



# Regulation of Alcoholic Beverages

Legislative Services Agency's  
2023 Legal Seminar Series  
November 9, 2023

# Disclaimer

Please be advised that the information in this presentation contains informal opinions and are only applicable to the factual situations referenced and to the statutes in existence as of the date of this presentation.

The Iowa Department of Revenue may take a contrary position in the future to what is stated today. Any oral or written guidance or opinion by Department personnel not pursuant to a Petition for Declaratory Order under Iowa Administrative Code rule 701—7.24 is not binding upon the Department.

# Disclaimer

## **7D.16 Alcoholic beverages in state capitol or on complex grounds.**

Notwithstanding any contrary provision of law prohibiting the use and consumption of alcoholic beverages in a public place, the executive council may authorize, by resolution, the temporary use and consumption of alcoholic beverages, as defined in section 123.3, in the state capitol or on the state capitol complex grounds, as if the state capitol or state capitol complex grounds were a private place. The authorization by resolution shall be limited to the use and consumption of alcoholic beverages as an accompaniment to food at a single award ceremony, social event, or other occasion deemed appropriate by the executive council. The authorization shall require that the person providing the food and alcoholic beverages possess an appropriate retail alcohol license in accordance with section 123.95. The secretary of the executive council shall inform the secretary of the legislative council and the director of the department of administrative services of the approval of any such resolution.

[2009 Acts, ch 179, §101](#); [2022 Acts, ch 1099, §89, 102](#)

2022 amendment effective January 1, 2023; 2022 Acts, ch 1099, §102

Section amended

# Purpose of this Presentation

This presentation is intended for general educational purposes only.

Anyone involved in an audit or protest must contact the Department representative they are working with on that issue.

# How is Alcohol Regulated in Iowa?

I. Control State Distribution Model

II. Licensing

III. Compliance Validation and Administrative  
Actions

# How is Alcohol Regulated in Iowa?

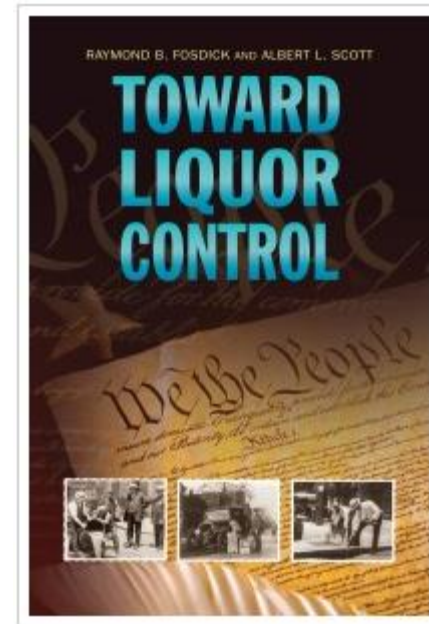
## **I. Control State Distribution Model**

# The “Tied House Evil”

- Direct control of an alcohol retailer by an alcohol manufacturer
- Retailer incentivized to sell only that manufacturer’s product, and as much of it as possible
- Overconsumption contributed to societal ills, which led to Prohibition (1920-1933)

# The Three-Tier System

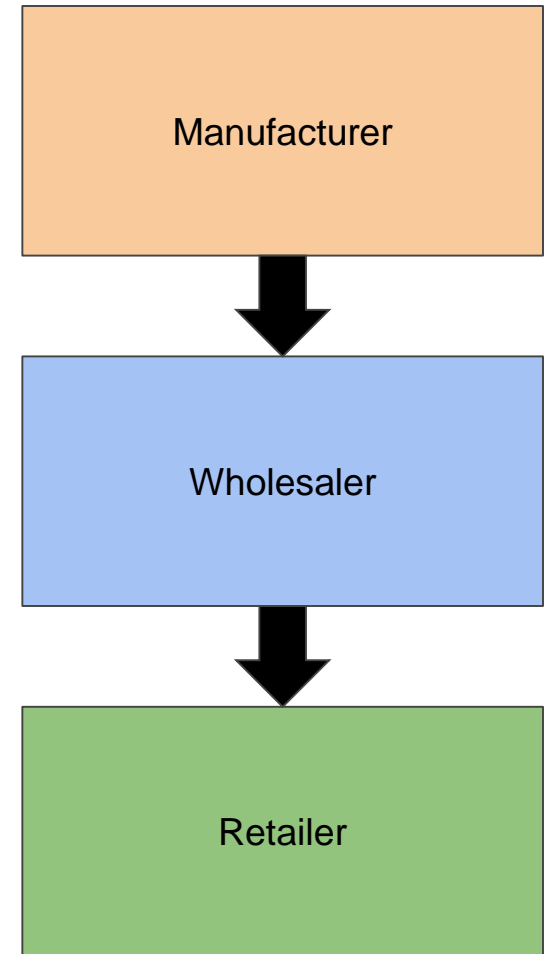
- Study commissioned by John D. Rockefeller
- How should alcohol be regulated post-Prohibition?





