

IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-1422
Dubuque County No. CVCV115206

BEECHER STORE INC.,

Petitioner–Appellant,

vs.

IOWA DEPARTMENT OF REVENUE,

Respondent–Appellee.

Appeal from the Iowa District Court
For Dubuque County
The Honorable THOMAS A. BITTER, District Judge

BRIEF FOR APPELLEE

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STATEMENT OF ISSUES

I. Iowa Code section 123.50(3) requires the Iowa Department of Revenue to impose specific designated penalties against a retail alcohol licensee if an employee of that licensee is criminally convicted of selling alcohol to a person under legal age. Said penalties are mandatory upon entry of the conviction. In this case, the Iowa Department of Revenue correctly imposed the mandatory penalty for a second underage sales violation against the Appellant after its employee was twice convicted of violating Iowa Code section 123.49(2)(h) as a result of two sales he made in two separate transactions to two different underage persons even though those sales occurred mere minutes apart.

II. The Appellant failed to preserve its claim that Iowa Code section 123.50(3)'s progressive penalty provisions are unconstitutionally vague due to its failure to initially raise this constitutional claim before the Iowa Department of Revenue in the underlying contested case. Regardless, the Appellant's void for vagueness claim lacks merit as it had more than fair notice of both the prohibited conduct and the consequences of that conduct in this case. Iowa Code section 123.50(3) imposes set

penalties upon a retail alcohol licensee based upon the number of criminal convictions entered against that licensee's employees within a set period of time.

ROUTING STATEMENT

This case may be summarily resolved through the application of existing legal principles. Therefore, transfer to the Court of Appeals is appropriate. *See* Iowa R. App. P. 6.1101(3)(a).

NATURE OF THE CASE

Petitioner-Appellant Beecher Store, Inc. [Beecher] appeals from a ruling denying its Iowa Code chapter 17A petition for judicial review of agency action entered by the Iowa District Court for Dubuque County. *See* D0016, Ruling on Petition for Judicial Review [Ruling] (8/9/2024); D0017, Notice of Appeal (9/5/2024). Beecher had sought review of a final administrative decision issued by the Iowa Department of Revenue [IDR] that imposed the statutorily mandated thirty-day license suspension and \$1,500 civil penalty for Beecher’s second violation of Iowa Code section 123.49(2)(h) (underage sale) committed within a two-year time period. *See* D0002, Petition (9/20/2023).

STATEMENT OF FACTS

Beecher holds a class “E” retail alcohol license for its business Beecher Liquor in Dubuque, Iowa. *See* D0006, Certified Record [CR] at 56-59 (eLAPS license summary) (10/10/2023). A class “E” retail alcohol license authorizes the holder “to sell alcoholic liquor, wine, and beer in original unopened containers at retail to patrons for consumption off the licensed premises” Iowa Code § 123.30(3)(d). A retail alcohol license does not vest the holder with a property interest. Iowa Code § 123.38(1).

Rather, Iowa law characterizes such a license as a “personal privilege” that is revocable for cause. *Id.* Beecher accordingly retains the privilege to sell alcoholic beverages in Iowa only as long as it conducts itself and its business consistently with all provisions of the Iowa Alcoholic Beverage Control Act—Iowa Code chapter 123. *See* Iowa Code §§ 123.1, 123.2, 123.38(1).

On October 15, 2022, officers of the Dubuque Police Department conducted an age compliance check at multiple alcohol-licensed businesses in Dubuque, including Beecher Liquor. Officers arrived at Beecher Liquor around 9:45 PM and were assisted by two underage community resource officers. D0006, CR at 45 (Dubuque P.D. investigative narrative); D0006, CR at 99 l.11–103 l.9 (Testimony of ABD Investigator Brandon Trapp). Each underage person was able to separately purchase an alcoholic beverage from Owais Mohammed Khan, the clerk working that evening at Beecher Liquor. *Id.* The Dubuque Police Department issued Mr. Khan two criminal citations as a consequence—one for each sale. *See* D0006, CR at 47, 55. Mr. Khan pled guilty on October 19, 2022, to both citations. *See* D0006, CR at 49, 54.

