ALCOHOLIC
BEVERAGES
DIVISION
State of Iowa

# Class B Beer Permit (BB)

*For taverns, bars, restaurants, etc.* Allows commercial establishments to sell beer for on-premises consumption. Also allows carry-out sales of beer.

The following pages contain information related to your license. This is not an all-inclusive list of information that pertains to you.

For the complete Iowa Code Chapter 123 use this link:

https://www.legis.iowa.gov/docs/code/123.pdf

For the complete 185 Iowa Administrative Rules use this link:

https://www.legis.iowa.gov/docs/iac/agency/185.pdf

ALCOHOLIC BEVERAGES DIVISION
State of Iowa

# Quick Links

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Legally Speaking

## Tobacco

Tobacco

**123.131 Authority under class "B" beer permit.**

1. Subject to the provisions of this chapter, any person holding a class "B" beer permit shall be authorized to sell beer for consumption on or off the premises. Sales of beer for consumption off the premises made pursuant to this section shall be made in original containers except as provided in subsection 2. However, unless otherwise provided in this chapter, no sale of beer shall be made for consumption on the premises unless the place where such service is made is equipped with tables and seats sufficient to accommodate not less than twenty-five persons at one time.

2. Subject to the rules of the division, sales of beer for consumption off the premises made pursuant to this section may be made in a container other than the original container only if the container is carried into an immediately adjacent premises covered by a license or permit that authorizes the consumption of beer, temporarily closed public right-of-way, or a private place, or if all of the following requirements are met:

a. The beer is transferred from the original container to the container to be sold on the licensed premises at the time of sale or when sold by telephonic or other electronic means.

b. The person transferring the beer from the original container to the container to be sold shall be eighteen years of age or more.

c. The container to be sold shall be no larger than seventy-two ounces.

d. The container to be sold shall be securely sealed by a method authorized by the division that is designed so that if the sealed container is reopened or the seal tampered with, it is visibly apparent that the seal on the container of beer has been tampered with or the sealed container has otherwise been reopened.

3. A container of beer other than the original container that is sold and sealed in compliance with the requirements of subsection 2 and the rules of the division shall not be deemed an open container subject to the requirements of sections 321.284 and 321.284A if the sealed container is unopened and the seal has not been tampered with, and the contents of the container have not been partially removed.

4. A person holding a class "B" beer permit and a class "A" beer permit whose primary purpose is manufacturing beer may purchase wine from a wholesaler holding a class "A" wine permit for sale at retail for consumption on the premises covered by the class "B" beer permit.

5. A person holding a class "B" beer permit may also hold a special class "A" beer permit for the premises licensed under a class "B" beer permit for the purpose of operating as a brewpub pursuant to this chapter.

**123.138 Records required — keg identification sticker.**

1. Each class "A" or special class "A" beer permittee shall keep proper records showing the amount of beer sold by the permittee, and these records shall be at all times open to inspection by the administrator and to other persons pursuant to section 123.30, subsection 1. Each class "B" beer permittee, class "C" beer permittee, or retail liquor control licensee shall keep proper records showing each purchase of beer made by the permittee or licensee, and the date and the amount of each purchase and the name of the person from whom each purchase was made, which records shall be open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the permittee or licensee.

2. a. Each class "B", "C", or special class "C" liquor control licensee and class "B" or "C" beer permittee who sells beer for off-premises consumption shall affix to each keg of beer an identification sticker provided by the administrator. The sticker provided shall allow for its full removal when common external keg cleaning procedures are performed. For the purposes of this subsection, "keg" means all durable and disposable containers with a liquid capacity of five gallons or more. Each class "B", "C", or special class "C" liquor control licensee and class "B" or "C" beer permittee shall also keep a record of the identification sticker number of each keg of beer sold by the licensee or permittee with the name and address of the purchaser and the number of the purchaser's driver's license, nonoperator's identification card, or military identification card, if the military identification card contains a picture and signature. This information shall be retained by the licensee or permittee for a minimum of ninety days. The records kept pursuant to this subsection shall be available for inspection by any law enforcement officer during normal business hours.

b. (1) The division shall provide the keg identification stickers described in paragraph "a" and shall, prior to utilizing a sticker, notify licensed brewers and licensed beer importers of the type of sticker to be utilized. Each sticker shall contain a number and the following statement:

> It is unlawful to sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person under legal age. Any person who defaces this sticker shall be guilty of criminal mischief punishable pursuant to section 716.6 and shall cause the forfeiture of any deposit, if applicable.

(2) The identification sticker shall be placed on the keg at the time of retail sale. The licensee or permittee shall purchase the stickers referred to in this subsection from the division and shall remit to the division deposits forfeited pursuant to this lettered

paragraph due to defacement. The cost of the stickers to licensees and permittees shall not exceed the division's cost of producing and distributing the stickers. The moneys collected by the division relating to the sale of stickers and forfeited deposits shall be credited to the beer and liquor control fund.

c. The provisions of this subsection shall be implemented uniformly throughout the state. The provisions of this subsection shall preempt any local county or municipal ordinance regarding keg registration or the sale of beer in kegs. In addition, a county or municipality shall not adopt or continue in effect an ordinance regarding keg registration or the sale of beer in kegs.

d. The division shall establish by rule procedures relating to the forfeiture and remittance of deposits pursuant to paragraph "b".

**123.140 Separate locations — class "B" or "C" beer permit.**

Every person holding a class "B" or class "C" beer permit having more than one place of business where such beer is sold which places do not constitute a single premises within the meaning of section 123.3, subsection 29, shall be required to have a separate license for each separate place of business, except as otherwise provided by this chapter.

**123.141 Keeping liquor where beer is sold.**

No alcoholic liquor for beverage purposes shall be used, or kept for any purpose in the place of business of class "B" beer permittees, or on the premises of such class "B" beer permittees, at any time. A violation of any provision of this section shall be grounds for suspension or revocation of the beer permit pursuant to section 123.50, subsection 3. This section shall not apply in any manner or in any way to the premises of any hotel or motel for which a class "B" beer permit has been issued, other than that part of such premises regularly used by the hotel or motel for the principal purpose of selling beer or food to the general public, to a premises for which both a class "B" beer permit and a class "A" native distilled spirits license have been issued, or to keep a pharmacy from having alcohol in stock for medicinal and compounding purposes.

**123.142 Unlawful sale and importation.**

1. It is unlawful for the holder of a class "B" or class "C" beer permit issued under this chapter to sell beer, except beer brewed on the premises covered by a special class "A" beer permit or beer purchased from a person holding a class "A" beer permit

issued in accordance with this chapter, and on which the tax provided in section 123.136 has been paid. However, this section does not apply to class "D" liquor control licensees as provided in this chapter.

2. It shall be unlawful for any person not holding a class "A" beer permit to import beer into this state for the purpose of sale or resale.

**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.

**123.3 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Administrator" means the administrator of the division, appointed pursuant to the provisions of this chapter, or the administrator's designee.

2. "Air common carrier" means a person engaged in transporting passengers for hire in interstate or foreign commerce by aircraft and operating regularly scheduled flights under a certificate of public convenience issued by the civil aeronautics board.

3. "Alcohol" means the product of distillation of any fermented liquor rectified one or more times, whatever may be the origin thereof, and includes synthetic ethyl alcohol.

4. "Alcoholic beverage" means any beverage containing more than one-half of one percent of alcohol by volume including alcoholic liquor, wine, and beer.

5. "Alcoholic liquor" means the varieties of liquor defined in subsections 3 and 50 which contain more than six and twenty-five hundredths percent of alcohol by volume, beverages made as described in subsection 7 which beverages contain more than six and twenty-five hundredths percent of alcohol by volume but which are not wine as defined in subsection 54, high alcoholic content beer as defined in subsection 22, or canned cocktails as defined in subsection 11, and every other liquid or solid, patented or not, containing spirits and every beverage obtained by the process described in subsection 54 containing more than twenty-one and twenty-five hundredths percent of alcohol by volume, and susceptible of being consumed by a human being, for beverage purposes. Alcohol manufactured in this state for use as fuel pursuant to an experimental distilled spirits plant permit or its equivalent issued by the federal bureau of alcohol, tobacco and firearms is not an "alcoholic liquor".

6. "Application" means a written request for the issuance of a permit, license, or certificate that is supported by a verified statement of facts and submitted

electronically, or in a manner prescribed by the administrator.

7. "Beer" means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains or made by the fermentation of or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than six and twenty-five hundredths percent of alcohol by volume.

8. "Brewer" means any person who manufactures beer for the purpose of sale, barter, exchange, or transportation.

9. "Brewpub" means a commercial establishment authorized to sell beer at retail for consumption on or off the premises that is operated by a person who holds a class "C" liquor control license or a class "B" beer permit and who also holds a special class "A" beer permit that authorizes the holder to manufacture and sell beer pursuant to this chapter.

10. "Broker" means a person who represents or promotes alcoholic liquor within the state on behalf of the holder of a distiller's certificate of compliance, a manufacturer's license, or a class "A" native distilled spirits license. An employee of the holder of a distiller's certificate of compliance, a manufacturer's license, or a class "A" native distilled spirits license is not a broker.

11. "Canned cocktail" means a mixed drink or cocktail that is premixed and packaged in a metal can and contains more than six and twenty-five hundredths percent of alcohol by volume but not more than fifteen percent of alcohol by volume.

12. "City" means a municipal corporation but not including a county, township, school district, or any special purpose district or authority.

13. "Club" means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership.

14. "Commercial establishment" means a place of business which is at all times equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to the standards and specifications of the division.

15. "Commission" means the alcoholic beverages commission established by this chapter.

16. "Completed application" means an application where all necessary fees have been paid in full, any required bonds have been submitted, the applicant has provided all

information requested by the division, and the application meets the requirements of section 123.92, subsection 2, if applicable.

17. "Designated security employee" means an agent, contract employee, independent contractor, servant, or employee of a licensee or permittee who works in a security position in any capacity at a commercial establishment licensed or permitted under this chapter.