# The Three-Tier System

- Alcohol sales and distribution broken out into three separate, independent tiers
- States can choose to control retail and/or wholesale tier



# Iowa Establishes the Control State Model

- March 6, 1934 – The Iowa Liquor Control Act is enacted
- The State of Iowa assumes direct control over the wholesale and off-premises retail sales of all alcoholic liquor and wine (not beer)



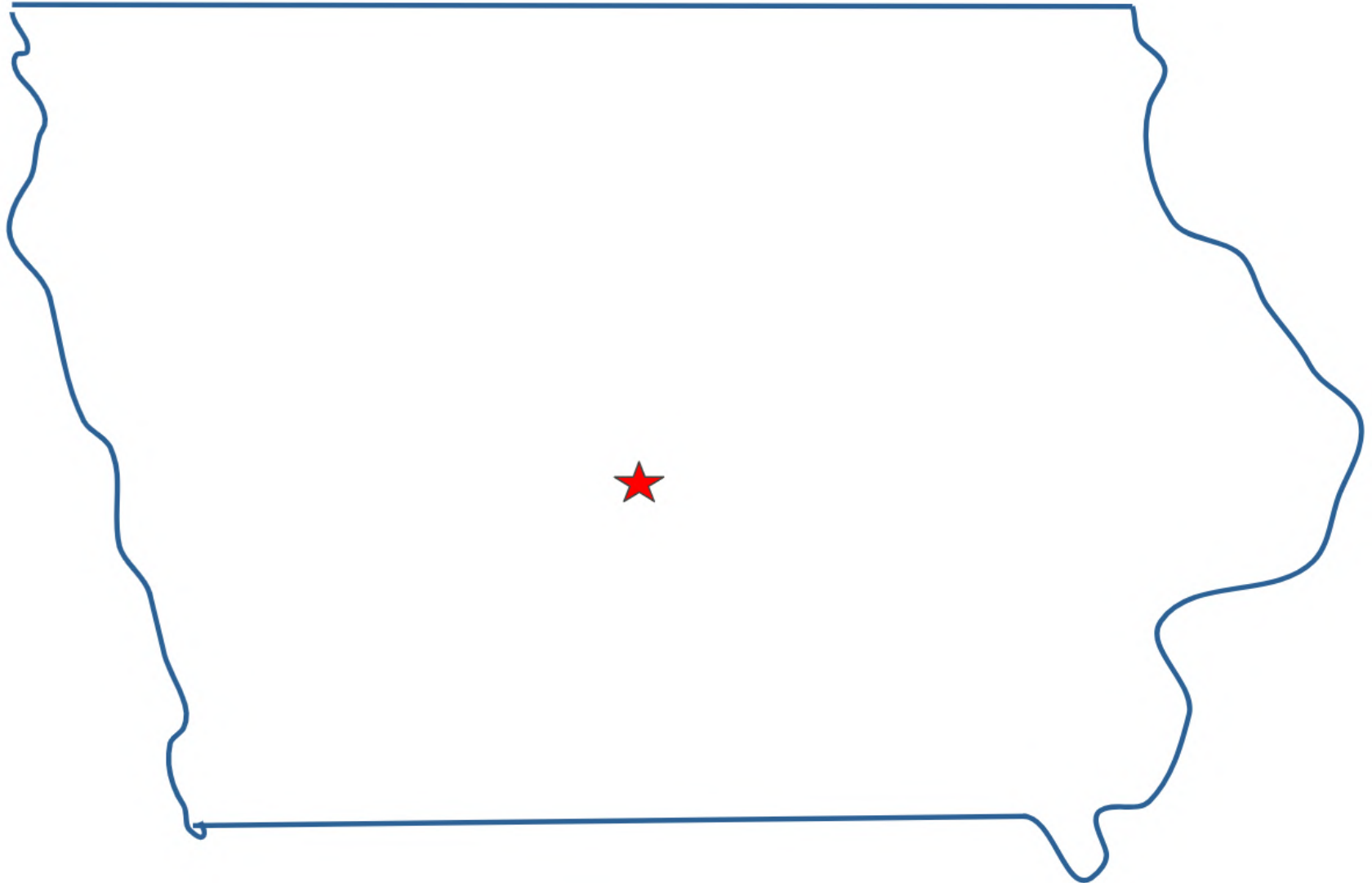
# Loosening Control of Wine and Retail

- 1985 – Iowa's control of wholesale and retail sale of wine ends, transition to privatization begins
- 1986 – Wholesale wine sales placed entirely in the private sector
- 1987:
  - State retail store operations cease; private businesses licensed for off-premises retail sale of wine and liquor
  - State retains role of sole importer and wholesaler of all liquor sold in Iowa

