

CHAPTER 91**ALCOHOLIC BEVERAGE CONTROL***H.F. 633*

***AN ACT** relating to the approval, disapproval, suspension, or revocation of liquor control licenses, wine permits, or beer permits, the imposition of civil penalties, and the appeal of the actions of local authorities or the administrator of the alcoholic beverages division regarding liquor control licenses, wine permits, and beer permits, the appropriation of moneys collected through civil penalties, the removal of certain restrictions on the sale of alcoholic beverages, and providing for other properly related matters.

Be It Enacted by the General Assembly of the State of Iowa:

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

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

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

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

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

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

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

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

4. Any violation of the requirements of this section, except subsection 3, shall subject the violator to the general penalties provided in this chapter and in addition thereto shall be to the general penalties, is grounds for suspension or revocation of the certificate of compliance, after notice and hearing before the division hearing board administrator. Willful failure to comply with requirements which may be imposed under subsection 3 shall be is grounds for suspension or revocation of the certificate of compliance only. Decisions of the hearing board concerning such suspension or revocation shall be binding upon all parties.

Sec. 4. Section 123.24, subsection 2, paragraphs a and b, Code 1993, are amended to read as follows:

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

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

*Estimate of additional local revenue expenditures required by state mandate on file with the Secretary of State

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

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

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

1. This chapter does not prohibit the sale of patent and proprietary medicines, tinctures, food products, extracts, toiletries, perfumes, and similar products, which are not susceptible of use as a beverage, but which contain alcoholic liquor, wine, or beer as one of their ingredients. These products may be sold through ordinary wholesale and retail businesses without a license or permit issued by the division.

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

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

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

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

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

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

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

d. CLASS "D".

(1) A class "D" liquor control license may be issued to a railway corporation, to an air common carrier, and to passenger-carrying boats or ships for hire with a capacity of twenty-five persons or more operating in inland or boundary waters, and shall authorize the holder to sell

or furnish alcoholic beverages, wine, and beer to passengers for consumption only on trains, watercraft as described in this section, or aircraft, respectively. Each license is valid throughout the state. Only one license is required for all trains, watercraft, or aircraft operated in the state by the licensee. However, if a watercraft is an excursion gambling boat licensed under chapter 99F, the owner shall obtain a separate class "D" liquor control license for each excursion gambling boat operating in the waters of this state.

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

Sec. 9. Section 123.31, unnumbered paragraph 1, Code 1993, is amended to read as follows:

~~Verified~~ Except as otherwise provided in section 123.35, verified applications for the original issuance or the renewal of liquor control licenses shall be filed at ~~such~~ the time and in ~~such~~ the number of copies as the administrator shall prescribe, on forms prescribed by the administrator, and, ~~except as provided in section 123.35,~~ shall set forth under oath the following information:

Sec. 10. Section 123.32, subsections 2, 4, and 6, Code 1993, are amended to read as follows:

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

4. ACTION BY ADMINISTRATOR.

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

b. Upon receipt of an application having been approved by the local authority, the division shall make ~~such an~~ investigation as the administrator deems necessary to determine that the applicant complies with all requirements for holding a license or permit, and may require the applicant to appear to be examined under oath regarding any matters pertinent to the application, in which case to demonstrate that the applicant complies with all of the requirements to hold a license or permit. If the administrator requires the applicant to appear and to testify under oath, a record shall be made of all testimony or evidence and the same record shall become a part of the application. The administrator may appoint a member of the division or may request an administrative law judge of the department of inspections and appeals to receive the testimony under oath and evidence, and to issue a proposed decision to approve or disapprove the application for a license or permit. The administrator may affirm, reverse, or modify the proposed decision to approve or disapprove the application for the license or permit. If the application is approved by the administrator, the license or permit applied for shall be issued. If the application is disapproved by the administrator, the applicant and the appropriate local authority shall be so notified by certified mail, and the fee and any bond returned to the applicant.

6. JUDICIAL REVIEW. ~~Judicial~~ The applicant or the local authority may seek judicial review of the action of the division hearing board may be sought administrator in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of ~~said~~ the Iowa administrative procedure Act, petitions for judicial review may be filed in the

district court of the county ~~wherein~~ where the premises covered by the application are situated.

