

### Actual Use Rules

- Actual Use Idaho Code 23-932 gives the director of the Idaho State Police the authority for rulemaking.
- ABC Duties
  - Issuance and regulation of alcohol licensing
    - Manufacture, transportation & sale of beer & wine
    - Regulate the sale of liquor-by-the-drink by retail licensees
    - 5,000 licenses issued annually to wineries, breweries, distributors, retail establishments, and direct shippers who ship wine into Idaho from other states.

### Quota System

- 1 for every for every 1,500 population within an incorporated city.
- Currently 862 quota system licenses issued
- Limited number of licenses and a higher demand in some cities & so Idaho law allows the licenses to be transferred between private parties.
- The value a license is different in different locations of Idaho due to various factors but to give you an idea here are the current values around the state:

| City          | Current Value | # Quota Licenses | # Priority Wait List |
|---------------|---------------|------------------|----------------------|
| Boise         | \$160,000     | 137              | 65                   |
| Coeur d'Alene | \$202,000     | 31               | 23                   |
| Idaho Falls   | \$165,000     | 38               | 14                   |
| Lewiston      | \$166,000     | 22               | 4                    |
| Pocatello     | \$77,000      | 36               | 17                   |
| Twin Falls    | \$95,000      | 31               | 10                   |
| Ketchum       | \$233,000     | 10               | 9                    |

\*The highest price paid for a liquor license transfer was in Ketchum for \$335,000 in 2010

- Priority waiting list for liquor licenses
- Modifications to Idaho Code and to IDAPA to try and ensure these licenses are used once they are issued, and that they are not just received and placed into a drawer.
- Actual use not defined anywhere in Idaho Code nor in rule.
  - 2014 6 cases litigated and 11 in 2015
  - Costly to litigate and it is usually in the thousands of dollars
- Minimum requirement to keep liquor licenses in good standing.
- A definition of "actual use" will keep ABC and licensees wasting resources on litigation

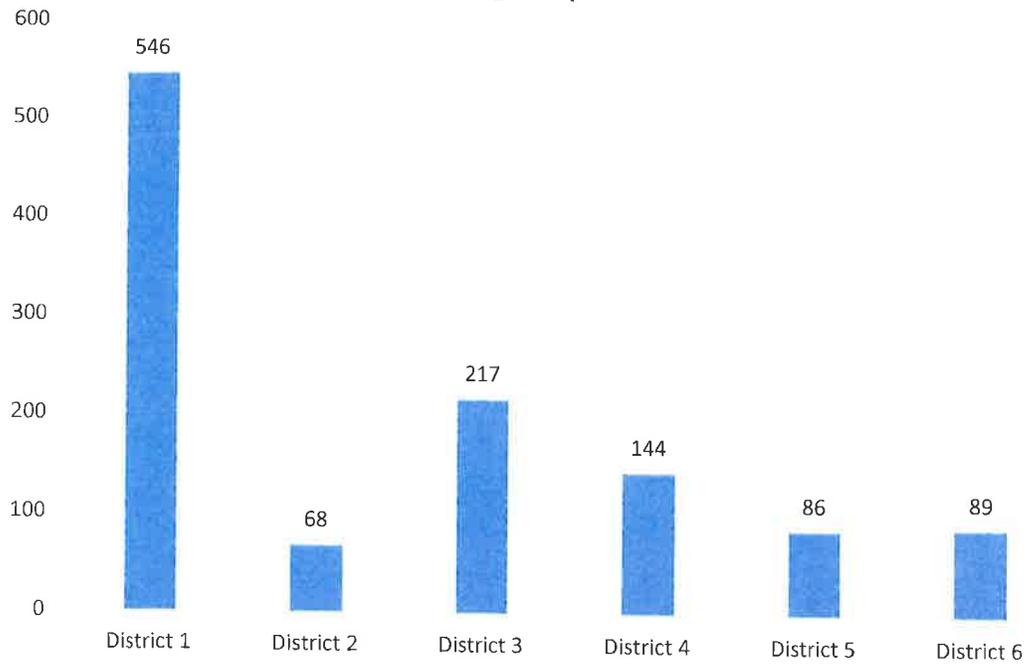
## Rule Process

- Rule process started summer 2014 with notice of negotiated rulemaking. No comment from public or industry
- Sought information from industry by contacting associations and then by survey before writing rule so that the smallest/most remote licensees wouldn't have their license at risk.
  - How many days a week were they are open.
  - How many hours a day are the open.
  - How many liquor drinks they sold per day on the days they were open.
  - If they experienced a "busy" and a "slow" season and how the liquor-by-the-drink sales were affected on per day sales.
- This information is what ABC used to arrive at the requirement of 20 hours per week and the 20 liquor-by-the-drink sales per week.
- Idaho Code §23-908(4)] that newly issued liquor licenses be put into "actual use" 6 days a week & 8 hours a day for the first 6 months.
- Actual use beyond that time frame.
  - Not dictating what days of the week
  - Open for "legitimate" sales of liquor 20-hours per week
  - Individual licensee to decide when to be open for these 20-hours.
  - Standard to allow remote business to operate within the confines of the rules, but also provides the agency with an enforceable standard when liquor licenses are not in "actual" use.
  - NO current licensee that is open that would be in violation of this rule if adopted.
- When liquor licenses are being used properly the state of Idaho benefits from the following:
  - Revenue from the purchase of liquor from the Idaho State Liquor Division (ISLD).
  - Creation of jobs
  - Tax revenue
- Dormant liquor frustration for priority waiting list.
- Complaints that quota system licenses are not in actual use.

## Due Process

- Issue notice when aware of a liquor license not being in use a letter
- Loss or move of physical location have tools in place for licensee
  - 90-days to find a suitable premises
  - Authority to grant a 60-day extension
- This rule does not affect specialty liquor licenses. This is due to specialty liquor license issuance being restricted by a location meeting specific physical requirements (e.g. minimum square footage, minimum amount of water frontage, number of golf holes with a minimum yardage, etc.).
- Beer and wine licenses also do not have an actual use requirement.
- Supported by the Idaho Licensed Beverage Association (ILBA)
- Clarity for regulators & license holders
- No property right to a liquor license.

### Minimum Average Liquor Sales Per Week



### Average hours open per week