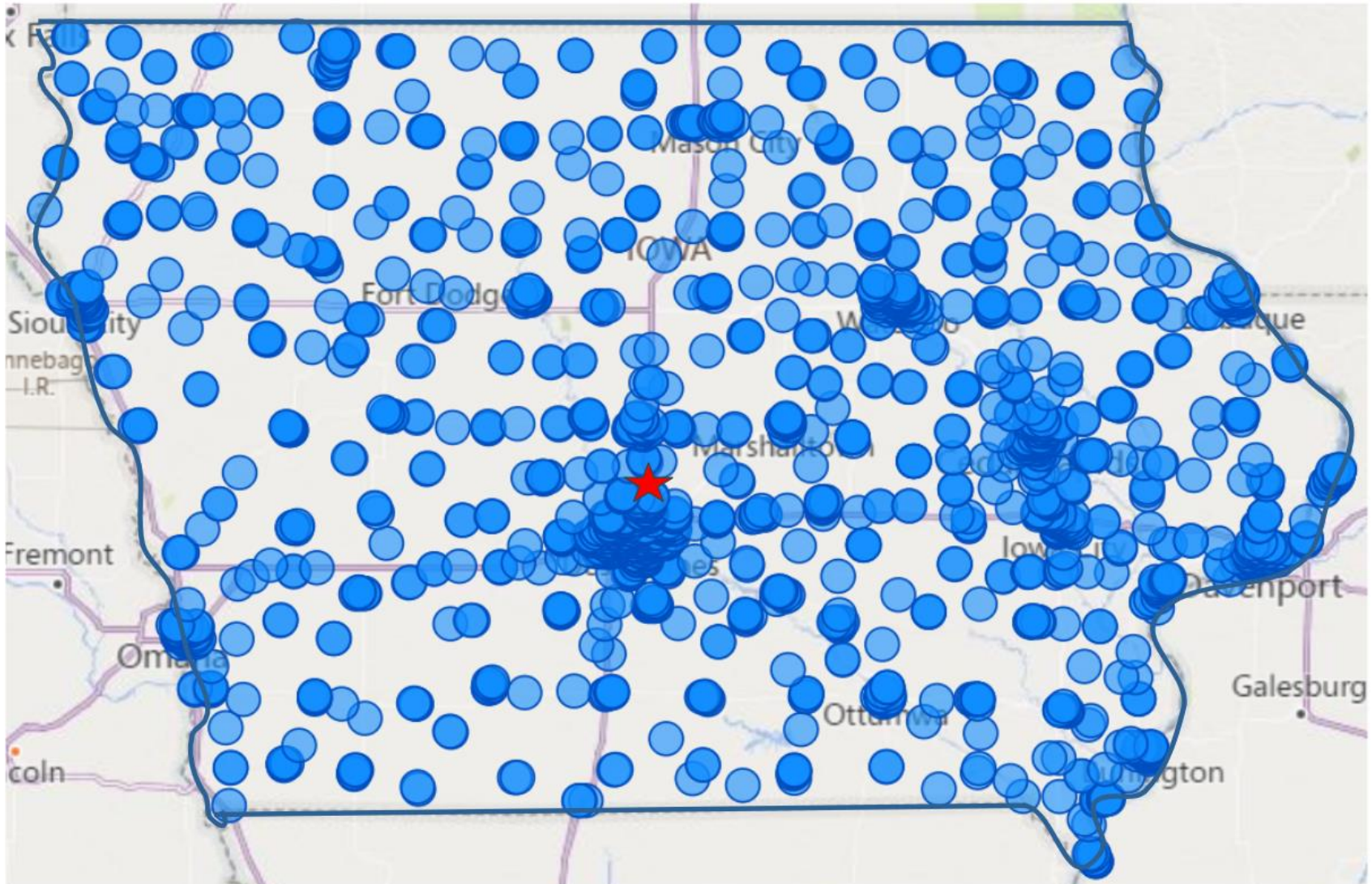
# IDR's Distribution Responsibilities

- IDR “has the exclusive right of importation into the state of all forms of alcoholic liquor”
- IDR “shall act as the sole wholesaler of alcoholic liquor to class ‘E’ retail alcohol licensees”
- IDR shall:
  - “[S]ell alcoholic liquor to class ‘E’ retail alcohol licensees only”
