LEGISLATURE OF THE STATE OF IDAHO
Sixty-seventh Legislature Second Regular Session - 2024

IN THE SENATE

SENATE BILL NO. 1364

BY STATE AFFAIRS COMMITTEE

AN ACT
RELATING TO BEER; AMENDING SECTION 23-1003, IDAHO CODE, TO REMOVE A PROVISION REGARDING A BREWER'S LICENSE AND TO REVISE A PROVISION REGARDING A BREWER'S LICENSE; AMENDING SECTION 23-1007, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 23-1032, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 23-1033, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 23-1003, Idaho Code, be, and the same is hereby amended to read as follows:

23-1003. BREWERS', DEALERS' AND WHOLESALERS' LICENSES. (a) Before any brewer shall manufacture or any dealer or wholesaler import or sell beer within the state of Idaho, such brewer shall apply to the director for a license. The application form shall be prescribed and furnished by the director and require that the applicant show that such brewer possesses all the qualifications and none of the disqualifications of a licensee. To determine qualification for a license, the director shall cause an investigation that shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. 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 with the application. The application shall also be accompanied by the required licensee fee; provided, that where the applicant is or will be within more than one (1) of the foregoing classifications, the applicant shall apply for each classification but shall pay only one (1) license fee, which shall be for the classification requiring the highest fee. If the director is satisfied that the applicant possesses the qualifications and none of the disqualifications for the license, the director shall issue a license for each classification applied for, subject to the restrictions and upon the conditions in this act specified, which license or licenses shall be at all times prominently displayed in the place of business of the licensee.

(b) Each wholesaler shall, in addition to the application, file with the director a notice in writing signed by the dealer or brewer and the wholesaler stating the geographic territory within which the wholesaler will distribute beer to retailers. The territory will be agreed upon between the dealer or brewer and the wholesaler and may not be changed or modified without the consent of both the dealer or brewer and the wholesaler. Provided however, nothing in this section shall be interpreted to prohibit a brewer or dealer from permitting more than one (1) distributor for the same geographic territory.
(c) In the event that a wholesaler sells beer to a retailer who is located outside the geographical territory designated by that wholesaler on the notice provided for in subsection (b) of this section, the dealer or wholesaler who has designated the geographical territory in which the sale occurred may apply to a district court of this state for the issuance of an injunction enjoining sales of beer by the wholesaler outside of its designated geographical territory. The procedure for issuance of an injunction pursuant to this act shall be subject to the Idaho rules of civil procedure. Upon proof to the court that a wholesaler has made a sale of beer outside of its designated geographical territory, the court shall issue an injunction directed to the wholesaler prohibiting sales of beer outside of its designated geographical territory.

(d) Any brewer licensed within the state of Idaho who produces fewer than thirty thousand (30,000) barrels of beer annually, upon payment of a retailer's annual license fee, may be issued a brewer's retail beer license for the retail sale of the products of its brewery at its licensed premises or one (1) remote retail location, or both. Any brewer selling beer at retail or selling to a retailer must pay the taxes required in section 23-1008, Idaho Code, but need not be licensed as a wholesaler for the purpose of selling beer at the brewery or at one (1) remote retail location.

(e) (d). Any brewer licensed within the state of Idaho who that produces fewer than thirty thousand (30,000) barrels of beer annually may be issued a brewer's pub retail license. Upon payment of a retailer's annual license fee, and subject to the fees in sections 23-1015 and 23-1016, Idaho Code, a brewer may, at its licensed brewery or at one (1) remote retail location, or both, sell at retail the products of any brewery by the individual bottle, can or glass. Any brewer selling beer at retail or selling products of its brewery to a retailer must pay the taxes required in section 23-1008, Idaho Code, on the products of its brewery, but need not be licensed as a wholesaler for the purpose of selling beer at the brewery or at one (1) remote retail location. Upon annual approval by the director, a brewer licensed pursuant to this subsection shall not forfeit its right to sell the products of any brewery by the individual bottle, can, or glass at its licensed brewery or one (1) remote retail location, or both, should the brewer produce more than thirty thousand (30,000) barrels of beer, provided such brewer:

(i) Has continuously brewed beer in and continuously maintained a physical presence in the state of Idaho for no less than five (5) years; and

(ii) Has not violated any of the provisions of this chapter resulting in a revocation or suspension of a license for multiple days during any point of the brewery's production operations.