18. "Distillery", "winery", and "brewery" mean not only the premises where alcohol or spirits are distilled, wine is fermented, or beer is brewed, but in addition mean a person owning, representing, or in charge of such premises and the operations conducted there, including the blending and bottling or other handling and preparation of alcoholic liquor, wine, or beer in any form.

19. "Division" means the alcoholic beverages division of the department of commerce established by this chapter.

20. "Grape brandy" means brandy produced by the distillation of fermented grapes or grape juice.

21. "Grocery store" means any retail establishment, the business of which consists of the sale of food, food products, or beverages for consumption off the premises.

22. "High alcoholic content beer" means beer which contains more than six and twenty-five hundredths percent of alcohol by volume, but not more than fifteen percent of alcohol by volume, that is made by the fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains. Not more than one and five-tenths percent of the volume of a "high alcoholic content beer" may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol. The added flavors and other nonbeverage ingredients may not include added caffeine or other added stimulants including but not limited to guarana, ginseng, and taurine.

23. "Hotel" or "motel" means premises licensed by the department of inspections and appeals and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with twenty or more sleeping rooms.

24. "Import" means the transporting or ordering or arranging the transportation of alcoholic liquor, wine, or beer into this state whether by a resident of this state or not.

25. "Importer" means the person who transports or orders, authorizes, or arranges the transportation of alcoholic liquor, wine, or beer into this state whether the person is a resident of this state or not.

26. The terms "in accordance with the provisions of this chapter", "pursuant to the provisions of this title", or similar terms shall include all rules and regulations of the division adopted to aid in the administration or enforcement of those provisions.

27. "Institutional investor" means a person who maintains a diversified portfolio of investments through a state or federally chartered bank, a mutual fund, a retirement plan or account created by an employer, the person, or another individual to provide retirement benefits or deferred compensation to the person, a private investment firm, or a holding company publicly traded on the New York stock exchange, the American stock exchange, or NASDAQ stock market and who has a majority of investments in businesses other than businesses that manufacture, bottle, wholesale, or sell at retail alcoholic beverages.

28. "Legal age" means twenty-one years of age or more.

29. "Licensed premises" or "premises" means all rooms, enclosures, contiguous areas, or places susceptible of precise description satisfactory to the administrator where alcoholic beverages, wine, or beer is sold or consumed under authority of a liquor control license, wine permit, or beer permit. A single licensed premises may consist of multiple rooms, enclosures, areas, or places if they are wholly within the confines of a single building or contiguous grounds.

30. "Local authority" means the city council of any incorporated city in this state, or the county board of supervisors of any county in this state, which is empowered by this chapter to approve or deny applications for retail beer or wine permits and liquor control licenses; empowered to recommend that such permits or licenses be granted and issued by the division; and empowered to take other actions reserved to them by this chapter.

31. "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, or process any substance capable of producing a beverage containing more than one-half of one percent of alcohol by volume and includes blending, bottling, or the preparation for sale.

32. "Mixed drink or cocktail" means an alcoholic beverage, composed in whole or in part of alcoholic liquor, that is combined with other alcoholic beverages or nonalcoholic beverages or ingredients including but not limited to ice, water, soft drinks, or flavorings.

33. "Native brewery" means a business which manufactures beer or high alcoholic content beer and is operated by a person who holds a class "A" beer permit that authorizes the holder to manufacture and sell beer pursuant to this chapter.

34. "Native distilled spirits" means spirits fermented, distilled, or, for a period of two years, barrel matured on the licensed premises of the native distillery where fermented, distilled, or matured. "Native distilled spirits" also includes blended or mixed spirits comprised solely of spirits fermented, distilled, or, for a period of two years, barrel matured at a native distillery.

35. "Native distillery" means a business with an operating still which produces and manufactures native distilled spirits.

36. "Native wine" means wine manufactured pursuant to section 123.176 by a manufacturer of native wine.

37. "Package" means any container or receptacle used for holding alcoholic liquor.

38. "Permit" or "license" means an express written authorization issued by the division for the manufacture or sale, or both, of alcoholic liquor, wine, or beer.

39. "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.

40. "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 administrator 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 administrator shall not require the person to post a bond to meet the requirements of this paragraph.

b. The person is not prohibited by section 123.40 from obtaining a liquor control license or a wine or beer permit.

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.

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 administrator may determine that the person is of good moral character notwithstanding such conviction. 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.

41. "Pharmacy" means a drug store in which drugs and medicines are exposed for

sale and sold at retail, or in which prescriptions of licensed physicians and surgeons, dentists, prescribing psychologists, or veterinarians are compounded and sold by a registered pharmacist.

42. "Private place" means a location which, at the time alcoholic beverages are kept, dispensed, or consumed, meets all of the following criteria:

a. The general public does not have access to the location and attendees are limited to bona fide social hosts and invited guests.

b. The location is not of a commercial nature.

c. Goods or services are neither sold nor purchased at the location.

d. The location is not a licensed premises.

e. Admission fees or other kinds of entrance fees, fare, ticket, donation or charges are not made or are required of the invited guests to enter the location.

43. "Public place" means any place, building, or conveyance to which the public has or is permitted access.

44. "Residence" means the place where a person resides, permanently or temporarily.

45. "Retail beer permit" means a class "B" or class "C" beer permit issued under the provisions of this chapter.

46. "Retail wine permit" means a class "B" wine permit, class "B" native wine permit, or class "C" native wine permit issued under this chapter.

47. "Retailer" means any person who shall sell, barter, exchange, offer for sale, or have in possession with intent to sell any alcoholic liquor, wine, or beer for consumption either on or off the premises where sold.

48. The prohibited "sale" of alcoholic liquor, wine, or beer under this chapter includes soliciting for sales, taking orders for sales, keeping or exposing for sale, delivery or other trafficking for a valuable consideration promised or obtained, and procuring or allowing procurement for any other person.

49. "School" means a public or private school or that portion of a public or private school which provides facilities for teaching any grade from kindergarten through grade twelve.

50. "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, but not limited to, brandy, rum, whisky, and gin.

51. "Unincorporated town" means a compactly populated area recognized as a distinct place with a distinct place-name which is not itself incorporated or within the corporate limits of a city.

52. "Warehouse" means any premises or place primarily constructed or used or provided with facilities for the storage in transit or other temporary storage of

perishable goods or for the conduct of normal warehousing business.

53. "Wholesaler" means any person, other than a vintner, brewer or bottler of beer or wine, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in alcoholic liquor, wine, or beer. A wholesaler shall not sell for consumption upon the premises.

54. "Wine" means any beverage containing more than six and twenty-five hundredths percent of alcohol by volume but not more than twenty-one and twenty-five hundredths percent of alcohol by volume obtained by the fermentation of the natural sugar contents of fruits or other agricultural products but excluding any product containing alcohol derived from malt or by the distillation process from grain, cereal, molasses, or cactus.

**123.186 Federal regulations adopted as rules.**

1. 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.

2. The division shall adopt as rules the substance of 27 C.F.R. §6.88, to permit a manufacturer of alcoholic beverages, wine, or beer, or an agent of such manufacturer, to provide to a retailer without charge wine and beer coil cleaning services, including carbon dioxide filters and other necessary accessories to properly clean the coil and affix carbon dioxide filters. The rules shall provide that the manufacturer shall be responsible for paying the costs of any filters provided.

3. A licensee or permittee who permits or assents to or is a party in any way to a violation or infringement of a rule adopted pursuant to this section is guilty of a violation of this section. A violation of this section shall subject the licensee or permittee to the general penalties provided in this chapter and shall constitute grounds for imposition of a civil penalty or suspension or revocation of the license or permit pursuant to section 123.39.

**123.33 Records.**

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 administrator 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.

ALCOHOLIC BEVERAGES DIVISION
State of Iowa

# REGULATORY BULLETIN

No. B-2016-01 R January 1, 2016

## Tastings by Retailers

**TO: On- and off-premises retailers, including, but not limited to, bars, restaurants, hotels, motels, grocery stores, liquor stores, and convenience stores.**

### INTRODUCTION

The Iowa Alcoholic Beverages Division (Division) administers and enforces the laws of Iowa concerning beer, wine, and alcoholic liquor. The purpose of this bulletin is to provide clarification on the practice of ***retailer-conducted*** tastings. A tasting is the presentation and serving of a product to consumers for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

### BACKGROUND

The Division is conducting a comprehensive review of its rules to update and provide clarity to stakeholders. The Division began by reviewing the tasting, sampling, and trade spending rule, which resulted in the adoption of three new separate rules and defining related terms. The new layout provides clarity and explains each subject matter in greater detail.

### DISCUSSION

The newly adopted rule on tastings allows retailers to conduct tastings under the following guidelines:

**The tasting amount per consumer must be limited to:**

- No more than two ½ ounce tastes of any brand of alcoholic liquor,
- No more than two 1 ounce tastes of any brand of wine,
- No more than two 2 ounce tastes of any brand of beer or high alcoholic content beer, and
- No more than two 2 ounce tastes of a mixed drink or cocktail as defined in 185 Iowa Administrative Code section 4.5(1)"*b*".

**A retailer is prohibited from:**

- Serving a taste to a consumer who is under legal age, intoxicated, or simulating intoxication, and
- Allowing a person under 18 years of age to serve a taste.

**When conducting a tasting:**

- An off-premise license or permit holder cannot charge for product or access to the tasting,
- Tastes must be served by a retailer, the retailer's employees or agents, or an industry member who has the explicit consent of the retailer,
- The alcoholic beverages served during a tasting must be legally obtained by the retailer,
- The tasting must be limited to the types of alcoholic beverages available for purchase,
- The tasting must be held during the hours when alcoholic beverages may be legally sold or served, and
- Food may be offered to consumers.

**Violations:**

- A retailer who conducts a tasting that is found to be in violation of Iowa laws or rules may be subject to administrative sanctions, including, but not limited to, civil penalty, license suspension or license revocation.