  - “[O]ffer the same price on alcoholic liquor to all class ‘E’ retail alcohol licensees without regard for the quantity of purchase or the distance for delivery”
  - “[D]eliver alcoholic liquor purchased by class ‘E’ retail alcohol licensees”

# IDR's Distribution Responsibilities



# IDR's Distribution Responsibilities



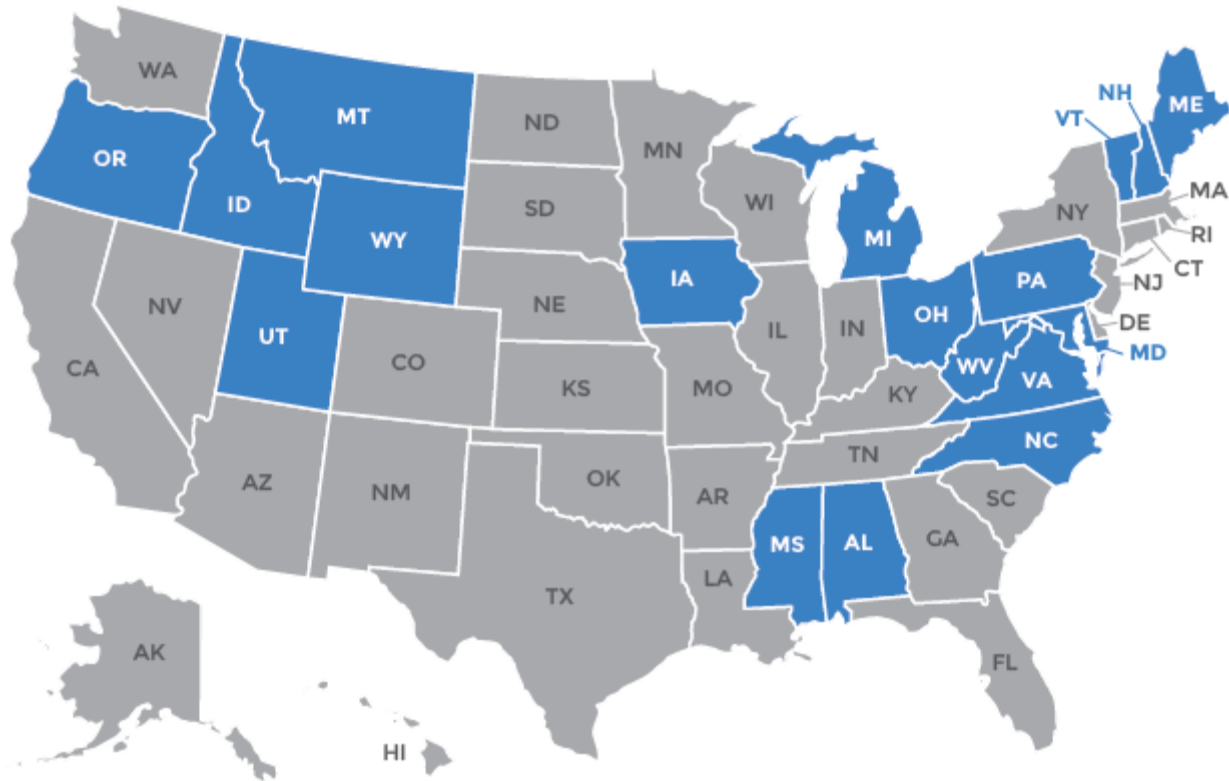
# Why Control Liquor This Way?

