

FEBRUARY 11, 2019

S 1040

COPIES OF SOME ORAL TESTIMONIES

ATTACHMENT 1

Russell Westerberg representing client ILBA in opposition to S. 1040

S.1040 is spread out over 48 pages. While there are numerous drafting complexities, the intent of the proposal is clear. Replace the 60 year old system Idaho has used to allocate licenses to serve liquor based on population in a city, by giving cities and counties carte blanche authority to issue a license to serve liquor to every restaurant and hotel that wants one. Regardless of population.

My client's concerns focus on the significant economic demolition S.1040 will inflict on the market value of their business. Eliminating the transaction value of a state issued quota license in Idaho's more populous communities will cause the investment portfolios of many small business owners to evaporate. Those are legitimate concerns.

However, what concerns me and what I hope should concern you is the absolute, unlimited expansion of liquor by the drink establishments S. 1040 will cause to occur in Idaho's cities and counties.

Liquor by the drink is nothing new in most Idaho cities where quota licenses exist. However, giving county commissioners the authority to issue liquor by the drink in rural, unincorporated areas is reason alone to say no to S.1040. The only liquor by the drink licenses that currently exist outside city limits are those few specialty, non transferable licenses made possible in each instance by separate acts of the legislature.

Since 1959 retail liquor licenses have been issued by the State of Idaho based on population. **Exceptions, for economic development have been provided by the Legislature** in the form of Specialty Licenses which are not transferable and are the only kind that are presently found outside city limits. (*Golf courses, ski resorts etc.*)

Transferring the ability to issue liquor license from the state to cities and counties grossly ignores the legislature's responsibility in Art 3 section 24 to **provide for the temperance and morality and sobriety of the people and the purity of the home, and - Art 3 section 26 that says after 1934 the legislature shall have full authority to permit, control and regulate the manufacture and sale of intoxicating liquors.**

The professed purpose of S.1040 is to increase the number of licenses to serve liquor by the drink by eliminating any required per capita population per liquor license. The Director of the State Liquor dispensary has been heard to agree that increasing the number of retail liquor licenses will increase the sale of liquor.

2014 statistics obtained from Dept. of law enforcement graphically demonstrate that when liquor licenses per capita are increased, DUIs per capita increase proportionately.

For example: Four years ago the average per capita per retail liquor license in the state of Idaho and the City of Boise was 1,500. Resort oriented counties Teton, Blaine, Boise, Boundary, Idaho and Valley County have per capita averages far below the state average. In the same study Teton County averaged 642 people per license.

As you might expect, corresponding with residents in cities in Resort - counties greater access to liquor results in higher instances of DUIs. For Instance, during 2004-2014 the percentage of the population in Teton County arrested for DUI was double the percentage of the population arrested in Ada County. **Resort cities have higher instances of DUIs because residents there have greater access to liquor.**

If S.1040 has the desired effect of not just lowering, but eliminating any required population per liquor license - DUIs per capita and associated problems with alcohol abuse will increase proportionately state wide.

Don't be lulled into thinking because there is no limit on the number and location of beer and wine by the drink licenses that there is no need to continue current policy allocating liquor by the drink licenses according to population. There is a non-disputable difference between the quantity needed for intoxication between beer, and wine and 100 proof Old Overcoat.

S.1040 isn't about economic development. Its about increasing the sale and consumption of intoxicating liquors Idaho's constitution Article 3 section 26 put each of you and your colleagues in the legislature in charge of controlling and regulating the sale of.

I encourage you to honor the expectations given you by the architects of Idaho's constitution and at the same time prevent economic loss to Idaho's current license holders and hold S. 1040 in this committee.

**Senate State Affairs Committee
Idaho State Senate
Boise, ID 83720
RE: Opposition to SB1040**

Dear Senator Lodge,

When I bought my Idaho State liquor license in 2007, I paid \$150,000 for a license I was told I would never technically own. On top of that, I paid the State of Idaho a 10% mandated transfer fee. In addition to this transfer fee, I paid monthly interest for the loan I secured in order to purchase the right to use that license. I paid this loan off in 2016. That same year I was able to secure another loan (based on the value of my business) to buy out my business partner. Again, I paid the same State mandated transfer fee of 10% because I changed the structure of my corporation. I am still paying on this loan. When all was said and done, I have \$185,000 invested into my current license. If this bill passes, the value of my license will be devalued and I could potentially hold a license with no value. Why would anyone purchase a \$185,000 license when they could get a restaurant license from the city or county for \$3,000 and then set up a makeshift "eating establishment"?