~~Where the hearing board on an appeal by an applicant finds that the local authority acted arbitrarily, capriciously, or without reasonable cause in disapproving an application and the administrator issues a license or permit, the local authority may seek judicial review of such decision according to the terms of the Iowa administrative procedure Act within thirty days.~~

Sec. 11. Section 123.32, subsection 5, Code 1993, is amended by striking the subsection and inserting in lieu thereof the following:

5. APPEAL TO ADMINISTRATOR. An applicant for a liquor control license, wine permit, or beer permit may appeal from the local authority's disapproval of an application for a license or permit to the administrator. In the appeal the applicant shall be allowed the opportunity to demonstrate in an evidentiary hearing conducted pursuant to chapter 17A that the applicant complies with all of the requirements for holding the license or permit. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to conduct the evidentiary hearing and to render a proposed decision to approve or disapprove the issuance of the license or permit. The administrator may affirm, reverse, or modify the proposed decision. If the administrator determines that the applicant complies with all of the requirements for holding a license or permit, the administrator shall order the issuance of the license or permit. If the administrator determines that the applicant does not comply with the requirements for holding a license or permit, the administrator shall disapprove the issuance of the license or permit.

Sec. 12. Section 123.32, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 7. SUSPENSION BY LOCAL AUTHORITY. A liquor control licensee or a wine or beer permittee whose license or permit has been suspended or revoked or a civil penalty imposed by a local authority for a violation of this chapter or suspended by a local authority for violation of a local ordinance may appeal the suspension, revocation, or civil penalty to the administrator. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to hear the appeal which shall be conducted in accordance with chapter 17A and to issue a proposed decision. The administrator may review the proposed decision upon the motion of a party to the appeal or upon the administrator's own motion in accordance with chapter 17A. Upon review of the proposed decision, the administrator may affirm, reverse, or modify the proposed decision. A liquor control licensee, wine or beer permittee, or a local authority aggrieved by a decision of the administrator may seek judicial review of the decision pursuant to chapter 17A.

Sec. 13. Section 123.35, unnumbered paragraph 2, Code 1993, is amended to read as follows:

~~Such~~ The application, accompanied by the necessary fee and bond, if required, shall be filed in the same manner as is provided for filing the initial application. However, for the renewal of a class "E" license, the simplified application form for renewal, accompanied by the necessary fee and bond if required, shall be filed directly with the administrator without the endorsement of local authorities if all of the following conditions are met: the applicant's license has not been suspended or revoked since the preceding license was issued; a civil penalty has not been imposed against the applicant under this chapter since the preceding license was issued; an administrative proceeding is not pending against the applicant to suspend or revoke the applicant's license or to impose a civil penalty under this chapter; and the applicant has not been convicted of a violation of this chapter since the preceding license was issued.

Sec. 14. Section 123.36, subsection 1, Code 1993, is amended by striking the subsection.

Sec. 15. Section 123.37, unnumbered paragraph 5, Code 1993, is amended by striking the unnumbered paragraph.

Sec. 16. Section 123.39, subsection 1, Code 1993, is amended to read as follows:

1. a. Any The administrator or the local authority may suspend a liquor control license, wine permit, or beer permit issued under this chapter may, after notice in writing to the licensee or permit holder and reasonable opportunity for hearing, and subject to section 123.50 where applicable, be suspended for a period not to exceed one year or revoked, revoke the license or permit, or impose a civil penalty not to exceed one thousand dollars per violation. Before suspension, revocation, or imposition of a civil penalty, the licensee or permit holder shall be given written notice and an opportunity for a hearing. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to conduct the hearing and issue a proposed decision. Upon the motion of a party to the hearing or upon the administrator's own motion, the administrator may review the proposed decision in accordance with chapter 17A. Upon review of the proposed decision, the administrator may affirm, reverse, or modify the proposed decision. A liquor control licensee, wine, or beer permittee aggrieved by a decision of the administrator may seek judicial review of the administrator's decision in accordance with chapter 17A.

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

a. (1) Misrepresentation of any material fact in the application for the license or permit.
b. (2) Violation of any of the provisions of this chapter.
e. (3) Any change in the ownership or interest in the business operated under a class "A", class "B", or class "C" liquor control license, or any wine or beer permit, which change was not previously reported to and approved by the local authority and the division.

