

CHAPTER 5
LICENSE AND PERMIT DIVISION
[Ch 5, IAC 7/1/75 renumbered Ch 6, IAC 3/7/79]
[Prior to 10/8/86, Beer and Liquor Control Department [150]]

185—5.1(123) Manufacture and sale of native wine. Manufacturers of native wine from grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, may sell, keep or offer for sale and deliver their native wine subject to the following regulations and restrictions.

5.1(1) *Manufacturer of native wine defined.* A manufacturer of native wine is a person in Iowa who processes grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, by fermentation into wine.

5.1(2) *Residency requirements.* A manufacturer of native wine who is a sole proprietor must be a resident of Iowa. At least one of the partners of a partnership which is a manufacturer of native wine must be a resident of Iowa. A corporation which is a manufacturer of native wine must be registered to do business in Iowa with the Iowa secretary of state's office in lieu of any other residency requirements.

5.1(3) *Licenses required.*

a. Class "A" native wine permit. Before selling its wine to the division, Class "A" wine wholesalers, retail wine permittees, and liquor control licensees, a manufacturer of native wine shall apply for and shall obtain from the division one Class "A" native wine permit and a \$5,000 bond for its wineries and for its retail establishments. A Class "A" native wine permit obtained for a native winery and for retail establishments costs \$25 a year. A manufacturer of native wine may obtain an application for a Class "A" native wine permit from the division and may submit the completed application and the \$25 fee to the division without having to get the application approved by a local authority. Each Class "A" native wine permit is valid for one year from the effective date and must be renewed each year. A manufacturer of native wine must display the original or a copy of its Class "A" native wine permit in each of its native wineries and in each of its retail establishments. The \$25 fee paid for a Class "A" native winery is not refundable. A manufacturer of native wine must register its retail establishment on forms provided by the division. The division shall issue a manufacturer of native wine duplicate copies of its Class "A" native wine permit so that a copy of it can be posted in each winery and retail establishment.

b. Vintner's certificate of compliance. In order for a manufacturer of native wine to be able to sell its wine to the division, it must obtain an application for a vintner's certificate of compliance from the division and must obtain a vintner's certificate from the division at no expense in addition to obtaining from the division its one Class "A" native wine permit.

c. Class "B" wine permit. In order for a manufacturer of native wine to sell wine it did not manufacture, it must obtain a Class "B" wine permit and a \$1,000 bond for each native winery or retail establishment.

5.1(4) *Exclusive operation of retail establishments.* No person except a manufacturer of native wine can operate a Class "A" native wine retail establishment.

5.1(5) *Distance a retail establishment must be from a native winery.* A manufacturer of native wine cannot have a retail establishment within five miles of a native winery not operated by the manufacturer of native wine.

5.1(6) *Sale of native wine only.* A manufacturer of native wine may sell wine it did not manufacture only if it obtains an appropriate retail wine permit for each location.

5.1(7) *Hours of sale.* A manufacturer of native wine can sell its native wine in its native winery and in its retail establishments on Mondays through Saturdays between the hours of 9 a.m. and 10 p.m. and on Sundays between the hours of 10 a.m. and 12 midnight.

5.1(8) *Premises, books of account and records available for inspection.* A manufacturer of native wine shall cause the premises, books of account, and records to be accessible and available at all reasonable times for inspection by representatives of the division, the law enforcement division of the Iowa department of public safety, or members of local police authority.

5.1(9) *Delivery of native wine.* A manufacturer of native wine may ship its native wine in closed containers to individual purchasers inside and outside Iowa.

5.1(10) *Reports required.*

a. Monthly combined wine production and wine gallonage tax report. A monthly report is required showing the amount of wine on hand at the beginning of the month, the amount produced, the amount sold, the amount of wine gallonage tax due, and any other information requested. Report forms shall be furnished by the division. A manufacturer of native wine shall submit a report along with any wine gallonage tax payment to the division's licensing division by the tenth of each month for the preceding month's business. Reports and wine gallonage tax payments postmarked by the tenth of each month for the preceding month shall be considered timely. This report must be mailed for each month even if no wine sales were made during the month.

b. Annual report. A manufacturer of native wine shall, in January of each year, deliver to the division a complete report, sworn to under oath by the owner, a partner or corporate officer, showing the number of gallons of wine produced by the winery in the preceding year. Report forms shall be furnished by the division.

5.1(11) *Wine gallonage tax.* A manufacturer of native wine must pay to the division a \$1.75 wine gallonage tax on its native wine it sells at wholesale: (1) to retail liquor licensees, (2) to retail beer permittees, (3) to retail wine permittees, and (4) to the division. A manufacturer of native wine does not pay the \$1.75 wine gallonage tax on its native wine it: (1) sells at retail in Iowa in its winery and in its retail establishments, (2) ships to individuals inside and outside Iowa, and (3) sells to other Class "A" wine permittees and to Class "F" beer permittees.