## CONCLUSION

Effective December 30, 2015, retailers shall conduct tastings in accordance with this bulletin.

## QUESTIONS

If you have any questions concerning this bulletin, please contact Stephanie Strauss, Government Relations, at 515-281-7432 or Strauss@IowaABD.com.

Stephen Larson, Administrator

**References and useful information:**

**State Law**: 123.186(1)
**State Rules:** 185 Iowa Administrative Code chapter 16
**Federal Regulations:** 27 Code of Federal Regulation 6.95
**Website Links:** http://iowaabd.com/alcohol/regulation/alcohol_laws

*The Alcoholic Beverages Division was created to administer and enforce the laws of Iowa concerning beer, wine and alcoholic liquor.*

*This bulletin does not replace statutes, rules or court decisions.*
*This bulletin should not be considered legal advice or a substitute for legal counsel.*



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ALCOHOLIC BEVERAGES DIVISION
State of Iowa

# REGULATORY BULLETIN

No. B-2016-02 January 1, 2016

# Sampling

**TO: Alcoholic Beverages Manufacturers, Wholesalers, and Brokers (Industry Members)**

## INTRODUCTION

The Iowa Alcoholic Beverages Division (Division) administers and enforces the laws of Iowa concerning beer, wine, and alcoholic liquor. The purpose of this bulletin is to provide clarification on the practice of sampling. Sampling is the practice of industry members giving alcoholic beverages to a retailer for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

## BACKGROUND

Iowa Code section 123.186 mandates that the Division adopt as rules the substance of the federal regulations 27 C.F.R. parts 6, 8, 10, and 11 as they relate to transactions between industry members and retailers, otherwise known as trade practices. The Division is conducting a comprehensive review of the trade practices chapter to update rules and provide clarity to stakeholders. The Division began by reviewing the tasting, sampling, and trade spending rule, which resulted in the adoption of three new separate rules and defining related terms. The new layout provides clarity and explains each subject matter in greater detail.

## DISCUSSION

The newly adopted rule on sampling allows an industry member to give alcoholic beverages to a retailer who has not purchased the brand from that industry member within the preceding 12 months, and while following the below guidelines:

**Quantities cannot exceed the following amounts within a calendar year:**

- No more than 3 liters of any brand of alcoholic liquor,
- No more than 3 liters of any brand of wine, and
- No more than 3 gallons of any brand of beer or high alcoholic content beer.

**An industry member must:**

- Obtain alcoholic liquor, wine, beer, or high alcoholic content beer from the respective wholesaler, and
- Clearly mark the word "SAMPLE" on each container of alcoholic liquor, wine, beer, or high alcoholic content beer used for sampling. The marking cannot obscure the label of the container.

**Record keeping requirements:**

- An industry member must keep and maintain records in accordance with 185 Iowa Administrative Code section 16.18.

**Violations:**

- An industry member who conducts sampling that is found to be in violation of Iowa laws or rules may be subject to administrative sanctions, including, but not limited to, civil penalty, license suspension or license revocation.

## CONCLUSION

Effective December 30, 2015, industry members shall engage in the practice of sampling in accordance with this bulletin.

## QUESTIONS

If you have any questions concerning this bulletin, please contact Stephanie Strauss, Government Relations, at 515-281-7432 or Strauss@IowaABD.com.

Stephen Larson, Administrator

**References and useful information:**

**State Law:** 123.186(1)
**State Rules:** 185 Iowa Administrative Code chapter 16
**Federal Regulations:** 27 Code of Federal Regulation 6.91
**Website Links:** http://iowaabd.com/alcohol/regulation/alcohol_laws

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ALCOHOLIC BEVERAGES DIVISION
State of Iowa

# TRADE PRACTICES FAQ

## Things of Value

1. Can industry members give, sell, or rent coolers/cooler bags/dump bins to on- or off-premises licensee/permit holders?

   Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving, or paying for any equipment used in the storage, handling, serving, or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.

2. Can industry members give, sell, or rent logoed buckets or pitchers to on- or off-premises license/permit holders?

   Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving, or paying for any equipment used in the storage, handling, serving, or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.

3. Can industry members give, sell, or rent tents, tables and/or chairs to on- or off-premises license/permit holders?

   Manufacturers and wholesalers are prohibited from directly or indirectly giving, selling, renting, or lending equipment, furnishings, or fixtures to a retailer for use by the retailer or in the retail establishment. Iowa Code §123.45, 185 IAC 16.40, and 27 CFR 6.21.

4. Can industry members give, sell, or rent dispensing equipment, coil boxes, or draft trucks with tapping equipment on the side to on- or off-premises license/permit holders?

   Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving, or paying for any equipment used in the storage, handling, serving, or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.

5. Can industry members park a refrigerated truck on an on- or off-premises licensed premises to store extra product in?

   Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving, or paying for any equipment used in the storage, handling, serving, or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.

6. Can industry members give, sell, or rent a draft system or walk-in cooler to on- or off-premises license/permit holders?

   Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving, or paying for any equipment used in the storage, handling, serving, or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40

# Things of Value (continued)

ALCOHOLIC BEVERAGES DIVISION State of Iowa

7. Can industry members give t-shirts to on- or off-premises license/permit holders for their employees to wear?

   Manufacturers and wholesalers must **sell** wearing apparel, including sweatshirts, t-shirts, pants, shorts, hats, caps, polo-type shirts, jackets, jerseys, and other similar clothing, which bears substantial permanently affixed advertising identifying the industry member's name or products to a retailer at not less than the industry member's laid-in cost of the items. There is no dollar limitation on wearing apparel which may be sold by an industry member to a retailer. 185 IAC 16.3(6)

8. Can industry members sponsor a band or concert on a licensed premises?

   Sponsorships cannot be offered as an inducement to exclude a competitor's product. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172, 123.180, and 27 CFR 6.41

9. Can beer or wine industry members give disposable glassware to on- or off-premises license/permit holders?

   Manufacturers and wholesalers must sell one-time usage cups made of paper, paper laminate, or plastic. Iowa law requires wholesalers to charge the retailer an amount equal to or greater than the cost of the one-time usage cups. Iowa Code § 123.45.

10. Can a retailer demand industry members provide kegs, glasses, etc., at no cost prior to agreeing to carry the industry member's product?

    While retailers may try to negotiate benefits from wholesalers, the law prohibits the granting of some requests. For all items not expressly prohibited, anything an industry member offers to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172, 123.180, 123.186, and 185 IAC 16.

# Advertising

11. Can industry members provide banners with brand names and/or logos to be erected or placed upon the outside of the on- or off- premises license/permit holders premises?

    Iowa law prohibits advertising on the outside of licensed premises if the advertising contains a brand name. Signs or other advertising matter may be erected or placed inside the premises, inside a fence or similar enclosure which wholly or partially surrounds the premises, or inside a window facing outward from the premises. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.51, 123.123, 123.135, 123.172, and 123.180.

12. Can industry members give, sell, or rent umbrellas for outdoor service area tables to on-premises license/permit holders?

    Manufacturers and wholesalers may give, sell, or rent table umbrellas to retailers as point-of-sale items. The umbrellas must bear substantial advertising matter about the product or the manufacturer or wholesaler. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172, 123.180, 123.186, and 27 C.F.R, § 6.84.

# Return of Product

13. Can industry members allow the return of beer, wine, or liquor that annual (12 month) on- or off-premises license/permit holders ordered too much of or is not selling?

    Manufacturers and wholesalers are prohibited by both federal and state law from accepting the return of overstocked and slow-moving beer, wine or liquor. Iowa Code § 123.186, 185 IAC 16.90, and 27 C.F.R. § 11.45.

14. Can industry members allow the return of beer, wine, or liquor that seasonal (6 and 8 month) on- or off-premises license/permit holders ordered too much of or is not selling?

    Manufacturers and wholesalers may accept the return of product from a seasonal licensee, if the product is likely to spoil during the off season. Manufacturers and wholesalers are under no obligation to accept the return of the product. Iowa Code § 123.186, 27 C.F.R. §§ 11.31, and 11.39.

15. Can industry members allow the return of beer, wine, or liquor that temporary (5-day and 14-day) on- or off-premises license/permit holders ordered too much of?

    Manufacturers and wholesalers may accept the return of products that temporary license/permit holders have on hand at the time the retailer terminates business. Manufacturers and wholesalers are under no obligation to accept the return of the product. Iowa Code § 123.186, 185 IAC 16.90, and 27 C.F.R. § 11.35.

# Ordering Product

16. Can licenses/permits that are owned by the same person/entity share their alcoholic beverages inventory between their annual licensed location and temporary licensed location?

    Transferring product between retail premises is prohibited. Each premises is separately licensed and is required to operate as a separate business. Each license/permit holder must order product under the unique license/permit granted to each premises. Iowa Code §§ 123.123, 123.130, 123.172, 123.173, and 123.177.

# Pricing of Product

17. Can industry members donate beer, wine or liquor to on- or off-premises license/permit holders?

    Iowa law prohibits manufacturers and wholesalers from discriminating between retailers, so manufacturers and wholesalers must uniformly offer all rebates, free goods, or other discounts to all retailers. Iowa Code §§ 123.22, 123.123, 123.135, 123.172, 123.180, and 185 IAC 16.10.

18. Can industry members give a quantity discount or rebate on beer, wine, or liquor purchased by on- or off-premises license/permit holders?

    Iowa law prohibits manufacturers and wholesalers from discriminating between retailers, so manufacturers and wholesalers must uniformly offer all rebates, free goods, or other discounts to all retailers. Iowa Code §§ 123.22, 123.123, 123.135, 123.172, 123.180, and 185 IAC 16.10.

State of Iowa

Alcoholic Beverages Division

# Special Event Education

# 2020

# Introduction

Iowa's alcoholic beverages industry operates within the confines of a carefully cast partnership between the Iowa Alcoholic Beverages Division (Division), licensees and law enforcement officials. Close cooperation among these three entities is essential for regulation and enforcement of Iowa's alcoholic beverages laws in order to achieve compliance.

