

IN THE SENATE

SENATE BILL NO. 1344

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO BEER AND BREWERS; AMENDING SECTION 23-1033, IDAHO CODE, TO PROVIDE THAT CERTAIN BREWERS MAY BE PERMITTED TO HAVE A FINANCIAL INTEREST IN ONE ADDITIONAL BREWERY.

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

SECTION 1. 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, wholesaler, 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, renting, 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 retailer 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 retailers 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 retailer 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, CO gas regulators, picnic or party pumps, together with necessary nonmechanical or nonenergized equipment to enable cooling of beer, and CO 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 relocating 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

1 distribution of written information or instructions to licensed
2 retailers with respect thereto;

3 (iii) The tapping of kegs;

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

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

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

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

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