I have no regrets over spending any of this money. I do however hope to someday recover these expenses and retain the value of my business for future sale. I fear that passage of this bill would cause my bank to call my loan due because of the devaluation of liquor licenses and my businesses. What I know is that I do everything I can to protect this investment. We currently require all staff to participate in regular training on how to identify fake ID's, prevent the over-service of alcohol and promote a safe clean environment for patrons to congregate. I fail to understand how someone that only paid \$3,000 for a license having that same level of commitment to staff safety and community commitment to the prevention of underage / binge drinking.

How is this economic development? Business owners, running safe and profitable business provide the State with revenue through this 10% transfer fee. My business alone has provided the State of Idaho \$20,000 through this revenue-generating vehicle.

Economic development is not created by making more liquor licenses available. Economic development is a process achieved through investing in infrastructure, housing, and urbanization. Currently the State of Idaho has a functioning and stable quota system in place to compensate for this growth. Flooding the market with licenses will cause an unbalanced economic environment for local business who were forced to pay market value for a license that they technically do not own.

I am only one example of an Idaho liquor license holder. There are approximately 1100 quota license holders throughout the state that have obtained single and multiple licenses. We share a common fear that the investments we have worked so hard to purchase and maintain will be worthless and result in economic hardship for ourselves, our families and our businesses.

Thank you for taking time to hear my testimony. I urge you to vote NO on SB1040.

Regards,

Brad Selvig
1010 S. Broadway Ave
Boise, ID 83706
Owner
Boise River Catering
The End Zone Tavern

Joe Ostermiller

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February 5, 2019

State Affairs Committee
700 W. Jefferson St.
Boise, ID 83701

Members of the State Affairs Committee:

I am writing this letter in opposition to S1040 regarding alcohol served by the drink. I am sincerely hoping and requesting that you will NOT SUPPORT this bill as it is written. The proposed amendments to these statutes are very concerning to me, as I am on the current liquor license waiting list, and have been for quite some time.

The monetary value of liquor licenses in Boise has been financially prohibitive for my wife and I to purchase a seasoned license, so we chose to wait it out on the list so we could see our vision come to life. Currently, I am about two to three years away from being offered a state license. Once we get offered a license, we plan to open a unique to Boise, high end craft cocktail establishment that focuses on the art of the cocktail. While we plan to offer some light appetizers/tapas, we do not want to (nor can we afford to) enter into the food industry with a full restaurant at this time.

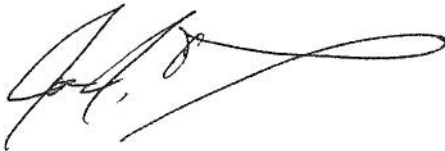
S1040 is, I believe, pointed in the right direction, but still misses the mark and will end up creating more obstacles for entry level Idaho entrepreneurs than any good that will come out of it. While I have many concerns about the system that this bill would create, below are my primary concerns which will effect myself and others in my position directly. Please refer to the attachment for a more in depth analysis in support of these points marked with an asterisk:

Prohibitive to Entry Level Entrepreneurs: The old adage of “it takes money to make money” holds very true to this bill. The added cost of restaurant equipment, supplies, stock, staff, and square footage needed to meet the definition of an “eating establishment”** will be as financially prohibitive to the entry level entrepreneur as the current cost of purchasing a seasoned liquor license here in Boise. With the current system there is, at least, an option to acquire an affordable license with the freedom to open the establishment style of your choice. This is particularly concerning to me directly, and I am certain many other people who are currently on the liquor license waiting list.

