

**123.49 Miscellaneous prohibitions.**

1. A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic beverage.

a. A person other than a person required to hold a license or permit under [this chapter](#) who dispenses or gives an alcoholic beverage in violation of [this subsection](#) is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage.

b. The general assembly declares that [this subsection](#) shall be interpreted so that the holding of *Clark v. Mincks*, 364 N.W.2d 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injury inflicted upon another by an intoxicated person.

2. A person holding a retail alcohol license under [this chapter](#), and the person's agents or employees, shall not do any of the following:

a. Knowingly permit any gambling, except in accordance with [chapter 99B](#), [99D](#), [99F](#), or [99G](#), or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license.

b. Sell or dispense any alcoholic beverage on the premises covered by the license, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. on any day of the week.

c. Sell alcoholic beverages to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members, to sales by a hotel or motel to bona fide registered guests, nor to retail sales by the managing entity of a convention center, civic center, or events center.

d. (1) Keep on premises covered by a retail alcohol license any alcoholic liquor in any container except the original package purchased from the department, and except mixed drinks or cocktails mixed on the premises for immediate consumption on the licensed premises or as otherwise provided by this paragraph "d". This prohibition does not apply to holders of a class "D" retail alcohol license or to alcoholic liquor delivered in accordance with [section 123.46A](#).

(2) Mixed drinks or cocktails mixed on the premises that are not for immediate consumption may be consumed on the licensed premises subject to the requirements of this subparagraph pursuant to rules adopted by the department. The rules shall provide that the mixed drinks or cocktails be stored, for no longer than seventy-two hours, in a labeled container in a quantity that does not exceed three gallons. The rules shall also provide that added flavors and other nonbeverage ingredients included in the mixed drinks or cocktails shall not include hallucinogenic substances or added caffeine or other added stimulants including but not limited to guarana, ginseng, and taurine. The rules shall also require that the licensee keep records as to when the contents in a particular container were mixed and the recipe used for that mixture. In addition, mixed drinks or cocktails mixed on the premises pursuant to this subparagraph may be sold for consumption off the licensed premises as provided in and subject to the requirements of subparagraph (3).

(3) Mixed drinks or cocktails mixed on premises covered by a class "C" retail alcohol license for consumption off the licensed premises may be sold if the mixed drink or cocktail is immediately filled in a sealed container and is promptly taken from the licensed premises prior to consumption of the mixed drink or cocktail. A mixed drink or cocktail that is sold in a sealed container in compliance with the requirements of this subparagraph and rules adopted by the department shall not be deemed an open container subject to the requirements of [sections 321.284](#) and [321.284A](#) if the sealed container is unopened and the seal has not been tampered with, and the contents of the container have not been partially removed.

(4) For purposes of this paragraph:

(a) "Sealed container" means a vessel containing a mixed drink or cocktail that is designed to prevent consumption without removal of a tamper-evident lid, cap, or seal. "Sealed container" does not include a container with a sipping hole or other opening for a

straw, a cup made of plastic that is intended for one-time use, or a cup made of paper or polystyrene foam.

(b) “*Tamper-evident*” means a lid, cap, or seal that visibly demonstrates when a container has been opened.

e. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been so reused or adulterated.

f. (1) Employ a person under eighteen years of age in the sale or serving of alcoholic beverages for consumption on the premises where sold.

(2) This paragraph shall not apply if the employer has on file written permission from the parent, guardian, or legal custodian of a person sixteen or seventeen years of age for the person to sell or serve alcoholic beverages for consumption on the premises where sold. However, a person sixteen or seventeen years of age shall not work in a bar as defined in [section 142D.2](#). The employer shall keep a copy of the written permission on file until the person is either eighteen years of age or no longer engaged in the sale of or serving alcoholic beverages for consumption on the premises where sold. If written permission is on file in accordance with this paragraph, a person sixteen or seventeen years of age may sell or serve alcoholic beverages in a restaurant as defined in [section 142D.2](#) during the hours in which the restaurant serves food.

