

TITLE 23  
ALCOHOLIC BEVERAGES

CHAPTER 11  
DISTRIBUTORS AND SUPPLIERS OF BEER

23-1101. DECLARATION OF POLICY. It is hereby declared to be the policy of the legislature of the state of Idaho to regulate and control the importation, sale and distribution of beer within the state of Idaho, in the exercise of its powers under the twenty-first amendment to the constitution of the United States of America, and pursuant to section 26, article III, of the constitution of the state of Idaho. In furtherance of that policy, the restrictions and regulations contained in this chapter are enacted to promote equality and fair dealing in the business relationship between Idaho distributors of beer and the suppliers of such product and to assure the establishment and maintenance of an orderly system for the distribution of such products in accordance with the laws of this state regulating the sale and distribution of such products to the public.

[23-1101, added 1993, ch. 312, sec. 1, p. 1148.]

23-1102. DEFINITIONS. Whenever used in this chapter, the following words or phrases, or the plural thereof, unless the context clearly requires otherwise, shall have the meaning ascribed to them in this section:

(1) "Agreement" means any agreement between a distributor and a supplier, whether oral or written, whereby a distributor is granted the right to purchase a brand, or brands, of beer sold by a supplier and to resell such products within the state of Idaho.

(2) "Amend," "amendment," or "modify," means any alteration or change in the agreement, which causes a material change in the distributor's business or relationship with the supplier, and which alteration or change does not apply to all distributors in the state of Idaho who distribute supplier's products.

(3) "Ancillary business" means a business owned by a distributor, by a substantial stockholder of a distributor, or by a substantial partner of a distributor, the primary business of which is directly related to the transporting, storing or marketing of the supplier's products.

(4) "Designated member" means:

(a) The spouse, child, grandchild, parent, brother or sister of a deceased individual who owned an interest in a distributor;

(b) Any person who inherits an ownership interest in a distributor;

(c) The appointed and qualified personal representative or the testamentary trustee of a deceased individual owning an interest in a distributor;

(d) The person appointed by a court as the guardian or conservator of the property of an incapacitated individual owning an interest in a distributor; or

(e) A person who has succeeded to the deceased individual's ownership interest in the distributor pursuant to a written contract or instrument which has been previously approved, in writing, by a supplier.

(5) "Distributor" means a business entity, whether sole proprietorship, partnership, corporation, association, syndicate, or any other combination of persons, licensed by the state of Idaho to sell beer to retailers. The term "distributor" shall not include a brewery, brewery

branch or subsidiary thereof, which is licensed by the state of Idaho and which license authorizes sales of beer to be made directly to a retailer, whether or not licensed as a distributor by the state of Idaho.

(6) "Good faith" means honesty in fact in the conduct or transaction involved and the observance of reasonable commercial standards of fair dealing in the trade, as such term and standards are defined in, and interpreted pursuant to, the uniform commercial code, title 28, Idaho Code.

(7) "Person" means any individual, partnership, corporation, association, syndicate, or any other combination of individuals or corporations.

(8) "Reasonable standards and/or qualifications" mean those criteria established and consistently applied by a supplier to distributors within the state of Idaho and similarly situated distributors in adjoining states who:

(a) Have entered into, continued or renewed an agreement with the supplier during a period of twenty-four (24) months prior to the proposed transfer of the distributor's business; or

(b) Have changed managers or successor managers during a period of twenty-four (24) months prior to the proposed change in manager or successor manager of the distributor.

(9) "Retaliatory action" includes the refusal to continue an agreement, or a material part thereof, or a material reduction in the quality of service or quantity of products available to a distributor under an agreement, which refusal or reduction is not made in good faith.

(10) "Similarly situated distributors in adjoining states" mean distributors in adjoining states having an agreement with the supplier who have reasonably comparable business, area and market characteristics to an Idaho distributor of supplier's products, which business, area and market characteristics may include, but are not limited to, the following: gross sales' volume concerning supplier's products, facilities, number of employees, business capitalization, market areas, considering the population and the demographics thereof, and the square miles of area served.

(11) "Substantial stockholder" or "substantial partner" means a person who owns an interest of ten percent (10%) or more of a distributor.