Restriction of Freedom of Future Growth: I understand the intent of this bill is to still allow for liquor only bars to come and go by grandfathering in the current transferable state liquor licenses. However, over time these licenses will dwindle through revocations, failure to renew, inability to transfer and place a license within 90 days if a business closes, etc.** Growth is going to continue to explode for the foreseeable future in Idaho, and Boise in particular. Quantity of state liquor licenses and growth will be on opposite trajectories leading eventually, to a very bland, overly restauranted state. While the short term effect may well lower the value of the current state licenses**, they will still be prohibitively expensive to entry level entrepreneurs and in time they will be just as, if not more expensive than they are today. This will leave anyone at the entry level in a worse position than they would be in with the current system because there is no affordable option as there is today.

In summary, please do not support Senate Bill S1332 as it is written. There still needs to be a third option which would allow the "little guy" to enter into business without the prohibitive expense of purchasing a "legacy license" or investing in the unnecessary and high dollar expense of a full restaurant. I've attached some ideas to a possible solution and would welcome the opportunity to discuss these ideas with anyone on the committee at your convenience.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Ostermiller', with a long, sweeping flourish extending to the right.

Joe Ostermiller

Attachments:

[Research and Rationale in Opposition to S1040]

[Possible Solution]

RESEARCH AND RATIONALE IN OPPOSITION TO S1040

Effect of S1040 on value of current licenses:

Short Term:

- Fair Market Value (FMV) of existing state liquor licenses will find a level point
 - Estimate: \$50,000 (+/- \$5,000)
 - Factors used to determine this level FMV:
 - Today's FMV for transfer of state liquor license in 31 municipalities in which licenses are transferred on a regular basis
 - (Data provided by ISP Alcohol Beverage Control)
 - An assumption of \$10,000 FMV for the remaining 126 Idaho municipalities with active state licenses that ABC does not maintain current FMV for transfer of state liquor licenses data on
 - Other unknown factors not used in this FMV estimate:
 - The number of small town license holders who will use the increased license value as an opportunity to sell/transfer due to the geographic restriction on state licenses being lifted (23-904)
 - This will further lower the FMV of state licenses
 - Will lead to a potential massive reduction of social gathering places in small communities
 - Number of restaurant owners and current state license holders across the state who will choose to sell their license and convert to a municipal license as way to make some easy money
 - This will further lower the FMV of state licenses
 - Nearly all leased state licenses will go up for sale when their lease term is met. Assuming most leased state licenses are leased by restaurants:
 - There is zero incentive for the restaurant owner to continue leasing. Therefore, they will terminate the lease agreement and obtain a municipal license adding more state licenses into the supply further lowering the FMV of state licenses
 - Calculation to determine \$50,000 FMV estimate:
 - Median average of the FMV of every individual license in the state using the data provided by ISP/ABC and the assumption of \$10,000 for every other license

Effect of S1040 on value of current licenses continued:

Long Term:

- Supply of state liquor license will dwindle over time to nothing
 - Causes:
 - There are many completely appropriate ways for a state license to be permanently lost from the system:
 - 23-617 – Administrative penalties for serving to persons under 21 or intoxicated persons
 - Revocation after multiple offenses
 - 23-915 – Persons not qualified to be licensed
 - Subsection 6 - Any licensee disqualified by 23-915 shall have license revoked
 - 23-921 – Suspension, revocation and refusal to renew licenses
 - Gives director authority to suspend, revoke or refusal renewal
 - 23-921A – Suspension/Revocation for violation of obscenity laws
 - 23-925 – Illegal Liquor
 - Inability to “place” a license within 90 days if a business closes for any reason
 - I believe this will be a very common cause of licenses being lost as the demand will plummet in the short term
 - THERE IS NO MENTION WHATSOEVER of any means to maintain the number of state liquor licenses
 - Effects:
 - A basic understanding of supply and demand and a dash of common sense clearly shows that over time, values will rise again, quite possibly to the same levels they are today or even significantly higher
 - Small towns will lose businesses and social gathering establishments because bar owners will see the value in their licenses and sell them to the larger cities where the demand lies. This may well happen in the short term as well.
 - Cocktail bars, night clubs, and other food-less social venues will dwindle to nearly nothing
 - Idaho will be flooded with mediocre restaurants that have no character

Effect of S1040 on value of current licenses continued:

Insufficient remedy to loss of value of licenses currently valued over \$50,000:

- 10% Discount on liquor to state license holders (23-217) is insufficient
 - If state license values drop to \$50,000 (median average of today's FMV calculated as explained above) and using Boise as an example: (Boise liquor license FMV = \$176,000)
 - \$100,000 annual purchase of liquor will take 24 years to earn back lost value
 - \$85,000 annual purchase of liquor will take 28 years to earn back lost value
 - \$75,000 annual purchase of liquor will take 35 years to earn back lost value
 - Boise liquor license FMV data provide by ISP/ABC
 - Annual liquor purchase amount is based off of three popular downtown Boise cocktail bars that primarily focus on cocktails, not food.
 - Data provided by the Idaho State Liquor Division

Impediments to entry level entrepreneurs created by S1040:

No affordable option to enter into the market:

- Currently - two options to obtain liquor license:
 - NOT AFFORDABLE: Purchase/transfer an established license
 - AFFORDABLE: Wait on the list for a \$750 license
- If S1040 passes - two options to obtain a liquor license:
 - NOT AFFORDABLE: Purchase/transfer an established license
 - Despite the fact that the FMV off state licenses will level out, \$50,000 is still prohibitive to many aspiring entrepreneurs
 - NOT AFFORDABLE: Open a restaurant
 - Requirement of restaurant (23-902) impedes entry level entrepreneurs
 - Start-up costs of a new restaurant is very high
 - Cost of a basic, entry level 150 sq. ft. kitchen: \$50,000+
 - Required type 1 hood: \$24,000 of total kitchen cost
 - Installation of equipment: \$2,500+
 - Cost of additional square footage (150 sq.ft.):
 - \$3,000/year
 - Cost of kitchen staff:
 - Chef: \$50,000/year
 - Additional kitchen staff: \$50,000/year
 - Many other expenses:
 - Plates, glasses, silverware
 - Cooking utensils, pots and pans
 - Food stock
 - Etc.
 - NO AFFORDABLE OPTION to enter into the industry

Possible Solution

Issue two types of municipal licenses:

- Class 2:
 - Restricts use of license to “eating establishments” and “lodging facilities” as it is currently written in S1040
 - Increase application fee to \$750 in all municipalities
 - Reduce renewal fee to \$2,500 in all municipalities
 - Otherwise remains the same as what is written in in S1040 for municipal licenses

- Class 1:
 - Allows for a more broad use of the license to include liquor only cocktail bars and night clubs while somewhat maintaining S1040’s intent of limiting these types of establishments
 - Application fee to \$5,000
 - Renewal fee to be \$3,500
 - Two year wait period to attain new Class 1 license
 - Non-transferable
 - No quota

Original Applicant License Holders:

All current state licenses that are held by the original applicants (i.e. they only spend the initial application fee for their license) will automatically be converted to municipal licenses. The owners of the license will have the option as to whether they convert to a Class 1 or Class 2 license. Upon their next renewal date, the owner of the license will pay the balance of the new application fee minus the original fee that they paid when issued their license. Subsequent years would be the standard renewal fee.

- Example 1 - An original state license holder (using Boise as an example) chooses to convert to a Class 2 license:
 - New application fee of \$750 - original \$750 fee paid = \$0 due at next renewal date
 - Shows good will toward current state license holders
 - Subsequent years renewal fee will be \$2,500 annually

- Example 2 - An original state license holder (using Boise as an example) chooses to convert to a Class 1 license:
 - New application fee of \$5,000 - original \$750 fee paid = \$4,250 due at next renewal date
 - Subsequent years renewal fee will be \$3,500 annually

Purchase/Transfer License Holders:

Current state licenses that are held by owners who purchased a transferred license will maintain a “legacy license” for a set period (15 years seems to work well). During this period, the state will provide the license holder with an annual “reimbursement” for the loss of their initial investment caused by the current state quota system, up to a maximum of 75% of their initial investment in the purchase/transfer of their license. This reimbursement will be in the form of a 15% discount on liquor purchases and renewal fee waivers over the 15 year term only. These “legacy licenses” will automatically convert to municipal licenses, when 75% “reimbursement” of an individual license transfer/purchase price has been attained, OR at the end of the 15 year “reimbursement period”. When one of the aforementioned criteria are met, the 15% discount will cease, and renewal fees will begin. The owner of the license will have the option as to whether they will convert to Class 1 or Class 2 municipal license.

