

IN THE SENATE

SENATE BILL NO. 1364, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO BEER; AMENDING SECTION 23-1003, IDAHO CODE, TO REMOVE A PROVI-
2 SION REGARDING A BREWER'S LICENSE AND TO REVISE PROVISIONS REGARDING A
3 BREWER'S LICENSE; AMENDING SECTION 23-1007, IDAHO CODE, TO PROVIDE A
4 CORRECT CODE REFERENCE; AMENDING SECTION 23-1032, IDAHO CODE, TO PRO-
5 VIDE A CORRECT CODE REFERENCE; AMENDING SECTION 23-1033, IDAHO CODE, TO
6 PROVIDE CORRECT CODE REFERENCES; AND DECLARING AN EMERGENCY AND PROVID-
7 ING AN EFFECTIVE DATE.
8

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

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

12 23-1003. BREWERS', DEALERS' AND WHOLESALERS' LICENSES. (a) Before
13 any brewer shall manufacture or any dealer or wholesaler import or sell beer
14 within the state of Idaho, such brewer shall apply to the director for a
15 license. The application form shall be prescribed and furnished by the di-
16 rector and require that the applicant show that such brewer possesses all the
17 qualifications and none of the disqualifications of a licensee. To deter-
18 mine qualification for a license, the director shall cause an investigation
19 that shall include a fingerprint-based criminal history check of the Idaho
20 central criminal history database and the federal bureau of investigation
21 criminal history database. Each person listed as an applicant on an initial
22 application shall submit a full set of fingerprints and the fee to cover the
23 cost of the criminal history background check with the application. The ap-
24 plication shall also be accompanied by the required licensee fee; provided,
25 that where the applicant is or will be within more than one (1) of the fore-
26 going classifications, the applicant shall apply for each classification
27 but shall pay only one (1) license fee, which shall be for the classification
28 requiring the highest fee. If the director is satisfied that the applicant
29 possesses the qualifications and none of the disqualifications for the li-
30 cense, the director shall issue a license for each classification applied
31 for, subject to the restrictions and upon the conditions in this act speci-
32 fied, which license or licenses shall be at all times prominently displayed
33 in the place of business of the licensee.

34 (b) Each wholesaler shall, in addition to the application, file with
35 the director a notice in writing signed by the dealer or brewer and the whole-
36 saler stating the geographic territory within which the wholesaler will dis-
37 tribute beer to retailers. The territory will be agreed upon between the
38 dealer or brewer and the wholesaler and may not be changed or modified with-
39 out the consent of both the dealer or brewer and the wholesaler. Provided
40 however, nothing in this section shall be interpreted to prohibit a brewer or
41 dealer from permitting more than one (1) distributor for the same geographic
42 territory.

1 (c) In the event that a wholesaler sells beer to a retailer who is lo-
 2 cated outside the geographical territory designated by that wholesaler on
 3 the notice provided for in subsection (b) of this section, the dealer or
 4 wholesaler who has designated the geographical territory in which the sale
 5 occurred may apply to a district court of this state for the issuance of an
 6 injunction enjoining sales of beer by the wholesaler outside of its desig-
 7 nated geographical territory. The procedure for issuance of an injunction
 8 pursuant to this act shall be subject to the Idaho rules of civil procedure.
 9 Upon proof to the court that a wholesaler has made a sale of beer outside of
 10 its designated geographical territory, the court shall issue an injunction
 11 directed to the wholesaler prohibiting sales of beer outside of its desig-
 12 nated geographical territory.

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

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

- 36 (1) Has continuously brewed beer in and continuously maintained a phys-
 37 ical presence in the state of Idaho for no less than five (5) years;
 38 (2) Has not violated any of the provisions of this chapter resulting
 39 in a revocation or suspension of a license for multiple days during any
 40 point of the brewery's production operations; and
 41 (3) Has surrendered any wholesale license.

