

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 276

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO BEER; AMENDING SECTION 23-1001, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 23-1003, IDAHO CODE, TO REVISE PROVISIONS REGARDING BREWERS' LICENSES; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 23-1028, IDAHO CODE, TO REVISE A PROVISION REGARDING A WAREHOUSE AND RECORDS OF WHOLESALERS AND DEALERS AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 23-1001, Idaho Code, be, and the same is hereby amended to read as follows:

23-1001. DEFINITIONS. As used in this chapter:

(a) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and/or other ingredients in drinkable water.

(b) "Brewer" means a person licensed to manufacture beer inside or outside of the state of Idaho.

(c) "Certificate of approval" means a license issued to a person whose business is located outside of the state of Idaho who sells beer to wholesalers located within the state of Idaho.

(d) "Contractee brewer" means a brewer producing fewer than thirty thousand (30,000) barrels of beer in aggregate annually, including any beer manufactured outside the state of Idaho, that enters into a contractual relationship with another brewer to produce beer on the contractee's behalf.

(e) "Contractor brewer" means a brewer producing fewer than thirty thousand (30,000) barrels of beer in aggregate annually, including any beer manufactured outside the state of Idaho, that enters into a contractual relationship with a contractee brewer to produce beer for the contractee brewer on the contractor brewer's licensed premises.

(f) "Dealer" means a person licensed to import beer into this state for sale to a wholesaler.

(g) "Director" means the director of the Idaho state police.

(h) "Live performance" means a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(i) "Person" includes any individual, firm, copartnership, association, corporation or any group or combination acting as a unit, and the plural as well as the singular number unless the intent to give a more limited meaning is disclosed by the context.

(j) "Premises" means the building and contiguous property owned, or leased or used under government permit, by a licensee as part of the business establishment in the business of sale of beer at retail, which property is improved to include decks, docks, boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios, poolside areas or similar improved ap-

1 purtenances in which the sale of beer at retail is authorized under the
2 provisions of law.

3 (k) "Retailer" means a person licensed to sell beer to consumers at
4 premises described in the license.

5 (l) "Theater" means a room, place or outside structure for performances
6 or readings of dramatic literature, plays or dramatic representations of an
7 art form not in violation of any provision of Idaho law.

8 (m) "Wholesaler" means any person licensed to sell beer to retailers,
9 wholesalers, permittees or consumers and to distribute beer from warehouse
10 premises physically located within the state of Idaho described in the li-
11 cense.

12 (n) All other words and phrases used in this chapter, the definitions of
13 which are not herein given, shall be given their ordinary and commonly under-
14 stood and acceptable meanings.

15 SECTION 2. That Section 23-1003, Idaho Code, be, and the same is hereby
16 amended to read as follows:

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

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

48 (c) In the event that a wholesaler sells beer to a retailer who is lo-
49 cated 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 licensed brewer licensed within the state of Idaho~~ that produces fewer than thirty thousand (30,000) barrels of beer in the aggregate annually, including any beer produced outside the state of Idaho, may be issued a brewer's 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:

- (1) Has continuously brewed beer in and continuously maintained a physical presence in the state of Idaho for no less than five (5) years;
- (2) 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; and
- (3) Has surrendered any wholesale license.

(e) ~~A brewer licensed under the provisions of subsection (d) of this section that produces fewer than thirty thousand (30,000) barrels of beer in the aggregate annually, including any beer produced outside the state of Idaho,~~ 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,~~ maintain a warehouse physically located within the state of Idaho, distribute its beer using employees of the brewery with equipment owned or controlled by the brewery, and 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 in accordance with the provisions of subsection (d) of this section. The holder of a brewer's retail license shall not be disqualified from holding a retail wine license or wine by the drink license for the sale of wine at the brewery's premises on the grounds that the licensee is also licensed as a wholesaler.

SECTION 3. LEGISLATIVE INTENT. In amending Section 23-1003(d) and (e), Idaho Code, the Idaho Legislature, in accordance with the dormant commerce

1 clause of the United States Constitution, intends to treat in-state small
2 brewers brewing thirty thousand (30,000) barrels or fewer the same as out-
3 of-state small brewers brewing thirty thousand (30,000) barrels or fewer and
4 ensure that out-of-state small brewers are given no advantage over in-state
5 small brewers. The amendment clarifies that out-of-state small brewers may
6 obtain a brewer's retail license under Section 23-1003(d), Idaho Code, and
7 clarifies that the out-of-state small brewer may act as a wholesaler for its
8 own beer products as long as it maintains a warehouse in Idaho. The in-state
9 warehouse requirement ensures that all beer products produced in or trans-
10 ported into Idaho are subject to inspection. In that regard, the Idaho Leg-
11 islature declares that maintaining a brewery or a physical warehouse in the
12 state of Idaho is paramount in the interest of protecting the health, safety,
13 and welfare of Idaho citizens and for the establishment of an orderly market-
14 place. Such physical presence achieves unquestionable jurisdiction, pro-
15 vides immediate accountability for suppliers, and provides the ability for
16 regulators to remove bad actors and unsafe products from the market. Such
17 physical presence allows for physical inspections statutorily required by
18 Idaho law, including but not limited to the Idaho State Police, the Division
19 of Alcohol Beverage Control, the Idaho State Tax Commission, and the Idaho
20 Department of Health and Welfare.

21 SECTION 4. That Section 23-1028, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 23-1028. WAREHOUSE AND RECORDS OF WHOLESALERS AND DEALERS. Each li-
24 censed wholesaler and dealer shall sell and distribute beer in this state
25 only from stocks of beer ~~which that~~ have been unloaded, stored, and main-
26 tained for no less than twenty-four (24) hours in a warehouse or warehouses
27 owned or used by such wholesaler or dealer physically located within the
28 state of Idaho in the conduct of his business as such. All records which a
29 wholesaler or dealer is by law or rule required to maintain, shall be kept
30 at his warehouse within the state of Idaho, or, if such wholesaler or dealer
31 shall have more than one (1) warehouse, then in the warehouse of such whole-
32 saler or dealer which he shall designate as his principal warehouse within
33 the state. Nothing in this section shall be deemed to affect the existing
34 rights of any person who, on and prior to January 1, 1996, was licensed as a
35 wholesaler by the state of Idaho.

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