- Example 1 - A state license holder who purchases \$75,000 worth of liquor annually and (using Boise as an example) paid \$175,000 for their license:
 - Will take 9 years to be “reimbursed” for 75% of their \$175,000 purchase/transfer investment
 - 75% of their transfer/purchase price = \$131,250
 - 15% discount on annual liquor sales = \$11,250 annually
 - Renewal fee waiver = \$3,500 annually (for the 9 years it takes to reimburse to 75%)
 - In this example, this license holder attains 75% reimbursement prior to the end of the 15 year term
 - License would automatically be converted to a Class 1 or Class 2 municipal license as per the option of the license holder
 - 15% discount would cease
 - Annual renewal fees applicable to the license class chosen by the license holder would take effect at next renewal
- Example 2 - A state license holder who purchases \$25,000 worth of liquor annually and (using Boise as an example) paid \$175,000 for their license:
 - Will not quite make full 75% “reimbursement” of their \$175,000 purchase/transfer investment
 - 75% of their license transfer/purchase price = \$131,250
 - 15% discount on annual liquor sales = \$3,750 annually
 - Renewal fee waiver = \$3,500 annually (for the full 15 year reimbursement term)
 - In this example, the license holder would not reach the full 75% “reimbursement” of their initial \$175,000 investment.
 - Amount “reimbursed” at the end of the 15 year term would be \$108,750
 - At the end of the 15 year term:
 - License would automatically be converted to a Class 1 or Class 2 municipal license as per the option of the license holder
 - 15% discount would cease
 - Annual renewal fees applicable to the license class chosen by the license holder would take effect at next renewal
- Note: There are only 8 municipalities which have a FMV estimated over \$100,000 meaning that the number of purchase/transfer license holders who will not attain 75% reimbursement should be quite low

Analysis of proposed solution effect on stakeholders:

Entry Level Entrepreneurs (to include those individuals who have put their time in on the priority waiting list):

- Allows an affordable option for entry into the industry
- Does not restrict freedom to open the establishment style of their choosing

Original Applicant State License Holders:

- Because original applicant state license holders have no additional expense beyond the original application fee invested in their license, they lose out on nothing by converting to a municipal license

Transfer/Purchase State License Holders:

- Most transfer/purchase state license holders should be able to attain 75% reimbursement on their transfer/purchase investment
 - This group is the only one who loses out at all, however the vast majority of these license holders should have established and stable businesses which can absorb this 25% loss
 - It is worth noting again that only 8 cities have licenses with a FMV over \$100,000

State of Idaho:

- The initial loss from the 15% liquor discount offered to “legacy license” holders during the 15 year reimbursement period will be more than absorbed by offering no discount to municipal license holders
- The increased application and license renewal fees will also help to offset the 15% loss from liquor sales and will also ensure funding for any programs that S1040 originally intends to fund
- After the 15 year reimbursement period, there will be no discounts offered on liquor, no renewal fee waivers, and new application fees will provide more funds for the state to do good things with
- After the 15 year reimbursement period, the system will be standardized and simplified
 - While there will still be Class 1 and Class 2 licenses, they will have minimal administrative differences and the authority will be solely in the hands of the cities and counties
- The state will avoid repeating the same problem the current quota system created as state licenses are lost and supply drops

Citizens of Idaho:

- Small towns will not lose their social gathering places
- Future entrepreneurs will not be tethered by restrictive limitations of the use of municipal licenses
- Idaho will not be flooded over time with nothing but restaurants that serve liquor
- The craft cocktail movement is still in full effect, and Idaho residents can still enjoy the economic impacts as well as tasting a culinary art that has been fully revived from the pre-prohibition era
 - Idaho has missed the boat to some degree due to the limitations of the current system
 - This proposal would allow Idaho to catch up and take part in this movement

**BRIAN DONESLEY
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FEBRUARY 11, 2019

TO: MEMBERS OF THE SENATE STATE AFFAIRS COMMITTEE

Re: Senate Bill 1040

Honorable Senator:

The fiscal impact of Senate Bill 1040 is impossible to calculate. Will sales increase, driving up sales tax, liquor sales from the dispensary and beer and wine distributors? Why would sales outstrip the general increase in drinking population? Anybody can get a drink easily now. So, how does one justify the loss of equity and goodwill that would be suffered by current licenses? Assume that the business value including license for the average bar is what, at fair market value? The license average must be over \$100,000. The business itself would be one and a half (1.5) times annual gross sales to three (3) times annual gross sales. Take an average statewide of business value of \$400,000 times 1200 licensee businesses, more or less. That is \$480,000,000, half a billion dollars. For perspective, the FY2018 State Budget was \$3.65 billion. Based on what fiscal impact statement does it make sense to strip that value from Idaho businesses and families?

The argument will be that current licensees could move their license to other Cities or in the County. Imagine the Boise City Counsel allowing licenses from every small town in Idaho where there is no business. How many licenses can a market use?

Will a small reduction of 5% in the dispensary cost of purchase for liquor compensate the licensees? It is believed not.

Other than the many issues involving the unfairness and bad faith of government agreeing to and implementing a regulatory scheme, collecting fees and revenues from the liquor regulatory system, promoting investment by its citizens and then abandoning the model and promoting more competition unfairly, resulting in grave disruption to the marketplace and the system of governance at play for 65 years, while leaving grave unknowns to be exploited against the citizens, there are

Members of the Senate State Affairs Committee

Re: Senate Bill 1040

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compelling legal arguments involving what kind of society was designed by the people through the State Constitution and what values were demanded adhered to by its elected officials.

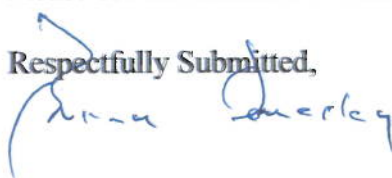
Art. III of the State Constitution. Sec. 1 grants legislative authority to the Legislature, not to Cities or Counties. Senate Bill 1040 provides that Cities and Counties shall have the "same" powers over alcohol as the state. This eliminates the supremacy of the State and abdicates the Legislature's responsibility to enforce the Constitutional mandate of Sec. 24, which makes it "The FIRST CONCERN of all good government is the virtue and sobriety of the people, and the purity of the home. The LEGISLATURE should further all wise and well directed efforts for the promotion of temperance and morality." Any responsible legislator must make this the highest priority as a matter of public policy. AN OPINION SHOULD BE SOUGHT FROM THE ATTORNEY GENERAL AS TO WHETHER THE BILL IS UNCONSTITUTIONAL AS AN UNLAWFUL DELEGATION OF POWER FROM THE LEGISLATURE TO THE COUNTIES AND CITIES. Sec. 25 prescribes the duties sworn to by each Legislator to "faithfully discharge the duties" prescribed. The highest duty is described in the Constitution.

Senate Bill 1040 is remarkably complicated and confusing. There are many questions. If the intention is to give restaurants liquor licenses, a simple measure could be pursued, though that concept is unfair to current licensees and only promotes special interests of those who want to get into the retail liquor sales marketplace with minimal cost and regulation. Under the present proposal, chaos would ensue. Ask ABC. Since Territorial times, Idaho citizens have had statutes to regulate the sale of alcohol, embodied in the State Constitution by the State's founders. It is put at risk haphazardly and irresponsibly, practically overnight, without careful review and comment by those familiar with the laws, (law enforcement), and by the Legislators themselves. Who has carefully read and sought counsel on Senate Bill 1040 and its ramifications? Another "study group" appointed by the Governor or the Legislature, as in the past, would likely be authorized with a select group of "shareholders," comprised of the hotels, restaurants, chamber of commerce, IACI, commercial real estate interests and those wanting to extend commercial activities selling alcohol from the purview and supervision of the Cities to the Counties.

The Idaho Supreme Court might well view unfavorably the delegation of authority to the county commissioners or city councils, which the Constitution so clearly intended to be the exclusive province of the Legislature in Sec. 26.

Please see the attached Technical Analysis.