This rule is intended to implement Iowa Code sections 123.4, 123.56, and 123.183.

185—5.2(123) *Special permits issued.* Rescinded IAB 8/18/93, effective 7/29/93.

185—5.3(123) *Licensed manufacturers and wholesalers.*

5.3(1) *License required.* A separate manufacturer's or wholesaler's license shall be required for each place of business of the holder.

5.3(2) *To whom liquor may be sold outside the state of Iowa.* The holder of a manufacturer's or wholesaler's license shall not sell alcoholic liquor outside the state of Iowa, except to a purchaser having the legal right to buy and receive it from the seller at the place of sale and place of delivery, respectively.

5.3(3) *Proof of right to purchase.* Before making a sale to a purchaser other than the division, a licensed manufacturer or wholesaler shall require the purchaser to produce and exhibit for inspection proof of the right to purchase alcoholic liquor according to the laws of the purchaser's own state.

5.3(4) *Registry number of license or permit to physician or pharmacist required.* If the purchaser is a licensed physician or pharmacist or the holder of any other form of license or permit entitling the purchaser to purchase alcoholic liquor, the licensed manufacturer or wholesaler must make a record of the sale which shows the registry number of the license or permit, date thereof and where and to whom it was issued and the date of the sale, name and address of the purchaser and kind and quantity of alcoholic liquor sold.

5.3(5) *Licensed manufacturer or wholesaler to maintain record.* The licensed manufacturer or wholesaler shall maintain a record of all shipments of liquor received and an individual record of each and every sale made, which record shall disclose the name and address of the purchaser and the kind and quantity of alcoholic liquor sold to each purchaser. The licensed manufacturer or wholesaler shall obtain from the carrier a receipt for each shipment of alcoholic liquor to each purchaser and shall deliver the receipt or the duplicate original of the receipt to the division.

5.3(6) *Records accessible and available for inspection.* All records, books of account and premises of a licensed manufacturer or wholesaler shall be accessible and available at all reasonable times for inspection by representatives of the division.

This rule is intended to implement Iowa Code sections 123.4, 123.41 and 123.42.

185—5.4(123) Investigation before issuing license or permit. No manufacturer's or wholesaler's license, nor any special permit referred to in Iowa Code section 123.29, shall be issued until an investigation has been made which shows that the applicant is entitled to such license or permit under the laws of Iowa and the rules of the division.

This rule is intended to implement Iowa Code sections 123.4, 123.41 and 123.42.

185—5.5(123) Eligibility for beer and wine wholesalers licenses. Rescinded IAB 5/15/91, effective 6/19/91.

185—5.6(123) Living quarters permit. This permit may be issued by the administrator to a licensee/permittee after an application furnished by the division has been filed with and approved by the local approving authority. The local approving authority shall forward the application to the license division of the division for processing.

This rule is intended to implement Iowa Code sections 123.4 and 123.30.

185—5.7(123) Change of ownership of a licensed premises, new license or permit required.

5.7(1) A new license or permit and a new bond and a new dramshop policy must be obtained whenever one of the following occurs:

- a. When a business is sold or leased to another person.
- b. When a licensee or permittee changes to another form of business, such as: sole proprietorship to a corporation; a corporation to a sole proprietorship; a sole proprietorship to a partnership; a partnership to a sole proprietorship; a partnership to a corporation; or a corporation to a partnership.
- c. When a partner leaves a partnership or when a new partner is added to a partnership.
- d. When a corporation name is changed due to a merger or is voluntarily changed by its owners.
- e. Each time an entity obtains a seasonal license or permit.
- f. When a receiver takes over the operation of an establishment.

5.7(2) A new license or permit is not required:

- a. When only the trade name of the business is changed.
- b. When the stock of a corporation holding a license or permit is sold. A letter to the division listing the new owner or owners and the amount of stock held by each is required.
- c. When a name of a licensee or permittee is changed by marriage, divorce, or other legal proceeding. A letter requesting the name change is required.
- d. When a license or permit is transferred to another location within the jurisdiction of the local authority as allowed by rule 185—4.18(123).

This rule is intended to implement Iowa Code sections 123.4, 123.21(11), 123.31 and 123.56.

185—5.8(123) Dramshop liability insurance requirements. For the purpose of providing proof of financial responsibility, as required under the provisions of Iowa Code section 123.92, a liability insurance policy shall meet the following requirements.

5.8(1) Current certificate required. The dramshop liability certificate of insurance shall be issued by a company holding a current certificate of authority from the Iowa insurance commissioner authorizing the company to issue dramshop liability insurance in Iowa or issued under the authority and requirements of Iowa Code sections 515.147 to 515.149. The dramshop policy shall take effect the day the license or permit takes effect and shall continue until the expiration date of the license or permit. A new dramshop liability certificate of insurance shall be provided each time the division issues a new license.

