

*See Senate Report*

*(P. 912) Motion to Rk vote by [unclear] Welch*  
*(P. 1054) Motion to R/C - Prevalent*

SENATE FILE **354**  
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO SSB 171)

Passed Senate, <sup>(P. 902)</sup> Date 3/30/93 Passed House, Date \_\_\_\_\_  
Vote: Ayes 44 Nays 6 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to alcoholic beverages, by amending licensing and  
2 permitting requirements, by eliminating the division hearing  
3 board, by establishing hearing and appeals procedures, by  
4 amending procedures for the issuance, suspension, or  
5 revocation of licenses and permits, by imposing civil  
6 penalties, by appropriating moneys collected through civil  
7 penalties, by removing certain restrictions on the sale of  
8 alcoholic beverages, and by providing for other properly  
9 related matters.

**SF 354**

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

**SENATE FILE 354**

**S-3440**

1 Amend the amendment, S-3346, to Senate File 354 as  
2 follows:  
3 1. Page 1, by striking lines 25 through 27 and  
4 inserting the following: "the endorsement of local  
5 authorities if all of the following conditions are  
6 met: the applicant's license has not been suspended  
7 or revoked since the preceding license was issued; a  
8 civil penalty has not been imposed against the  
9 applicant under this chapter since the preceding  
10 license was issued; an administrative proceeding is  
11 not pending against the applicant to suspend or revoke  
12 the applicant's license or to impose a civil penalty  
13 under this chapter; and the applicant has not been  
14 convicted of a violation of this chapter since the  
15 preceding license was issued."

By JOHN P. KIBBIE

1 Section 1. Section 123.3, subsection 26, paragraphs c and  
2 e, Code 1993, are amended to read as follows:

3 c. ~~Is~~ Notwithstanding paragraph "e", the applicant is a  
4 citizen of the United States and a resident of this state, or  
5 licensed to do business in this state in the case of a  
6 corporation. Notwithstanding paragraph "~~f e,~~" in the case of  
7 a partnership, only one general partner need be a resident of  
8 this state.

9 e. ~~If such person is a corporation, partnership,~~  
10 ~~association, club, or hotel or motel the~~ The requirements of  
11 this subsection ~~shall~~ apply to each the following:

12 (1) Each of the officers, directors, and partners of such  
13 person, ~~and to any.~~

14 (2) A person who directly or indirectly owns or controls  
15 ten percent or more of any class of stock of such person or.

16 (3) A person who directly or indirectly has an interest of  
17 ten percent or more in the ownership or profits of such  
18 person. ~~For the purposes of this provision, an individual and~~  
19 ~~the individual's spouse shall be regarded as one person.~~

20 Sec. 2. Section 123.16, subsection 2, paragraph b, Code  
21 1993, is amended by striking the paragraph.

22 Sec. 3. Section 123.19, subsection 4, Code 1993, is  
23 amended to read as follows:

24 4. Any violation of the requirements of this section,  
25 except subsection 3, shall subject the violator to the general  
26 penalties provided in this chapter and in addition thereto  
27 ~~shall be~~ to the general penalties, is grounds for suspension  
28 or revocation of the certificate of compliance, after notice  
29 and hearing before the ~~division hearing board~~ administrator.  
30 Willful failure to comply with requirements which may be  
31 imposed under subsection 3 ~~shall be~~ is grounds for suspension  
32 or revocation of the certificate of compliance only.

33 ~~Decisions of the hearing board concerning such suspension or~~  
34 ~~revocation shall be binding upon all parties.~~

35 Sec. 4. Section 123.24, subsection 2, paragraphs a and b,

1 Code 1993, are amended to read as follows:

2 a. The division may accept from a class "E" liquor control  
3 licensee a cashier's check which shows the licensee is the  
4 remitter or a check issued by the licensee in payment of  
5 alcoholic liquor. If a check is subsequently dishonored, the  
6 division shall cause a notice of nonpayment and penalty to be  
7 served upon the class "E" liquor control licensee or upon any  
8 person in charge of the licensed premises. The notice shall  
9 state that if payment or satisfaction for the dishonored check  
10 is not made within ten days of the service of notice, the  
11 licensee's liquor control license ~~shall~~ may be suspended under  
12 section 123.39. The notice of nonpayment and penalty shall be  
13 in a form prescribed by the administrator, and shall be sent  
14 by certified mail.

15 b. If upon notice and hearing under section 123.39 and  
16 pursuant to the provisions of chapter 17A concerning a  
17 contested case hearing, the administrator determines that the  
18 class "E" liquor control licensee failed to satisfy the  
19 obligation for which the check was issued within ten days  
20 after the notice of nonpayment and penalty was served on the  
21 licensee as provided in paragraph "a" of this subsection, the  
22 administrator ~~shall~~ may suspend the licensee's class "E"  
23 liquor control license for ~~not-less-than-three-days-but-not~~  
24 ~~more-than-thirty~~ a period not to exceed ten days.

25 Sec. 5. Section 123.24, subsection 2, paragraph c, Code  
26 1993, is amended by striking the paragraph.

27 Sec. 6. Section 123.29, Code 1993, is amended by striking  
28 the section and inserting in lieu thereof the following:

29 123.29 PATENT AND PROPRIETARY PRODUCTS CONTAINING  
30 ALCOHOLIC LIQUOR, WINE, OR BEER.

31 1. This chapter does not prohibit the sale of patent and  
32 proprietary medicines, tinctures, food products, extracts,  
33 toiletries, perfumes, and similar products, which are not  
34 susceptible of use as a beverage, but which contain alcoholic  
35 liquor, wine, or beer as one of their ingredients. These

1 products may be sold through ordinary wholesale and retail  
2 businesses without a license or permit issued by the division.

3 2. This chapter does not prohibit a member of the clergy  
4 of any religious denomination which uses vinous liquor in its  
5 sacramental ceremonies from purchasing, receiving, possessing,  
6 and using vinous liquor for sacramental purposes.

7 Sec. 7. Section 123.30, subsection 1, Code 1993, is  
8 amended to read as follows:

9 1. a. A liquor control license may be issued to any  
10 person who ~~7-or-whose-officers-in-the-case-of-a-club-or~~  
11 ~~corporation,7-or-whose-partners-in-the-case-of-a-partnership,~~  
12 are is of good moral character as defined by this chapter.

13 b. As a condition for issuance of a liquor control license  
14 or wine or beer permit, the applicant must give consent to  
15 members of the fire, police, and health departments and the  
16 building inspector of cities; the county sheriff, deputy  
17 sheriff, members of the department of public safety,  
18 representatives of the division and of the department of  
19 inspections and appeals, certified police officers, and any  
20 official county health officer to enter upon areas of the  
21 premises where alcoholic beverages are stored, served, or  
22 sold, without a warrant during business hours of the licensee  
23 or permittee to inspect for violations of this chapter or  
24 ordinances and regulations that cities and boards of  
25 supervisors may adopt. However, a subpoena issued under  
26 section 421.17 or a warrant is required for inspection of  
27 private records, a private business office, or attached living  
28 quarters. Persons who are not certified peace officers shall  
29 limit the scope of their inspections of licensed premises to  
30 the regulatory authority under which the inspection is  
31 conducted. All persons who enter upon a licensed premise  
32 premises to conduct an inspection shall present appropriate  
33 identification to the owner of the establishment or the person  
34 who appears to be in charge of the establishment prior to  
35 commencing an inspection; however, this provision does not

1 apply to undercover criminal investigations conducted by peace  
2 officers.

3 c. As a further condition for the issuance of a class "E"  
4 liquor control license, the applicant shall post a bond in a  
5 sum of not less than five thousand nor more than fifteen  
6 thousand dollars as determined on a sliding scale established  
7 by the division; however, a bond shall not be required if all  
8 purchases of alcoholic liquor from the division by the  
9 licensee are made by cash payment or by means that ensure that  
10 the division will receive full payment in advance of delivery  
11 of the alcoholic liquor.

12 d. A class "E" liquor control license may be issued to a  
13 city council for premises located within the limits of the  
14 city if there are no class "E" liquor control licensees  
15 operating within the limits of the city and no other  
16 applications for a class "E" license for premises located  
17 within the limits of the city at the time the city council's  
18 application is filed. If a class "E" liquor control license  
19 is subsequently issued to a private person for premises  
20 located within the limits of the city, the city council shall  
21 surrender its license to the division within one year of the  
22 date that the class "E" liquor control licensee begins  
23 operating, liquidate any remaining assets connected with the  
24 liquor store, and cease operating the liquor store.

25 Sec. 8. Section 123.30, subsection 3, paragraph d, Code  
26 1993, is amended to read as follows:

27 d. CLASS "D". (1) A class "D" liquor control license may  
28 be issued to a railway corporation, to an air common carrier,  
29 and to passenger-carrying boats or ships for hire with a  
30 capacity of twenty-five persons or more operating in inland or  
31 boundary waters, and shall authorize the holder to sell or  
32 furnish alcoholic beverages, wine, and beer to passengers for  
33 consumption only on trains, watercraft as described in this  
34 section, or aircraft, respectively. Each license is valid  
35 throughout the state. Only one license is required for all

1 trains, watercraft, or aircraft operated in the state by the  
2 licensee. However, if a watercraft is an excursion gambling  
3 boat licensed under chapter 99F, the owner shall obtain a  
4 separate class "D" liquor control license for each excursion  
5 gambling boat operating in the waters of this state.

6 (2) A class "D" liquor control licensee who operates a  
7 train or a watercraft intrastate only, or an excursion  
8 gambling boat licensed under chapter 99F, shall purchase  
9 alcoholic liquor from a class "E" liquor control licensee  
10 only, wine from a class "A" wine permittee or a class "B" wine  
11 permittee who also holds a class "E" liquor control license  
12 only, and beer from a class "A" beer permittee only.

13 Sec. 9. Section 123.32, subsections 2, 4, and 6, Code  
14 1993, are amended to read as follows:

15 2. ACTION BY LOCAL AUTHORITIES. The local authority shall  
16 either approve or disapprove the issuance of a liquor control  
17 license, retail wine permit, or retail beer permit, shall  
18 endorse its approval or disapproval on the application and  
19 shall forward the application along with the necessary fee and  
20 bond, if required, to the division. ~~Upon the initial~~  
21 ~~application for a liquor control license, retail wine permit,~~  
22 ~~or retail beer permit, the fact that the local authority~~  
23 ~~determines that no liquor control license, retail wine permit,~~  
24 ~~or retail beer permit shall be issued shall not be held to be~~  
25 ~~arbitrary, capricious, or without reasonable cause.~~ There is  
26 no limit upon the number of liquor control licenses, retail  
27 wine permits, or retail beer permits which may be approved for  
28 issuance by local authorities.

29 4. ACTION BY ADMINISTRATOR.

30 a. Upon receipt of an application having been disapproved  
31 by the local authority, the administrator shall ~~disapprove the~~  
32 ~~application, so~~ notify the applicant that the applicant may  
33 appeal the disapproval of the application to the  
34 administrator. The applicant shall be notified by certified  
35 mail, and return the application, the fee, and any bond shall

1 be returned to the applicant.

2 b. Upon receipt of an application having been approved by  
3 the local authority, the division shall make such an  
4 investigation as the administrator deems necessary to  
5 determine that the applicant complies with all requirements  
6 for holding a license or permit, and may require the applicant  
7 to appear to be examined under oath ~~regarding-any-matters~~  
8 ~~pertinent-to-the-application,-in-which-case~~ to demonstrate  
9 that the applicant complies with all of the requirements to  
10 hold a license or permit. If the administrator requires the  
11 applicant to appear and to testify under oath, a record shall  
12 be made of all testimony or evidence and the ~~same~~ record shall  
13 become a part of the application. The administrator may  
14 appoint a member of the division or may request an  
15 administrative law judge of the department of inspections and  
16 appeals to receive the testimony under oath and evidence, and  
17 to issue a proposed decision to approve or disapprove the  
18 application for a license or permit. The administrator may  
19 affirm or reverse the proposed decision to approve or  
20 disapprove the application for the license or permit. If the  
21 application is approved by the administrator, the license or  
22 permit ~~applied-for~~ shall be issued. If the application is  
23 disapproved by the administrator, the applicant and the  
24 appropriate local authority shall be so notified by certified  
25 ~~mail,-and-the-fee-and-any-bond-returned-to-the-applicant.~~

26 6. JUDICIAL REVIEW. ~~Judicial~~ The applicant or the local  
27 authority may seek judicial review of the action of the  
28 ~~division-hearing-board-may-be-sought~~ administrator in  
29 accordance with the terms of the Iowa administrative procedure  
30 Act. Notwithstanding the terms of ~~said~~ the Iowa  
31 administrative procedure Act, petitions for judicial review  
32 may be filed in the district court of the county ~~wherein~~ where  
33 the premises covered by the application are situated.