## **123.1 Public policy declared.**

*This chapter* shall be cited as the “*Iowa Alcoholic Beverage Control Act*”, and shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is declared to be public policy that the traffic in alcoholic liquors is so affected with a public interest that it should be regulated to the extent of prohibiting all traffic in them, except as provided in *this chapter*.

[C35, §1921-f1; C39, §**1921.001**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.1]  
85 Acts, ch 32, §3; 86 Acts, ch 1122, §1

# U.S. Control Jurisdictions



Source: National Alcohol Beverage Control Association



# How is Alcohol Regulated in Iowa?

## II. Licensing

# Alcohol Licensing

## **123.2 General prohibition.**

It is unlawful to manufacture for sale, sell, offer or keep for sale, possess, or transport alcoholic liquor, wine, or beer except upon the terms, conditions, limitations, and restrictions enumerated in [this chapter](#).

[C35, §1921-f3; C39, §1921.003; C46, 50, 54, 58, 62, 66, 71, §123.3; C73, 75, 77, 79, 81, §123.2]

[85 Acts, ch 32, §4](#)

# Alcohol Licensing

- Number of license types: 22
  - Manufacturing: 6
  - Importation: 3
  - Wholesaling: 2
  - Retailing: 9
  - Shipping/Transporting: 2
- Issue ~16,000 licenses per fiscal year

# Holding an Alcohol License is a Privilege

“A retail alcohol license, wine permit, or beer permit is a **personal privilege** and is revocable for cause. It is not property nor is it subject to attachment and execution nor alienable nor assignable, and it shall cease upon the death of the permittee or licensee...Every permit or license shall be issued in the name of the applicant and no person holding a permit or license shall allow any other person to use it.”

Iowa Code § 123.38(1)

# “Person of Good Moral Character”

- Licenses only issued if the applicant is found to be a “person of good moral character”
- Aligns with the public policy purpose of “protection of the welfare, health, peace, morals, and safety of the people of the state”

# What is a “Person?”

“*Person*” means any individual, association, or partnership, any corporation, limited liability company, or other similar legal entity, any club, hotel or motel, or any municipal corporation owning or operating a bona fide airport, marina, park, coliseum, auditorium, or recreational facility in or at which the sale of alcoholic liquor, wine, or beer is only an incidental part of the ownership or operation.

# What Constitutes “Good Moral Character?”

*“Person of good moral character”* means any person who meets all of the following requirements:

a. The person has such financial standing and good reputation as will satisfy the director that the person will comply with this chapter and all laws, ordinances, and regulations applicable to the person’s operations under this chapter. However, the director shall not require the person to post a bond to meet the requirements of this paragraph.

# What Constitutes “Good Moral Character?” (cont.)

*b.* The person is not prohibited by section 123.40 from obtaining a retail alcohol license or a wine or beer permit.

- 123.40: Revocation of a license or permit prohibits the person from holding another license or permit for two years



# What Constitutes “Good Moral Character?” (cont.)

c. 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 “e”, in the case of a partnership, only one general partner need be a resident of this state.

# What Constitutes “Good Moral Character?” (cont.)

*d.* The person has not been convicted of a felony. However, if the person’s conviction of a felony occurred more than five years before the date of the application for a license or permit, and if the person’s rights of citizenship have been restored by the governor, the director may determine that the person is of good moral character notwithstanding such conviction.

# What Constitutes “Good Moral Character?” (cont.)

e. The requirements of this subsection apply to the following:

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

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

(3) A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of such person.