Respectfully Submitted,



Brian Donesley

TO MEMBERS OF THE SENATE STATE AFFAIRS COMMITTEE
TECHNICAL ANALYSIS
SENATE BILL NO. 1040

Presented by Brian Donesley, Attorney

P.4. Section 1. 23-217

Five (5%) discount from the dispensary, not ten (10%).

P.5. Section 2

The first violation of sale to a minor is not a mandatory penalty. Subsequent violations are mandatory penalties. Also, (2) Gives the mayor discretion as the “responsible authority” to impose fines. What due process?

P.5 Section 3

Minors must “knowingly” misrepresent age to be guilty of an infraction or subsequent misdemeanor.

P.6. Section 4

“Interdicted” minors are allowed in a restaurant, eating establishment or lodging facility or any place where there is a bar, if the bar, described as “place,” is separated.

“Theater” presenting a “live performance” may invite minors. But, the definition of “theater” references where artful events occur, which could include sexual content. See P.12, 23-604(8). Also, the definition for “live performances” is deleted. See P.11, 23-902(10).

Any brewery or winery, without food, may be attended by minors, without limitations. Likewise any person licensed to sell wine at retail, if the wine is sold by a licensed winery selling only its own product. These exceptions swallow the rule that minors are not allowed in a “place,” which is where liquor, beer or wine is kept, prepared and served.

P.7. Section 5. 23-605

Eliminated are the words “intoxicated or apparently” intoxicated, substituted with “obviously intoxicated”. A person actually intoxicated, or who appears to be intoxicated, are no longer referenced. The burden is made more difficult for enforcement, requiring that a person “obviously” be intoxicated for prosecution. What if a person is actually intoxicated, goes out onto the highway, causes harm and is subsequently determined to have been served in a licensed premise, and nobody had noticed that he/she was drunk? This loosens the standard of proof required by the State.

P.8. Section 6

Strict liability is provided for selling to a person under 21 years of age, without consideration for the possibility of fake identification.

Again, the words actually, “apparently or obviously intoxicated” are deleted. It is here that the “actually” issue arises. See above Section 5.

The restriction for sale to and “interdicted person” remains. But the definition is deleted at P.11, 23-902(6).

The penalties provided to a person under the age of 21 years who “knowingly misrepresents”. Can it not be assumed that the underage person knows his/her age?

P.8. Section 7. 23-617

If “all of the licensees employees” are server trained, then there is a schedule requiring a “written warning” for the first two (2) violations. Only upon the third violation is there an administrative fine. Why remove the discretion for administrative penalties and lighten the responsibility of the licensee?

P.9. Section 8

How does this proposal “further regulate and control the sale and distribution within the State of alcoholic beverages”.... and serve to “ensure the entire control of the sale of liquor”? What authority is there for the Legislature to delegate its responsibilities to City councils and County commissions, pursuant to **Article III**, §§ 24 and 26 of the Idaho State Constitution, which requires the protection, health, welfare and safety of the people of the State of Idaho...for the purpose of promoting and encouraging temperance in the use of alcoholic beverages within the State of Idaho?

P10. Section 9

The definition of “Eating establishment” is vague. All that is required is a hood and equipment “capable of cooking complete meals” served “during the time” the establishment is open. Does this mean part of the time? All of the time?

Exclusions for luncheonettes, etc. are lumped in with “other similar uses” as not meeting the requirements.

The term “Interdicted person” is deleted.

The term “Live performance” is deleted. Refer above.

The term “Lodging facility” only requires overnight accommodations available to the general public. This would appear to apply to any overnight lodging, i.e. VRBO.

“Rules” may be promulgated by the director or by the City or County. Contradiction and confusion are inevitable.

The term “Theater” references “an art form,” opening the door to First Amendment issues allowing minors to be upon the premises of such theater where liquor is sold.

The term “winery” requires only bottling of wine, and more than one (1) winery may be upon the same premises upon which minors may be allowed. This would allow an enterprising “winery” operator to buy wine in bulk, bottle it and sell it upon its establishment where children will be allowed to be present, essentially a “place” in which minors are otherwise not allowed.

P.12. Section 11

Again, a restriction on sales is limited to a person “obviously” intoxicated.