The Iowa Alcoholic Beverages Division [ABD]¹ subsequently issued two orders against Beecher imposing the civil penalties mandated by Iowa Code section 123.50(3) upon the first and second conviction of a licensee’s employees for violating the underage age sales prohibition, Iowa code section 123.49(2)(h). *See* D0006, CR at 35-39 (ABD Order: D-2022-00271), 51-55 (ABD Order: D-2022-00270). Beecher only appealed the order imposing the penalty for its employee’s second violation of Iowa Code section 123.49(2)(h). *See* D0006, CR at 40-41. Hearing on Beecher’s appeal was held before Administrative Law Judge Toby J. Gordon on February 9, 2023. *See generally* D0006, CR at 62-116 (Transcript of 2/9/2023 hearing). Following hearing, ALJ Gordon affirmed the ABD’s order that imposed upon Beecher the penalties mandated by law for a second violation of Iowa Code section 123.49(2)(h) after finding that there “is no minimum period of time required in the statute between the first and second violations.” D0006, CR at 117-122 (2/16/2023 Proposed Decision); *see also* D0006, CR at 35-39 (ABD Order: D-2022-00271).

¹ Effective July 1, 2023, all functions and duties of the Iowa Alcoholic Beverages Division were transferred to the Iowa Department of Revenue. *See* 2023 Iowa Acts ch. 19, § 2351 *et seq.* (Senate File 514).

Beecher requested further agency review of ALJ Gordon's decision. *See* D0006, CR at 123-24 (Licensee's Notice of Appeal). As designee for the Director of the Iowa Department of Revenue, former ABD Administrator Stephen Larson issued a final agency decision on August 23, 2023, in which he affirmed and adopted ALJ Gordon's proposed decision. *See* D0006, CR at 148-53 (Director's Final Decision)). Beecher subsequently petitioned for judicial review of the IDR's decision. *See generally* D0002, Petition.

On judicial review, the district court observed that the "shall" in Iowa Code section 123.50(3) imposes a certain mandate on the IDR to impose specific penalties upon a liquor licensee if certain conditions are met. *See* D0016, Ruling at 4. Finding that those conditions were met in this case when an employee of the licensee, Mr. Kahn, was convicted of two violations of Iowa Code section 123.49(2)(h), the district court affirmed the IDR's assessment of the civil penalty required by statute for a second violation. *Id.* Because the penalties are mandated by statute, the district court ruled that the IDR had no discretion in determining what that civil penalty should be. *Id.* Lastly, the district court declined to address Beecher's constitutional arguments upon finding that those

arguments were not previously raised before the agency and consequently were not preserved by Beecher for judicial review. *See* D0016, Ruling at 5. Beecher now appeals. D0017, Notice of Appeal (9/5/2024).

Additional facts will be discussed below as necessary.

ARGUMENT

I. THE IOWA DEPARTMENT OF REVENUE CORRECTLY ASSESSED BEECHER LIQUOR THE STATUTORY PENALTY FOR ITS SECOND VIOLATION OF IOWA CODE SECTION 123.49(2)(h).

Standard of Review.

Judicial review of final agency action under Iowa Code chapter 17A is for corrections of errors at law. *E.g., Houck v. Iowa Bd. of Pharmacy Exam'rs*, 752 N.W.2d 14, 16 (Iowa 2008). Constitutional claims, however, are reviewed de novo. *Houck*, 752 N.W.2d at 17. When scrutinizing the propriety of a district court's judicial review ruling, the Court applies the standards of Iowa Code section 17A.19(10) to the challenged agency action to determine whether its conclusions are the same as those of the district court. *E.g., Litterer v. Judge*, 644 N.W.2d 357, 360-61 (Iowa 2002).

When determining whether the IDR correctly applied the law to the facts at issue, reviewing courts are to give appropriate deference to those matters vested by a provision of law in the discretion of the agency. Iowa Code §§ 17A.19(10)(l) & (m), 17A.19(11). As the agency now charged with administering and enforcing Iowa Code chapter 123, the IDR is vested by statute with broad authority to interpret and enforce the state’s laws concerning alcohol. Iowa Code §§ 123.4, 123.20; 123.39; *see Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004); *City of Sioux City v. GME, Ltd.*, 584 N.W.2d 322, 325 (Iowa 1998); *Walnut Brewery, Inc. v. Iowa Dep’t of Com.-Alcoholic Beverages Div.*, 775 N.W.2d 724, 729 (Iowa Ct. App. 2009) (“The legislature has clearly vested the interpretation of sections 123.49 and 123.50 with the agency.”); *see also* 2023 Iowa Acts ch. 19, § 2351 *et seq.* (transferring administration of chapter 123 from the former ABD to IDR). Thus, IDR’s interpretations of Iowa Code chapter 123’s regulatory standards and the application of those standards to the facts found are entitled to heightened deference and may not be reversed by a reviewing court unless those interpretations are “irrational, illogical, or wholly unjustifiable.” *Auen*,