(12) "Supplier" means any person, either within or outside the state of Idaho, who enters into an agreement with a distributor for the sale of beer to such distributor with the intent that such products will be resold by the distributor to retailers within the state of Idaho. The term "supplier" shall also be deemed to include the successor in interest to a supplier's business generally, or with reference to a specific brand or brands, of beer. The term "supplier" shall not include any person who produces fewer than thirty thousand (30,000) barrels of beer annually and who is licensed by the state of Idaho for such purpose.

(13) "Transfer of distributor's business" or similar phrase, means the voluntary sale, assignment or other transfer of all or control of the business, or all or substantially all of the assets of the distributor, or all or control of the capital stock of the distributor, including without limitation the sale or other transfer of capital stock or assets by merger, consolidation or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the distributor.

[23-1102, added 1993, ch. 312, sec. 1, p. 1148.]

23-1103. PROHIBITED ACTS. The following are prohibited under the provisions of this chapter:

(1) A distributor shall not:

(a) Transfer the distributor's business without giving the supplier written notice of the proposed transfer of the business as required under the provisions of this chapter.

(b) Transfer the distributor's business without receiving the supplier's written approval for the proposed transfer, where required by an agreement and consistent with the provisions of this chapter.

(c) Distribute, sell or deliver beer to a retailer whose premises are situated outside the geographic territory agreed upon by the distributor and the supplier, as the area in which the distributor will sell beer purchased from the supplier, without the consent of the supplier and the distributor who has been assigned such territory by the supplier.

(2) A supplier shall not, directly or indirectly, or through an affiliate or subsidiary:

(a) Require any distributor to do any illegal act or to violate any law or regulation either by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the supplier and the distributor, or by any other means.

(b) Require any distributor to accept delivery of any beer or other commodity which has not been ordered by the distributor or, if ordered, has been canceled by the distributor in accordance with reasonable cancellation procedures of the supplier. Provided however, a supplier may impose reasonable inventory requirements upon a distributor if the requirements are made in good faith and are generally applied to other distributors in Idaho and similarly situated distributors in adjoining states having an agreement with the supplier.

(c) Withhold delivery of beer ordered by a distributor or change a distributor's allocation of a brand or brands by the supplier if the withholding or change is not made in good faith.

(d) Engage in any conduct that requires a distributor to fix or maintain the resale prices at which the distributor sells products received from the supplier.

(e) Require a distributor to purchase one (1) or more brands of beer or other products in order for the distributor to purchase another brand or brands of beer. Provided however, that if a distributor has agreed to distribute a brand or brands of beer before the effective date of this chapter, the distributor shall continue to distribute the brand or brands of beer in conformance with the provisions of this chapter.

(f) Require a distributor to assent to any unreasonable requirement, condition, understanding or term of an agreement which limits the distributor's right to sell a brand or brands of beer or other products of any other supplier.

(g) Require a distributor to submit financial reports or other specific financial or sales information regarding products sold by the distributor, other than those of the supplier, as a condition of renewal or continuation of an agreement.

(h) Require a distributor to terminate the designation of an individual as a manager or successor manager of a distributor, or refuse to approve the designation of an individual as manager or successor manager, unless the manager or successor manager fails to meet reasonable standards or qualifications for such position which standards or

qualifications are nondiscriminatory and are applied uniformly to all distributors similarly situated. In any legal action, or other dispute resolution proceedings, challenging such termination or designation, the distributor shall have the burden of proving that the termination of the manager or successor manager was required by the supplier or that the supplier refused to approve the designation of an individual as manager or successor manager. Upon the distributor making such prima facie showing, the supplier shall have the burden of proving that such person fails to meet nondiscriminatory and reasonable standards and qualifications.

(i) Take any retaliatory action against a distributor who, with just cause, files a complaint with any regulatory body or in any court of law regarding an alleged violation of federal, state or local law or of any administrative rule by the supplier.

[23-1103, added 1993, ch. 312, sec. 1, p. 1150.]

23-1104. NOTICE OF TRANSFER BY DISTRIBUTOR -- CONSENT BY SUPPLIER. (1) A distributor who proposes to transfer the distributor's business shall give the supplier written notice of the distributor's proposed transfer of the distributor's business not less than thirty (30) days prior to the date specified in the notice for completion of the transfer, except in cases of transfer to a designated member, in which case the transferee shall give the supplier written notice of the transfer within a reasonable time after the transfer is completed.