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

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

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

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

Sec. 17. Section 123.39, subsection 4, Code 1993, is amended to read as follows:

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

Sec. 18. Section 123.50, subsection 3, unnumbered paragraph 1 and paragraphs a, c, and d, Code 1993, are amended to read as follows:

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

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

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

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

Sec. 19. Section 123.53, Code 1993, is amended by adding the following new subsection:
NEW SUBSECTION. 5. Notwithstanding section 8.33, civil penalties imposed and collected by the division shall not revert to the general fund of the state. The moneys from the civil penalties are appropriated for use by the division for the purposes of providing educational programs, information and publications for alcoholic beverage licensees and permittees, local authorities, and law enforcement agencies regarding the laws and rules which govern the alcoholic beverages industry, and for promoting compliance with alcoholic beverage laws and rules.

Sec. 20. Section 123.95, Code 1993, is amended by striking the section and inserting in lieu thereof the following:

123.95 PREMISES MUST BE LICENSED – EXCEPTION AS TO CONVENTIONS AND SOCIAL GATHERINGS.

1. A person shall not allow the dispensing or consumption of alcoholic liquor, except wines and beer, in any establishment unless the establishment is licensed under this chapter or except as otherwise provided in this section. The holder of an annual class "B" liquor control license or an annual class "C" liquor control license may act as the agent of a private social host for the purpose of providing and serving alcoholic liquor, wine, and beer as part of a food catering service for a private social gathering in a private place. The holder of an annual special class "C" liquor control license shall not act as the agent of a private social host for the purpose of providing and serving wine and beer as part of a food catering service for a private social gathering in a private place. The private social host or the licensee shall not solicit donations in payment for the food or alcoholic beverages from the guests, and the alcoholic beverages and food shall be served without cost to the guests. Section 123.92 does not apply to a liquor control licensee who acts in accordance with this section when the liquor control licensee is providing and serving food and alcoholic beverages as an agent of a private social host at a private social gathering in a private place which is not on the licensed premises.

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

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

Sec. 21. Section 123.177, subsection 1, Code 1993, is amended to read as follows:

1. A person holding a class "A" wine permit may manufacture and sell, or sell at wholesale, wine for consumption off the premises. Sales within the state may be made only to persons holding a class "A" or "B" wine permit, and to persons holding a class "A", "B", "C" or "D" liquor control license, and to persons holding a special permit issued under section 123.20, subsection 3. A class "A" wine permittee having more than one place of business shall obtain a separate permit for each place of business where wine is to be stored, warehoused, or sold.

Sec. 22. REPEALS. Sections 123.15 and 123.151, Code 1993, are repealed.

Sec. 23. APPEAL AFFECTED. This Act applies to administrative appeals of decisions of the administrator of the alcoholic beverages division of the department of commerce or a local authority which are filed on or after July 1, 1993.

Approved May 3, 1993

CHAPTER 92

LONG-TERM CARE ASSET PRESERVATION PROGRAM

S.F. 63

AN ACT relating to the establishment of a long-term care asset preservation program.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 249F.1 LONG-TERM CARE ASSET PRESERVATION PROGRAM.

1. The Iowa long-term care asset preservation program is established to do all of the following:
 - a. Provide incentives for an individual to insure against the costs of providing for the individual's own long-term care.
 - b. Provide a mechanism for an individual to qualify for coverage of the costs of the individual's long-term care needs under the medical assistance program pursuant to chapter 249A prior to substantially exhausting the assets of the individual.
 - c. Assist in developing methods for increasing access to and the affordability of a long-term care policy.
 - d. Provide counseling services to individuals regarding planning for long-term care needs.
 - e. Assist in alleviating the financial burden on the state's medical assistance program by encouraging the pursuit of private long-term care payment initiatives.
2. The department of human services and the division of insurance of the department of commerce shall administer this program as provided in this chapter.

Sec. 2. NEW SECTION. 249F.2 DUTIES OF DEPARTMENTS.

1. The department of human services shall seek approval of a state plan amendment or make application to the United States department of health and human services for any necessary waivers under 42 U.S.C. § 1396n relating to providing assistance under chapter 249A.
2. The division of insurance shall adopt rules pursuant to chapter 17A for the certification of any long-term care policy or contract which, if purchased by an eligible individual, will allow such individual to retain additional assets as provided in section 249F.4. A policy certified pursuant to this section shall satisfy the definition in section 514G.4, subsection 1, and additionally shall, at a minimum, do all of the following:
 - a. Inform the purchaser of the availability of consumer information concerning the long-term care asset preservation program established in this chapter.
 - b. Provide the option of home and community-based services in addition to nursing home care.