679 N.W.2d at 590; *Walnut Brewery, Inc.*, 775 N.W.2d at 729; see Iowa Code § 17A.19(10)(l) & (m).

“The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity.” Iowa Code § 17A.19(8)(a). Consequently, it was Beecher’s burden to demonstrate on judicial review that the challenged decision of the IDR was unsupported by substantial evidence in the record or otherwise affected by prejudicial legal error. Iowa Code § 17A.19(8)(a); see *Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 671 (Iowa 2005).

Preservation of Error.

“In reviewing agency action, the district court and the appellate court may only review issues considered and decided by the agency.” *Klein v. Iowa Pub. Info. Bd.*, 968 N.W.2d 220, 235 (Iowa 2021) (quoting *Grudle v. Iowa Dep’t of Rev. & Fin.*, 450 N.W.2d 845, 847 (Iowa 1990)). Beecher properly exhausted administrative remedies before the IDR by presenting to and receiving a ruling from both the presiding administrative law judge at the time of hearing and the IDR director’s designee on further agency review on the question of whether IDR correctly interpreted Iowa Code section 123.50(3) as mandating it to

impose upon Beecher the delineated civil penalty for a second offense of the underage sales prohibition as a consequence of a Beecher employee receiving two separate convictions for violating Iowa Code section 123.49(2)(h). *See generally* D0006, CR at 117-122 (ALJ's Proposed Decision), 148-153 (Director's Final Order). This same question was subsequently presented to and decided by the district court and is therefore preserved for appellate review. *See generally* D0016, Ruling.

Argument.

The Iowa Alcoholic Beverage Control Act, Iowa Code chapter 123, establishes strict regulatory standards over those engaging in the sale of alcoholic beverages within the state of Iowa. The intention of the Act, according to the Iowa Legislature, is to achieve maximum protection for “the protection of the welfare, health, peace, morals, and safety of the people of the state” and that all provisions of Iowa Code chapter 123 “shall be liberally construed for the accomplishment of that purpose.” Iowa Code § 123.1. Any person or entity desiring to sell alcohol in the state must be licensed and must follow all the conditions and limitations contained in Iowa Code chapter 123. Iowa Code §§ 123.2 and 123.30.

The Director of the Iowa Department of Revenue has the authority to suspend or revoke a retail alcohol license for any violation of the Iowa Alcoholic Beverage Control Act. Iowa Code § 123.39; *see also* Iowa Code § 123.50. Liquor licensees are responsible for all regulatory violations that occur on the licensed premises, including violations committed by their agents and/or employees. 185 Iowa Admin. Code r. 4.8; *see also Randall's Int'l, Inc. v. Hearing Bd.*, 429 N.W.2d 163 (Iowa 1988).

Two Violations Committed

The uncontested facts of this case establish that two underage persons assisting the Dubuque Police Department in the conduct of age compliance checks were each separately sold an alcoholic beverage by a clerk working at Beecher Liquor on October 15, 2022. Each underage person was waited on separately at the sales counter by the clerk, Mr. Khan. D0006, CR at 101 l.5–102 l.6, 107 l.15–108 l.9 (Testimony of ABD Investigator Brandon Trapp). Each underage person paid for their own alcoholic beverage purchase. *Id.* The first sales transaction was completed before the second one commenced. *Id.* A separate criminal citation was issued to Mr. Khan for each sale. *See* D0006, CR at 47, 55. As a consequence of these two sales, Mr. Khan was twice convicted of

violating Iowa Code section 123.49(2)(h). *See* D0006, CR at 49, 54. As noted by ALJ Gordon, the two underage sales violations in this case were separate, independent violations because one underage sale could be committed without committing the second. D0006, CR at 119 (“Proof of the sale of one violation is not dependent on proof of the other.”); *see also State v. Velez*, 829 N.W.2d 572, 581-84 (Iowa 2013) (detailing tests for multiple violations).