(2) A supplier's written consent shall be required for a transfer of the distributor's business to a person other than a designated member. Provided however, written consent from a supplier shall be required for a transfer of the distributor's business to a designated member if any of the following conditions apply:

(a) The transferee or any owner of the transferee has been convicted of a felony under the laws of any state or of the federal government which would adversely affect the good will or interests of the supplier.

(b) The transferee or any owner of the transferee has had a license for the sale of beer, wine or any alcoholic beverage suspended or revoked by the regulatory agency of the federal government or of any state and such suspension or revocation interrupted service by the transferee or by the owner of the transferee for a period of more than thirty (30) days.

(c) The transferee or any owner of the transferee is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the transferee's business or assets, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the transferee.

(d) The transferee or any owner of the transferee has had any previous agreement with the supplier involuntarily terminated, canceled, discontinued or not renewed by the supplier for good cause.

(3) If the transferee is a designated member, a supplier shall not interfere with, prevent, or unreasonably delay the transfer of the distributor's business. An unreasonable delay is one that exceeds thirty (30) days after the service of the notice required by subsection (1) of this section and the receipt of all material information reasonably requested from which the supplier can determine whether the transfer to the designated member may require the supplier's consent. If consent is required, a supplier may not

withhold consent or unreasonably interfere with the transfer of the distributor's business if the transferee meets reasonable standards and qualifications which are material and nondiscriminatory.

(4) If the transferee is not a designated member, a supplier may not withhold consent or unreasonably interfere with or delay the transfer of the distributor's business if the transferee meets reasonable standards and qualifications which are material and nondiscriminatory. An unreasonable delay is one that exceeds thirty (30) days after the receipt of all material information reasonably requested to enable the supplier to determine whether the transferee meets reasonable standards and qualifications.

(5) In any legal action, or other dispute resolution proceeding, between a distributor and supplier relating to the supplier's refusal to consent to the transfer of the distributor's business to a transferee, the distributor shall have the burden of proving that the supplier withheld consent, interfered with or delayed the proposed transfer of the distributor's business. Upon the distributor making such prima facie showing, the supplier shall have the burden of proving that the proposed transferee does not meet such reasonable standards and qualifications.

[23-1104, added 1993, ch. 312, sec. 1, p. 1151.]

23-1105. SUPPLIER'S RIGHT TO AMEND, CANCEL OR FAIL TO RENEW IMMEDIATELY UPON WRITTEN NOTICE -- GROUNDS. A supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement with a distributor immediately upon written notice given by the supplier as provided in section 23-1108, Idaho Code, only if any of the following occur:

(1) Revocation or suspension of a governmental permit or license held by the distributor whereby the distributor cannot service the distributor's sales territory for a period of more than thirty (30) days.

(2) The distributor is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the distributor's business or assets, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the distributor.

(3) A stockholder or a partner of the distributor who holds or owns ten percent (10%) or more of the stock or value of the distributor has been convicted of a felony under the laws of the United States or the laws of any state which conviction would adversely affect the good will or interests of the distributor or supplier. Provided however, that if another stockholder or other stockholders, or partner or partners, or a designated member or members, or other person, notifies the supplier in writing prior to the conviction of an intent to purchase the partnership interest or the stock of the offending stockholder or partner and then purchases the interest or stock within thirty (30) days after a final conviction or within thirty (30) days after the supplier has consented to the transfer, whichever event occurs last, the supplier shall not amend, modify, terminate, cancel, discontinue or fail to renew such agreement. Any purchase of an interest or stock pursuant to the provisions of this subsection shall comply with the requirements and conditions of supplier consent contained in the provisions of section 23-1104, Idaho Code.

(4) An assignment of the distributor's agreement with the supplier, or a transfer of the distributor's business, other than to a designated member, has been made without written notice as provided under the provisions of this chapter.

(5) Fraud by the distributor in his dealings with the supplier or with reference to supplier's products.

(6) The distributor has failed to pay for products ordered and delivered in accordance with established terms with a supplier and fails to make full payment within five (5) business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier.

(7) A transfer of the distributor's business is made despite timely and proper notice of disapproval by the supplier.

(8) The distributor has sold or delivered beer to a retailer whose premises are outside of the territory assigned to the distributor by the supplier in the agreement.

[23-1105, added 1993, ch. 312, sec. 1, p. 1153.]