34 ~~Where-the-hearing-board-on-an-appeal-by-an-applicant-finds~~  
35 ~~that-the-local-authority-acted-arbitrarily,-capriciously,-or~~

1 without-reasonable-cause-in-disapproving-an-application-and  
2 the-administrator-issues-a-license-or-permit,-the-local  
3 authority-may-seek-judicial-review-of-such-decision-according  
4 to-the-terms-of-the-Iowa-administrative-procedure-Act-within  
5 thirty-days.

6 Sec. 10. Section 123.32, subsection 5, Code 1993, is  
7 amended by striking the subsection and inserting in lieu  
8 thereof the following:

9 5. APPEAL TO ADMINISTRATOR. An applicant for a liquor  
10 control license, wine permit, or beer permit may appeal from  
11 the local authority's disapproval of an application for a  
12 license or permit to the administrator. In the appeal the  
13 applicant shall be allowed the opportunity to demonstrate in  
14 an evidentiary hearing conducted pursuant to chapter 17A that  
15 the applicant complies with all of the requirements for  
16 holding the license or permit. The administrator may appoint  
17 a member of the division or an administrative law judge from  
18 the department of inspections and appeals to conduct the  
19 evidentiary hearing and to render a proposed decision to  
20 approve or disapprove the issuance of the license or permit.  
21 The administrator may affirm or reverse the proposed decision.  
22 If the administrator determines that the applicant complies  
23 with all of the requirements for holding a license or permit,  
24 the administrator shall order the issuance of the license or  
25 permit. If the administrator determines that the applicant  
26 does not comply with the requirements for holding a license or  
27 permit, the administrator shall disapprove the issuance of the  
28 license or permit.

29 Sec. 11. Section 123.32, Code 1993, is amended by adding  
30 the following new subsection:

31 NEW SUBSECTION. 7. SUSPENSION BY LOCAL AUTHORITY. A  
32 liquor control licensee or a wine or beer permittee whose  
33 license or permit has been suspended or revoked or upon whom a  
34 civil penalty has been imposed by a local authority for a  
35 violation of this chapter, or whose license has been suspended

1 by a local authority for violation of a local ordinance may  
2 appeal the suspension, revocation, or civil penalty to the  
3 administrator. The administrator may appoint a member of the  
4 division or an administrative law judge from the department of  
5 inspections and appeals to hear the appeal, which shall be  
6 conducted in accordance with chapter 17A, and to issue a  
7 proposed decision. The administrator may review the proposed  
8 decision upon the motion of a party to the appeal or upon the  
9 administrator's own motion in accordance with chapter 17A.  
10 Upon review of the proposed decision, the administrator may  
11 affirm, reverse, or modify the proposed decision. A liquor  
12 control licensee, wine or beer permittee, or a local authority  
13 aggrieved by a decision of the administrator may seek judicial  
14 review of the decision pursuant to chapter 17A.

15 Sec. 12. Section 123.36, subsection 1, Code 1993, is  
16 amended by striking the subsection.

17 Sec. 13. Section 123.37, unnumbered paragraph 5, Code  
18 1993, is amended by striking the unnumbered paragraph.

19 Sec. 14. Section 123.39, subsection 1, Code 1993, is  
20 amended to read as follows:

21 1. a. Any The administrator or the local authority may  
22 suspend a liquor control license, wine permit, or beer permit  
23 issued under this chapter may, after notice in writing to the  
24 license or permit holder and reasonable opportunity for  
25 hearing, and subject to section 123.50 where applicable, be  
26 suspended for a period not to exceed one year or revoked,  
27 revoke the license or permit, or impose a civil penalty not to  
28 exceed one thousand dollars per violation. Before suspension,  
29 revocation, or imposition of a civil penalty, the licensee or  
30 permit holder shall be given written notice and an opportunity  
31 for a hearing. The administrator may appoint a member of the  
32 division or an administrative law judge from the department of  
33 inspections and appeals to conduct the hearing and issue a  
34 proposed decision. Upon the motion of a party to the hearing  
35 or upon the administrator's own motion, the administrator may

1 review the proposed decision in accordance with chapter 17A.  
2 Upon review of the proposed decision, the administrator may  
3 affirm, reverse, or modify the proposed decision. A liquor  
4 control licensee, wine, or beer permittee aggrieved by a  
5 decision of the administrator may seek judicial review of the  
6 administrator's decision in accordance with chapter 17A.

7 b. A license or permit issued under this chapter may be  
8 suspended or revoked, or a civil penalty may be imposed on the  
9 license or permit holder by the local authority or the  
10 administrator for any of the following causes:

11 a- (1) Misrepresentation of any material fact in the  
12 application for the license or permit.

13 b- (2) Violation of any of the provisions of this chapter.

14 c- (3) Any change in the ownership or interest in the  
15 business operated under a class "A", class "B", or class "C"  
16 liquor control license, or any wine or beer permit, which  
17 change was not previously reported to and approved by the  
18 local authority and the division.

19 d- (4) An event which would have resulted in  
20 disqualification from receiving the license or permit when  
21 originally issued.

22 e- (5) Any sale, hypothecation, or transfer of the license  
23 or permit.

24 f- (6) The failure or refusal on the part of any licensee  
25 or permittee to render any report or remit any taxes to the  
26 division under this chapter when due.

27 c. A criminal conviction is not a prerequisite to  
28 suspension, revocation, or imposition of a civil penalty  
29 pursuant to this section. A local authority which acts  
30 pursuant to this section or section 123.32 shall notify the  
31 division in writing of the action taken, and shall notify the  
32 licensee or permit holder of the right to appeal a suspension,  
33 revocation, or imposition of a civil penalty to the division.  
34 Civil penalties imposed and collected by the local authority  
35 under this section shall be retained by the local authority.

1 Civil penalties imposed and collected by the division under  
2 this section shall be retained by the division.

3 Sec. 15. Section 123.39, subsection 4, Code 1993, is  
4 amended to reads as follows:

5 4. If the cause for suspension is a first offense  
6 violation of section 123.49, subsection 2, paragraph "h", and  
7 ~~the violation occurred on or after January 1, 1988,~~ the  
8 administrator or local authority shall impose a civil penalty  
9 in the amount of three hundred dollars in lieu of suspension  
10 of the license or permit. Local authorities shall retain  
11 civil penalties collected under this paragraph if the  
12 proceeding to impose the penalty is conducted by the local  
13 authority. The division shall retain civil penalties  
14 collected under this paragraph if the proceeding to impose the  
15 penalty is conducted by the administrator of the division. ~~If~~  
16 ~~the matter is appealed to the division's hearing board,~~ the  
17 ~~hearing board shall not reduce the amount of the civil penalty~~  
18 ~~imposed under this paragraph if a violation of section 123.49,~~  
19 ~~subsection 2, paragraph "h" is found.~~

20 Sec. 16. Section 123.49, subsection 2, paragraph c, Code  
21 1993, is amended by striking the paragraph.

22 Sec. 17. Section 123.50, subsection 3, unnumbered  
23 paragraph 1 and paragraphs a, c, and d, Code 1993, are amended  
24 to read as follows:

25 If any licensee, wine permittee, beer permittee, or  
26 employee of a licensee or permittee is convicted of a  
27 violation of section 123.49, subsection 2, paragraph "h", or  
28 if a retail wine or beer permittee is convicted of a violation  
29 of paragraph "i" of that subsection, the administrator or  
30 local authority shall, in addition to ~~the other~~ criminal  
31 penalties fixed for ~~such~~ violations by this section, assess a  
32 civil penalty as follows:

33 a. Upon a first conviction, the violator's liquor control  
34 license, wine permit, or beer permit shall be suspended for a  
35 period of fourteen days. However, if the conviction is for a

1 violation of section 123.49, subsection 2, paragraph "h",  
2 ~~which occurred on or after January 1, 1988~~, the violator's  
3 liquor control license or wine or beer permit shall not be  
4 suspended, but the violator shall be assessed a civil penalty  
5 in the amount of three hundred dollars. Failure to pay the  
6 civil penalty as ordered under section 123.39 for a violation  
7 of section 123.49, subsection 2, paragraph "h", or this  
8 subsection will result in automatic suspension of the license  
9 or permit for a period of fourteen days.

10 c. Upon a third conviction within a period of ~~five~~ three  
11 years, the violator's liquor control license, wine permit, or  
12 beer permit shall be suspended for a period of sixty days.

13 d. Upon a fourth conviction within a period of ~~five~~ three  
14 years, the violator's liquor control license, wine permit, or  
15 beer permit shall be revoked.

16 Sec. 18. Section 123.53, Code 1993, is amended by adding  
17 the following new subsection:

18 NEW SUBSECTION. 5. Notwithstanding section 8.33, civil  
19 penalties imposed and collected by the division shall not  
20 revert to the general fund of the state. The moneys from the  
21 civil penalties are appropriated for use by the division for  
22 the purposes of providing educational programs, information  
23 and publications for alcoholic beverage licensees and  
24 permittees, local authorities, and law enforcement agencies  
25 regarding the laws and rules which govern the alcoholic  
26 beverages industry, and for promoting compliance with  
27 alcoholic beverage laws and rules.

28 Sec. 19. Section 123.177, subsection 1, Code 1993, is  
29 amended to read as follows:

30 1. A person holding a class "A" wine permit may  
31 manufacture and sell, or sell at wholesale, wine for  
32 consumption off the premises. Sales within the state may be  
33 made only to persons holding a class "A" or "B" wine permit,  
34 and to persons holding a class "A", "B", "C" or "D" liquor  
35 control license, and to persons holding a special permit

1 issued-under-section-123-297--subsection-3. A class "A" wine  
2 permittee having more than one place of business shall obtain  
3 a separate permit for each place of business where wine is to  
4 be stored, warehoused, or sold.

5 Sec. 20. REPEALS. Sections 123.15 and 123.151, Code 1993,  
6 are repealed.

7 EXPLANATION

8 This bill eliminates the requirement that a person  
9 (including a spouse of the license holder) who holds a 10  
10 percent or more interest in a licensed establishment be a  
11 citizen and a resident. The bill requires that only the  
12 applicant be a resident and a citizen. The bill amends the  
13 requirements for licensing by stating the classes of persons  
14 who must be named in the application as holding an ownership  
15 interest in the establishment to be licensed under chapter  
16 123.

17 The bill further eliminates the division's hearing board  
18 which acts as an intermediate appellate review board for  
19 administrative actions involving licensees and permittees, and  
20 establishes a system of hearings and appeals for licensees and  
21 permittees. Administrative matters which would have been  
22 appealed to the hearing board from the proposed decision by an  
23 administrative law judge and reviewed by the administrator may  
24 now be appealed through a petition for judicial review  
25 directly to district court from the final decision of the  
26 administrator. Additionally, the bill eliminates a provision  
27 which would allow the commission to reverse, affirm, or amend  
28 approvals, denials, suspensions, and revocations of liquor  
29 licenses and permits.

30 The bill reduces the period of potential suspension of a  
31 liquor control license for a licensee who presents a check to  
32 the division for the purchase of alcoholic liquor which is  
33 subsequently dishonored by the licensee's bank.

34 The bill eliminates the necessity of obtaining a special  
35 permit for the manufacture or sale of patent and proprietary

1 products which contain alcoholic liquor as one of their  
2 ingredients, but which are not susceptible for use as an  
3 intoxicant or alcoholic beverage.

