

123.49 Miscellaneous prohibitions.

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

a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer 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, wine, or beer.

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, wine, or beer rather than the serving of alcoholic beverages, wine, or beer as the proximate cause of injury inflicted upon another by an intoxicated person.

2. A person or club holding a liquor control license or retail wine or beer permit under this chapter, and the person's or club'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 or permit.

b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. on a weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liquor or beer between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday.

c. Sell alcoholic beverages, wine, or beer 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 liquor control license any alcoholic liquor in any container except the original package purchased from the division, 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 common carriers holding a class "D" liquor control license.

(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 division. 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. In addition, the rules shall require that the licensee keep records as to when the contents in a particular container were mixed and the recipe used for that mixture.

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. Employ a person under eighteen years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.

g. Allow any person other than the licensee, permittee, or employees of the licensee or permittee, 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 class "B" liquor control licensee or wine or beer permittee, or to common carriers holding a class "D" liquor control license.

h. Sell, give, or otherwise supply any alcoholic beverage, wine, or beer 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, wine, or beer.

i. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, 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 or permit. 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 liquor licensee or permittee authorized to sell alcoholic beverages for consumption on the licensed premises and used by patrons of the liquor licensee or permittee.

k. Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of 2:00 a.m. and 6:00 a.m. on a weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday.

l. 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, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to a person under legal age.

4. No privilege of selling alcoholic liquor, wine, or beer on Sunday as provided in section 123.36, subsection 5, and section 123.134, subsection 5, shall be granted to a club or other organization which places restrictions on admission or membership in the club or organization on the basis of sex, race, religion, or national origin. However, the privilege may be granted to a club or organization which places restrictions on membership on the basis of sex, if the club or organization has an auxiliary organization open to persons of the other sex.

[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

Referred to in §123.36, 123.39, 123.50, 123.50A, 123.92, 123.134, 123.150, 602.6405, 805.8C(2)

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

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

[T] Subsection 2, paragraph d amended