42 ~~(f)~~ (e) A brewer licensed under the provisions of subsection (d) ~~or~~ (e)
 43 of this section may be licensed as a wholesaler for the sale of beer produced
 44 by such brewery to retailers other than at the licensed brewery and one (1)
 45 remote retail location and shall not be required to pay an additional fee.
 46 Such brewer shall, however, comply with and be subject to all other regula-
 47 tions or provisions of law that apply to a wholesaler's license, except as
 48 the laws may restrict sales at the licensed brewery or one (1) other remote
 49 retail location. The holder of a ~~brew pub~~ brewer's retail license shall not
 50 be disqualified from holding a retail wine license or wine by the drink li-

1 cense for the sale of wine at the ~~brew pub~~ brewery's premises on the grounds
2 that the licensee is also licensed as a wholesaler.

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

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

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

21 23-1032. FINANCIAL INTEREST IN DEALER OR WHOLESALER PROHIBITED. (1)
22 It shall be unlawful for any brewer, directly or indirectly, or through an
23 affiliate, subsidiary, officer, director, agent or employee to have any fi-
24 nancial interest in any licensed wholesaler's or dealer's business, or to
25 own or control any real property upon which a licensed dealer or wholesaler
26 conducts business, except:

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

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

44 (c) If a licensed dealer or wholesaler is voluntarily selling its dis-
45 tribution rights, a brewer whose brand distribution rights are being
46 transferred may have any financial interest in the purchasing distribu-

1 tor for a period not to exceed five (5) years to assist in financing the
2 purchase.

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

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

12 23-1033. FINANCIAL INTEREST IN OR AID TO RETAILERS PROHIBITED --
13 CERTAIN AID PERMITTED. (1) Except as provided in sections 23-1003(d), and
14 ~~23-1003(e)~~, Idaho Code, it shall be unlawful for any brewer, dealer, whole-
15 saler, or the holder of any certificate of approval, directly or indirectly,
16 or through an affiliate, subsidiary, officer, director, agent or employee:

17 (a) To have any financial interest in any licensed retailer's business,
18 or to own or control any real property upon which a licensed retailer
19 conducts his business, except such property as shall have been so owned
20 or controlled continuously for more than one (1) year prior to July
21 1, 1975; provided however, that a brewer licensed pursuant to section
22 23-1003(d) ~~or (e)~~, Idaho Code, may be permitted to have a financial
23 interest in one (1) additional brewery licensed pursuant to section
24 23-1003(d) ~~or (e)~~, Idaho Code; or

25 (b) To aid or assist any licensed retailer by giving such retailer, or
26 any employee thereof, any discounts, premiums or rebates in connection
27 with any sale of beer; or

28 (c) To aid or assist any licensed retailer by furnishing, giving, rent-
29 ing, lending or selling any equipment, signs, supplies, services, or
30 other thing of value to the retailer which may be used in conducting the
31 retailer's retail beer business, except as expressly permitted by this
32 chapter; or

33 (d) To enter into any lease or other agreement with any retail licensee
34 to control the product or products sold by such retailer; or

35 (e) To provide for any rental or other charge to be paid to or by the re-
36 tailer for product display or advertising display space.

37 (2) A brewer, dealer, or wholesaler as an incident to merchandising in
38 the ordinary course of business, and if available to all licensed retail-
39 ers without discrimination, may sell to a retailer equipment, supplies, or
40 clothing which may be used in conducting the retailer's retail business. A
41 brewer, dealer or wholesaler may not sell such equipment or supplies at a
42 price, or under terms, intended or designed to encourage or induce the re-
43 tailer to use products of the seller to the exclusion of the products of other
44 brewers, dealers or wholesalers. In no event shall the sales price be less
45 than the reasonable value of such equipment or supplies.

46 (3) Notwithstanding the provisions of subsection (2) of this section,
47 a brewer, dealer, or wholesaler, as an incident to merchandising in the
48 ordinary course of business, and if available to all retailers within the

1 brewer, dealer or wholesaler's service area, without discrimination, may
2 lend, give, furnish or sell to a retailer, the following items:

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

9 (b) Signs, posters, placards, designs, devices, decorations or graphic
10 displays bearing advertising matter and for use in windows or elsewhere
11 in the interior of a retail establishment. The brewer, dealer or whole-
12 saler shall not directly or indirectly pay or credit the retailer for
13 displaying such materials or for any expense incidental to their opera-
14 tion;

15 (c) Newspaper cuts, mats or engraved blocks for use in retailer's ad-
16 vertisements;

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

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

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

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

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

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

49 (iii) The tapping of kegs;

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

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

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

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

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

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