4 The bill specifies that class "D" liquor control licensees,  
5 including trains and boats which operate intrastate only and  
6 gambling boats licensed under chapter 99F, must purchase  
7 alcoholic beverages from Iowa-licensed entities.

8 The bill permits the division and the local authority to  
9 impose a civil penalty in an amount not to exceed \$1,000 upon  
10 a licensee or permittee for a violation of chapter 123, in  
11 lieu of suspension or revocation for the violation, and  
12 further allows the division to retain the civil penalties  
13 collected to be used for licensee education and educational  
14 programs for local authorities and law enforcement agencies.

15 The bill eliminates the prohibition against a retailer  
16 extending credit to a consumer for the purchase of alcoholic  
17 beverages.

18 The bill mandates the revocation of a liquor control  
19 license or wine or beer permit where the licensee or the  
20 licensee's agent or employee is convicted of four sales to  
21 underage persons within a three-year period.

22 Finally, the bill eliminates the publication of the  
23 intoxication notice, and makes nonsubstantive Code  
24 corrections.

25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

## SENATE FILE 354

S-3302

1 Amend Senate File 354 as follows:

2 1. Page 10, by inserting after line 19, the  
3 following:

4 "Sec. \_\_\_\_ . Section 123.47A, subsection 1, Code  
5 1993, is amended to read as follows:

6 1. A person shall not sell, give, or otherwise  
7 supply alcoholic liquor, wine, or beer to any person  
8 knowing or having reasonable cause to believe that the  
9 person is age eighteen, nineteen, or twenty. A person  
10 age eighteen, nineteen, or twenty shall not purchase  
11 or possess alcoholic liquor, wine, or beer. However,  
12 a person age eighteen, nineteen, or twenty may possess  
13 alcoholic liquor, wine, or beer given to the person  
14 within a private home with the knowledge and consent  
15 of the person's parent or guardian, and a person age  
16 eighteen, nineteen, or twenty may handle alcoholic  
17 liquor, wine, and beer during the course of the  
18 person's employment by a liquor control licensee, or  
19 wine or beer permittee. A person, other than a  
20 licensee or permittee, who commits a first offense  
21 under this section commits a scheduled violation of  
22 section 805.8, subsection 10. A person, other than a  
23 licensee or permittee, who commits a second or  
24 subsequent violation of this section, commits a simple  
25 misdemeanor. A licensee or permittee who violates  
26 this section with respect to a person who is age  
27 nineteen or twenty is guilty of a simple misdemeanor  
28 punishable by a fine of not more than fifty dollars.  
29 The penalty provided under this section against a  
30 licensee or permittee who violates this section with  
31 respect to a person who is age nineteen or twenty is  
32 the only penalty which shall be imposed against a  
33 licensee or permittee who violates this section. A  
34 licensee or permittee who violates this section with  
35 respect to a person who is age eighteen commits a  
36 simple misdemeanor, and is subject to the criminal and  
37 civil penalties provided pursuant to sections 123.49  
38 and 123.50 with respect to selling, giving, or  
39 otherwise supplying alcoholic beverages, liquor, wine,  
40 or beer to persons under legal age.

41 Sec. \_\_\_\_ . NEW SECTION. 123.48 PURCHASE OR  
42 ATTEMPTED PURCHASE PROHIBITED BY PERSONS UNDER TWENTY-  
43 ONE YEARS -- PENALTY.

44 1. A person who is under twenty-one years of age  
45 shall not purchase or attempt to purchase alcoholic  
46 liquor, wine, or beer.

47 2. A person who violates this section shall be  
48 fined one hundred dollars for the first offense. A  
49 person who commits a second violation of this section  
50 shall be fined two hundred fifty dollars, and for a

S-3302

S-3302

Page 2

- 1 third or subsequent violation of this section, a  
 2 person shall be fined five hundred dollars."  
 3 2. Title page, line 8, by inserting after the  
 4 word "beverages," the following: "by providing a  
 5 penalty for the purchase or attempted purchase of  
 6 alcoholic beverages by certain persons,".  
 7 3. By renumbering as necessary.

*Motion to R/c by Liannetto*

By JOHN W. JENSEN  
 TONY BISIGNANO  
 JOE J. WELSH

S-3302 FILED MARCH 30, 1993  
 ADOPTED

## SENATE FILE 354

S-3305

- 1 Amend Senate File 354 as follows:  
 2 1. Page 7, line 17, by inserting after the word  
 3 "or" the following: "may request".  
 4 2. Page 7, by striking line 21 and inserting the  
 5 following: "The administrator may affirm, reverse, or  
 6 modify the proposed decision."  
 7 3. Page 8, line 4, by inserting after the word  
 8 "or" the following: "may request".  
 9 4. Page 8, line 32, by inserting after the word  
 10 "or" the following: "may request".

By JOE J. WELSH

S-3305 FILED MARCH 30, 1993  
 ADOPTED

## SENATE FILE 354

S-3206

- 1 Amend Senate File 354 as follows:  
 2 1. Page 12, by inserting after line 6, the  
 3 following:  
 4 "Sec. \_\_\_\_ . APPLICABILITY OF CERTAIN PROVISIONS.  
 5 Sections 3, 9, 10, 11, 13, 14, and 20 of this Act  
 6 apply to administrative appeals to the alcoholic  
 7 beverages division of the department of commerce which  
 8 are filed on or after July 1, 1993."

By JOE J. WELSH

S-3206 FILED MARCH 23, 1993

*Adopted  
 3/30/93  
 (P. 897)*

## SENATE FILE 354

S-3296

1 Amend Senate File 354 as follows:

2 1. Page 11, by inserting after line 27, the  
3 following:

4 "Sec. \_\_\_\_ . Section 123.95, Code 1993, is amended  
5 by striking the section and inserting in lieu thereof  
6 the following:

7 123.95 PREMISES MUST BE LICENSED -- EXCEPTION AS  
8 TO CONVENTIONS AND SOCIAL GATHERINGS.

9 1. A person shall not allow the dispensing or  
10 consumption of alcoholic liquor, except wines and  
11 beer, in any establishment unless the establishment is  
12 licensed under this chapter or except as otherwise  
13 provided in this section. The holder of a class "B"  
14 liquor control license or a class "C" liquor control  
15 license may act as the agent of a private social host  
16 for the purpose of providing and serving alcoholic  
17 liquor, wine, and beer as part of a food catering  
18 service for a private social gathering in a private  
19 place. The private social host or the licensee shall  
20 not solicit donations in payment for the food or  
21 alcoholic beverages from the guests, and the alcoholic  
22 beverages and food shall be served without cost to the  
23 guests. Section 123.92 shall apply to a liquor  
24 control licensee who acts in accordance with this  
25 section when the liquor control licensee is providing  
26 and serving food and alcoholic beverages as an agent  
27 of a private social host at a private social gathering  
28 in a private place which is not on the licensed  
29 premises.

30 2. An applicant for a class "B" liquor control  
31 license or class "C" liquor control license shall  
32 state on the application for the license that the  
33 licensee intends to engage in catering food and  
34 alcoholic beverages for private social gatherings and  
35 the catering privilege shall be noted on the license  
36 or permit. A licensee who engages in catering food  
37 and alcoholic beverages for private social gatherings  
38 shall maintain a record on the licensed premises which  
39 includes the name and address of the host of the  
40 private social gathering, and the date for which  
41 catering was provided. The record maintained pursuant  
42 to this section shall be open to inspection pursuant  
43 to section 123.30, subsection 1, during normal  
44 business hours of the licensee.

45 3. However, bona fide conventions or meetings may  
46 bring their own legal liquor onto the licensed  
47 premises if the liquor is served to delegates or  
48 guests without cost. All other provisions of this  
49 chapter shall be applicable to such premises. The  
50 provisions of this section shall have no application

S-3296

S-3296

Page 2

- 1 to private social gatherings of friends or relatives  
2 in a private home or a private place which is not of a  
3 commercial nature nor where goods or services may be  
4 purchased or sold nor any charge or rent or other  
5 thing of value is exchanged for the use of such  
6 premises for any purpose other than for sleeping  
7 quarters."  
8 2. By renumbering as necessary.

By JAMES B. KERSTEN  
TONY BISIGNANO

S-3296 FILED MARCH 30, 1993  
ADOPTED

## SENATE FILE 354

S-3346

- 1 Amend Senate File 354 as follows:  
2 1. Page 5, by inserting after line 12, the  
3 following:  
4 "Sec. \_\_\_\_ . Section 123.31, unnumbered paragraph 1,  
5 Code 1993, is amended to read as follows:  
6 Verified Except as otherwise provided in section  
7 123.35, verified applications for the original  
8 issuance or the renewal of liquor control licenses  
9 shall be filed at such the time and in such the number  
10 of copies as the administrator shall prescribe, on  
11 forms prescribed by the administrator, and, except as  
12 provided in section 123.35, shall set forth under oath  
13 the following information:"  
14 2. Page 8, by inserting after line 14, the  
15 following:  
16 "Sec. \_\_\_\_ . Section 123.35, unnumbered paragraph 2,  
17 Code 1993, is amended to read as follows:  
18 Such The application, accompanied by the necessary  
19 fee and bond, if required, shall be filed in the same  
20 manner as is provided for filing the initial  
21 application. However, for the renewal of a class " E"  
22 license, the simplified application form for renewal,  
23 accompanied by the necessary fee and bond if required,  
24 shall be filed directly with the administrator without  
25 the endorsement of local authorities if the applicant  
26 has not been convicted of a violation of this chapter  
27 since the preceding license was issued."

By JOHN P. KIBBIE  
JOE J. WELSH

S-3346 FILED APRIL 1, 1993



1 Section 1. Section 123.3, subsection 26, paragraphs c and  
2 e, Code 1993, are amended to read as follows:

3 c. ~~is~~ Notwithstanding paragraph "e", the applicant is a  
4 citizen of the United States and a resident of this state, or  
5 licensed to do business in this state in the case of a  
6 corporation. Notwithstanding paragraph "~~f e~~," in the case of  
7 a partnership, only one general partner need be a resident of  
8 this state.

9 e. ~~if such person is a corporation, partnership,~~  
10 ~~association, club, or hotel or motel the~~ The requirements of  
11 this subsection ~~shall~~ apply to each the following:

12 (1) Each of the officers, directors, and partners of such  
13 person, ~~and to any.~~

14 (2) A person who directly or indirectly owns or controls  
15 ten percent or more of any class of stock of such person or.

16 (3) A person who directly or indirectly has an interest of  
17 ten percent or more in the ownership or profits of such  
18 person. ~~For the purposes of this provision, an individual and~~  
19 ~~the individual's spouse shall be regarded as one person.~~

20 Sec. 2. Section 123.16, subsection 2, paragraph b, Code  
21 1993, is amended by striking the paragraph.

22 Sec. 3. Section 123.19, subsection 4, Code 1993, is  
23 amended to read as follows:

24 4. Any violation of the requirements of this section,  
25 except subsection 3, shall subject the violator to the general  
26 penalties provided in this chapter and in addition ~~thereto~~  
27 shall be to the general penalties, is grounds for suspension  
28 or revocation of the certificate of compliance, after notice  
29 and hearing before the ~~division hearing board~~ administrator.

30 Willful failure to comply with requirements which may be  
31 imposed under subsection 3 ~~shall be~~ is grounds for suspension  
32 or revocation of the certificate of compliance only.

33 ~~Decisions of the hearing board concerning such suspension or~~  
34 ~~revocation shall be binding upon all parties.~~

35 Sec. 4. Section 123.24, subsection 2, paragraphs a and b,

1 Code 1993, are amended to read as follows:

2 a. The division may accept from a class "E" liquor control  
3 licensee a cashier's check which shows the licensee is the  
4 remitter or a check issued by the licensee in payment of  
5 alcoholic liquor. If a check is subsequently dishonored, the  
6 division shall cause a notice of nonpayment and penalty to be  
7 served upon the class "E" liquor control licensee or upon any  
8 person in charge of the licensed premises. The notice shall  
9 state that if payment or satisfaction for the dishonored check  
10 is not made within ten days of the service of notice, the  
11 licensee's liquor control license ~~shall~~ may be suspended under  
12 section 123.39. The notice of nonpayment and penalty shall be  
13 in a form prescribed by the administrator, and shall be sent  
14 by certified mail.