# What Constitutes “Financial Standing?”

In evaluating an applicant’s “financial standing,” the local authority or the administrator may consider such factors as, **but not limited to**, the following:

(1) Verified source(s) of financial support and adequate operating capital for the applicant’s proposed establishment.

(2) A record of timely submission of all required federal, state, or local tax returns or forms and prompt payment of all taxes due.

# What Constitutes “Financial Standing?” (cont.)

(3) A record of prompt payment to the local authority of fees or charges made by a local authority for municipal utilities or other municipal services incurred in conjunction with the proposed establishment.

(4) A record of prompt payment or satisfaction of administrative penalties imposed pursuant to Iowa Code chapter 123.

# What Constitutes “Financial Standing?” (cont.)

(5) A record of maintaining, and providing prompt payment for, dramshop liability insurance coverage as required pursuant to Iowa Code chapter 123.

(6) A record of prompt payment for license, permit, or certificate fees.

(7) A record of prompt payment for alcoholic liquor orders placed with the division.

# What Constitutes “Good Reputation?”

In evaluating an applicant’s “good reputation,” the local authority or the administrator may consider such factors as, **but not limited to**, the following:

(1) A pattern or practice of sales of alcoholic beverages to persons under the legal age for which the licensee or permittee, or the licensee’s or permittee’s agents or employees, have pled or have been found guilty.

# What Constitutes “Good Reputation?” (cont.)

(2) A pattern or practice by the licensee or permittee, or the licensee’s or permittee’s agents or employees, of violating alcoholic beverages laws and regulations for which corrective action has been taken since the previous license or permit was issued.

(3) Sales to intoxicated persons.



# What Constitutes “Good Reputation?” (cont.)

(4) Licensee or permittee convictions for violations of laws relating to operating a motor vehicle while under the influence of drugs or alcohol and the recency of such convictions.

(5) Licensee or permittee misdemeanor convictions and the recency of such convictions.

# What Constitutes “Good Reputation?” (cont.)

(6) A pattern or practice by the licensee or permittee, or the licensee’s or permittee’s agents or employees, of failing to cooperate with the department of public safety, the division, the county attorney, the county sheriff and sheriff’s deputies, the city police department, or the city attorney.

# What Constitutes “Good Reputation?” (cont.)

(7) A pattern or practice by the licensee or permittee of violating local ordinances established by the local authority pursuant to Iowa Code section 123.39(2).

(8) A pattern or practice by the licensee of failing to report any change in the ownership or interest in the business pursuant to Iowa Code section 123.39(1)“b”(3).

# Premises Requirements

- Must be precisely described and depicted with a sketch showing boundaries, selling/serving locations, entrances/exits, measurements of the space to be licensed
- Must conform to all applicable laws, health and fire regulations, and must constitute a “safe and proper place”

# Local Authorities

- First-level approval for most retail alcohol licenses
- City council if premises to be licensed is within city limits
- County board of supervisors if premises to be licensed is outside city limits

# Local Authorities (cont.)

- May have additional requirements for retail license applicants:
  - Define by motion the location of retail premises during special events
  - Ordinances governing any other activities or matters which may affect the retail sale and consumption of alcoholic beverages and the health, welfare and morals of the community involved
    - Examples: Minimum number of days a renewal application must be submitted ahead of expiration; required inspections by chiefs of police or designees; zoning; minimum age of customers in establishments
  - Note: Ordinances cannot conflict with Iowa Code chapter 123 and cannot diminish the hours during which alcoholic beverages may be sold

# Dramshop Insurance

- Required for on-premises licenses
- Purpose: To provide protection for members of the public who experience damages as a result of licensees serving patrons any alcoholic beverage to a point that reaches or exceeds the standard set forth in law for liability.
- Minimum coverage required:
  - \$50,000 for bodily injury to or death of one person in each claim or occurrence
  - \$100,000 for bodily injury to or death of two or more persons in each occurrence
  - \$25,000 for loss of means of support of any one person in each occurrence
  - \$50,000 for loss of means of support of two or more persons in each occurrence
- Policies must be occurrence-based, not claims-made-based
- Coverage must remain active for the duration of the license
  - If coverage lapses, immediate suspension of license

# How is Alcohol Regulated in Iowa?

## **III. Compliance Validation and Administrative Actions**



# Regulatory Responsibilities

The director, in executing the alcoholic beverage control functions of the department, shall have the following duties and powers:

...