P.13. Section 12

So called “grandfather rights” purport to make State liquor licenses “freely transferrable throughout the State of Idaho wherever liquor by drink establishments are allowed.” But Cities may not agree to have State licenses in their city, regulated pursuant to rulemaking requirements by the director, without being subject to City or County regulation. What conflicts shall arise? Cities and Counties are granted the “same” authority regarding regulation of so called “municipal licenses.” State licenses from small towns may be sought to be transferred into more lucrative markets.

State licenses are subject to a much lesser annual fee payable to the State than are municipal licenses. Would State licenses be subject to license fees by both the State and a City or County?

P.13. Section 13. 23-905

Cities and Counties are authorized to issue licenses to “eating establishments and lodging facilities.” The Legislature allocates rule making authority to Cities and Counties by ordinance “consistent with State Law.” Required is “fair administration.” There is no reference to the Idaho Administrative Procedures Act or any other due process procedural provisions.

P.13. Section 14. 23-906

A City or County has 60 days to hold an election up to the effective date of the Act. Default is to allow the sale of liquor in any city or county which does not timely conduct such election.

P.15. Section 19. 23-910

A State beer license is required to apply for a City license for the sale of liquor by the drink.

P.15. Section 20. 23-911

The City or County may do an investigation of any applicant. Any “false statement” is a felony. There’s no reference to a knowledge requirement with respect to any such false statement to be a criminal act.

P.17. Section 22. 23-913

City councils and County commissioners may set initial license fees “not less than \$3,000” per year. For State licenses, the license fees are substantially less and are capped at \$750. There is no cap on City and County license fees. Resorts pay \$25,000 as a one (1) time fee with renewals of \$3,500 per year. The license fees for State licenses have not been increased.

P.20. Section 26. 23-918

Manufacturers, wholesalers and their financially interested parties “may hold an interest in a license premises,” if the showing is made with respect to food on premises. This violates the traditional separation between manufacturers, wholesalers and retailers, originated in the Federal Alcohol Act after Prohibition as the “three-tiered system.” The purpose was to keep the market from becoming vertically integrated, as it was during Prohibition under the Mob.

It serves the purpose of preserving the integrity of the system and the accountability for the various participants at the various levels within the manufacturing and distribution and sale of liquor.

P.22. Section 29. 23-921

Unlike City and County licenses, State administrative suspensions, revocations or refusals for State liquor licenses only are required to comply with the State Administrative Procedures Act.

P.23 Section 30. 23-921A

“Obscenity” upon a licensed premise requires a six (6) month suspension by “the director.” Does this apply to City and County licenses? Or is “obscurity” to be allowed in city and county licensed premises?

P.24. Section 32. 23-923

Reference is to “liquor, excluding wine and beer” sold in State liquor stores. Does “liquor,” otherwise undefined, include wine or beer? This is contradictory, and there is no clear definition of “liquor” in the proposal.

Section 47. 23-1304A

The elections reauthorize the sale of alcoholic beverages including liquor by the drink within Counties.

Takings

No person other than the licensee may exercise any of the privileges under a liquor license other than the licensee. Hence, that a liquor license is a “mere privilege.” The Idaho courts have reached that conclusion in cases, though the issue has not been fully litigated under good facts, ie. a class action by current licensees of a change of law depriving them of their property interests in the licenses and/or their occupations, both of which implicate liberty and property interests under the First and Fourteenth Amendments to the US Constitution. US Supreme Court cases have held that government and citizens enter into contractual agreements where the citizens rely upon assurances from the government, essentially an estoppel or quasi-contract analysis of property rights.

The US Supreme Court has ruled that one’s occupation/business must be totally destroyed, made totally infeasible, not just damaged, to sustain a takings argument against the government. This is firmly the law in zonings cases, where, for example, eminent domain is exercised by the government. Here, there are strong prevailing public policy expressly stated that would draw into question the public good served by the government actions, as well as challenges to unlawful delegation by the Legislature (Art. III of the Idaho Constitution) to so-called “municipalities”, of which counties are not and cities are by statute only. This is very suspect constitutionally. Cities only exist as corporate entities under statute, while Counties are separate, constitutional entities. I argue that the delegation is illegal and an abrogation of Legislative duties in violation of the state public policies and basic governmental duties under the Constitution.

Respectfully Submitted

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February 11, 2019