15 b. If upon notice and hearing under section 123.39 and  
16 pursuant to the provisions of chapter 17A concerning a  
17 contested case hearing, the administrator determines that the  
18 class "E" liquor control licensee failed to satisfy the  
19 obligation for which the check was issued within ten days  
20 after the notice of nonpayment and penalty was served on the  
21 licensee as provided in paragraph "a" of this subsection, the  
22 administrator ~~shall~~ may suspend the licensee's class "E"  
23 liquor control license for ~~not-less-than-three-days-but-not~~  
24 ~~more-than-thirty~~ a period not to exceed ten days.

25 Sec. 5. Section 123.24, subsection 2, paragraph c, Code  
26 1993, is amended by striking the paragraph.

27 Sec. 6. Section 123.29, Code 1993, is amended by striking  
28 the section and inserting in lieu thereof the following:

29 123.29 PATENT AND PROPRIETARY PRODUCTS CONTAINING  
30 ALCOHOLIC LIQUOR, WINE, OR BEER.

31 1. This chapter does not prohibit the sale of patent and  
32 proprietary medicines, tinctures, food products, extracts,  
33 toiletries, perfumes, and similar products, which are not  
34 susceptible of use as a beverage, but which contain alcoholic  
35 liquor, wine, or beer as one of their ingredients. These

1 products may be sold through ordinary wholesale and retail  
2 businesses without a license or permit issued by the division.

3 2. This chapter does not prohibit a member of the clergy  
4 of any religious denomination which uses vinous liquor in its  
5 sacramental ceremonies from purchasing, receiving, possessing,  
6 and using vinous liquor for sacramental purposes.

7 Sec. 7. Section 123.30, subsection 1, Code 1993, is  
8 amended to read as follows:

9 1. a. A liquor control license may be issued to any  
10 person who ~~or whose officers in the case of a club or~~  
11 ~~corporation, or whose partners in the case of a partnership,~~  
12 are is of good moral character as defined by this chapter.

13 b. As a condition for issuance of a liquor control license  
14 or wine or beer permit, the applicant must give consent to  
15 members of the fire, police, and health departments and the  
16 building inspector of cities; the county sheriff, deputy  
17 sheriff, members of the department of public safety,  
18 representatives of the division and of the department of  
19 inspections and appeals, certified police officers, and any  
20 official county health officer to enter upon areas of the  
21 premises where alcoholic beverages are stored, served, or  
22 sold, without a warrant during business hours of the licensee  
23 or permittee to inspect for violations of this chapter or  
24 ordinances and regulations that cities and boards of  
25 supervisors may adopt. However, a subpoena issued under  
26 section 421.17 or a warrant is required for inspection of  
27 private records, a private business office, or attached living  
28 quarters. Persons who are not certified peace officers shall  
29 limit the scope of their inspections of licensed premises to  
30 the regulatory authority under which the inspection is  
31 conducted. All persons who enter upon a licensed premise  
32 premises to conduct an inspection shall present appropriate  
33 identification to the owner of the establishment or the person  
34 who appears to be in charge of the establishment prior to  
35 commencing an inspection; however, this provision does not

1 apply to undercover criminal investigations conducted by peace  
2 officers.

3 c. As a further condition for the issuance of a class "E"  
4 liquor control license, the applicant shall post a bond in a  
5 sum of not less than five thousand nor more than fifteen  
6 thousand dollars as determined on a sliding scale established  
7 by the division; however, a bond shall not be required if all  
8 purchases of alcoholic liquor from the division by the  
9 licensee are made by cash payment or by means that ensure that  
10 the division will receive full payment in advance of delivery  
11 of the alcoholic liquor.

12 d. A class "E" liquor control license may be issued to a  
13 city council for premises located within the limits of the  
14 city if there are no class "E" liquor control licensees  
15 operating within the limits of the city and no other  
16 applications for a class "E" license for premises located  
17 within the limits of the city at the time the city council's  
18 application is filed. If a class "E" liquor control license  
19 is subsequently issued to a private person for premises  
20 located within the limits of the city, the city council shall  
21 surrender its license to the division within one year of the  
22 date that the class "E" liquor control licensee begins  
23 operating, liquidate any remaining assets connected with the  
24 liquor store, and cease operating the liquor store.

25 Sec. 8. Section 123.30, subsection 3, paragraph d, Code  
26 1993, is amended to read as follows:

27 d. CLASS "D". (1) A class "D" liquor control license may  
28 be issued to a railway corporation, to an air common carrier,  
29 and to passenger-carrying boats or ships for hire with a  
30 capacity of twenty-five persons or more operating in inland or  
31 boundary waters, and shall authorize the holder to sell or  
32 furnish alcoholic beverages, wine, and beer to passengers for  
33 consumption only on trains, watercraft as described in this  
34 section, or aircraft, respectively. Each license is valid  
35 throughout the state. Only one license is required for all

1 trains, watercraft, or aircraft operated in the state by the  
2 licensee. However, if a watercraft is an excursion gambling  
3 boat licensed under chapter 99F, the owner shall obtain a  
4 separate class "D" liquor control license for each excursion  
5 gambling boat operating in the waters of this state.

6 (2) A class "D" liquor control licensee who operates a  
7 train or a watercraft intrastate only, or an excursion  
8 gambling boat licensed under chapter 99F, shall purchase  
9 alcoholic liquor from a class "E" liquor control licensee  
10 only, wine from a class "A" wine permittee or a class "B" wine  
11 permittee who also holds a class "E" liquor control license  
12 only, and beer from a class "A" beer permittee only.

13 Sec. 9. Section 123.32, subsections 2, 4, and 6, Code  
14 1993, are amended to read as follows:

15 2. ACTION BY LOCAL AUTHORITIES. The local authority shall  
16 either approve or disapprove the issuance of a liquor control  
17 license, retail wine permit, or retail beer permit, shall  
18 endorse its approval or disapproval on the application and  
19 shall forward the application along with the necessary fee and  
20 bond, if required, to the division. ~~Upon the initial~~  
21 ~~application for a liquor control license, retail wine permit,~~  
22 ~~or retail beer permit, the fact that the local authority~~  
23 ~~determines that no liquor control license, retail wine permit,~~  
24 ~~or retail beer permit shall be issued shall not be held to be~~  
25 ~~arbitrary, capricious, or without reasonable cause.~~ There is  
26 no limit upon the number of liquor control licenses, retail  
27 wine permits, or retail beer permits which may be approved for  
28 issuance by local authorities.

29 4. ACTION BY ADMINISTRATOR.

30 a. Upon receipt of an application having been disapproved  
31 by the local authority, the administrator shall ~~disapprove the~~  
32 ~~application, so~~ notify the applicant that the applicant may  
33 appeal the disapproval of the application to the  
34 administrator. The applicant shall be notified by certified  
35 mail, and return the application, the fee, and any bond shall

1 be returned to the applicant.

2 b. Upon receipt of an application having been approved by  
3 the local authority, the division shall make such an  
4 investigation as the administrator deems necessary to  
5 determine that the applicant complies with all requirements  
6 for holding a license or permit, and may require the applicant  
7 to appear to be examined under oath regarding-any-matters  
8 pertinent-to-the-application,-in-which-case to demonstrate  
9 that the applicant complies with all of the requirements to  
10 hold a license or permit. If the administrator requires the  
11 applicant to appear and to testify under oath, a record shall  
12 be made of all testimony or evidence and the same record shall  
13 become a part of the application. The administrator may  
14 appoint a member of the division or may request an  
15 administrative law judge of the department of inspections and  
16 appeals to receive the testimony under oath and evidence, and  
17 to issue a proposed decision to approve or disapprove the  
18 application for a license or permit. The administrator may  
19 affirm or reverse the proposed decision to approve or  
20 disapprove the application for the license or permit. If the  
21 application is approved by the administrator, the license or  
22 permit applied-for shall be issued. If the application is  
23 disapproved by the administrator, the applicant and the  
24 appropriate local authority shall be so notified by certified  
25 mail, and-the-fee-and-any-bond-returned-to-the-applicant.

26 6. JUDICIAL REVIEW. ~~Judicial~~ The applicant or the local  
27 authority may seek judicial review of the action of the  
28 division-hearing-board-may-be-sought administrator in  
29 accordance with the terms of the Iowa administrative procedure  
30 Act. Notwithstanding the terms of said the Iowa  
31 administrative procedure Act, petitions for judicial review  
32 may be filed in the district court of the county wherein where  
33 the premises covered by the application are situated.

34 Where-the-hearing-board-on-an-appeal-by-an-applicant-finds  
35 that-the-local-authority-acted-arbitrarily,-capriciously,-or

1 without-reasonable-cause-in-disapproving-an-application-and  
2 the-administrator-issues-a-license-or-permit,-the-local  
3 authority-may-seek-judicial-review-of-such-decision-according  
4 to-the-terms-of-the-Iowa-administrative-procedure-Act-within  
5 thirty-days:

6 Sec. 10. Section 123.32, subsection 5, Code 1993, is  
7 amended by striking the subsection and inserting in lieu  
8 thereof the following:

9 5. APPEAL TO ADMINISTRATOR. An applicant for a liquor  
10 control license, wine permit, or beer permit may appeal from  
11 the local authority's disapproval of an application for a  
12 license or permit to the administrator. In the appeal the  
13 applicant shall be allowed the opportunity to demonstrate in  
14 an evidentiary hearing conducted pursuant to chapter 17A that  
15 the applicant complies with all of the requirements for  
16 holding the license or permit. The administrator may appoint  
17 a member of the division or may request an administrative law  
18 judge from the department of inspections and appeals to  
19 conduct the evidentiary hearing and to render a proposed  
20 decision to approve or disapprove the issuance of the license  
21 or permit. The administrator may affirm, reverse, or modify  
22 the proposed decision. If the administrator determines that  
23 the applicant complies with all of the requirements for  
24 holding a license or permit, the administrator shall order the  
25 issuance of the license or permit. If the administrator  
26 determines that the applicant does not comply with the  
27 requirements for holding a license or permit, the  
28 administrator shall disapprove the issuance of the license or  
29 permit.

30 Sec. 11. Section 123.32, Code 1993, is amended by adding  
31 the following new subsection:

32 NEW SUBSECTION. 7. SUSPENSION BY LOCAL AUTHORITY. A  
33 liquor control licensee or a wine or beer permittee whose  
34 license or permit has been suspended or revoked or upon whom a  
35 civil penalty has been imposed by a local authority for a

1 violation of this chapter, or whose license has been suspended  
2 by a local authority for violation of a local ordinance may  
3 appeal the suspension, revocation, or civil penalty to the  
4 administrator. The administrator may appoint a member of the  
5 division or may request an administrative law judge from the  
6 department of inspections and appeals to hear the appeal,  
7 which shall be conducted in accordance with chapter 17A, and  
8 to issue a proposed decision. The administrator may review  
9 the proposed decision upon the motion of a party to the appeal  
10 or upon the administrator's own motion in accordance with  
11 chapter 17A. Upon review of the proposed decision, the  
12 administrator may affirm, reverse, or modify the proposed  
13 decision. A liquor control licensee, wine or beer permittee,  
14 or a local authority aggrieved by a decision of the  
15 administrator may seek judicial review of the decision  
16 pursuant to chapter 17A.