This manual was developed to provide information for licensees/permittees, their employees and agents to have a general understanding of the laws and regulations governing the alcoholic beverages license/permit. Knowledge may be the least expensive insurance against the imposition of administrative civil penalties, license suspension or revocation, criminal fines, and civil lawsuits.

The Division hopes that this manual will provide licensees/permittees, their employees and agents with the information necessary for the responsible sale of alcoholic beverages and will assist in their effort to:

- Comply with alcoholic beverages laws and regulations.
- Curb underage drinking and illegal use of alcoholic beverages.
- Support the responsible consumption of alcoholic beverages by people of legal drinking age.

## Timeline

The Division makes every attempt to process applications in a timely manner. To ensure that your license/permit is approved in time for your event, please be proactive in applying for your license/permit and contacting your dram insurance carrier and local authority. The summer months particularly show an influx of special events, so we encourage you to apply for any license/permit well in advance so as to ensure adequate time for the license/permit to be processed. We typically recommend that you apply at least 45 days in advance of your event to ensure that your application is processed in time.

Licensees/permittees who are not making any changes or updates to their license/permit may continue to sell alcoholic beverages permitted by their license/permit type.

# Licensing

Current license/permit holders may continue to sell alcoholic beverages in their licensed premises. The license/permit holder will need to operate within the parameters of their original license/permit type (Example: class ‘‘B” beer permittees can only sell beer and coolers - NOT ALCOHOLIC LIQUOR) and follow all alcohol laws required by Iowa Code chapter 123. However, if a new or existing business wishes to make changes to an existing license/permit or acquire a new alcohol license/permit, the following three options are available.

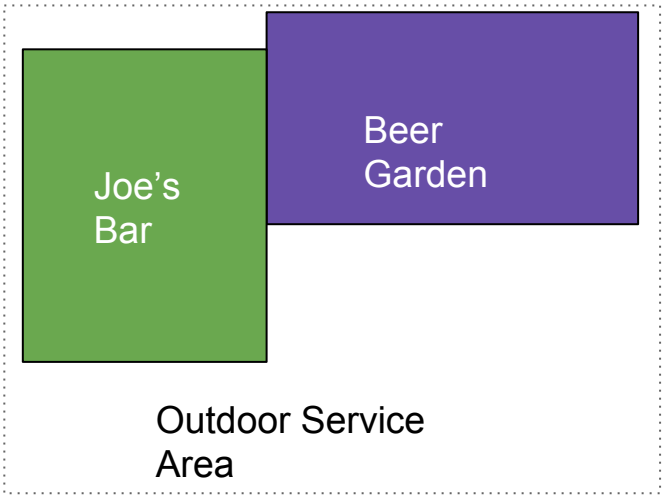
## 1. Five-day Licenses/Permits

Persons wanting to sell and dispense alcoholic beverages at a town celebration or other special event must obtain a five-day license/permit. Five-day licenses/permits are valid for a period of five consecutive days. The license/permit term should include the delivery date for alcoholic beverages. License/permit applicants wanting to sell alcoholic beverages on a Sunday within the five-day period must also obtain a Sunday sales privilege. Licensing requirements for five-day licenses/permits are the same as the requirements for annual licenses/permits of the same class. Special event licenses/permits may be issued for on-premises locations only.

**Iowa Code section 123.34**

| | |
|---|---|
| Class “B” Beer Permit | Beer & Coolers |
| Special Class “C” Liquor License | Beer, Wine & Coolers |
| Class “C” Liquor License | Liquor, Wine, Beer & Coolers |

## 2. Outdoor Service Areas (patios, beer gardens, etc.)




Outdoor service areas are designated areas which are outside of the original licensed premises. Outdoor service areas are considered extensions of existing licensed premises, however, they are not automatically included as part of the licensed premises. Only products permitted by the license/permit may be served. Licensees/permittees may not sell or serve any alcoholic beverages in an outdoor area until they have met licensing requirements by filing the following documents with the local authority:

- Online application for outdoor service area.
- Sketch of the outdoor area clearly showing boundaries of the area and its relationship to the licensed premises.
- Online endorsement from the licensee’s/permittee’s insurance company certifying that the dramshop liability insurance policy covers the outdoor service area.

The words “outdoor service area” will be reflected at the bottom of the license/permit if the licensee/permittee has met all requirements for an outdoor service area. (“Outdoor service area” will not be reflected on the license/permit if the outdoor area is to be used for less than a two-week period; a letter will be sent to the local authority.) Outdoor service areas are not stand-alone licenses. They expire with the license and must be renewed annually.

**Iowa Code section 123.3 and 185 Iowa Administrative Code**

## 3. License Transfers

Applications for license/permit transfers must be submitted online. The licensee/permittee's insurance carrier must certify that the dramshop liability insurance covers the premises to which the license/permit is being transferred. A sketch of the premises must be submitted to the city council or county board of supervisors. Transfer applications must be approved by the city council or county board of supervisors. When requirements are met and approved by the Division, a letter of authorization will be sent to the local authority and the license/permit holder for a temporary transfer.

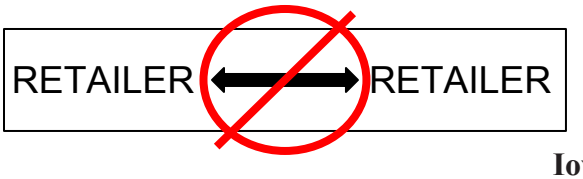
Selling and serving of alcoholic beverages at the new location is limited to the transfer period approved by the local authority (city or county). The licensee/permittee can sell or serve products allowed by their license/permit, only. Sales and service at the original location must stop during the time of the license/permit transfer. Transfers may be temporary (24 hours to 7 days).

**Iowa Code section 123.38 and 185 Iowa Administrative Code**

# Laws and Regulation

## Transfer of Alcoholic Beverages Between Licensed Premises

Liquor, wine and beer inventory cannot be transferred from one retail premises to another even if all of the premises are owned by the same person, partnership, corporation or association.




***Exceptions: Inventory may be transferred when the retail license is transferred from one location to another.***

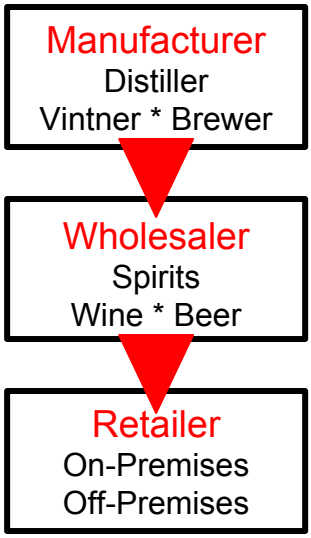
**Iowa Code sections 123.22, 123.30, 123.123, 123.130, 123.131, 123.132, 123.173, 123.177, 123.178, 123.178A and 123.178B**

## Buying Alcoholic Beverages For Resale

Iowa's alcoholic beverages industry operates under a three-tier system – manufacturer (importer) to wholesaler to retailer. All liquor, wine and beer purchases must be made through the three-tier system.

**Off-premises licensees/permittees** (liquor stores, grocery stores, convenience stores, etc.) must purchase the liquor, wine and beer for resale in their licensed establishments from the following sources:

- ***Liquor:*** From the Iowa Alcoholic Beverages Division only. The Division is the sole wholesaler of liquor in Iowa. **Iowa Code sections 123.22 and 123.30**
- ***Wine:*** From Iowa licensed wine wholesalers only. **Iowa Code sections 123.173, 123.177, 123.178, 123.178A and 123.178B**
- ***Beer and wine coolers:*** From Iowa licensed beer wholesalers only. No exceptions! **Iowa Code sections 123.130 and 123.132**




| License | Must Purchase From |
|---|---|
| Beer Off-Premises<br>Beer On-Premises | BEER WHOLESALER |
| Wine Off-Premises | WINE WHOLESALER |
| Wine On-Premises | WINE WHOLESALER (Or less than one case per brand, per day from Class E retailer) |
| Liquor Off-Premises | IOWA ALCOHOLIC BEVERAGES DIVISION |
| Liquor On-Premises | CLASS E RETAILER |

## Buying Alcoholic Beverages For Resale (continued)

**On-premises licensees/permittees** (bars, restaurants, hotels, motels, etc.) must purchase the liquor, wine and beer for resale in their licensed establishments from the following sources:

- ***Liquor:*** From off-premises class "E" liquor licensees (liquor stores, grocery stores, etc.) that hold federal wholesale permits. **Iowa Code sections 123.22 and 123.30**

- ***Wine:*** From Iowa licensed wine wholesalers. On-premises licensees also may purchase limited quantities of wine (less than one case per brand, per day) from off-premises class "E" liquor licensees (liquor stores, grocery stores, etc.) who also are licensed to sell bottles of wine. **Iowa Code sections 123.30, 123.173, 123.177, 123.178 and 123.178B**

- ***Beer and wine coolers:*** From Iowa licensed beer wholesalers. No exceptions! **Iowa Code sections 123.123 and 123.130**

## Record Keeping Requirements

Iowa law requires licensees/permittees to make their records available to law enforcement officials and to members of the Iowa Alcoholic Beverages Division during business hours and when the licensee/permittee, their employees, agents or patrons are on the licensed premises. Licensees/permittees are expected to have receipts on hand for any equipment, furnishings, or fixtures that have been purchased or rented.

**Iowa Code sections 123.14, 123.21, 123.33 and 123.138 Also Internal Revenue Code 26 U.S. 5121-5123**

## Bootlegging

Selling liquor, wine, beer and other alcoholic beverages without a license is bootlegging. Whenever liquor, wine or beer are sold or their cost is recovered in any manner, a license/permit is required. Bootlegging is a criminal offense (serious misdemeanor). Bootlegging includes:

- Selling alcohol without a license.
- Allowing your liquor license to expire without renewing.
- **Selling or serving outdoors without an outdoor service area privilege.**
- **Bringing spirits, wine or beer across the state border to sell in your licensed establishment.**
- **Retailer buying from someone other than a wholesaler.**

**Iowa Code sections 123.59, 123.60 through 123.88 and 123.119**

## Display of License

Licensees/permittees must prominently display their liquor, wine or beer license/permit so that it is in full view of the public.

