any way acting on behalf of a licensee shall con-  
34 stitute a misdemeanor, and upon conviction such person shall be fined not  
35 less than the sum of one hundred dollars (\$100) nor more than the sum of three  
36 hundred dollars (\$300), or be imprisoned in the county jail for not less than  
37 thirty (30) days nor more than six (6) months, or both such fine and impris-  
38 onment. Any court in which a judgment of conviction is entered shall certify  
39 a copy thereof to the director, and the director shall thereupon commence ad-  
40 ministrative proceedings. The director shall review the circumstances and  
41 may take action he considers appropriate against the licensee including sus-  
42 pension of the license for not to exceed six (6) months, a fine, or both such  
43 suspension and fine or may revoke the license.

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

1           SECTION 4. SEVERABILITY. The provisions of this act are hereby declared  
2 to be severable and if any provision of this act or the application of such  
3 provision to any person or circumstance is declared invalid for any reason,  
4 such declaration shall not affect the validity of the remaining portions of  
5 this act.

6           SECTION 5. An emergency existing therefor, which emergency is hereby  
7 declared to exist, this act shall be in full force and effect on and after its  
8 passage and approval.