17 Sec. 12. Section 123.36, subsection 1, Code 1993, is  
18 amended by striking the subsection.

19 Sec. 13. Section 123.37, unnumbered paragraph 5, Code  
20 1993, is amended by striking the unnumbered paragraph.

21 Sec. 14. Section 123.39, subsection 1, Code 1993, is  
22 amended to read as follows:

23 1. a. Any The administrator or the local authority may  
24 suspend a liquor control license, wine permit, or beer permit  
25 ~~issued under this chapter may, after notice in writing to the~~  
26 ~~license or permit holder and reasonable opportunity for~~  
27 ~~hearing, and subject to section 123.50 where applicable, be~~  
28 suspended for a period not to exceed one year ~~or revoked,~~  
29 revoke the license or permit, or impose a civil penalty not to  
30 exceed one thousand dollars per violation. Before suspension,  
31 revocation, or imposition of a civil penalty, the licensee or  
32 permit holder shall be given written notice and an opportunity  
33 for a hearing. The administrator may appoint a member of the  
34 division or may request an administrative law judge from the  
35 department of inspections and appeals to conduct the hearing

1 and issue a proposed decision. Upon the motion of a party to  
2 the hearing or upon the administrator's own motion, the  
3 administrator may review the proposed decision in accordance  
4 with chapter 17A. Upon review of the proposed decision, the  
5 administrator may affirm, reverse, or modify the proposed  
6 decision. A liquor control licensee, wine, or beer permittee  
7 aggrieved by a decision of the administrator may seek judicial  
8 review of the administrator's decision in accordance with  
9 chapter 17A.

10 b. A license or permit issued under this chapter may be  
11 suspended or revoked, or a civil penalty may be imposed on the  
12 license or permit holder by the local authority or the  
13 administrator for any of the following causes:

14 a. (1) Misrepresentation of any material fact in the  
15 application for the license or permit.

16 b. (2) Violation of any of the provisions of this chapter.

17 c. (3) Any change in the ownership or interest in the  
18 business operated under a class "A", class "B", or class "C"  
19 liquor control license, or any wine or beer permit, which  
20 change was not previously reported to and approved by the  
21 local authority and the division.

22 d. (4) An event which would have resulted in  
23 disqualification from receiving the license or permit when  
24 originally issued.

25 e. (5) Any sale, hypothecation, or transfer of the license  
26 or permit.

27 f. (6) The failure or refusal on the part of any licensee  
28 or permittee to render any report or remit any taxes to the  
29 division under this chapter when due.

30 c. A criminal conviction is not a prerequisite to  
31 suspension, revocation, or imposition of a civil penalty  
32 pursuant to this section. A local authority which acts  
33 pursuant to this section or section 123.32 shall notify the  
34 division in writing of the action taken, and shall notify the  
35 licensee or permit holder of the right to appeal a suspension,

1 revocation, or imposition of a civil penalty to the division.  
2 Civil penalties imposed and collected by the local authority  
3 under this section shall be retained by the local authority.  
4 Civil penalties imposed and collected by the division under  
5 this section shall be retained by the division.

6 Sec. 15. Section 123.39, subsection 4, Code 1993, is  
7 amended to reads as follows:

8 4. If the cause for suspension is a first offense  
9 violation of section 123.49, subsection 2, paragraph "h", and  
10 ~~the violation occurred on or after January 1, 1988,~~ the  
11 administrator or local authority shall impose a civil penalty  
12 in the amount of three hundred dollars in lieu of suspension  
13 of the license or permit. Local authorities shall retain  
14 civil penalties collected under this paragraph if the  
15 proceeding to impose the penalty is conducted by the local  
16 authority. The division shall retain civil penalties  
17 collected under this paragraph if the proceeding to impose the  
18 penalty is conducted by the administrator of the division. ~~If~~  
19 ~~the matter is appealed to the division's hearing board, the~~  
20 ~~hearing board shall not reduce the amount of the civil penalty~~  
21 ~~imposed under this paragraph if a violation of section 123.49,~~  
22 ~~subsection 2, paragraph "h" is found.~~

23 Sec. 16. Section 123.47A, subsection 1, Code 1993, is  
24 amended to read as follows:

25 1. A person shall not sell, give, or otherwise supply  
26 alcoholic liquor, wine, or beer to any person knowing or  
27 having reasonable cause to believe that the person is age  
28 eighteen, nineteen, or twenty. A person age eighteen,  
29 nineteen, or twenty shall not purchase or possess alcoholic  
30 liquor, wine, or beer. However, a person age eighteen,  
31 nineteen, or twenty may possess alcoholic liquor, wine, or  
32 beer given to the person within a private home with the  
33 knowledge and consent of the person's parent or guardian, and  
34 a person age eighteen, nineteen, or twenty may handle  
35 alcoholic liquor, wine, and beer during the course of the

1 person's employment by a liquor control licensee, or wine or  
2 beer permittee. A person, other than a licensee or permittee,  
3 who commits a first offense under this section commits a  
4 scheduled violation of section 805.8, subsection 10. A  
5 person, other than a licensee or permittee, who commits a  
6 second or subsequent violation of this section, commits a  
7 simple misdemeanor. A licensee or permittee who violates this  
8 section with respect to a person who is age nineteen or twenty  
9 is guilty of a simple misdemeanor punishable by a fine of not  
10 more than fifty dollars. The penalty provided under this  
11 section against a licensee or permittee who violates this  
12 section with respect to a person who is age nineteen or twenty  
13 is the only penalty which shall be imposed against a licensee  
14 or permittee who violates this section. A licensee or  
15 permittee who violates this section with respect to a person  
16 who is age eighteen commits a simple misdemeanor, and is  
17 subject to the criminal and civil penalties provided pursuant  
18 to sections 123.49 and 123.50 with respect to selling, giving,  
19 or otherwise supplying alcoholic beverages, liquor, wine, or  
20 beer to persons under legal age.

21 Sec. 17. NEW SECTION. 123.48 PURCHASE OR ATTEMPTED  
22 PURCHASE PROHIBITED BY PERSONS UNDER TWENTY-ONE YEARS --  
23 PENALTY.

24 1. A person who is under twenty-one years of age shall not  
25 purchase or attempt to purchase alcoholic liquor, wine, or  
26 beer.

27 2. A person who violates this section shall be fined one  
28 hundred dollars for the first offense. A person who commits a  
29 second violation of this section shall be fined two hundred  
30 fifty dollars, and for a third or subsequent violation of this  
31 section, a person shall be fined five hundred dollars.

32 Sec. 18. Section 123.49, subsection 2, paragraph c, Code  
33 1993, is amended by striking the paragraph.

34 Sec. 19. Section 123.50, subsection 3, unnumbered  
35 paragraph 1 and paragraphs a, c, and d, Code 1993, are amended

1 to read as follows:

2 If any licensee, wine permittee, beer permittee, or  
3 employee of a licensee or permittee is convicted of a  
4 violation of section 123.49, subsection 2, paragraph "h", or  
5 if a retail wine or beer permittee is convicted of a violation  
6 of paragraph "i" of that subsection, the administrator or  
7 local authority shall, in addition to ~~the other~~ criminal  
8 penalties fixed for such violations by this section, assess a  
9 civil penalty as follows:

10 a. Upon a first conviction, the violator's liquor control  
11 license, wine permit, or beer permit shall be suspended for a  
12 period of fourteen days. However, if the conviction is for a  
13 violation of section 123.49, subsection 2, paragraph "h",  
14 ~~which occurred on or after January 17, 1988,~~ the violator's  
15 liquor control license or wine or beer permit shall not be  
16 suspended, but the violator shall be assessed a civil penalty  
17 in the amount of three hundred dollars. Failure to pay the  
18 civil penalty as ordered under section 123.39 for a violation  
19 of section 123.49, subsection 2, paragraph "h", or this  
20 subsection will result in automatic suspension of the license  
21 or permit for a period of fourteen days.

22 c. Upon a third conviction within a period of ~~five~~ three  
23 years, the violator's liquor control license, wine permit, or  
24 beer permit shall be suspended for a period of sixty days.

25 d. Upon a fourth conviction within a period of ~~five~~ three  
26 years, the violator's liquor control license, wine permit, or  
27 beer permit shall be revoked.

28 Sec. 20. Section 123.53, Code 1993, is amended by adding  
29 the following new subsection:

30 NEW SUBSECTION. 5. Notwithstanding section 8.33, civil  
31 penalties imposed and collected by the division shall not  
32 revert to the general fund of the state. The moneys from the  
33 civil penalties are appropriated for use by the division for  
34 the purposes of providing educational programs, information  
35 and publications for alcoholic beverage licensees and

1 permittees, local authorities, and law enforcement agencies  
2 regarding the laws and rules which govern the alcoholic  
3 beverages industry, and for promoting compliance with  
4 alcoholic beverage laws and rules.

5 Sec. 21. Section 123.95, Code 1993, is amended by striking  
6 the section and inserting in lieu thereof the following:

7 123.95 PREMISES MUST BE LICENSED -- EXCEPTION AS TO  
8 CONVENTIONS AND SOCIAL GATHERINGS.

9 1. A person shall not allow the dispensing or consumption  
10 of alcoholic liquor, except wines and beer, in any  
11 establishment unless the establishment is licensed under this  
12 chapter or except as otherwise provided in this section. The  
13 holder of a class "B" liquor control license or a class "C"  
14 liquor control license may act as the agent of a private  
15 social host for the purpose of providing and serving alcoholic  
16 liquor, wine, and beer as part of a food catering service for  
17 a private social gathering in a private place. The private  
18 social host or the licensee shall not solicit donations in  
19 payment for the food or alcoholic beverages from the guests,  
20 and the alcoholic beverages and food shall be served without  
21 cost to the guests. Section 123.92 shall apply to a liquor  
22 control licensee who acts in accordance with this section when  
23 the liquor control licensee is providing and serving food and  
24 alcoholic beverages as an agent of a private social host at a  
25 private social gathering in a private place which is not on  
26 the licensed premises.

27 2. An applicant for a class "B" liquor control license or  
28 class "C" liquor control license shall state on the  
29 application for the license that the licensee intends to  
30 engage in catering food and alcoholic beverages for private  
31 social gatherings and the catering privilege shall be noted on  
32 the license or permit. A licensee who engages in catering  
33 food and alcoholic beverages for private social gatherings  
34 shall maintain a record on the licensed premises which  
35 includes the name and address of the host of the private

1 social gathering, and the date for which catering was  
2 provided. The record maintained pursuant to this section  
3 shall be open to inspection pursuant to section 123.30,  
4 subsection 1, during normal business hours of the licensee.

5 3. However, bona fide conventions or meetings may bring  
6 their own legal liquor onto the licensed premises if the  
7 liquor is served to delegates or guests without cost. All  
8 other provisions of this chapter shall be applicable to such  
9 premises. The provisions of this section shall have no  
10 application to private social gatherings of friends or  
11 relatives in a private home or a private place which is not of  
12 a commercial nature nor where goods or services may be  
13 purchased or sold nor any charge or rent or other thing of  
14 value is exchanged for the use of such premises for any  
15 purpose other than for sleeping quarters.

16 Sec. 22. Section 123.177, subsection 1, Code 1993, is  
17 amended to read as follows:

18 1. A person holding a class "A" wine permit may  
19 manufacture and sell, or sell at wholesale, wine for  
20 consumption off the premises. Sales within the state may be  
21 made only to persons holding a class "A" or "B" wine permit,  
22 and to persons holding a class "A", "B", "C" or "D" liquor  
23 control license,--and-to-persons-holding-a-special-permit  
24 issued-under-section-123.297-subsection-3. A class "A" wine  
25 permittee having more than one place of business shall obtain  
26 a separate permit for each place of business where wine is to  
27 be stored, warehoused, or sold.

28 Sec. 23. REPEALS. Sections 123.15 and 123.151, Code 1993,  
29 are repealed.

30 Sec. 24. APPLICABILITY OF CERTAIN PROVISIONS. Sections 3,  
31 9, 10, 11, 13, 14, and 23 of this Act apply to administrative  
32 appeals to the alcoholic beverages division of the department  
33 of commerce which are filed on or after July 1, 1993.