**Iowa Code section 123.21 and 185 Administrative Code**

## Ages to Sell, Serve, and Deliver

A licensee's/permittee's employees and agents must be at least 16 years of age to sell (in original unopened containers) liquor, wine and beer for off-premises consumption (grocery stores, convenience stores, liquor stores, etc.). Employees must be at least 18 to sell and dispense liquor, wine and beer for on-premises consumption (restaurants, bars, clubs, etc.).

| | |
|---|---|
| 16 | **TO SELL** for off-premises consumption |
| 18 | **TO SERVE** for on-premises consumption |

**Iowa Code sections 123.46, 123.47 and 123.49 and 185 Administrative Code**

## Iowa's Legal Drinking Age

Iowa's 21-year-old legal drinking age applies to everyone, including patrons, agents, employees and the licensees/permittees family members. Licensees/permittees, their employees and agents must exercise reasonable care to assure that a person is of legal drinking age before selling or serving them an alcoholic beverage.

**Iowa Code sections 123.47 and 123.49**

## Age to be in Licensed Establishment

Iowa law does not prohibit minors from being in licensed establishments. However, licensees/permittees should check with their local authority to determine if there is an ordinance governing minors in licensed establishments. If the local authority has such an ordinance, the ordinance applies.

**Iowa Code section 123.39 and 185 Iowa Administrative Code**

## Hours of Sale

The hours during which alcoholic beverages may be legally sold and served are:

**HOURS OF SALE**
**Monday-Saturday**
**6AM to 2AM**
**Sunday**
**8AM to 2AM**

Licensees/permittees licensed to sell beer to go and/or on-premises liquor control licensees who intend to sell beer on Sundays must apply for and obtain a 'Sunday Sales Privilege'.

**Iowa Code sections 123.36, 123.49 and 123.134**

## Outside Advertising

Licensees/permittees may advertise price and brand names of liquor, wine and beer in the following manner:

- Media (newspapers, radio, television, etc.).
- Inside signs (neon signs, mirrors, etc.).
- Outside signs (billboards, reader boards, etc.) which are not located on the licensed premises.

Licensees/permittees may not advertise specific brand names on signs located on the outside of their licensed premises (in the parking lot, on the outside of the building, etc.).
***Exception: Outside signs with specific brand names of liquor, wine and beer are legal when located in enclosed or partially enclosed areas (patio umbrellas with specific name brands in a fenced outdoor beer garden, etc.).***
**Signs in the outdoor service area must face inward.**

**Iowa Code section 123.51**

## Trade Practices

There are state and federal laws and rules that regulate marketing practices between industry members and retailers. When an industry member provides unfair or unlawful services, benefits and gifts to a retailer in order to obtain a better position in the marketplace, it can be referred to as unfair competition or unlawful trade practices. Gifts, services and benefits are examples of areas that are regulated in marketing practices. Retailers should be aware of which marketing practices are considered to be fair and allowable as well as practices deemed to be unfair or inducements. The handout provided in your packet provides answers to frequently asked questions about marketing practices.

**Iowa Code section 123.45, 123.186 and 185 Iowa Administrative Code**

## Infused and Premixed Drinks

On-premises liquor control licensees may mix, store, and dispense mixed drinks, cocktails and alcohol infusions which are not for immediate consumption. The rules define "immediate consumption" to mean the mixing and fulfilling of a mixed drink or cocktail order only after receiving the order. Examples are margaritas, daiquiris, bloody mary's, Jell-O shots, and martinis that have been premixed and contain alcoholic liquor. Licensees who intend to serve premixed drinks should become familiar with the record keeping and label requirements. For more information reference the handout provided in your packet or visit **https://abd.iowa.gov/alcohol/infused-and-premixed-drinks.**

**Iowa Code section 123.49 and 185 Iowa Administrative Code**

## Gambling

A social gambling license permits betting in small stakes card and parlor games between individuals who have a social relationship (other than for the purpose of gambling). Participants must be at least 21 years old and cannot win or lose more than a total of $50 in a 24-hour period. General admission fees or cover charges may not be charged at any time social gambling is allowed. Licensees/permittees, their employees and agents may not promote, sponsor, conduct or act as a banker or cashier for social games. For more information or information on how to apply for a social gambling license reference the handout provided in your packet, visit **www.DIA.Iowa.gov** or contact the **Social and Charitable Gaming Division** at 515-281-6848.

**Iowa Code sections 99B.6, 123.49 and 123.50 and 481 Iowa Administrative Code chapter 102**

## Sales to Intoxicated Persons

It is unlawful to sell or serve liquor, wine or beer to a person who is, or appears to be, intoxicated. The laws governing the sale of alcoholic beverages to an intoxicated person apply to both on- and off-premises licensees – bars, restaurants, hotels, motels, liquor stores, convenience stores, grocery stores, etc.

Although it may be difficult to refuse the sale or service of alcoholic beverages, the consequences that may occur if appropriate action is not taken are significant. People who become intoxicated put themselves and others at risk of injury and harm. Licensees/permittees, their employees and agents who sell or serve an alcoholic beverage to an intoxicated person must realize that their failure to intervene may indirectly injure or kill someone.

Laws governing an intoxicated person also apply to licensees/permittees. Intoxication impairs judgment and interferes with sound business decisions. For this reason, licensees/permittees may find it a good business practice not to drink while working.

Licensees/permittees who sell or serve an alcoholic beverage to an intoxicated person are subject to criminal penalties. In addition, administrative proceedings may be initiated for suspension or revocation of the license/permit. Licensees/permittees also may be held civilly liable under Iowa's DramShop Act for serving an alcoholic beverage to an intoxicated person who causes damage, injury or death of an innocent party. Licensees/permittees can minimize their risk by never serving an alcoholic beverage to a person who is or appears to be intoxicated.

**Iowa Code sections 123.49, 123.92, 123.93 and 321J.2**

## Iowa Program for Alcohol Compliance Training

State of Iowa
ALCOHOLIC
BEVERAGES DIVISION

The Iowa Program for Alcohol Compliance Training (I-PACT) is an alcohol retailer training course for on- and off-premises licensees/permittees. The training is online and free of charge. I-PACT covers the Alcoholic Beverages Control Act (Iowa Code chapter 123), valid forms of identification, and how to spot altered and fake IDs. For more information reference the handout provided in your packet or visit **https://abd.iowa.gov/education/i-pact.**

## I-PLEDGE Tobacco, Alternative Nicotine and Vapor Products Retailer Training

All individuals who sell tobacco, alternative nicotine and vapor products as well as holders of retail licenses should take the I-PLEDGE training. The core objective of the I-PLEDGE program is to prevent illegal sales of tobacco, alternative nicotine and vapor products by educating retailers and increasing awareness of changes in Iowa's tobacco, alternative nicotine and vapor products laws. The program focuses on preventing underage sales and when not to make a sale. Participants will learn techniques for refusing the sale of tobacco, alternative nicotine and vapor products with minimal confrontation and how to legally confiscate an altered or fake ID. Establishments choosing to participate in the I-PLEDGE training are granted an affirmative defense, which may be used once in a four-year period. The training is offered online at no cost. For more information reference the handout provided in your packet or visit **https://abd.iowa.gov/i-pledge.**

## Smokefree Air Act

The Smokefree Air Act prohibits smoking in almost all public places and enclosed areas within places of employment, as well as some outdoor areas. The law applies to: restaurants, bars, outdoor entertainment events and amphitheaters.

For more information reference handouts provided in your packet or contact Iowa Department of Public Health.
**Phone:** 1-888-944-2247 **DEAF RELAY:** (Hearing or Speech Impaired) 711 or 1-800-735-2942.
**Website:** http://www.iowasmokefreeair.gov/

State of Iowa
ALCOHOLIC
BEVERAGES DIVISION

# LEGALLY SPEAKING

# INFUSED & PREMIXED DRINKS

With the passage and signing of House File 2465, the mixing, storing, and dispensing of mixed drinks, cocktails and alcohol infusions which are not for immediate consumption (herein referred to as premixed drinks) became legal July 1, 2012, for on-premises liquor licensees. However, the new language stipulates premixed drinks must be in compliance with the Iowa Code section 123.49(2)*d*(2) and rules adopted by the Alcoholic Beverages Division (ABD).

The ABD filed and adopted rules which were effective July 1 2012. The rules define "immediate consumption" to mean the mixing and fulfilling of a mixed drink or cocktail order only after receiving the order. Licensees who intend to serve premixed drinks should become familiar with the following rules to ensure compliance with Iowa regulations.

## A Liquor Licensee Must:

- Utilize alcoholic beverages in the premixed drink which are authorized by the license and obtained through the three-tier system
- Comply with all applicable state and federal food safety regulations
- Comply with all federal alcohol regulations

## A Liquor Licensee Cannot:

- Add hallucinogenic substances, added caffeine or stimulants, or controlled substances to a premixed drink.

## A Premixed Drink Batch Must Be:

- Disposed of within 72 hours of mixing
- Mixed, stored, and consumed on the licensed premises
- In a labeled container that is compliant with state and federal food safety statutes.

## A Premixed Drink Batch Cannot Be:

- More than three gallons
- Removed from the licensed premises
- Mixed, stored, or dispensed from an original package of liquor or wine, or a container bearing an alcoholic beverage name brand
- Added to a relabeled empty container or another premixed drink batch if expired.