This Court has found that Iowa Code section 123.50(3) “is written so as to make the conviction of the licensee’s employee the prohibited act upon which the principal’s license [sanction] is based.” *Randall’s Intern. Inc.*, 429 N.W.2d at 165. Thus, even though the two sales in this case may have occurred within minutes of each other, two sanctionable violations of the underage statute nonetheless occurred due to the two criminal convictions having been entered against Beecher’s employee, Mr. Khan.

Statutory Penalty Required

As recognized by the district court, Iowa Code section 123.50(3)(b) imposes a specific mandatory penalty for a second violation of the underage sales prohibition in that:

If any retail alcohol licensee or employee of a licensee is convicted or found in violation of section 123.49, subsection 2, paragraph “h”, the director or local authority *shall*, in addition to criminal penalties fixed for violations by this section, assess a civil penalty as follows:

....

b. A second violation within two years *shall* subject the licensee or permittee to a thirty-day suspension and a civil penalty in the amount of one thousand five hundred dollars.

Iowa Code § 123.50(3)(b) (emphasis added); *see* D0016, Ruling at 4-5. The statutory language of this code section uses the word “shall,” which imposes a duty upon the IDR to implement the delineated penalty. *See* Iowa Code § 4.1(30); *see also Walnut Brewery, Inc.*, 775 N.W.2d at 732-33 (holding that administrative penalties delineated in Iowa Code § 123.50(3) are mandatory).

As discussed above, Beecher’s employee committed two separate and distinct violations of Iowa Code section 123.49(2)(h) that each resulted in entry of a criminal conviction within a period of two years. Consequently, as ALJ Gordon and Administrator Larson correctly found, the IDR had no choice but to impose against Beecher the 30-day liquor license suspension and \$1,500 civil penalty mandated by statute for a second violation. D0006, CR at 119-120 (Iowa Code 123.50(3) “only

requires a maximum two year duration between the first and second violation. There is no minimum period of time required in the statute between the first and second violations.”), 150-152; see Iowa Code § 123.50(3)(b); *Walnut Brewery, Inc.*, 775 N.W.2d at 732-33.

Beecher does not contest that its employee was twice convicted on October 19, 2022, of violating Iowa Code section 123.49(2)(h). Yet, applying criminal law principals for sentencing enhancements, Beecher now contends that both of its underage sales offenses should be treated as first offenses because final adjudication of the first violation had yet to be rendered by the ABD at the time the second offense was charged. In effect Beecher is arguing that its first violation had to be completed as to offense *and adjudication* before its second violation could in fact qualify as a second offense. No such requirement appears in the plain language of Iowa Code section 123.50(3). Beecher’s argument further ignores the fact that the ABD is not authorized to impose or enhance a *criminal* sentence.

While enhanced criminal penalties may not be imposed under certain recidivist statutes unless each succeeding conviction is subsequent in time to the previous convictions, this Court has found this

rule inapplicable in civil enforcement proceedings where the primary purpose of the statute in question is to promote public safety, as it is under Iowa Code chapter 123. *State v. Freeman*, 705 N.W.2d 286, 289 (Iowa 2005) (discussing *State v. Thomas*, 275 N.W.2d 422, 423 (Iowa 1979)); see Iowa Code § 123.1 (Public policy declared). Thus, when facing questions of civil licensing sanctions, the Court has concluded that multiple criminal convictions arising out of the same acts or events could constitute separate and distinct offenses for penalty enhancement purposes. See *Thomas*, 275 N.W.2d at 423 (“the legislature intended three convictions within six years to be grounds for suspension without the added condition that each must occur at a different time.”). Much like the habitual violator statute at issue in *Thomas*, the sanctions mandated by Iowa Code section 123.50(3) are intended to progressively penalize and then ultimately eliminate from the marketplace liquor licensees who endanger public safety by repeatedly providing alcoholic beverages to underage persons. Similarly, nothing in the statute at issue in this case prohibits IDR from finding that multiple sanctionable violations of the underage sales prohibition occurred in immediate succession. The only temporal requirement for implementing the

progressive penalties called for by Iowa Code section 123.50 is that multiple offenses occur within a specified two- or three-year time period. The Iowa Legislature in implementing Iowa Code section 123.50 imposes administrative sanctions against a licensee based solely upon the number of violations found or criminal convictions entered. Iowa law expressly provides that “[t]he *date of any violation* shall be used in determining the period between violations.” Iowa Code § 123.50(3)(e)(1) (emphasis added). It is irrelevant to the imposition of sanctions under Iowa Code section 123.50 whether the licensee’s subsequent violations occurred before or after an adjudication was rendered on the previous offense. The date a criminal conviction was actually entered simply is not pertinent to the analysis. Only the number and date when violations occurred matter.