34  
35

WELSH, CH.  
DIELEMAN  
KRAMER

SSB 171

STATE GOVERNMENT

SENATE/HOUSE FILE 354  
BY (PROPOSED DEPARTMENT OF  
COMMERCE/ALCOHOLIC BEVERAGES  
DIVISION BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to alcoholic beverages, by amending licensing and  
2 permitting requirements, by eliminating the division hearing  
3 board, by establishing hearing and appeals procedures, by  
4 amending procedures for the issuance, suspension, or  
5 revocation of licenses and permits, by imposing civil  
6 penalties, by appropriating moneys collected through civil  
7 penalties, by removing certain restrictions on the sale of  
8 alcoholic beverages, and by providing for other properly  
9 related matters.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

1 Section 1. Section 123.3, subsection 26, paragraphs c and  
2 e, Code 1993, are amended to read as follows:

3 c. ~~is Notwithstanding paragraph "e", the applicant is a~~  
4 citizen of the United States and a resident of this state, or  
5 licensed to do business in this state in the case of a  
6 corporation. Notwithstanding paragraph "~~f e~~," in the case of  
7 a partnership, only one general partner need be a resident of  
8 this state.

9 e. ~~If-such-person-is-a-corporation,-partnership,~~  
10 ~~association,-club,-or-hotel-or-motel-the~~ The requirements of  
11 this subsection shall apply to each the following:

12 (1) Each of the officers, directors, and partners of such  
13 person, ~~and-to-any.~~

14 (2) A person who directly or indirectly owns or controls  
15 ten percent or more of any class of stock of such person ~~or.~~

16 (3) A person who directly or indirectly has an interest of  
17 ten percent or more in the ownership or profits of such  
18 person. ~~For-the-purposes-of-this-provision,-an-individual-and~~  
19 ~~the-individual's-spouse-shall-be-regarded-as-one-person-~~

20 Sec. 2. Section 123.16, subsection 2, paragraph b, Code  
21 1993, is amended by striking the paragraph.

22 Sec. 3. Section 123.19, subsection 4, Code 1993, is  
23 amended to read as follows:

24 4. Any violation of the requirements of this section,  
25 except subsection 3, shall subject the violator to the general  
26 penalties provided in this chapter and in addition thereto

27 ~~shall-be~~ to the general penalties, is grounds for suspension  
28 or revocation of the certificate of compliance, after notice  
29 and hearing before the ~~division-hearing-board~~ administrator.

30 Willful failure to comply with requirements which may be  
31 imposed under subsection 3 ~~shall-be~~ is grounds for suspension  
32 or revocation of the certificate of compliance only.

33 ~~Decisions-of-the-hearing-board-concerning-such-suspension-or~~  
34 ~~revocation-shall-be-binding-upon-all-parties-~~

35 Sec. 4. Section 123.24, subsection 2, paragraphs a and b,

1 Code 1993, are amended to read as follows:

2 a. The division may accept from a class "E" liquor control  
3 licensee a cashier's check which shows the licensee is the  
4 remitter or a check issued by the licensee in payment of  
5 alcoholic liquor. If a check is subsequently dishonored, the  
6 division shall cause a notice of nonpayment and penalty to be  
7 served upon the class "E" liquor control licensee or upon any  
8 person in charge of the licensed premises. The notice shall  
9 state that if payment or satisfaction for the dishonored check  
10 is not made within ten days of the service of notice, the  
11 licensee's liquor control license ~~shall~~ may be suspended under  
12 section 123.39. The notice of nonpayment and penalty shall be  
13 in a form prescribed by the administrator, and shall be sent  
14 by certified mail.

15 b. If upon notice and hearing under section 123.39 and  
16 pursuant to the provisions of chapter 17A concerning a  
17 contested case hearing, the administrator determines that the  
18 class "E" liquor control licensee failed to satisfy the  
19 obligation for which the check was issued within ten days  
20 after the notice of nonpayment and penalty was served on the  
21 licensee as provided in paragraph "a" of this subsection, the  
22 administrator ~~shall~~ may suspend the licensee's class "E"  
23 liquor control license for ~~not-less-than-three-days-but-not~~  
24 ~~more-than-thirty~~ a period not to exceed ten days.

25 Sec. 5. Section 123.24, subsection 2, paragraph c, Code  
26 1993, is amended by striking the paragraph.

27 Sec. 6. Section 123.29, Code 1993, is amended by striking  
28 the section and inserting in lieu thereof the following:

29 123.29 PATENT AND PROPRIETARY PRODUCTS CONTAINING  
30 ALCOHOLIC LIQUOR, WINE, OR BEER.

31 1. This chapter does not prohibit the sale of patent and  
32 proprietary medicines, tinctures, food products, extracts,  
33 toiletries, perfumes, and similar products, which are not  
34 susceptible of use as a beverage, but which contain alcoholic  
35 liquor, wine, or beer as one of their ingredients. These

1 products may be sold through ordinary wholesale and retail  
2 businesses without a license or permit issued by the division.

3 2. This chapter does not prohibit a member of the clergy  
4 of any religious denomination which uses vinous liquor in its  
5 sacramental ceremonies from purchasing, receiving, possessing,  
6 and using vinous liquor for sacramental purposes.

7 Sec. 7. Section 123.30, subsection 1, Code 1993, is  
8 amended to read as follows:

9 1. a. A liquor control license may be issued to any  
10 person who ~~or whose officers in the case of a club or~~  
11 ~~corporation, or whose partners in the case of a partnership,~~  
12 are is of good moral character as defined by this chapter.

13 b. As a condition for issuance of a liquor control license  
14 or wine or beer permit, the applicant must give consent to  
15 members of the fire, police, and health departments and the  
16 building inspector of cities; the county sheriff, deputy  
17 sheriff, members of the department of public safety,  
18 representatives of the division and of the department of  
19 inspections and appeals, certified police officers, and any  
20 official county health officer to enter upon areas of the  
21 premises where alcoholic beverages are stored, served, or  
22 sold, without a warrant during business hours of the licensee  
23 or permittee to inspect for violations of this chapter or  
24 ordinances and regulations that cities and boards of  
25 supervisors may adopt. However, a subpoena issued under  
26 section 421.17 or a warrant is required for inspection of  
27 private records, a private business office, or attached living  
28 quarters. Persons who are not certified peace officers shall  
29 limit the scope of their inspections of licensed premises to  
30 the regulatory authority under which the inspection is  
31 conducted. All persons who enter upon a licensed premise  
32 premises to conduct an inspection shall present appropriate  
33 identification to the owner of the establishment or the person  
34 who appears to be in charge of the establishment prior to  
35 commencing an inspection; however, this provision does not

1 apply to undercover criminal investigations conducted by peace  
2 officers.

3 c. As a further condition for the issuance of a class "E"  
4 liquor control license, the applicant shall post a bond in a  
5 sum of not less than five thousand nor more than fifteen  
6 thousand dollars as determined on a sliding scale established  
7 by the division; however, a bond shall not be required if all  
8 purchases of alcoholic liquor from the division by the  
9 licensee are made by cash payment or by means that ensure that  
10 the division will receive full payment in advance of delivery  
11 of the alcoholic liquor.

12 d. A class "E" liquor control license may be issued to a  
13 city council for premises located within the limits of the  
14 city if there are no class "E" liquor control licensees  
15 operating within the limits of the city and no other  
16 applications for a class "E" license for premises located  
17 within the limits of the city at the time the city council's  
18 application is filed. If a class "E" liquor control license  
19 is subsequently issued to a private person for premises  
20 located within the limits of the city, the city council shall  
21 surrender its license to the division within one year of the  
22 date that the class "E" liquor control licensee begins  
23 operating, liquidate any remaining assets connected with the  
24 liquor store, and cease operating the liquor store.

25 Sec. 8. Section 123.30, subsection 3, paragraph d, Code  
26 1993, is amended to read as follows:

27 d. CLASS "D". (1) A class "D" liquor control license may  
28 be issued to a railway corporation, to an air common carrier,  
29 and to passenger-carrying boats or ships for hire with a  
30 capacity of twenty-five persons or more operating in inland or  
31 boundary waters, and shall authorize the holder to sell or  
32 furnish alcoholic beverages, wine, and beer to passengers for  
33 consumption only on trains, watercraft as described in this  
34 section, or aircraft, respectively. Each license is valid  
35 throughout the state. Only one license is required for all

1 trains, watercraft, or aircraft operated in the state by the  
2 licensee. However, if a watercraft is an excursion gambling  
3 boat licensed under chapter 99F, the owner shall obtain a  
4 separate class "D" liquor control license for each excursion  
5 gambling boat operating in the waters of this state.

6 (2) A class "D" liquor control licensee who operates a  
7 train or a watercraft intrastate only, or an excursion  
8 gambling boat licensed under chapter 99F, shall purchase  
9 alcoholic liquor from a class "E" liquor control licensee  
10 only, wine from a class "A" wine permittee or a class "B" wine  
11 permittee who also holds a class "E" liquor control license  
12 only, and beer from a class "A" beer permittee only.

13 Sec. 9. Section 123.32, subsections 2, 4, and 6, Code  
14 1993, are amended to read as follows:

15 2. ACTION BY LOCAL AUTHORITIES. The local authority shall  
16 either approve or disapprove the issuance of a liquor control  
17 license, retail wine permit, or retail beer permit, shall  
18 endorse its approval or disapproval on the application and  
19 shall forward the application along with the necessary fee and  
20 bond, if required, to the division. ~~Upon-the-initial~~  
21 ~~application-for-a-liquor-control-license,-retail-wine-permit,~~  
22 ~~or-retail-beer-permit,-the-fact-that-the-local-authority~~  
23 ~~determines-that-no-liquor-control-license,-retail-wine-permit,~~  
24 ~~or-retail-beer-permit-shall-be-issued-shall-not-be-held-to-be~~  
25 ~~arbitrary,-capricious,-or-without-reasonable-cause.~~ There is  
26 no limit upon the number of liquor control licenses, retail  
27 wine permits, or retail beer permits which may be approved for  
28 issuance by local authorities.

29 4. ACTION BY ADMINISTRATOR.

30 a. Upon receipt of an application having been disapproved  
31 by the local authority, the administrator shall ~~disapprove-the~~  
32 ~~application,-so~~ notify the applicant that the applicant may  
33 appeal the disapproval of the application to the  
34 administrator. The applicant shall be notified by certified  
35 mail, and return the application, the fee, and any bond shall

1 be returned to the applicant.

2 b. Upon receipt of an application having been approved by  
3 the local authority, the division shall make such an  
4 investigation as the administrator deems necessary to  
5 determine that the applicant complies with all requirements  
6 for holding a license or permit, and may require the applicant  
7 to appear to be examined under oath regarding-any-matters  
8 pertinent-to-the-application,-in-which-case to demonstrate  
9 that the applicant complies with all of the requirements to  
10 hold a license or permit. If the administrator requires the  
11 applicant to appear and to testify under oath, a record shall  
12 be made of all testimony or evidence and the same record shall  
13 become a part of the application. The administrator may  
14 appoint a member of the division or may request an  
15 administrative law judge of the department of inspections and  
16 appeals to receive the testimony under oath and evidence, and  
17 to issue a proposed decision to approve or disapprove the  
18 application for a license or permit. The administrator may  
19 affirm or reverse the proposed decision to approve or  
20 disapprove the application for the license or permit. If the  
21 application is approved by the administrator, the license or  
22 permit applied-for shall be issued. If the application is  
23 disapproved by the administrator, the applicant and the  
24 appropriate local authority shall be so notified by certified  
25 mail,-and-the-fee-and-any-bond-returned-to-the-applicant.

26 6. JUDICIAL REVIEW. ~~Judicial~~ The applicant or the local  
27 authority may seek judicial review of the action of the  
28 division-hearing-board-may-be-sought administrator in  
29 accordance with the terms of the Iowa administrative procedure  
30 Act. Notwithstanding the terms of said the Iowa  
31 administrative procedure Act, petitions for judicial review  
32 may be filed in the district court of the county wherein where  
33 the premises covered by the application are situated.

