



**DATE:** January 20, 2019

**TO:** The Iowa Legislature

**FR:** Stephanie Strauss, Legislative Liaison, Alcoholic Beverages Division

**RE:** LSB 1189DP – Alcoholic Beverages Division Departmental Bill

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The Alcoholic Beverages Division Departmental Bill is an act relating to matters under the purview of the alcoholic beverages division of the department of commerce. The changes the bill makes will create clarity, improve readability, and make the law easier for the reader to understand and for the regulator to apply and enforce with consistency.

This bill clarifies the Division's role as an alcoholic beverage control law enforcement authority for the state. The proposed amendment in Section 5 would eliminate the tiered enforcement authority that exists today (primary and supplementary aids) and designate select personnel within the Division (investigators and compliance officers) with peace officer status. Additional information regarding the rationale behind the proposed change and what the impacts of the change would be, along with a history of alcoholic beverages law enforcement authority responsibilities is included in this memo.

Section 10 designates records collected by the Division from licensees or permittees in conjunction with investigations, inspections, and audits are confidential before administrative or criminal charges are filed. The proposed change will assist the regulator and protect the rights of businesses it regulates.

Sections 25, 37, and 44 require liquor, wine, and beer manufacturers to share with the Division the records they are required to submit to the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury (TTB). This ensures that the Division has the information it needs to validate taxes owed to the state. Reciprocal language for class "A" native distilled spirits license holders was passed in 2017.

#### **OTHER KEY CHANGES IN THE BILL**

- Amends existing definitions and establishes new definitions.
- Authorizes the Division to adopt rules for the recovery of operational costs arising from the failure of licensees or permittees to remain in compliance with the law.
- Establishes uniform language in §123.23(4) regarding the types of action that may be taken as a result of a violation of Iowa Code chapter 123 or the rules of the Division. Conforming changes are made throughout the chapter.
- Clarifies in §123.32 the actions that can be taken by local authorities and the Division on applications for licenses, permits, and certificates of compliance.
- Clarifies in §123.39 the times when the local authorities and the Division may suspend, revoke, or impose a civil penalty, based on the type of license, permit, or certificate of compliance.
- Clarifies when beer and wine gallonage tax is not owed.
- Moves the wine carrier permit from 123.187 to new section 123.188.

## **SECTION BY SECTION EXPLANATION**

### **SECTIONS 1-2: Amend §123.3 Definitions.**

- Removes the references to a percentage of alcohol by weight from the definitions for “alcoholic liquor”, “beer”, “high alcoholic content beer”, and “wine.” The definition for “wine” is further amended to provide for percentage of alcohol by volume.
- “Application” is amended by adding certificate.
- “Licensed premises or premises” is amended by striking areas susceptible of precise description satisfactory to the administrator from what may constitute a single licensed premises.
- “Local authority” is amended to give a city council or county board of supervisors the power to authorize a designee to act on behalf of the body during the licensing process.
- “Person” is amended to include limited liability companies or other similar legal entities.
- Define “Completed application.”
- Codify the definitions for “Mixed drink or cocktail” and “private place” to assist the reader. Both terms are currently defined only in the Division’s administrative rules.
- Define “Native brewery” to more clearly differentiate between beer manufacturing business models in the state of Iowa.

### **SECTIONS 3 -4: Amend §123.10 Rules.**

- Update a Code reference in subsection 13.
- New subsection 14 authorizes the Division to prescribe a uniform fee to be assessed against certain licensees or permittees to recover administrative costs incurred when a licensee or permittee fails to maintain dramshop liability insurance.
- New subsection 15 authorizes the Division to assess a capped fee to partially recover administrative costs related to contested case proceedings.

**SECTION 5:** Amends §123.14 to clarify the role of the alcoholic beverages division of the department of commerce, the county attorney, the county sheriff and the sheriff’s deputies, the police department of every city, and the department of public safety in the enforcement of Iowa’s alcoholic beverage control laws. The proposed amendment will more clearly define the role of the entities charged with enforcing the provisions of Iowa Code chapter 123. Additionally, the proposed amendment confers the Division’s investigators and compliance officers with the powers and authority of peace officer status when acting within the scope of their responsibilities under Iowa Code chapter 123.

**What is peace officer status?** Peace officer status is a law enforcement designation that allows for the enforcement of criminal and civil laws. Those entities holding peace officer status are described in Iowa Code § 801.4(11) and include sheriffs, police officers, parole officers, and probation officers. Peace officer status can also be designated by law in other chapters of the Iowa Code. For example, investigators of the Department of Inspections and Appeals are designated as peace officers in Iowa Code § 10A.403.