(3) A person sixteen or seventeen years of age shall not sell or serve alcoholic beverages under this paragraph unless at least two employees eighteen years of age or older are physically present in the area where alcoholic beverages are sold or served.

(4) If a person employed under this paragraph reports an incident of workplace harassment to the employer or if the employer otherwise becomes aware of such an incident, the employer shall report the incident to the employee’s parent, guardian, or legal custodian and to the Iowa civil rights commission, which shall determine if any action is necessary or appropriate under [chapter 216](#).

(5) An employer that employs a person under this paragraph shall require the person to attend training on prevention and response to sexual harassment upon commencing employment.

(6) Prior to a person commencing employment under this paragraph, the employer shall notify the employer’s dramshop liability insurer, in a form and time period prescribed by the director, that the employer is employing a person under this paragraph.

g. Allow any person other than the licensee or employees of the licensee to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as permitted in [section 123.95](#). This paragraph does not apply to the lodging quarters of a hotel or motel holding a retail alcohol license, or to holders of a class “D” retail alcohol license.

h. Sell, give, or otherwise supply any alcoholic beverage to any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, or permit any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, to consume any alcoholic beverage.

i. In the case of a retail wine or beer permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to wine, beer, or any other beverage in or about the permittee’s place of business.

j. Knowingly permit or engage in any criminal activity on the premises covered by the license. However, the absence of security personnel on the licensed premises is insufficient, without additional evidence, to prove that criminal activity occurring on the licensed premises was knowingly permitted in violation of this paragraph “j”. For purposes of this paragraph “j”, “*premises*” includes parking lots and areas adjacent to the premises of a retail alcohol licensee authorized to sell alcoholic beverages for consumption on the licensed premises and used by patrons of the retail alcohol licensee.

k. Sell, give, possess, or otherwise supply a machine which is used to vaporize an alcoholic beverage for the purpose of being consumed in a vaporized form.

3. A person under legal age shall not misrepresent the person’s age for the purpose of

purchasing or attempting to purchase any alcoholic beverage from any retail alcohol licensee. If any person under legal age misrepresents the person's age, and the licensee establishes that the licensee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee is not guilty of selling alcoholic beverages to a person under legal age.

[C35, §1921-f46, 1921-f114, 1921-g3; C39, §1921.046, 1921.115, 1921.116; C46, 50, 54, 58, 62, 66, 71, §123.46, 124.20, 124.21; C73, 75, 77, 79, 81, §123.49]

84 Acts, ch 1275, §3; 85 Acts, ch 32, §38 – 42; 86 Acts, ch 1002, §5; 86 Acts, ch 1211, §11; 89 Acts, ch 67, §26; 90 Acts, ch 1175, §8; 91 Acts, ch 245, §2, 3; 94 Acts, ch 1172, §4; 97 Acts, ch 126, §4; 2003 Acts, ch 178, §108, 121; 2003 Acts, ch 179, §142; 2004 Acts, ch 1155, §1; 2006 Acts, ch 1033, §1; 2010 Acts, ch 1128, §4; 2012 Acts, ch 1138, §22; 2017 Acts, ch 119, §10, 11; 2018 Acts, ch 1060, §34 – 36; 2019 Acts, ch 113, §30, 31, 67, 68; 2020 Acts, ch 1114, §13, 16; 2021 Acts, ch 155, §6 – 8; 2022 Acts, ch 1099, §45 – 50, 88; 2023 Acts, ch 19, §2419; 2023 Acts, ch 44, §1, 2; 2023 Acts, ch 64, §106; 2023 Acts, ch 66, §28; 2023 Acts, ch 92, §21

Referred to in §123.3, 123.30, 123.39, 123.46A, 123.50, 123.50A, 123.92, 602.6405, 805.8C(2)

Civil liability for dispensing or sale and service to intoxicated persons; see §123.92

For scheduled fines applicable to violations of subsection 2, paragraph h, see §805.8C(2)

Subsection 2, paragraphs a, d, and f amended