34 ~~Where-the-hearing-board-on-an-appeal-by-an-applicant-finds~~  
35 ~~that-the-local-authority-acted-arbitrarily,-capriciously,-or~~

~~1 without-reasonable-cause-in-disapproving-an-application-and  
2 the-administrator-issues-a-license-or-permit,-the-local  
3 authority-may-seek-judicial-review-of-such-decision-according  
4 to-the-terms-of-the-Iowa-administrative-procedure-Act-within  
5 thirty-days-~~

6 Sec. 10. Section 123.32, subsection 5, Code 1993, is  
7 amended by striking the subsection and inserting in lieu  
8 thereof the following:

9 5. APPEAL TO ADMINISTRATOR. An applicant for a liquor  
10 control license, wine permit, or beer permit may appeal from  
11 the local authority's disapproval of an application for a  
12 license or permit to the administrator. In the appeal the  
13 applicant shall be allowed the opportunity to demonstrate in  
14 an evidentiary hearing conducted pursuant to chapter 17A that  
15 the applicant complies with all of the requirements for  
16 holding the license or permit. The administrator may appoint  
17 a member of the division or an administrative law judge from  
18 the department of inspections and appeals to conduct the  
19 evidentiary hearing and to render a proposed decision to  
20 approve or disapprove the issuance of the license or permit.  
21 The administrator may affirm or reverse the proposed decision.  
22 If the administrator determines that the applicant complies  
23 with all of the requirements for holding a license or permit,  
24 the administrator shall order the issuance of the license or  
25 permit. If the administrator determines that the applicant  
26 does not comply with the requirements for holding a license or  
27 permit, the administrator shall disapprove the issuance of the  
28 license or permit.

29 Sec. 11. Section 123.32, Code 1993, is amended by adding  
30 the following new subsection:

31 NEW SUBSECTION. 7. SUSPENSION BY LOCAL AUTHORITY. A  
32 liquor control licensee or a wine or beer permittee whose  
33 license or permit has been suspended or revoked or upon whom a  
34 civil penalty has been imposed by a local authority for a  
35 violation of this chapter, or whose license has been suspended

1 by a local authority for violation of a local ordinance may  
2 appeal the suspension, revocation, or civil penalty to the  
3 administrator. The administrator may appoint a member of the  
4 division or an administrative law judge from the department of  
5 inspections and appeals to hear the appeal, which shall be  
6 conducted in accordance with chapter 17A, and to issue a  
7 proposed decision. The administrator may review the proposed  
8 decision upon the motion of a party to the appeal or upon the  
9 administrator's own motion in accordance with chapter 17A.  
10 Upon review of the proposed decision, the administrator may  
11 affirm, reverse, or modify the proposed decision. A liquor  
12 control licensee, wine or beer permittee, or a local authority  
13 aggrieved by a decision of the administrator may seek judicial  
14 review of the decision pursuant to chapter 17A.

15 Sec. 12. Section 123.36, subsection 1, Code 1993, is  
16 amended by striking the subsection.

17 Sec. 13. Section 123.37, unnumbered paragraph 5, Code  
18 1993, is amended by striking the unnumbered paragraph.

19 Sec. 14. Section 123.39, subsection 1, Code 1993, is  
20 amended to read as follows:

21 1. a. Any The administrator or the local authority may  
22 suspend a liquor control license, wine permit, or beer permit  
23 issued under this chapter may, after notice in writing to the  
24 license or permit holder and reasonable opportunity for  
25 hearing, and subject to section 123-50 where applicable, be  
26 suspended for a period not to exceed one year or revoked,  
27 revoke the license or permit, or impose a civil penalty not to  
28 exceed one thousand dollars per violation. Before suspension,  
29 revocation, or imposition of a civil penalty, the licensee or  
30 permit holder shall be given written notice and an opportunity  
31 for a hearing. The administrator may appoint a member of the  
32 division or an administrative law judge from the department of  
33 inspections and appeals to conduct the hearing and issue a  
34 proposed decision. Upon the motion of a party to the hearing  
35 or upon the administrator's own motion, the administrator may

1 review the proposed decision in accordance with chapter 17A.  
2 Upon review of the proposed decision, the administrator may  
3 affirm, reverse, or modify the proposed decision. A liquor  
4 control licensee, wine, or beer permittee aggrieved by a  
5 decision of the administrator may seek judicial review of the  
6 administrator's decision in accordance with chapter 17A.

7 b. A license or permit issued under this chapter may be  
8 suspended or revoked, or a civil penalty may be imposed on the  
9 license or permit holder by the local authority or the  
10 administrator for any of the following causes:

11 a- (1) Misrepresentation of any material fact in the  
12 application for the license or permit.

13 b- (2) Violation of any of the provisions of this chapter.

14 c- (3) Any change in the ownership or interest in the  
15 business operated under a class "A", class "B", or class "C"  
16 liquor control license, or any wine or beer permit, which  
17 change was not previously reported to and approved by the  
18 local authority and the division.

19 d- (4) An event which would have resulted in  
20 disqualification from receiving the license or permit when  
21 originally issued.

22 e- (5) Any sale, hypothecation, or transfer of the license  
23 or permit.

24 f- (6) The failure or refusal on the part of any licensee  
25 or permittee to render any report or remit any taxes to the  
26 division under this chapter when due.

27 c. A criminal conviction is not a prerequisite to  
28 suspension, revocation, or imposition of a civil penalty  
29 pursuant to this section. A local authority which acts  
30 pursuant to this section or section 123.32 shall notify the  
31 division in writing of the action taken, and shall notify the  
32 licensee or permit holder of the right to appeal a suspension,  
33 revocation, or imposition of a civil penalty to the division.  
34 Civil penalties imposed and collected by the local authority  
35 under this section shall be retained by the local authority.

1 Civil penalties imposed and collected by the division under  
2 this section shall be retained by the division.

3 Sec. 15. Section 123.39, subsection 4, Code 1993, is  
4 amended to read as follows:

5 4. If the cause for suspension is a first offense  
6 violation of section 123.49, subsection 2, paragraph "h", and  
7 ~~the violation occurred on or after January 1, 1988,~~ the  
8 administrator or local authority shall impose a civil penalty  
9 in the amount of three hundred dollars in lieu of suspension  
10 of the license or permit. Local authorities shall retain  
11 civil penalties collected under this paragraph if the  
12 proceeding to impose the penalty is conducted by the local  
13 authority. The division shall retain civil penalties  
14 collected under this paragraph if the proceeding to impose the  
15 penalty is conducted by the administrator of the division. ~~If~~  
16 ~~the matter is appealed to the division's hearing board, the~~  
17 ~~hearing board shall not reduce the amount of the civil penalty~~  
18 ~~imposed under this paragraph if a violation of section 123.49,~~  
19 ~~subsection 2, paragraph "h" is found.~~

20 Sec. 16. Section 123.49, subsection 2, paragraph c, Code  
21 1993, is amended by striking the paragraph.

22 Sec. 17. Section 123.50, subsection 3, unnumbered  
23 paragraph 1 and paragraphs a, c, and d, Code 1993, are amended  
24 to read as follows:

25 If any licensee, wine permittee, beer permittee, or  
26 employee of a licensee or permittee is convicted of a  
27 violation of section 123.49, subsection 2, paragraph "h", or  
28 if a retail wine or beer permittee is convicted of a violation  
29 of paragraph "i" of that subsection, the administrator or  
30 local authority shall, in addition to ~~the other~~ criminal  
31 penalties fixed for such violations by this section, assess a  
32 civil penalty as follows:

33 a. Upon a first conviction, the violator's liquor control  
34 license, wine permit, or beer permit shall be suspended for a  
35 period of fourteen days. However, if the conviction is for a

1 violation of section 123.49, subsection 2, paragraph "h",  
2 ~~which occurred on or after January 17, 1988~~, the violator's  
3 liquor control license or wine or beer permit shall not be  
4 suspended, but the violator shall be assessed a civil penalty  
5 in the amount of three hundred dollars. Failure to pay the  
6 civil penalty as ordered under section 123.39 for a violation  
7 of section 123.49, subsection 2, paragraph "h", or this  
8 subsection will result in automatic suspension of the license  
9 or permit for a period of fourteen days.

10 c. Upon a third conviction within a period of ~~five~~ three  
11 years, the violator's liquor control license, wine permit, or  
12 beer permit shall be suspended for a period of sixty days.

13 d. Upon a fourth conviction within a period of ~~five~~ three  
14 years, the violator's liquor control license, wine permit, or  
15 beer permit shall be revoked.

16 Sec. 18. Section 123.53, Code 1993, is amended by adding  
17 the following new subsection:

18 NEW SUBSECTION. 5. Notwithstanding section 8.33, civil  
19 penalties imposed and collected by the division shall not  
20 revert to the general fund of the state. The moneys from the  
21 civil penalties are appropriated for use by the division for  
22 the purposes of providing educational programs, information  
23 and publications for alcoholic beverage licensees and  
24 permittees, local authorities, and law enforcement agencies  
25 regarding the laws and rules which govern the alcoholic  
26 beverages industry, and for promoting compliance with  
27 alcoholic beverage laws and rules.

28 Sec. 19. Section 123.177, subsection 1, Code 1993, is  
29 amended to read as follows:

30 1. A person holding a class "A" wine permit may  
31 manufacture and sell, or sell at wholesale, wine for  
32 consumption off the premises. Sales within the state may be  
33 made only to persons holding a class "A" or "B" wine permit,  
34 and to persons holding a class "A", "B", "C" or "D" liquor  
35 control license, and to persons holding a special permit

1 issued-under-section-123.29,-subsection-3. A class "A" wine  
2 permittee having more than one place of business shall obtain  
3 a separate permit for each place of business where wine is to  
4 be stored, warehoused, or sold.

5 Sec. 20. REPEALS. Sections 123.15 and 123.151, Code 1993,  
6 are repealed.

7

#### EXPLANATION

8 This bill eliminates the requirement that a person  
9 (including a spouse of the license holder) who holds a 10  
10 percent or more interest in a licensed establishment be a  
11 citizen and a resident. The bill requires that only the  
12 applicant be a resident and a citizen. The bill amends the  
13 requirements for licensing by stating the classes of persons  
14 who must be named in the application as holding an ownership  
15 interest in the establishment to be licensed under chapter  
16 123.

17 The bill further eliminates the division's hearing board  
18 which acts as an intermediate appellate review board for  
19 administrative actions involving licensees and permittees, and  
20 establishes a system of hearings and appeals for licensees and  
21 permittees. Administrative matters which would have been  
22 appealed to the hearing board from the proposed decision by an  
23 administrative law judge and reviewed by the administrator may  
24 now be appealed through a petition for judicial review  
25 directly to district court from the final decision of the  
26 administrator. Additionally, the bill eliminates a provision  
27 which would allow the commission to reverse, affirm, or amend  
28 approvals, denials, suspensions, and revocations of liquor  
29 licenses and permits.

30 The bill reduces the period of potential suspension of a  
31 liquor control license for a licensee who presents a check to  
32 the division for the purchase of alcoholic liquor which is  
33 subsequently dishonored by the licensee's bank.

34 The bill eliminates the necessity of obtaining a special  
35 permit for the manufacture or sale of patent and proprietary

1 products which contain alcoholic liquor as one of their  
2 ingredients, but which are not susceptible for use as an  
3 intoxicant or alcoholic beverage.

4 The bill specifies that class "D" liquor control licensees,  
5 including trains and boats which operate intrastate only and  
6 gambling boats licensed under chapter 99F, must purchase  
7 alcoholic beverages from Iowa-licensed entities.

8 The bill permits the division and the local authority to  
9 impose a civil penalty in an amount not to exceed \$1,000 upon  
10 a licensee or permittee for a violation of chapter 123, in  
11 lieu of suspension or revocation for the violation, and  
12 further allows the division to retain the civil penalties  
13 collected to be used for licensee education and educational  
14 programs for local authorities and law enforcement agencies.

15 The bill eliminates the prohibition against a retailer  
16 extending credit to a consumer for the purchase of alcoholic  
17 beverages.

18 The bill mandates the revocation of a liquor control  
19 license or wine or beer permit where the licensee or the  
20 licensee's agent or employee is convicted of four sales to  
21 underage persons within a three-year period.

22 Finally, the bill eliminates the publication of the  
23 intoxication notice, and makes nonsubstantive Code  
24 corrections.