**Why is the Division seeking peace officer status?** The Division believes it already holds the equivalent of peace officer status. Today, the Division is a “supplementary aid” to the Department of Public Safety in alcoholic beverage control law enforcement in the state (Iowa Code § 123.14(2)). Additionally, the Division is created by statute to administer and enforce the laws concerning alcoholic beverage control (Iowa Code § 123.4). The Division administrator is given the duty and power to regulate the entire alcoholic beverage industry in the state, and to appoint clerks, agents, or other employees required for carrying out such responsibilities (Iowa Code §§ 123.9(6) and 123.9(4)).

The proposed amendment to Iowa Code § 123.14 is meant to clarify, not alter, the Division’s law enforcement status. It also restricts peace officer status to certain personnel (investigators and

compliance officers). These personnel would be further restricted to only having the powers and authority of peace officers when carrying out enforcement of alcoholic beverage laws within Iowa Code chapter 123, and would not be allowed to carry a weapon to perform those responsibilities.

The proposed language mirrors the language granting peace officer status to investigators at the Department of Inspections and Appeals. Also, the language was reviewed by the former commissioner of the Department of Public Safety, Roxann Ryan, as well as police officers from several large Iowa cities and no issues were expressed.

**What new regulatory powers/authority would the Division gain by this amendment?** None. The Division's investigators and compliance officers would be limited to the enforcement of the provisions of Iowa Code chapter 123, as they are today.

One benefit to having clearly defined peace officer status is that peace officers' investigative records are considered confidential under Iowa Code § 22.7(5). Today, the Division's investigators' investigative records may not be considered confidential and could be subject to open records requests. Having these records be clearly indicated as confidential under the law allows subjects of investigations to know that sensitive information shared during an investigation will not be shared publicly during the course of the investigation. Additionally, peace officer status will allow the Division to confidentially share information and collaborate with other enforcement entities holding peace officer status, leading to more effective and efficient regulatory work.

The Division's investigators and compliance officers holding peace officer status will not impact the regulatory work performed by other state agencies related to alcohol.

**What other state agencies with licensing authority hold peace officer status?** At least several other state agencies, including:

- Investigators for the Department of Inspections and Appeals (Iowa Code § 10A.403);
- Investigators for the Insurance Fraud Bureau within the Iowa Insurance Division (Iowa Code § 507E.8);
- Investigators hired by the Iowa Board of Nursing (Iowa Code § 152.11);
- Inspectors for the Iowa Board of Pharmacy (Iowa Code § 155A.26);
- Investigators appointed by the Iowa Board of Medicine (Iowa Code § 148.14);
- Investigators appointed by the Iowa Dental Board (Iowa Code § 153.33(1)(b)

#### **History of Alcoholic Beverages Law Enforcement Authority**

**1935:** The county attorney of each county is the primary enforcer for the Liquor Control Commission. Sheriffs and deputies and police departments are supplementary aids. ([1935 Iowa Code, § 1921-f94, p. 316](#))

**1939:** The Department of Public Safety is added as a supplementary aid to the county attorney. ([48GA, ch 120, § 94](#))

**1963:** The Liquor Control Commission is granted the authority to create an enforcement division to act as the primary enforcer for the commission. The county attorney is added as a supplementary aid to the enforcement division. ([60GA, ch 114, §§ 4 and 22](#))

**1971:** The Division of Beer and Liquor Law Enforcement of the Department of Public Safety is created and becomes the primary enforcement authority. Other divisions of the Department of Public Safety, county attorneys, sheriffs and deputies, and police departments are supplementary aids. Liquor Control Commission appears to not have any enforcement authority. ([64GA, ch 131, §§ 14 and 147](#))

**1988:** The Department of Inspections and Appeals is added as a supplementary aid to the Division of Beer and Liquor Law Enforcement of the Department of Public Safety. ([72GA, 88 Acts, ch 1241, § 2](#))

**2002:** The Alcoholic Beverages Division replaces the Department of Inspections and Appeals as a supplementary aid to the Division of Beer and Liquor Law Enforcement of the Department of Public Safety. ([79GA, 2002 Acts, ch 1119, § 11](#))

**2005:** The Division of Beer and Liquor Law Enforcement is eliminated. The Department of Public Safety remains the primary alcoholic beverages law enforcement authority. ([81GA, 2005 Acts, ch 35, §§ 28 and 32](#))

**SECTION 6:** Amends §123.23 Distiller's certificate of compliance – injunction-penalty, as follows:

- Subsection 1 is amended to conform to the new definition for “completed application.”
- Subsection 6 is amended to establish uniform language regarding the types of action that may be taken as a result of a violation of Iowa Code chapter 123 or the rules of the Division.