## Label Requirements

A label is required to be on each container that holds a premixed drink batch. The label must adhere to the container, in a noticeable place, until the entire contents are dispensed or destroyed. **The label must legibly identify:**

- The date and time of mixing alcoholic beverages with nonalcoholic ingredients in the container
- The date and time the contents expire
- The title of the recipe used for the contents
- The size of batch
- The person who prepared the contents

Each label must be marked clearly with the words "CONTAINS ALCOHOL."

## Record Keeping Requirements

Records must be maintained for three years on each prepared batch of premixed drinks. **The records must identify:**

- The date and time of mixing alcoholic beverages with nonalcoholic ingredients in the container
- Each alcoholic beverage, including the brand and amount used in the batch
- Each nonalcoholic ingredient used in the batch
- The recipe of title and directions
- The size of batch
- The person who prepared the contents
- The date and time the contents were destroyed or entirely consumed
- If not consumed, the method of destruction
- The person who destroyed the contents

## Dispensing Machines

A dispensing machine that contains a premixed drink is required to follow the labeling, record keeping, and disposal requirements. Licensees who use a dispensing machine that contains a non-alcoholic premix, and add alcoholic beverages after receiving and dispensing a customer order for the beverage, are not required to label the container or maintain records.

## Violations

A failure to comply with the above rules will result in a fine, license suspension, and/or license revocation.

Licensees may access label, record keeping and recipe log templates at https://abd.iowa.gov/alcohol/infused-and-premixed-drinks.

State of Iowa
ALCOHOLIC
BEVERAGES DIVISION

# LEGALLY SPEAKING

# TAKING A GAMBLE WITH YOUR LICENSE?

It may only be February, but one sign that spring is just around the corner is the excitement that comes with the culmination of the college basketball season known as "March Madness." Many people throughout the country strategically make their hopeful winning picks, all the while knowing that their wager may be lost if they are not accurate in their selections. This seemingly acceptable practice of placing wagers on "March Madness" games is not without consequence however. With wagering activities such as this taking place in bars and restaurants where beer and liquor is sold, licensees should be aware of what is permissible under Iowa law.

Whether it's a restaurant conducting a sports betting pool or a bar allowing customers to play a game of Texas Hold'em, on-premises licensees are required to obtain a social gambling license. An establishment with a social gambling license may permit two types of gambling on its premises; gambling between individuals and sports betting pools.

## Gambling Between Individuals

In establishments with a social gambling license, gambling may occur between patrons who are together for purposes other than gambling. Therefore, a social relationship must exist beyond that apparent in the gambling situation. Gambling on small stakes card and parlor games such as cribbage, darts and pool is allowed with a social gambling license. No casino-style games, other than poker, are permissible but poker tournaments are never authorized with a social gambling license. A licensee or its employees cannot sponsor, conduct or promote any game. A participant cannot win or lose more than a total of $50 in a 24-hour period.

## Sports Betting Pools

An establishment with a social gambling license may conduct a sports betting pool if the game is publicly displayed and the rules of the game, including the cost per participant and the amount of the prizes, are clearly displayed on or near the pool. A participant cannot wager more than $5 and maximum winnings to all participants in the pool cannot exceed $500. All money wagered must be awarded to participants. The sports betting pool can only be used for one sporting event and must consist of a grid compliant with Iowa statute. Because of this requirement, the NCAA Basketball Tournament brackets are not legal at liquor establishments. For additional information on how to conduct a sports betting pool in grid format please refer to Iowa Code section 99B.6(7).

## Poker Tournaments, Poker Runs and Raffles

A social gambling license does not allow licensees to conduct poker tournaments, poker runs or raffles. These activities can only be conducted by a licensed charitable organization. A poker run is an organized event where participants must visit checkpoints, drawing a playing card at each one. The object is to have the best poker hand at the end of the run. Raffles are defined as a lottery where each patron buys a ticket for a chance at a prize, with the winner determined by a random method. The winner does not have to be present to win.

## Already Hold a Social Gambling License?

If you have a social gambling license, please check your license to ensure it has not expired. The Department of Inspections and Appeals (DIA) currently does not provide notice to licensees of their renewal date. Social gambling on a premise with an expired license subjects the licensee to the same penalties as not having one at all.

## Penalties

Gambling that occurs at a licensed on-premises establishment without a social gambling license is a violation of Iowa law. First offense violators may face fines up to $1,000 and suspensions lasting up to 21 days.

## Don't Take a Gamble with Your Alcohol License!

DIA recommends that all on-premises licensees obtain a social gambling license. To apply for a social gambling license, complete a paper or online application, both of which are accessible on DIA's website. Along with the application, applicants must provide a letter on official letterhead from a financial institution or other entity, stating the establishment has an account in good standing. If conducting a sports betting pool, a copy of the grid and an explanation of how the pool will be conducted must also accompany the application. A social gambling license costs $150 and is valid for two years from the date issued. Applications must be submitted at least 30 days before the beginning date requested. Visit http://dia.iowa.gov/food-consumer-safety/social-and-charitable-gambling for rules and regulations regarding social gambling. If you have further questions, please contact the Social and Charitable Gambling Unit at (515) 281-6848.

State of Iowa
ALCOHOLIC
BEVERAGES DIVISION

**Stephen Larson, Administrator**
Find more information at
https://abd.iowa.gov/
Take the training at I-PACT.com

# IOWA Program For Alcohol Compliance Training

**Why should you participate in I-PACT?**
The overall goal of I-PACT is increased voluntary compliance with the state's alcohol laws through education and enforcement. The core objective of the program is to prevent illegal sales of alcohol by educating alcohol sellers and increasing awareness of changes in Iowa's liquor laws.

**What will you learn from I-PACT?**
The content focuses on key identifying elements of the latest format of Iowa driver's licenses, but also includes information on the previous version of licenses and identification cards. I-PACT covers the Alcoholic Beverage Control Act (Iowa Code chapter 123), valid forms of identification, and how to spot altered and fake IDs. The program focuses on preventing underage sales and sales to intoxicated patrons. Participants will learn techniques for refusing the sale of alcohol with minimal confrontation and how to legally confiscate an altered or fake ID. The training also includes regulations and tips for offsite delivery of alcohol.

**Who should take the I-PACT?**
All individuals who sell alcohol for on- or off-premises consumption, as well as holders of retail alcohol licenses should take the training. However, anyone who is interested may take the training.

**Make A Pact**
The program asks that a Pact is made by:
- Iowa kids not to consume alcohol products
- Iowa retailers not to sell alcohol to minors
- Iowa licensees not to serve alcohol to patrons under 21
-Iowa's law enforcement to enforce alcohol laws.

**CERTIFICATION** After successfully passing the final test, participants will receive a printable certificate of completion. The certification is valid for a period of two years. However, if an individual is cited for a sale-to-minor, the certification is revoked. The training may be taken again for recertification.

**Civil & Criminal Penalties**
Violations for illegal sales of alcohol to minors include a $500 criminal fine to the clerk, as well as a $500 civil fine to the retail establishment for the first violation. Subsequent violations can result in higher fines, license suspension or even revocation.

**SIGN UP**
I-PACT is available 24 hours a day, seven days a week, at I-PACT.com or through the ABD's website at https://abd.iowa.gov/

**AFFIRMATIVE DEFENSE**
Establishments that choose to participate in the I-PACT training are granted an affirmative defense, which may be used once in a four-year period. A business may avoid civil prosecution if an alcohol sale-to-minor violation occurs in their establishment. In order for the business to take advantage of the affirmative defense, the employee guilty of the violation must have been I-PACT certified prior to the time the offense occurred. However, the affirmative defense cannot be used if the employee sold to a minor under the age of 18. Only the business is eligible to avoid a civil penalty; the guilty employee will still be subject to a fine and their I-PACT certification will be revoked.

PLEDGE

State of Iowa
ALCOHOLIC
BEVERAGES DIVISION

**Stephen Larson, Administrator**
Find more information at
https://abd.iowa.gov/
Take the training at:
https://ipocp.iowaabd.com/portal

# I-PLEDGE ONLINE TOBACCO, ALTERNATIVE NICOTINE & VAPOR PRODUCTS TRAINING

**Why should you participate in I-PLEDGE?**
The overall goal of I-PLEDGE is an increase of voluntary compliance with the state's tobacco, alternative nicotine and vapor products laws through education and enforcement. The core objective of the program is to prevent illegal sales of tobacco, alternative nicotine and vapor products by educating retailers and increasing awareness of changes in Iowa's tobacco, alternative nicotine and vapor products laws.

**What will you learn from I-PLEDGE?**
While enforcement of Iowa's tobacco, alternative nicotine and vapor product laws is an important goal of I-PLEDGE, education of both law enforcement and the state's retailers is the primary focus of the program. The content focuses on key identifying elements of the latest format of Iowa driver's licenses, but also includes information on the previous version of licenses and identification and how to spot altered and fake IDs. The program focuses on preventing underage sales and when not to make a sale. Participants will learn techniques for refusing the sale of tobacco, alternative nicotine and vapor products with minimal confrontation and how to legally confiscate an altered or fake ID.

**Who should take the I-PLEDGE?**
All individuals who sell tobacco, alternative nicotine and vapor products as well as holders of retail licenses should take the training. However, anyone who is interested may take the training free of charge.

**Make A Pledge**
The program asks:
- Iowa's kids to pledge not to use tobacco, alternative nicotine and vapor products
- Iowa's retailers to pledge not to sell tobacco, alternative nicotine and vapor products to kids
- Iowa's law enforcement to pledge to enforce tobacco, alternative nicotine and vapor products laws in the state

**Civil & Criminal Penalties**
Violations for illegal sales of tobacco, alternative nicotine and vapor products to minors include a $100 criminal fine to the clerk as well as a $300 civil fine to the retail establishment for the first violation. Subsequent violations result in higher fines, license suspension or even revocation.

**Certification**
After successfully passing the final test, participants will receive a printable certificate of completion. The certification is valid for a period of two years. However, if an individual is cited for a sale-to-minor, the certification is revoked. The training may be taken again for recertification.