Beecher’s own statutory construction of Iowa Code section 123.50(3)(e)(1) must be rejected. This code provision cannot reasonably be read as limiting the number of underage sales violations the IDR can hold a liquor licensee accountable for to only one per day as apparently urged by Beecher. Beecher’s tortured reading inevitably leads to the possibility of absurd results, including precluding the IDR from suspending or revoking the retail alcohol license of a business operator

who purposively and repeatedly sold alcoholic beverages to multiple underage persons if those violations all occurred within a single 24-hour time period. *See, e.g., Iowa Ins. Inst. v. Core Grp. of Iowa Ass'n for Just.*, 867 N.W.2d 58, 75 (Iowa 2015) (“statutes should not be interpreted in a manner that leads to absurd results”). Any interpretation of Iowa Code section 123.50(3) that limits the ability of the IDR to hold liquor licensees fully accountable for each of their open and notorious violations of Iowa Code chapter 123 would only act to perversely place those licensees’ desires to profit from their flagrant defiance of the law above the very health, safety, and welfare of the public that the Alcohol Beverage Control Act was enacted to protect. *See* Iowa Code § 123.1.

Instead, Iowa Code section 123.50(3)(e)(1) is only meant to provide clarity and consistency to the implementation of the progressive penalties mandated by Iowa Code section 123.50(3) by specifying the date to be used by the IDR in calculating the time between different underage sales violations. By dictating that the IDR use only the date an underage sale occurred when imposing penalties under Iowa code section 123.50(3), the Legislature has ensured that an unjust manipulation or inconsistent

application of the specified violation window cannot occur to either the benefit or detriment of a liquor licensee.

Beecher's reliance upon *Motif, Ltd. v. Iowa Dept. of Commerce-Alcoholic Beverages Division*, No. 11-0793, 2012 WL 170211, (Iowa Ct. App. Jan. 19, 2012), for the proposition that only one actionable violation of Iowa Code section 123.49(2)(h) can arise from a single age compliance check is also misplaced. The *Motif, Ltd.* case differs in a key aspect from Beecher's circumstances in that no criminal convictions were entered against any of Motif's employees. Furthermore, only one violation of the underage sales statute was alleged in the administrative hearing complaint brought by the charging agency, and only one violation of the statute was found to have occurred by the former ABD in the *Motif, Ltd.* case. In the present case, the entry of two separate criminal convictions against Beecher's employee defines the number of violations that have occurred and triggers the mandatory penalties for a second violation. The entry of multiple criminal convictions against Beecher's employee precludes the ABD's exercise of discretion in this case. See *Walnut Brewery, Inc.*, 775 N.W.2d at 732-33. Consequently, the ABD rightfully

imposed against Beecher the penalty mandated by statute for a second violation of Iowa Code section 123.49(2)(h).

In fact, the Iowa Court Appeals in *Motif, Ltd.* actually rejected the argument that Iowa Code section 123.50(3) is a recidivist statute that requires a violation be complete as to both offense and adjudication before the statute's progressive penalties may be imposed. *See Motif, Ltd.*, 2012 WL 170211 at *5. In *Motif, Ltd.*, the licensee first failed an age compliance check on October 24, 2008. *Motif, Ltd. v. Iowa Dept. of Commerce-Alcoholic Beverages Division*, No. 11-0328, 2011 WL 4378166 at * 1 (Iowa Ct. App. Sept. 21, 2011); *Motif, Ltd.*, 2012 WL 170211 at *1. A second compliance check was conducted by the Iowa City Police Department on January 30, 2009—prior to an agency adjudication on the earlier violation. *Motif, Ltd.*, 2012 WL 170211 at *1. In each compliance check, the underage helpers were able to purchase an alcoholic beverage from Motif, though neither check resulted in a criminal conviction. *See Motif, Ltd.*, 2012 WL 170211; *Motif, Ltd.*, 2011 WL 4378166. The ABD subsequently adjudicated Motif's October 24, 2008, sale a first violation following an administrative hearing held on July 27, 2009. *Motif, Ltd.*, 2011 WL 4378166 at * 1. ABD sanctioned Motif for a second violation