**SECTIONS 7-9:** Amend §123.24 Alcoholic liquor sales by the division-dishonored payments-liquor prices.

- Strikes provisions that appear in subsections 1, 4, and 5 relating to split case fee, bottle surcharge, and mark up, the components that determine pricing for liquor that is sold by the Division.
- Adds a new subsection to relocate the stricken provisions that determine pricing for liquor that is sold by the Division. No change is made to how price is determined.

**SECTION 10:** Amends §123.27 by striking subsection 3, to allow the Division to utilize the state warehouse on Sunday.

**SECTION 11:** Amends §123.28 Restrictions on transportation.

**SECTIONS 12-14:** Amend §123.30 Liquor control licenses –classes.

- Subsection 2 is amended to clarify that a liquor control license shall not be issued to a place or to a building that is unsafe. Conforms to language in other sections of the Chapter that describe the conditions for a place where a license or permit may be issued.
- Subsection 4 is amended to make grammatical changes to language that was passed in 2018 Iowa Acts, Senate File 2502, §59 and to strike “private place” and replace it with “private place.”
- Subsection 5 is amended to strike language that was passed in 2018 Iowa Acts, Senate File 2502, §60, which inadvertently allows a licensee to let a patron carry a glass of alcoholic liquor to a place where it cannot be lawfully consumed.

**SECTION 15:** Amends §123.31(3) to conform to the change made to the definition for “person.”

**SECTION 16:** Amends §123.32 Action by local authorities and the division on applications for liquor control licenses, native-distilled spirits licenses, and wine and beer permits.

- Subsection 1, paragraph “a” describes the types applications that require action by the local authority and the Division and to conform to the changes made to the definitions for “person” and “local authority”, and “completed application.”
- Subsection 1, paragraph “b” describes the types of applications that require action by the Division only.
- Minor technical changes to subsections 2 and 3.
- Subsection 6 is amended to allow for the use of personal service as a means to provide notice to a licensee or permittee.

**SECTION 17:** Amends §123.34 Expiration of licenses and permits – seasonal, five-day, and fourteen-day licenses and permits-fees. Incorporates certificates of compliance, lists the types of licenses/permits that may be issued on a seasonal, five-day, or fourteen-day basis, cleans up and reorganizes the section.

**SECTIONS 18-20:** Amend §123.36 Liquor fees-Sunday sales.

- Subsection 5 is amended to eliminate the additional tax imposed on airlines.
- The first sentence in subsection 6 is amended to describe the type of business that may hold a class “D” liquor control license. The second sentence is now redundant and is stricken.
- Subsection 10, to clarify that all three types of class “C” liquor control licenses are subject to the license fee surcharge.

**SECTION 21:** Add new section 123.38A to address the confidential treatment of investigative information in the possession of the Division before administrative or criminal charges are filed.

**SECTIONS 22-23:** Amend §123.39 Suspension or revocation of license or permit – civil penalty.

- Subsection 1, paragraph “a” is restructured. New subparagraph (1) describes the types licenses and permits the local authority and the Division may take action on when a violation has occurred. Second sentence is stricken so it can be relocated. New subparagraph (2) describes the types of licenses, permits, and certificates that the Division only may take action on when a violation has occurred.
- Subsection 1, paragraphs “b” and “d” are amended to reflect the changes in paragraph “a.”
- Language stricken from paragraph “a” is relocated to new paragraph “e.”
- Paragraph “f” is amended to conform with §123.17(7).

**SECTIONS 24-26:** Amend §123.41 Manufacturer’s license.

- Subsection 1 to conform to the change made to the definition for “person.”
- Add a new subsection to require a person who holds a manufacturer’s license to file with the Division the records that are filed monthly with the TTB.
- Subsection 4 to conform to uniform language established in section 6 of the bill regarding the types of action that may be taken as a result of a violation of Iowa Code chapter 123 or the rules of the Division.

**SECTIONS 27-28:** Amend §123.42 Broker’s permit.

- Subsection 1 to conform to the change made to the definition for “completed application.”
- Add a new subsection to conform to uniform language established in section 6 of the bill regarding the types of action that may be taken as a result of a violation of Iowa Code chapter 123 or the rules of the Division.

**SECTION 29:** Amends §123.43(1) to conform to the change made to the definition for “person.”

**SECTION 30:** Amends §123.43A, subsection 5, by striking language that restricts the number of class “A” native distilled spirits licenses that may be issued to a person.

**SECTION 31:** Amends §123.46A, subsection 2, paragraph “a”, to clarify when payment is made for alcoholic beverages that are sold for delivery by a retailer.

**SECTIONS 32-34:** Amend §123.49 Miscellaneous prohibitions, by striking language that is redundant.

**SECTIONS 35-37:** Amend §123.56 Native wines.

- Subsection 1 is amended to update a Code reference.
- Subsection 4 by striking language that is made redundant by changes in sections 55 and 56 of the bill.
- Add a new subsection to require a manufacturer of native wines to file with the Division the records that are filed monthly with the TTB.