23-1106. SUPPLIER'S RIGHT TO DISCONTINUE DISTRIBUTION OF BRAND. (1) A supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement, with reference to a brand sold by a supplier, not less than thirty (30) days after written notice is given by the supplier as provided in section 23-1108, Idaho Code, if the supplier discontinues production or discontinues distribution in this state of a brand of beer sold by the supplier to the distributor.

(2) Nothing in this section shall prohibit a supplier from conducting test marketing of a product which is not currently being sold in this state, provided that the supplier has notified the director, Idaho state police, in writing, of its plans to conduct test marketing, which notice shall describe the market area in which the test shall be conducted, the name or names of the distributor or distributors who will be selling the product, the name or names of the product being tested, and the period of time, not to exceed eighteen (18) months, during which the testing will take place.

(3) If a supplier causes the discontinuance of distribution in this state of a brand of beer, except a brand that is being test marketed pursuant to subsection (2) of this section, then that brand cannot be reintroduced or sold to distributors within this state by any supplier for a period of six (6) months after providing the written notice required in the provisions of this section. A supplier who is test marketing a brand or brands in this state, in compliance with subsection (2) of this section, shall not be subject to the six (6) month reintroduction limitation set forth in the provisions of this subsection.

(4) Whenever a supplier discontinues distribution in this state of a brand of beer, the supplier shall be required, at the distributor's request, to purchase from the distributor any unsold inventory of that brand.

[23-1106, added 1993, ch. 312, sec. 1, p. 1154; am. 2000, ch. 469, sec. 71, p. 1520.]

23-1107. SUPPLIER REQUIREMENTS UPON AMENDMENT, CANCELLATION OR REFUSAL TO RENEW AN AGREEMENT. Except as provided in sections 23-1105 and 23-1106, Idaho Code, a supplier may not amend, modify, terminate, cancel, discontinue, or refuse to renew an agreement with a distributor, or cause a distributor to resign from an agreement, unless the supplier has complied with the following requirements:

(1) The supplier shall give written notice to the distributor, as provided in section 23-1108, Idaho Code.

(2) The supplier acts in good faith. In any legal action, or dispute resolution proceeding, the supplier shall have the burden of proving that it acted in good faith.

(3) The supplier has good cause. In any legal action, or dispute resolution proceeding, the supplier shall have the burden of proving that it has good cause. Good cause exists when all of the following have occurred:

(a) The distributor has failed to comply substantially with essential and reasonable requirements imposed upon him by the agreement, if such requirements are not discriminatory, either by their terms or in the method of their enforcement, as compared with requirements imposed on other distributors in Idaho or similarly situated distributors in adjoining states and if such requirements are not in violation of any law or regulation.

(b) The supplier first acquired knowledge of the failure described in subsection (3) (a) of this section not more than twenty-four (24) months before the date notification was given pursuant to the provisions of section 23-1108, Idaho Code.

(c) The supplier has given written notice to the distributor, stating specifically the manner in which the distributor has failed to comply with the agreement.

(d) The distributor was given adequate opportunity to use good faith efforts to correct the failure to comply with the agreement. Adequate opportunity shall be thirty (30) days after receipt of the supplier's notice to submit a plan of corrective action to comply with the agreement and an additional ninety (90) days after the submission of a plan of corrective action to correct the failure in accordance with the plan.

[23-1107, added 1993, ch. 312, sec. 1, p. 1154.]

23-1108. NOTICE REQUIREMENTS. Notice by a supplier of any proposed amendment, modification, termination, cancellation, discontinuance or refusal to renew an agreement with the distributor shall be written, shall be provided to the distributor in the manner provided in the agreement, if written, or if the agreement is oral, by certified mail, and the notice shall contain all of the following:

(1) A statement of intention to amend, modify, terminate, cancel, discontinue or refuse to renew the agreement.

(2) A statement of the reason(s) for the amendment, modification, termination, cancellation, discontinuance or nonrenewal.

(3) The date on which the amendment, modification, termination, cancellation, discontinuance or nonrenewal will take effect.

[23-1108, added 1993, ch. 312, sec. 1, p. 1155.]