5.8(2) Minimum coverage required. The dramshop liability insurance policy shall provide the following minimum liability coverage, exclusive in interests and cost of action, per occurrence:

- a. Fifty thousand dollars for bodily injury to or death of one person in each claim or occurrence.
- b. One hundred thousand dollars for bodily injury to or death of two or more persons in each occurrence.
- c. Twenty-five thousand dollars for loss of means of support of any one person in each occurrence.
- d. Fifty thousand dollars for loss of means of support of two or more persons in each occurrence.

5.8(3) Permitted policies. All dramshop policies issued under this rule shall be occurrence-based policies, not claims-made-based policies.

a. Claims-made-based policies. Claims-made-based policies provide liability coverage only if a written claim is made during the policy period, or any applicable extended reporting period.

b. Occurrence-based policies. Occurrence-based policies provide liability coverage only for injury or damage that occurs during the policy period regardless of the number of written claims made.

5.8(4) Cancellation. An insurance company or an insured may cancel a liability policy by giving a minimum of 30 days' prior written notice to the division of the party's intent to cancel the liability policy. The 30-day period shall begin on the date that the division receives the notice of cancellation. The party seeking to cancel a liability policy shall mail written notice of such cancellation to the division in Ankeny, Iowa, by certified mail, and further shall mail a copy of the notice of cancellation to the licensee or permittee, at that party's post office address. The notice of cancellation shall contain: the name of the party to whom the copy of the notice of cancellation was mailed, the address to which the copy of the notice of cancellation was sent, the date on which the notice of cancellation was mailed, the date the liability policy is being canceled, and the liquor control license or permit number of the licensee or permittee to be affected by such cancellation.

5.8(5) Civil tort liability. Subject to the ordinary or customary exclusions usually found in a policy of dramshop liability insurance, the policy shall contain coverage to insure against all civil tort liability of the insured, created under Iowa Code sections 123.92, 123.93 and 123.94, as those sections now exist or may hereafter be amended.

5.8(6) Proof of financial responsibility. A licensee or permittee shall be deemed to have furnished proof of financial responsibility as contemplated under the provisions of Iowa Code sections 123.92, 123.93, and 123.94 when the licensee or permittee has filed with the division at its offices in Ankeny, Iowa, a properly executed form as described by 185—subrule 12.2(12).

5.8(7) Signature required. Copies of the form described above shall not be deemed properly executed unless the authorized company representative executing the same shall first have filed with the division a sample of the representative's signature. Electronic and facsimile signatures will be acceptable.

5.8(8) Multiple establishment insurance policies. Any licensee that holds multiple licenses throughout the state may purchase an aggregate dramshop insurance policy for all locations provided that:

a. The amount of coverage for the aggregate policy is equal to the minimum required coverage multiplied by the number of establishments covered under the dramshop policy.

b. The aggregate policy provides at least the minimum level of coverage required under this rule for each and every location covered by the policy.

c. All other provisions of this rule are met by the aggregate policy.

5.8(9) Assault and battery policy requirement. Any dramshop insurance policy issued under this rule shall not contain an exclusionary clause for assault and battery or intentional force with regard to:

a. Employees, agents or any person acting as an agent of the establishment.

b. All patrons or visitors to the establishment.

5.8(10) Implementation dates. During the 12-month period commencing on September 1, 2003, all licensees and permittees applying for or renewing a license or permit shall obtain a dramshop insurance policy that conforms to the provisions of rule 5.8(123).

This rule is intended to implement Iowa Code sections 123.92, 123.93 and 123.94.

185—5.9(123) Surety bond requirements. A \$5,000 penal bond must be filed with the division with each application for a Class "A" wine permit, Class "A" beer permit, special Class "A" beer permit and manufacturer's license. A \$5,000, \$10,000 or \$15,000 penal bond must be filed with the division with each application for a Class "E" liquor control license. A Class "E" liquor control licensee may determine the amount of the bond to be posted with the division, and may increase or decrease the face amount of the bond in increments of \$5,000 on one occasion during the licensee's first year of business.

Thereafter, a licensee may increase or decrease the face amount of the bond in increments of \$5,000 only when the liquor control license is renewed. Each penal bond must meet the following requirements.

5.9(1) *Certificate of authority.* It must be issued by a company holding a current certificate of authority from the commissioner of insurance authorizing the company to issue bonds in Iowa.

5.9(2) *Forfeiture of bond.* It must contain a provision for the principal and surety to consent to the forfeiture of principal sum of the bond in the event of revocation of the license or permit by the violation of any Iowa Code provision which requires forfeiture of the bond.