6. To license, inspect, and control the manufacture of alcoholic beverages and regulate the entire alcoholic beverage industry in the state.

# Regulatory Responsibilities (cont.)

- The Department of Public Safety is the primary alcoholic beverage control law enforcement authority for the state
- IDR is a supplementary aid to DPS, along with:
  - County attorneys
  - Sheriffs and sheriffs' deputies
  - Police departments
- IDR alcohol compliance personnel do not have peace officer status

# Authorized Administrative Actions

- IDR may:
  - Suspend licenses for up to one year
  - Revoke licenses
  - Impose a civil penalty not to exceed \$1,000 per violation
- Local authorities may do the same for retail alcohol licenses
  - Local authorities retain civil penalties that they impose and collect
- A criminal conviction is not required to suspend, revoke, or impose a civil penalty

# Causes for Administrative Action

1. Misrepresentation of any material fact in the application for a license.
2. Violation of any of the provisions of Iowa Code chapter 123.
3. Failure to report changes in ownership or interest in the business operating under a license.
4. An event which would have resulted in disqualification from receiving a license when originally issued.
5. Any sale, hypothecation, or transfer of a license.
6. Failure or refusal by a licensee to render any report or remit any taxes when due.

# Common Violations

- Bootlegging
- After-hours sales/consumption
- Extending credit (tabs)
- Gambling on licensed premises
- Refilling liquor bottles
- Sales to minors

# Sales to Minors

- Specific penalties set by statute:
  - First violation: \$500 civil penalty
  - Second violation within two years: \$1,500 civil penalty and 30-day license suspension
  - Third violation within three years: \$1,500 civil penalty and 60-day license suspension
  - Fourth violation within three years: License revocation
- Date of each violation is used to determine the period between violations
- Suspensions and revocations are license-specific

# Compliance Validation Methods

1. Routine compliance inspections
2. Complaint-based investigations
3. Financial audits

# Licensee Responsibilities

As a condition for issuance of a retail alcohol 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 or deputy sheriff; members of the department of public safety; representatives of the department and of the department of inspections, appeals, and licensing; 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 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.



# Licensee Responsibilities (cont.)

Every holder of a license or permit under this chapter shall maintain records, in printed or electronic format, which include income statements, balance sheets, purchase and sales invoices, purchase and sales ledgers, and any other records as the director may require. **The records required and the premises of the licensee or permittee shall be accessible and open to inspection** pursuant to section 123.30, subsection 1, during normal business hours of the licensee or permittee.

# Right to Appeal

- Before a suspension, revocation, or civil penalty is imposed, or when a license application is denied, the licensee is given written notice and an opportunity for a hearing
- Requests for a contested case proceeding alleging a violation of Iowa Code chapter 123 must be filed within three years from the date of the alleged violation or the date of conviction for the violation, whichever is later
  - License denial appeals must be filed within 30 days of notice of denial

# Contested Case Hearings

- IDR director may:
  - Preside over the hearing
  - Appoint a member of the department to preside
  - Request an administrative law judge from the Department of Inspections, Appeals, and Licensing (DIAL) to conduct the hearing
- For hearings resulting from administrative action taken by a local authority, it is the local authority's responsibility to litigate the case

# Proposed and Final Decisions

- Proposed decision: Presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the IDR director did not preside
  - If the director presides, the decision that's issued is a final decision
- Any party adversely affected by a proposed decision may appeal to the director within 30 days after issuance
- Upon review of the case, the director may affirm, reverse, or modify the proposed decision and issue a final decision
  - Decision becomes final agency action if a party does not petition for judicial review

# Judicial Review

- Petition must be filed within 30 days of issuance of director's final decision
- District court may affirm, reverse, modify, or grant other appropriate relief from the final decision, or may remand the case back to the department for further proceedings
- District court decision can be further appealed

# Resources

- [Iowa Code chapter 123](#)
- [185 Iowa Administrative Code](#)
- <https://abd.iowa.gov/>
- <https://data.iowa.gov/stories/s/mke2-7r5k>
- <https://www.nabca.org/>

# Contact Us

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**Questions?**



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**Thank you!**