23-1109. TRANSFEREE OF DISTRIBUTOR'S BUSINESS BOUND BY AGREEMENTS IN EFFECT AT TIME OF TRANSFER -- SUPPLIER'S SUCCESSOR BOUND BY AGREEMENTS IN EFFECT AT TIME OF SUCCESSION TO SUPPLIER'S INTEREST. (1) A transferee of a distributor's business that continues to operate the business shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer.

(2) A successor to a supplier's interest in a particular brand or brands of beer, whether acquired by purchasing of the brand name or all or substantially all of the stock or assets of the supplier of that brand or brands, or who has been granted the marketing rights to a particular brand or brands of beer shall be bound by all terms and conditions of each agreement with dis-

tributors with respect to that brand or brands in effect on the date of the succession to such interest as a condition of such successor in interest continuing to sell that brand or brands to distributors for resale within this state.

[23-1109, added 1993, ch. 312, sec. 1, p. 1155.]

23-1110. COMPENSATION TO DISTRIBUTOR UPON TERMINATION, CANCELLATION OR NONRENEWAL OF AGREEMENT. (1) In the event that an agreement is terminated, canceled or not renewed by a supplier, the distributor shall be entitled to reasonable compensation for the laid-in cost to the distributor of the inventory of the supplier's products, including any taxes paid on the inventory by the distributor, together with a reasonable charge for handling of the products.

(2) In the event that an agreement is terminated, canceled or not renewed by a supplier in bad faith or for other than good cause, the distributor shall be entitled to additional compensation from the supplier for:

(a) The fair market value of any and all assets, including ancillary businesses, relating to the transporting, storing or marketing of supplier's products; and

(b) The good will of the business.

(3) The total compensation to be paid by the supplier shall be reduced by any sum received by the distributor from sale of assets of the business used in the distribution of the supplier's products as well as by whatever value such assets may have to the distributor that are unrelated to the supplier's products.

(4) As used in subsection (2)(a) of this section, fair market value means the highest dollar amount at which a seller would be willing to sell and a buyer would be willing to buy when each possesses all information relevant to the transaction.

[23-1110, added 1993, ch. 312, sec. 1, p. 1156.]

23-1111. ARBITRATION. Any dispute arising under the provisions of this chapter may be settled by such dispute resolution procedures, including arbitration, as may be provided by a written agreement between the parties. In the absence of a written agreement providing for dispute resolution procedures, any dispute arising under the provisions of this chapter may be settled by arbitration, if every party involved in the dispute agrees to arbitrate. Arbitration shall be conducted in accordance with the uniform arbitration act of the state of Idaho, chapter 9, title 7, Idaho Code.

[23-1111, added 1993, ch. 312, sec. 1, p. 1156.]

23-1112. JUDICIAL REMEDIES OF PARTIES. (1) If a supplier engages in conduct prohibited under the provisions of this chapter, a distributor with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages, court costs, and, in the court's discretion, attorney's fees, reasonably incurred as the result of the prohibited conduct. If a distributor engages in conduct prohibited under the provisions of this chapter, a supplier with which the distributor has an agreement may maintain a civil action against the distributor to recover actual damages, court costs and, in the court's discretion, attorney's fees reasonably incurred as a result of the prohibited conduct. Actual damages shall include damages to any ancillary business incurred as a result of the prohibited conduct.



(2) A supplier or distributor may bring an action for declaratory judgment for determination of any controversy arising pursuant to the provisions of this chapter.

(3) Upon proper application to the court, a supplier or distributor may obtain injunctive relief against any violation of the provisions of this chapter.

(4) The remedies provided in this section shall not abolish any other cause of action or remedy available to the supplier or the distributor.

(5) Nothing contained in this chapter shall give rise to a claim against the supplier or distributor by any proposed transferee of the distributor's business.

[23-1112, added 1993, ch. 312, sec. 1, p. 1156.]

23-1113. WAIVER OF BENEFITS OF CHAPTER. No agreement shall require a supplier or distributor to waive any rights granted pursuant to any provision of this chapter and the provisions of any agreement which would have such an effect shall be null and void. However, if a good faith dispute arises between the parties as to the meaning of any rights or obligations created in the provisions of this chapter, or the performance by a party of its obligations, the parties may enter into a written voluntary settlement of the dispute.

[23-1113, added 1993, ch. 312, sec. 1, p. 1157.]

CHAPTER 12  
IDENTIFICATION CARDS -- [REPEALED]