5.9(3) *Cancellation.* A surety company or a principal may cancel a bond by giving a minimum of 30 days' written notice to this division of the party's intent to cancel the bond. The 30-day period shall commence on the date that this division receives the notice of cancellation. The party seeking to cancel a bond shall mail written notice of such cancellation to the division in Ankeny, Iowa, by certified mail, and further shall mail a copy of the notice of cancellation to the other party, at that party's post office address. The notice of cancellation shall contain: the name of the party to whom the copy of the notice of cancellation was mailed, the address to which the copy of the notice of cancellation was sent, the date on which the notice of cancellation was mailed, the date the bond is being canceled, and the license or permit number of the licensee or permittee to be affected by such cancellation.

The cancellation or notice thereof shall have no force or effect in the event that the principal's license or permit has been revoked during the period of the bond or when an administrative hearing complaint has been filed, and charges are currently pending against the licensee or permittee which could result in revocation of the license or permit after an administrative hearing on the complaint.

5.9(4) *Proof of bond.* A licensee or permittee shall be deemed to have furnished a surety bond when the licensee or permittee has filed with the division at its offices in Ankeny, Iowa, a form described by 185—subrule 12.2(7).

5.9(5) *Alternate for surety bond.* Rescinded IAB 5/15/91, effective 6/19/91.

5.9(6) *Two bonds.* Rescinded IAB 5/15/91, effective 6/19/91.

5.9(7) *Class "E" bond.* Rescinded IAB 10/31/01, effective 12/5/01.

This rule is intended to implement Iowa Code sections 123.21, 123.30, 123.128 and 123.129.

185—5.10(123) *Combination wine licenses and permits.* Rescinded IAB 5/19/99, effective 6/23/99.

185—5.11(123) *Fees and surcharge enacted by the legislature for combination wine licenses and permits.* Rescinded IAB 5/19/99, effective 6/23/99.

185—5.12(123) *Distribution of fees and the surcharge enacted by the legislature for combination wine licenses and permits.* Rescinded IAB 5/19/99, effective 6/23/99.

185—5.13(123) *Bonds for combination wine and beer permits.* Rescinded IAB 5/19/99, effective 6/23/99.

185—5.14(123) *Effect on retail and wholesale bottled wine licenses and permits.* Rescinded IAB 5/19/99, effective 6/23/99.

185—5.15(123) *Refunds for fees for wholesale and retail bottled wine licenses.* Rescinded IAB 5/19/99, effective 6/23/99.

185—5.16(123) *Liquor license surcharge enacted by the legislature.* Rescinded IAB 5/19/99, effective 6/23/99.

185—5.17(123) *Calculating liquor license cost with Sunday Sales Privilege and surcharge enacted by the legislature.* Rescinded IAB 5/19/99, effective 6/23/99.

185—5.18(123) *Surcharge on seasonal licenses.* Rescinded IAB 5/19/99, effective 6/23/99.

185—5.19(123) Surcharge refund. Rescinded IAB 5/19/99, effective 6/23/99.

[Filed 12/14/72]

[Filed emergency 5/11/76—published 5/31/76, effective 5/11/76]

[Filed 5/19/78, Notice 4/5/78—published 6/14/78, effective 7/20/78]

[Filed 2/16/79, Notice 12/27/78—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed 8/15/80, Notice 5/28/80—published 9/3/80, effective 10/8/80]

[Filed emergency 5/19/82—published 6/9/82, effective 5/19/82]

[Filed 11/1/84, Notice 8/1/84—published 11/21/84, effective 12/26/84]

[Filed 5/3/85, Notice 2/13/85—published 5/22/85, effective 6/26/85]¹

[Filed without Notice 5/3/85—published 5/22/85, effective 7/1/85]

[Filed emergency 6/14/85—published 7/3/85, effective 7/1/85][◇]

[Filed emergency 7/1/85—published 7/31/85, effective 7/1/85]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed emergency 6/11/86—published 7/2/86, effective 7/1/86]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]^{◇2}[Filed 7/1/86, Notice 5/21/86—published 7/30/86, effective 9/3/86]²[Filed emergency 8/22/86—published 9/10/86, effective 9/30/86]²

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAC 7/30/86]

[Filed 2/16/88, Notice 10/7/87—published 3/9/88, effective 4/13/88]

[Filed 4/26/91, Notice 3/20/91—published 5/15/91, effective 6/19/91]

[Filed emergency 7/29/93—published 8/18/93, effective 7/29/93]

[Filed 10/20/93, Notice 8/18/93—published 11/10/93, effective 12/15/93]

[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

[Filed 10/12/01, Notice 8/8/01—published 10/31/01, effective 12/5/01]

[Filed 3/14/03, Notice 8/8/01—published 4/2/03, effective 5/8/03]

[◇] Two or more ARCs¹ Effective date of 5.1(2), 5.1(7) and 5.7(1) delayed 70 days by the Administrative Rules Review Committee on 6/11/85.² See Alcoholic Beverages Division in IAB.