**Affirmative Defense**
Establishments choosing to participate in I-PLEDGE training are granted an affirmative defense, which may be used once in a four-year period. A business may avoid civil prosecution if a tobacco, alternative nicotine or vapor product sale-to-minor violation occurs in their establishment. In order for the business to take advantage of the affirmative defense, the employee guilty of the violation must have been I-PLEDGE certified prior to the time the offense occurred. Only the business is eligible to avoid a civil penalty; the guilty employee will still be subject to a fine and his/her I-PLEDGE certification will be revoked.

ALCOHOLIC BEVERAGES DIVISION
State of Iowa

Stephen Larson, Administrator

# Iowa ABD Age to Purchase Mobile App

## What is it?

The Iowa ABD Age to Purchase App allows users to scan driver's licenses with their smartphone. No personal information of the customer is stored on the device. The built-in scanning function uses the camera feature on the device to scan the barcode on the driver's license to quickly help determine age and validity. The app also gives users access to a view similar to the desktop calendars previously issued by ABD and a manual DOB calculator.

This app is strictly a supplemental tool and is not a replacement for any reasonable and necessary steps or factual evidence that may be needed to determine the age of a person.

## Who should use it?

Anyone that is looking for assistance in determining the age of customers while selling or serving alcohol, tobacco, alternative nicotine, or vapor products should use this app.

## Additional Features

The app also contains links to ABD's two online training programs, I-PACT and I-PLEDGE, which help teach responsible selling and serving of alcohol, tobacco, alternative nicotine, and vapor products.

The Iowa ABD Age to Purchase App is available to download for free from the App Store and Google Play Store.

App Store: https://itunes.apple.com/us/app/iowa-abd-age-to-purchase/id1437250743?ls=1&mt=8

Google Play Store: https://play.google.com/store/apps/details?id=gov.iowaabd.agetopurchase

State of Iowa
ALCOHOLIC
BEVERAGES DIVISION

IDPH
Iowa Department of Public Health

# SMOKEFREE AIR ACT

## Duties of Proprietors

**Overview**

**Owners, operators, managers and persons having custody or control of a business are required to take certain actions in order to comply with the Smokefree Air Act.**

**Notifying Employees**

- The Smokefree Air Act requires proprietors to inform all existing and prospective employees * of the prohibitions described in the Smokefree Air Act. * *Employee is any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or any person who provides services to an employer on a voluntary basis.*

**Posting of Signs**

- Proprietors are required to post "No Smoking" signs at every entrance * to an indoor or outdoor nonsmoking area.
- Additionally, the Smokefree Air Act requires proprietors to post "No Smoking" signs in vehicles (owned, leased, or provided by the employer) which are visible from the vehicle's exterior.

**Entrance is any doorway to an enclosed area used by the public or employees for ingress and includes the commonly understood points of entry to an outdoor area such as a driveway, sidewalk, pathway, access road, gate or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way. (See Fact Sheet titled "Sign Requirements")*

**Removal of Ashtrays**

- The Smokefree Air Act requires proprietors to remove all ashtrays * from public places where smoking is prohibited. **Ashtray is defined as any receptacle… that is used for extinguishing or disposing of any lighted… tobacco product… However, "ashtray" shall not include any receptacle located outdoors and on the perimeter of any public place, the perimeter of the grounds of any public building, the perimeter to school grounds, or the perimeter of any other outdoor space subject to the prohibitions of the Smokefree Air Act.*

**Notifying Customers in Violation**

- A proprietor must inform any individual smoking in a place where smoking is prohibited that the individual is violating the Smokefree Air Act and must request that the individual stop smoking immediately.

1. If the individual refuses to stop smoking, the proprietor may discontinue service to that individual.
2. If the individual refuses to stop smoking, the proprietor may request that the individual leave the area where smoking is prohibited.
3. If the individual refuses to leave the area proprietor may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

**NOTE:** The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 142D).

State of Iowa
ALCOHOLIC
BEVERAGES DIVISION

IDPH
Iowa Department of Public Health

# SMOKEFREE AIR ACT

## Sign Requirements

### Overview

**The Smokefree Air Act requires businesses, and state, county and city governments to post "no smoking" signs at every entrance to places where smoking is prohibited.**

### Contents & Dimensions

To meet the sign requirements in the Smokefree Air Act, all "no smoking" signs should conform to the following:

· Signs must contain:

1. The words "no smoking" or the international "no smoking" symbol
2. The Smokefree Helpline: "1-888-944-2247"
3. The official Web site: smokefreeair.iowa.gov

· "No smoking" signs must be at least 24 square inches in size (e.g., 3" x 8" or 4" x 6", etc.)

· Vehicle "no smoking" signs must be at least 9 square inches in size (e.g., 3" x 3", etc.)

Font type and size must be legible.

### Posting of Signs

- A proprietor must inform any individual smoking in a place where smoking is prohibited that the individual is violating the Smokefree Air Act and must request that the individual stop smoking immediately.

1. If the individual refuses to stop smoking, the proprietor may discontinue service to that individual.
2. If the individual refuses to stop smoking, the proprietor may request that the individual leave the area where smoking is prohibited.
3. If the individual refuses to leave the area proprietor may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

**NOTE:** The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 142D).

State of Iowa
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# SMOKEFREE AIR ACT

## Bars

### Overview

**The Smokefree Air Act prohibits smoking in all enclosed areas within places of employment, including bars. Bars may allow smoking on unenclosed, outdoor patios.**

### Bar Definitions

- The Smokefree Air Act defines "bar" as an establishment where a customer may purchase alcoholic beverages and in which the serving of food is incidental to the consumption of those beverages.
- Incidental food service is defined as food preparation that is limited to the service of ice, pre-packaged snack foods, popcorn, peanuts, and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza, pre-packaged sandwiches, or other prepackaged, ready-to-serve products.
- Typically, an establishment meeting the criteria of bar will not contain food preparation equipment, including but not limited to the following: roaster oven, deep fat fryer, flat top grill, or crock pot. A bar may contain a microwave or toaster oven to heat commercially prepared foods.
- An establishment that prepares food beyond the limited food service described in the definitions above is considered a restaurant for the purposes of the Smokefree Air Act.

### Bar Restrictions

- Smoking is prohibited in all enclosed areas of a bar. These areas include serving areas, entrances, restrooms, hallways, and storage rooms.
- Smoking is not regulated in unenclosed outdoor patios or other outdoor areas of a bar.
- Nothing in the law prevents any owner or operator of a bar from declaring the entire property a nonsmoking place.

### Duties of Proprietors

Owners, operators, managers and persons having custody or control of a bar are required to take certain actions in order to comply with the Smokefree Air Act. These include:

- Informing employees about the law
- Not permitting smoking in any indoor area declared nonsmoking by the Smokefree Air Act
- Posting no-smoking at every entrance to areas where smoking is prohibited
- Removing all ashtrays from areas where smoking is prohibited (See the Fact Sheet titled, *"Duties of Proprietors,"* for more information.)

NOTE: The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 1420).

State of Iowa
ALCOHOLIC
BEVERAGES DIVISION

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Iowa Department of Public Health

# SMOKEFREE AIR ACT

## Restaurants

### Overview

**The Smokefree Air Act prohibits smoking in all enclosed areas within places of employment, including restaurants. Smoking is also prohibited in the outdoor seating or serving areas of restaurants.**

### Restaurant Definitions

- The Smokefree Air Act defines "restaurant" as eating establishments...which offer food to the public, guests, or employees, including the kitchen and catering facilities in which food is prepared on the premises for serving elsewhere, and including a bar area within a restaurant
- The Smokefree Air Act defines "bar" as an establishment in which the serving of food is incidental to the consumption of alcoholic beverages. Incidental food service is limited to the service of pre-packaged snack foods, popcorn, the reheating of commercially prepared foods that do not require assembly. (See the Fact Sheet titled, "Bars.")
- A food service establishment, with or without a liquor license, that prepares food beyond the limited food preparation described in the definition of a bar is considered a restaurant for the purposes of the Smokefree Air Act.

### Restaurant Restrictions

- Smoking is prohibited in all enclosed areas of a restaurant. These areas include dining areas, entrance areas, restrooms, hallways, stairways, storage rooms, and kitchens.
- Smoking is prohibited in all outdoor seating or serving areas of restaurant. These areas include all outdoor places where customers are seated or served food or beverages.
- Smoking is not prohibited in a defined outdoor area of a restaurant, such as a patio or a portion of a patio, provided that there is no seating in such area and no restaurant employee serves food or beverages to a patron in such area.

### Duties of Proprietors

- Owners, operators, managers and persons having custody or control of a restaurant are required to take certain actions in order to comply with the Smokefree Air Act. These include:
- Not permitting smoking in any indoor area declared nonsmoking by the Smokefree Air Act
- Posting no-smoking at every entrance to areas where smoking is prohibited
- Removing all ashtrays from areas where smoking is prohibited

(See the Fact Sheet titled, *"Duties of Proprietors,"* for more information.)

**NOTE:** The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 142D).

State of Iowa
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# SMOKEFREE AIR ACT

## Outdoor Areas

**Overview**

**The Smokefree Air Act regulates smoking in specified outdoor areas. Unless the law specifies that smoking is completely regulated in an area, the law does not specify a distance where smoking is regulated from the entrances to buildings.**

**Entertainment Venues**

- Smoking is not allowed in the designated seating areas (permanent or temporary) of outdoor entertainment venues where members of the general public assemble to witness entertainment events, including but not limited to:

| | |
|---|---|
| Sports arenas | Standing-room only |
| Stadiums | Chairs, seats, & bleachers |
| Amphitheatres | Festival-style seating |

**Seating or Serving Areas of Restaurants**

- Smoking is prohibited in all outdoor seating or serving areas of restaurant. These areas include all outdoor places where customers are seated and served food or beverages.
- Smoking is not prohibited in a defined outdoor area of a restaurant, such as a patio or a portion of a patio, provided that there is no seating in such area and no restaurant employee serves food or beverages to a patron in such area.