**SECTION 38:** Amends §123.95(1) and (2) to clarify the authority granted under a catering privilege.

**SECTION 39:** Amends §123.122 Beer permit or license required, by striking the current language and inserting new. The rewritten section relocates provisions in §123.144(2) and §123.146 that relate to how homemade beer can be used and how beer may be imported for personal use. These changes are intended to assist the reader by consolidating several related provisions into one section.

- Subsection 2 relocates provisions related to homemade beer.
- Subsection 3 relocates provisions related to how beer may be imported for personal use.

**SECTIONS 40-41:** Amend §123.127 Class “A” and special class “A” beer permit applications.

- Subsection 1, to conform to the new definition for “completed application.”
- Subsection 1, paragraph “b” to conform to amended definition for “person.”

**SECTIONS 42-44:** Amend §123.130 Authority under a class “A” and special class “A” beer permits.

- Subsection 1 to clarify that the holder of a class “A” beer permit may sell beer to distributors outside Iowa, pursuant to the laws of that jurisdiction. Reciprocal language for special class “A” beer permit holders was passed in 2016.
- Add a new subsection referring a class “A” beer permit holder operating as a native brewery to relevant Code sections.
- Add a new subsection to require a person who manufactures beer to file with the Division the records it files monthly with the TTB.

**SECTION 45:** Amends §123.131(2) to make grammatical changes to language that was passed in 2018 Iowa Acts, Senate File 2502, §61 and to strike “private place” and replace it with “private place.”

**SECTIONS 46-47:** Amend §123.135 Certificate of compliance – civil penalty.

- Subsection 1 to conform to the new definition for “completed application.”
- Subsection 5 to conform to uniform language established in section 6 of the bill regarding the types of action that may be taken as a result of a violation of Iowa Code chapter 123 or the rules of the Division.

**SECTION 48:** Amends §123.136(1) to describe when the barrel tax on beer is not levied or collected.

**SECTION 49:** Amends §123.143(3) to conform to the new definition for “native brewery.”

**SECTIONS 50-51:** Amend §123.173A Charity beer, spirits, and wine auction permit.

- Subsection 2 to conform to the new definition for “completed application.”
- Add a new subsection to conform to uniform language established in section 6 of the bill regarding the types of action that may be taken as a result of a violation of Iowa Code chapter 123 or the rules of the Division.

**SECTIONS 52-53:** Amend §123.175 Class “A” or retail wine permit application and issuance.

- Subsection 1, unnumbered paragraph, to conform to the new definition for “completed application.”
- Subsection 1, paragraph “b”, to conform to amended definition for “person.”

**SECTION 54:** Amends §123.177 to clarify that the holder of a class “A” wine permit may sell wine to distributors outside Iowa, pursuant to the laws of that jurisdiction. Reciprocal language for special class “A” beer permit holders was passed in 2016.

**SECTIONS 55-56:** Amend §123.179 to clarify the annual fee for a class “A” wine permit that is issued to a native winery.

**SECTIONS 57-58:** Amend §123.180 Vintner’s certificate of compliance-wholesale and retail restrictions-penalty.

- Subsection 1 to conform to the new definition for “completed application.”
- Subsection 6 to conform to uniform language established in section 6 of the bill regarding the types of action that may be taken as a result of a violation of Iowa Code chapter 123 or the rules of the Division.

**SECTION 59:** Amends §123.183(1) to describe when the wine gallonage tax is not levied or collected.

**SECTION 60:** Amends §123.186, subsection 1, to clarify that the Division shall adopt as rules the substance of the federal regulations 27 C.F.R. pt. 6, 27 C.F.R. pt. 8, 27 C.F.R. pt. 10, and 27 C.F.R. pt. 11.1.

**SECTIONS 61-62:** Amend §123.187 Direct shipment of wine-permits and requirements, as follows:

- Subsection 3, paragraph “d” to update a Code reference.
- Subsection 6, by striking the wine carrier permit. It will be relocated to a new Code section.

**SECTION 63:** Creates new §123.188 and relocates the provisions stricken in section 62 of the bill.

#### **SECTION 64: CODE EDITOR DIRECTIVE**

1. The Code editor is directed to make the following transfers: Section 123.56 to section 123.176
2. The Code editor shall correct internal references in the Code and in any enacted legislation as necessary due to the enactment of this section.

#### **SECTION 65: REPEALS**

- Repeals §123.144. The provisions in subsection 1 are repealed due to a conflict with Iowa Code §137F.3(1)). The provisions in subsection 2 are relocated to §123.122(2).
- Repeals §123.146. The provisions in this section are relocated to §123.122(3).