(f) (e) A brewer licensed under the provisions of subsection (d) or (e) of this section may be licensed as a wholesaler for the sale of beer produced by such brewery to retailers other than at the licensed brewery and one (1) remote retail location and shall not be required to pay an additional fee. Such brewer shall, however, comply with and be subject to all other regulations or provisions of law that apply to a wholesaler's license, except as the laws may restrict sales at the licensed brewery or one (1) other remote retail location. The holder of a brew pub license shall not be disqualified from holding a retail wine license or wine by the drink license for the sale
of wine at the brew pub premises on the grounds that the licensee is also licensed as a wholesaler.

SECTION 2. That Section 23-1007, Idaho Code, be, and the same is hereby amended to read as follows:

23-1007. SALES BY DEALERS AND WHOLESALERS -- PROHIBITED UNLESS OBTAINED FROM LICENSEES -- CONSUMPTION ON PREMISES PROHIBITED -- MINIMUM SALE ON LICENSED PREMISES OF UNBROKEN PACKAGES OR KEGS. Except as provided in section 23-1007A, Idaho Code, it shall be unlawful for any dealer or wholesaler to sell for use within the state of Idaho any unbroken packages or kegs of beer produced, manufactured, imported or bought by such dealer except to licensed dealers, wholesalers, retailers to whom a license has been issued by the director, or to employees of the wholesaler or dealer; nor shall any dealer or wholesaler allow for a consideration such beer to be consumed upon the premises of such dealer or wholesaler; provided, however, that any dealer or wholesaler shall be allowed to make sales of beer in kegs of not less than five (5) gallons to a consumer at his licensed premises. Licensed brewers may sell at retail only as provided in section 23-1003(d) and (e), Idaho Code.

SECTION 3. That Section 23-1032, Idaho Code, be, and the same is hereby amended to read as follows:

23-1032. FINANCIAL INTEREST IN DEALER OR WHOLESALER PROHIBITED. (1) It shall be unlawful for any brewer, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee to have any financial interest in any licensed wholesaler's or dealer's business, or to own or control any real property upon which a licensed dealer or wholesaler conducts business, except:

(a) For a brewer licensed within the state of Idaho who produces fewer than thirty thousand (30,000) barrels of beer annually and is duly licensed as a wholesaler as provided in section 23-1003(e), Idaho Code;

(b) If a licensed dealer or wholesaler has been granted distribution rights by a brewer for a brand in a designated territory and is unable to service the designated sales territory for reasons that are not the result of an action by the brewer, or in the event of a termination, cancellation, discontinuance or failure to renew a distribution agreement between a brewer and a licensed dealer or wholesaler for reasons set forth in section 23-1105, Idaho Code, such as insolvency, loss of licensure or fraud and in accordance with the provisions of chapter 11, title 23, Idaho Code, a brewer shall be allowed to appoint a temporary licensed dealer or wholesaler to service the brewer's brands in the designated sales territory and, for a period not to exceed five (5) years, to have any financial interest in the temporary licensed dealer or wholesaler; or

(c) If a licensed dealer or wholesaler is voluntarily selling its distribution rights, a brewer whose brand distribution rights are being transferred may have any financial interest in the purchasing distribu-
tor for a period not to exceed five (5) years to assist in financing the
purchase.

(2) It shall be unlawful for any licensed wholesaler or dealer, di-
rectly or indirectly, or through an affiliate, subsidiary, officer, direc-
tor, agent or employee to have any financial interest in a licensed brewer's
business, or to own or control any real property upon which a licensed brewer
conducts business. This section shall not apply to a noncontrolling de min-
imis interest in stock held in a publicly traded company including mutual
funds.

SECTION 4. That Section 23-1033, Idaho Code, be, and the same is hereby
amended to read as follows:

23-1033. FINANCIAL INTEREST IN OR AID TO RETAILERS PROHIBITED --
CERTAIN AID PERMITTED. (1) Except as provided in sections 23-1003(d), and
23-1003(e), Idaho Code, it shall be unlawful for any brewer, dealer, whole-
saler, or the holder of any certificate of approval, directly or indirectly,
or through an affiliate, subsidiary, officer, director, agent or employee:
(a) To have any financial interest in any licensed retailer's business,
or to own or control any real property upon which a licensed retailer
conducts his business, except such property as shall have been so owned
or controlled continuously for more than one (1) year prior to July
1, 1975; provided however, that a brewer licensed pursuant to section
23-1003(d) or (e), Idaho Code, may be permitted to have a financial
interest in one (1) additional brewery licensed pursuant to section
23-1003(d) or (e), Idaho Code; or
(b) To aid or assist any licensed retailer by giving such retailer, or
any employee thereof, any discounts, premiums or rebates in connection
with any sale of beer; or
(c) To aid or assist any licensed retailer by furnishing, giving, rent-
ing, lending or selling any equipment, signs, supplies, services, or
other thing of value to the retailer which may be used in conducting the
retailer's retail beer business, except as expressly permitted by this
chapter; or
(d) To enter into any lease or other agreement with any retail licensee
to control the product or products sold by such retailer; or
(e) To provide for any rental or other charge to be paid to or by the re-
tailer for product display or advertising display space.
(2) A brewer, dealer, or wholesaler as an incident to merchandising in
the ordinary course of business, and if available to all licensed retail-
ers without discrimination, may sell to a retailer equipment, supplies, or
clothing which may be used in conducting the retailer's retail business. A
brewer, dealer or wholesaler may not sell such equipment or supplies at a
price, or under terms, intended or designed to encourage or induce the re-
tailer to use products of the seller to the exclusion of the products of other
brewers, dealers or wholesalers. In no event shall the sales price be less
than the reasonable value of such equipment or supplies.
(3) Notwithstanding the provisions of subsection (2) of this section,
a brewer, dealer, or wholesaler, as an incident to merchandising in the
ordinary course of business, and if available to all retailers within the
brewer, dealer or wholesaler's service area, without discrimination, may lend, give, furnish or sell to a retailer, the following items:

(a) Necessary accessory equipment, such as shaft blowers, tapping devices, valves, beer hoses, washers, couplings, clamps, air hoses, vents, faucets, CO₂ gas regulators, picnic or party pumps, together with necessary nonmechanical or nonenergized equipment to enable cooling of beer, and CO₂ gas or ice when the same is furnished at the current retail price and as a bona fide sale in the regular course of business;

(b) Signs, posters, placards, designs, devices, decorations or graphic displays bearing advertising matter and for use in windows or elsewhere in the interior of a retail establishment. The brewer, dealer or wholesaler shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation;

(c) Newspaper cuts, mats or engraved blocks for use in retailer's advertisements;

(d) Items such as sports schedules, posters, calendars, informational pamphlets, decals and other similar materials for display at the point of sale which bear brand advertising for beer prominently displayed thereon, and which items are intended for use by the retailer's customers off the licensed premises and which items are made available to the retailer's customers for such purpose;

(e) Temporary signs or banners displaying a brewer's, dealer's or wholesaler's name, trademark or label, which signs may be permitted to be temporarily displayed on the exterior portion of the retailer premises in connection with a special event, in accordance with such rules relating thereto as may be established by the director.

(4) A distributor may perform services incident to or in connection with the following:

(a) The stocking, rotation and restocking of beer sold and delivered to such licensed retailer on or in such licensed retailer's storeroom, salesroom shelves or refrigerating units, including the marking or remarking of containers of such beer to indicate the selling price as established by the retailer and to the arranging, rearranging, or re-locating of advertising displays referred to in this section. For the purposes of this paragraph, a wholesaler may, with the permission of the retailer, and in accordance with space allocations directed by the retailer, set, remove, replace, reset or relocate all beer upon the shelves of the retailer. Labor performed or schematics prepared by the wholesaler relating to conduct authorized pursuant to this paragraph shall not constitute prohibited conduct or unlawful aid to a retailer;

(b) (i) The inspection of a licensed retailer's draught equipment to insure sanitation and quality control;

(ii) The instruction of licensed retailers in the proper use, maintenance and care of draught equipment, glasses and products used in the sale and dispensing of beer and the preparation and distribution of written information or instructions to licensed retailers with respect thereto;

(iii) The tapping of kegs;
(iv) A wholesaler may perform such services as may be required to maintain sanitation or quality control and which are incident to the repair and cleaning of a retailer's draught beer equipment and may furnish or sell the necessary equipment and repair parts and cleaning supplies required in the performance of such services.

(5) A wholesaler may assist a retailer by temporarily providing storage of the retailer's beer for a period not in excess of seven (7) days in the event that such storage is necessary to maintain the quality of such beer during a temporary loss or failure of the retailer's refrigeration equipment.

(6) A brewery, dealer or wholesaler may furnish or give to a retailer authorized to sell beer for consumption on the licensed premises, for sampling purposes only, a container of beer containing not more than sixty-four (64) ounces, not currently being sold by the retailer, and which container is clearly marked "NOT FOR SALE -- FOR SAMPLING PURPOSES ONLY."

(7) The word "ale" or "malt liquor" may be substituted for "beer" on any sign used in connection with any advertising herein permitted, provided reference shall be to ale or malt liquor which has an alcoholic content not greater than the limitation prescribed in section 23-1002, Idaho Code.

(8) Every violation of the provisions of this section by a dealer, brewer or wholesaler, in which a licensed retailer shall have actively participated shall constitute a violation on the part of such licensed retailer.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2024.