**Public Grounds**

- The Smokefree Air Act prohibits smoking on the grounds of state and local government buildings.
- The person having custody or control of the grounds of the public building should define the outdoor areas used in connection with that building and properly post the outdoor entrances with "no smoking" signs as required by the Smokefree Air Act.
- Outdoor areas of a public building that are not used in connection with that building are not regulated by the Smokefree Air Act.

**School Grounds**

- Smoking is prohibited on school grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a school.
- Smoking is prohibited inside any vehicle located on school grounds.

The Smokefree Air Act requires schools to remove all ashtrays from public places where smoking is prohibited.

**Public Transit Stations**

- The Smokefree Air Act prohibits smoking on public transit stations, platforms, and shelters under the control of state and local governments

*For more information, please see fact sheets for the above listed areas.*

**NOTE:** The information provided in this document is not intended to belegal advice. Please consult stale statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 142D).

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Iowa Department of Public Health

# SMOKEFREE AIR ACT

## Outdoor Entertainment Events

**Overview**

**The Smokefree Air Act prohibits smoking in permanent and temporary seating areas of outdoor entertainment events.**

**Outdoor Venues**

- Smoking is not allowed in the designated seating areas of outdoor entertainment venues, including but not limited to:

Sports Arenas

Stadiums

Amphitheatres

**Definition of Seating Areas**

"Seating areas of outdoor sports arenas, stadiums, amphitheaters, or other entertainment venues" means areas designated by the owner, operator, manager, or other person having custody or control of the area to be used primarily to witness entertainment events and shall include, but not be limited to, all chairs, seats, and bleachers whether permanent or temporary; standing room only; general admission or festival style seating areas; and any other areas where individuals congregate to witness entertainment events."

**Events on Public Grounds**

- The Smokefree Air Act requires that the grounds of all public buildings be nonsmoking. Entertainment events held on the grounds of public buildings most also prohibit smoking in all enclosed and outdoor areas (See the Fact Sheet titled *"Grounds of Public Buildings"* for additional information).

**Signage Requirements**

- Signage which meets the requirements of the law must be posted at the entrances to designated seating areas of outdoor entertainment events (See the Fact Sheet titled *"Signage" for* additional information).

**NOTE:** The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional Iowa Department of Public Health, Division of Tobacco Use Prevention & Control 1 1-888-944-2247 (Updated May 20, 2010)

State of Iowa
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# SMOKEFREE AIR ACT

## Public Parks

**Overview**

**The Smokefree Air Act restricts smoking in certain areas of state, county and city parks and recreational facilities . The Smokefree Air Act does not apply to Federal parks.**

**Indoor Areas**

- Smoking is prohibited in all enclosed buildings or shelters on park property.
- Smoking is not regulated in private residences located on park property, unless any portion of the private residence is open to the public.

**Outdoor Areas**

- Smoking is prohibited on the grounds* of public buildings** located within parks.

* "Grounds" are defined as "an outdoor area of a public building that is used in connection with the building...or any other outdoor area as designated by the person having custody or control of the public building." (See the Fact Sheet titled *" Grounds of Public Buildings.")*

** "Public building" is an enclosed area owned, leased, or operated by or under the control of the state government or its political subdivisions.

- Outdoor areas where smoking may be allowed include: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water, or
- Nothing in the law prohibits any person having custody or control of the park from declaring the entire area or property a nonsmoking place.

**Posting of Signs**

- "No smoking" signs which meet the requirements of the Smokefree Air Act must be clearly posted at every entrance to an enclosed building or shelter and at "commonly understood points of entry and exit to and from an outdoor area." (See the Fact Sheet titled, *" Signage.")*

**NOTE:** The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 1420).

**September 29, 2017** **Number: 2017-2**

# TTB Ruling

## Revised - Freshness Dating and Allowable Returns of Malt Beverage Products under the FAA Act

*The Alcohol and Tobacco Tax and Trade Bureau (TTB) has been asked to clarify the circumstances under which trade buyers[1] may return to industry members[2], and under which industry members may receive, malt beverage products that have been deemed unsuitable for sale because of freshness concerns without violating the consignment sales provision of the Federal Alcohol Administration Act (FAA Act) and TTB regulations. TTB Ruling 2012-4 is superseded.*

**TTB RULING 2017-2**

**Background**

Some brewers assign a coded "pull date" to their products to prevent stale or outdated products from remaining in the market. Brewers who assign pull date coding ask that wholesalers remove malt beverage products based on the pull date and replace them with fresh product. These brewers believe that relying on the wholesaler to monitor the pull date will ensure that only fresh products are in the retail market and that consumers do not purchase stale or spoiled malt beverages.

Brewers who include a "freshness date" on their products believe that such statements allow consumers to make purchasing decisions based on the freshness date. These brewers also assert that freshness dating is a quality control tool that offers some assurance that if the consumer purchases a malt beverage before that date, the product will not be deteriorated or spoiled.

On November 19, 2012, TTB issued Ruling 2012-4, which clarified the circumstances under which retailers may return to wholesalers, and under which wholesalers may receive, malt beverage products that have been deemed unsuitable for sale because of freshness concerns without violating the consignment sales provision of the FAA Act. Subsequently, TTB has received questions from industry members about whether the holding in TTB Ruling 2012-4 also applies to transactions between a wholesaler and a brewer. Accordingly, this Ruling modifies and supersedes TTB Ruling 2012-4 and clarifies the circumstances under which trade buyers may return to industry members, and under which industry members may receive, malt beverage products that have been deemed unsuitable for sale because of freshness concerns without violating the consignment sales provision of the FAA Act and the TTB regulations. TTB Ruling 2012-4 is restated below in its entirety, with only clarifying changes.

**Authority**

The Secretary of the Treasury is authorized to prescribe regulations regarding unfair competition and unlawful trade practices involving the sale of wine, distilled spirits, and malt beverage products under 27 U.S.C. 205. In the case of malt beverages, trade practice provisions of the FAA Act apply only if the laws of the State into which the malt beverage products are sold or shipped impose similar requirements. TTB uses rulings to clarify the provisions of the FAA Act and implementing regulations, when appropriate.

**Discussion**

The consignment sales provision of the FAA Act, 27 U.S.C. 205(d), makes it unlawful for an industry member (such as a producer, importer, or wholesaler of malt beverages, wines, or distilled spirits) to sell, offer for sale, or contract to sell to any trade buyer (a wholesaler or retailer), or for a trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of products from the trade buyer or the agreement to acquire other products from the trade buyer. However, section 205(d) does not prohibit transactions involving the bona fide return of products for "ordinary and usual commercial reasons arising after the merchandise has been sold".

TTB regulations promulgating allowable (that is, ordinary and usual) reasons for returns under section 205(d) are found in 27 CFR part 11, Subpart D — Rules for the Return of Distilled Spirits, Wine, and Malt Beverages. Sections 11.32 through 11.39 (27 CFR 11.32 through 11.39) of this subpart specify what are considered "ordinary and usual commercial reasons" for the return of products, and outline the conditions and limitations for such returns. The ordinary and usual commercial reasons listed under §§ 11.32 through 11.39 include:

- Defective product;
- Shipment error;

- A change in the law preventing sale of the product;
- Termination of the buyer's business or franchise;
- Change in product from that in inventory;
- Product in inventory is discontinued; or
- Possible spoilage of product during the offâ€‘season of a seasonal retail dealer.

While industry members have the option to accept exchanges and returns for the ordinary and usual commercial reasons listed in §§ 11.32 through 11.39, they are under no obligation to do so.

Sections 11.45 and 11.46 of Subpart D (27 CFR 11.45 and 11.46) indicate that returns or exchanges of products that are merely overstocked, slow-moving, or are seasonal in nature, such as holiday decanters and certain distinctive bottles, do not constitute returns for ordinary and usual commercial reasons.

**TTB Determination**

Under the following conditions, TTB will consider the return of malt beverages for cash or credit against outstanding indebtedness or exchange of such malt beverages for freshness reasons as a return by a trade buyer for ordinary or commercial reasons under 27 CFR 11.32:

- The brewer has policies and procedures in place that specify the date the retailer must pull the product;
- Such brewer's freshness return/exchange policies and procedures are readily verifiable and consistently followed by the brewer;
- The container has identifying markings that correspond with this date; and
- The malt beverage product pulled by the trade buyer may not re-enter the retail marketplace.

TTB believes this policy addresses the realities of modern marketing practices while minimizing the possibility that the industry will use freshness dating returns as a subterfuge for disposing of slow-moving products.

However, if TTB determines that, under the pretext that the trade buyer may exchange the product based upon freshness, an industry member is encouraging, requiring, or forcing a trade buyer to overstock its products (i.e., purchase more of its products than it may otherwise reasonably expect to sell), or if a trade buyer agrees to purchase more of an industry member's products than it may otherwise reasonably expect to sell, TTB may investigate the industry member and trade buyer for violating the consignment sales and/or tied house provisions. (*See* 27 U.S.C. 205(b)(7) and (d), as implemented under 27 CFR 6.71, 11.21(c), 11.31, and 11.45.) Moreover, if industry members re-introduce into the retail marketplace malt beverages that were returned or exchanged for freshness purposes, TTB may investigate whether the purported freshness purpose was a mere subterfuge to violate these same consignment sales and/or tied house provisions.

*Held*, subject to the conditions described above, TTB considers the exchange of an identical quantity of the same brand or the return for cash or credit against outstanding indebtedness for freshness concerns as a return by a trade buyer for ordinary or commercial reasons under 27 CFR 11.32.

Date Approved: September 29, 2017

[1] Any person who is a wholesaler or retailer of distilled spirits, wine, or malt beverages.Â  (*See* 27 CFR 11.11.)

[2] Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits.Â  (*See* 27 CFR 11.11.)

John J. Manfreda
Administrator
Alcohol and Tobacco Tax and Trade Bureau

# Contact the Division

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