25 BACKGROUND STATEMENT

26 SUBMITTED BY THE AGENCY

27 Licensing Requirements. Considerable confusion exists with  
28 regard to the classes of persons who may qualify to hold a  
29 liquor control license or wine or beer permit. The alcoholic  
30 beverages division seeks through this legislation to clarify  
31 the classes of persons who must be listed on an application  
32 for a license or permit, and to narrow the licensing  
33 requirements for an individual applicant to require only the  
34 applicant to be a resident of the state of Iowa and a citizen  
35 of the United States. The division believes that this measure

1 will assist the division's licensees and permittees in more  
2 readily and easily understanding and complying with licensing  
3 requirements. The division believes that the alcoholic  
4 beverages industry and local authorities will support this  
5 initiative.

6 Elimination of the Division's Hearing Board. The  
7 division's hearing board is comprised of a representative of  
8 the department of public safety, the attorney general's  
9 office, and a member of the division's commission, and serves  
10 as an intermediate appellate review board to review decisions  
11 of the administrator or local authority prior to an appeal to  
12 district court. It has become extraordinarily difficult to  
13 convene a hearing board on a regular basis and to set a matter  
14 when all persons to the appeal and the three-member hearing  
15 board may meet. Additionally, appellate review of an  
16 administrator's or local authority's administrative sanction  
17 of a licensee by the hearing board significantly delays the  
18 licensee's right to speedy resolution of the administrative  
19 matter. Other agencies which suspend or revoke licenses do  
20 not have intermediate appellate review boards. The division  
21 believes that the notions of fundamental fairness and due  
22 process to the division's licensees dictate that the hearing  
23 board be eliminated, so that decisions of the administrator  
24 may be appealed directly to district court through a petition  
25 for judicial review. Elimination of the hearing board will  
26 result in administrative cost savings to the division as well  
27 as to the licensee.

28 Elimination of the hearing board will not result in a loss  
29 of substantive or procedural due process rights for licensees  
30 or permittees whose licenses or permits are subject to  
31 suspension, revocation, or the imposition of a civil penalty  
32 for violation of chapter 123. Pursuant to this bill, local  
33 authorities may impose civil penalties, suspensions, or  
34 revocations and the licensee will be afforded the opportunity  
35 to appeal the local authority's action to the division

1 administrator. (Current law allows the licensee to appeal a  
2 decision of the local authority to the hearing board.)  
3 Licensees and permittees whose licenses and permits are  
4 subject to suspension, revocation, or the imposition of a  
5 civil penalty by the division will be afforded the opportunity  
6 in an evidentiary hearing conducted pursuant to chapter 17A to  
7 demonstrate compliance with all the lawful requirements for  
8 the retention of the license. An administrative law judge  
9 from the department of inspections and appeals will conduct  
10 the hearing and render a proposed decision. The administrator  
11 may review the proposed decision and may affirm, reverse, or  
12 modify the proposed decision. The division does not believe  
13 that the alcoholic beverages industry or local authorities  
14 will object to this legislative initiative.

15 Elimination Provision Regarding License Issuance and  
16 Suspensions and Revocations. Section 123.16 currently allows  
17 the alcoholic beverages' commission the ability to review and  
18 to affirm, reverse, or amend all actions taken by the  
19 administrator including the denial of licenses and permits and  
20 the suspension or revocation of licenses and permits. This  
21 provision is inconsistent with current Code provisions which  
22 establish a system of hearings and appeals for licensees and  
23 permittees regarding licensing matters and suspensions and  
24 revocations. The provision has never been utilized and it is  
25 inconsistent with chapter 17A, and further it fails to  
26 establish a basis upon which the commission could take such  
27 action. The division believes that the proposal to eliminate  
28 the hearing board and to establish a system of hearings and  
29 appeals is consistent with other agencies and with chapter  
30 17A. The division therefore recommends repeal of section  
31 123.16, subsection 2, paragraph "b". The division believes  
32 that this measure is noncontroversial.

33 Reduction of Potential Suspension of Licensee for  
34 Dishonored Checks Presented for Purchase of Alcoholic Liquor.  
35 Currently, the administrator is mandated by Iowa Code section

1 123.24 to suspend a class "E" liquor control license when the  
2 licensee presents a check for the purchase of alcoholic liquor  
3 from the division and the check is subsequently dishonored by  
4 the bank. The division not does not believe that the class  
5 "E" license should automatically be suspended for a violation  
6 of this nature. The division's experience with class "E"  
7 liquor control licensees during the prior five years indicates  
8 convincingly that licensees are not likely to present  
9 dishonored checks to the division, and the division's  
10 experience further indicates that the division has been able  
11 to collect amounts owed without the threat to the licensee of  
12 automatic suspension of the license or permit. The division  
13 believes that automatic suspension of the license is not a  
14 necessary tool for regulation of the class "E" liquor  
15 licensee. The division believes that the industry will  
16 support this legislative initiative.

17 Elimination of Special Permits. Under current law, persons  
18 who manufacture patent and proprietary medicines and food and  
19 other products which contain alcoholic liquor as one of their  
20 ingredients are required to obtain a five dollar special  
21 permit from the division. The division issues fewer than 100  
22 special permits annually. The division has never experienced  
23 difficulties with special permit holders which would result in  
24 suspension or revocation of a special permit. The division  
25 does not believe that it is necessary to require manufacturers  
26 of patent and proprietary medicines and food products to  
27 obtain a special permit to utilize alcohol as one of the  
28 ingredients of their products, and therefore, the division  
29 urges repeal of the provisions which require the purchase of a  
30 special permit. The division believes that the alcoholic  
31 beverages industry will support this legislative initiative.

32 Code Clarification to Require Class "D" Liquor Control  
33 Licensees to Purchase Alcoholic Beverages from Iowa-Licensed  
34 Entities. The current law is unclear with regard to persons  
35 or entities from whom class "D" liquor control licensees must

1 purchase alcoholic beverages. This measure clarifies the law  
2 to ensure that class "D" liquor control licensees which  
3 operate trains and boats intrastate only, and gambling boats  
4 licensed under chapter 99F, purchase alcoholic beverages from  
5 licensed Iowa entities. The measure does not impair airplanes  
6 which travel interstate from acquiring alcoholic beverages  
7 from out-of-state or in-state licensed entities. The division  
8 believes that this is a noncontroversial issue.

9 Civil Penalties in Lieu of Suspension of License or Permit.

10 The division currently has the authority to impose a \$300  
11 civil penalty on licensees in lieu of suspension of the  
12 license for a licensee's first sale to an underage person.  
13 The division believes that the alcoholic beverages industry  
14 would be more effectively served if the division has the  
15 option of imposing civil penalties on licensees for other  
16 violations of chapter 123. There are certainly instances  
17 where mitigating factors would dictate that a civil penalty is  
18 appropriate in lieu of suspension of the license or permit.  
19 The division believes that the alcoholic beverages industry  
20 will support this legislative initiative.

21 Elimination of Prohibition Imposed on Retailers on Sales of  
22 Alcoholic Beverages to Consumers on Credit. Currently, Iowa

23 Code section 123.49 prohibits a retailer from selling  
24 alcoholic beverages to a consumer on credit unless the  
25 consumer utilizes a bona fide credit card (like Visa, Master  
26 Card, or American Express). This law prohibits retailers from  
27 selling alcoholic beverages on credit to consumers unless the  
28 retailer subscribes to nationally known credit card companies.  
29 The retailers who do not qualify for participation in  
30 nationally known credit card companies or who choose not to  
31 participate are deprived of making business decisions with  
32 regard to extending credit to consumers and other customers.  
33 The division does not believe that regulation of this aspect  
34 of a licensee's business is necessary in order to foster a  
35 responsible and healthy alcoholic beverages industry. The

1 division believes that the alcoholic beverages industry will  
2 support this legislative initiative. (The "cash law" for  
3 wholesale purchases of beer is not affected by this  
4 legislative measure.)

5 Revocation of Licenses and Permits for Four Convictions of  
6 Sales to Underage Persons Within Three Years. Currently, the  
7 law provides that a license or permit shall be automatically  
8 revoked if a licensee or permittee is convicted of four  
9 violations of sales to underage persons within five years.  
10 The division proposes automatic revocation of the license or  
11 permit if the licensee or permittee is convicted of four sales  
12 to underage persons within three years. A three-year period  
13 will allow a licensee or permittee adequate time to  
14 demonstrate its willingness to comply with alcoholic beverages  
15 laws and regulations without the threat of automatic  
16 revocation of the license or permit for an additional two-year  
17 period. The division believes that this legislative measure  
18 will more effectively regulate the industry by providing a  
19 method of eliminating licensees and permittees from selling  
20 alcoholic beverages where they have repeatedly demonstrated  
21 their unwillingness to comply with alcoholic beverages laws.  
22 The division believes that the alcoholic beverages industry  
23 supports measures to eliminate irresponsible alcoholic  
24 beverages licensees and permittees.

25 Division to Retain Civil Penalties Collected to Initiate  
26 Educational Programs for Licensees, Local Authorities, and Law  
27 Enforcement Agencies. As a result of budget reductions over  
28 the past five years, the division has been forced to reduce or  
29 eliminate educational initiatives for licensees and  
30 permittees, law enforcement agencies, and local authorities.  
31 Local authorities, law enforcement agencies, and licensees and  
32 permittees rely upon the alcoholic beverages division to teach  
33 them about the alcoholic beverages laws and regulations and  
34 effective methods of complying with the laws and regulations.  
35 During the past five years, the division has not been able to

1 publish a "law book," a sufficient number of newsletters, or  
2 to conduct seminars for licensees, local authorities, or law  
3 enforcement agencies. The division believes that an important  
4 part of its mission is educating licensees, local authorities,  
5 and law enforcement agencies with respect to alcoholic  
6 beverages laws and regulations and assisting licensees and  
7 permittees in complying with the law. The division is  
8 constantly asked by law enforcement agencies, local  
9 authorities, and licensee associations to publish  
10 informational packets, to conduct seminars, and to provide  
11 similar informational services, but the division has not had  
12 the financial resources to do so. The division will have the  
13 financial resources available to provide educational programs  
14 for licensees, law enforcement agencies, and local authorities  
15 if the division is allowed to retain the civil penalties  
16 collected from licensees and to spend the civil penalties for  
17 educational programs. The division is not seeking additional  
18 general fund funding for this program, nor will the division  
19 seek additional staff to implement educational programs. In  
20 calendar year 1992, the division collected approximately  
21 \$30,000 in civil penalties from licensees and permittees. The  
22 division believes that the alcoholic beverages industry, local  
23 authorities, and law enforcement agencies will support this  
24 legislative initiative.

25 Elimination of the Intoxication Notice. In 1986, the  
26 division was mandated to furnish a notice to all licensees and  
27 permittees which states the penalties for driving while  
28 intoxicated. The licensees and permittees are required to  
29 post this notice in a prominent location in their  
30 establishments. The division does not believe that the  
31 intoxication notice is an effective deterrent to patrons  
32 driving while intoxicated, because patrons do not read or even  
33 peruse the notice. The funds expended on furnishing the  
34 notice to licensees and permittees would be better spent on  
35 educational programs for licensees and permittees to teach

1 them effective methods of preventing patrons from becoming  
2 intoxicated in their establishments. Other agencies within  
3 state government are better equipped to address the legal  
4 ramifications of persons driving while intoxicated. The  
5 division believes that the alcoholic beverages industry would  
6 endorse the elimination of the intoxication notice because it  
7 does not have the deterrent effect that was intended by  
8 passage of the intoxication notice legislation.

9 Nonsubstantive Code Corrections. This bill also makes  
10 nonsubstantive Code corrections by dividing paragraphs as  
11 appropriate, by changing sentence structure and grammar, and  
12 by changing vocabulary used in certain instances. The  
13 division believes that nonsubstantive Code corrections are  
14 appropriate to permit easier use of the Code, and to promote  
15 understanding of alcoholic beverages laws. The division  
16 believes that Code corrections are noncontroversial.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35