following a November 2009 hearing as a consequence of the noncompliant January 30, 2009, check. On judicial review both the district court and the Court of Appeals found that the ABD correctly enhanced the penalty for the January 30, 2009, violation despite the fact that the ABD had not yet adjudicated the first violation prior to the conduct of the second age compliance check. *Motif, Ltd.*, 2012 WL 170211 at *5 (“we agree with the agency and the district court—a second-violation penalty is appropriate under the circumstances of this case”).

Beecher’s contention that the penalty provisions of Iowa Code section 123.50(3) must be strictly construed to the benefit of Beecher and other similarly situated retail alcohol licensees is directly contradicted by the Legislature’s stated policy prerogative for implementing the Iowa Alcohol Beverage Control Act. The Legislature expressly instructs that “all provisions” of Iowa Code chapter 123 “shall be liberally construed” to accomplish “the protection of the welfare, health, peace, morals, and safety of the people” of Iowa. *See* Iowa Code §123.1. Therefore, any interpretation of Iowa Code section 123.50(3) that elevates the private interests of a retail alcohol licensee above the public safety purposes underlying the need for alcohol regulation consequently must be rejected.

Beecher’s argument that strict, recidivist sentencing principles should inhibit the IDR’s ability to implement the progressive penalties of Iowa Code section 123.50(3) as literally written also fails to take full account of the nature and scope of its Iowa retail alcohol license. Beecher does not have an absolute right to sell alcohol in Iowa. Iowa Code section 123.38 specifically refers to the ability to obtain a license to sell alcohol in Iowa as a “privilege.” The “control of alcoholic beverages, including the manner and circumstances under which they may be dispensed, *if at all*, has been within the police power of the States.” *Three K.C. v. Richter*, 279 N.W.2d 268, 271 (Iowa 1979) (emphasis added). It is unlawful to sell alcoholic beverages in Iowa except upon the “terms, conditions, limitations, and restrictions enumerated in [Iowa Code chapter 123].” Iowa Code § 123.2. A retail alcohol license under Iowa law “is not property.” Iowa Code § 123.38. Thus, Iowa law creates no expectation or entitlement to an inferred right on Beecher’s part to correct the errors of its employees before more onerous sanctions are instituted for subsequent violations. Instead, it is expected that Beecher and its employees will comply with the law at all times and that any failure to

do so will be met with any mandatory licensing penalties as dictated by statute.

The Court does not need to look to interpretations of California liquor laws to ascertain the purposes behind Iowa's regulatory scheme. As noted, the Iowa Legislature has fully voiced its intent that public safety is paramount and that licensees who employ repeat violators of the underage sales prohibition should be progressively punished with certainty—whether those illegal sales occurred two years or two seconds apart. The IDR's administration of Iowa Code section 123.50(3)'s penalty provisions in this case appropriately advanced the State of Iowa's public safety interests by facilitating the quick and certain sanctioning of a retail alcohol licensees who repeatedly sold alcoholic beverages to underage individuals.

II. IOWA CODE SECTION 123.50(3)'S PROGRESSIVE PENALTY PROVISIONS ARE NOT UNCONSTITUTIONALLY VAGUE.

Standard of Review.

Judicial review of final agency action under Iowa Code chapter 17A is for corrections of errors at law. *E.g., Houck*, 752 N.W.2d at 16. Constitutional claims, however, are reviewed de novo. *Houck*, 752 N.W.2d at 17.

Error Preservation.

Beecher waited until judicial review before the district court to raise for the first time in these proceedings that Iowa Code section 123.50(3) cannot be enforced against it because the statute is unconstitutionally vague. This Court has long recognized that in order to preserve error for judicial review, an issue—even constitutional claims—must first be raised before the agency. *E.g.*, *Chauffeurs, Teamsters and Helpers, Local Union No. 238 v. Iowa Civil Rights Comm’n.*, 394 N.W.2d 375, 382 (Iowa 1986) (“raising an issue in a petition for judicial review for the first time does not preserve it”); *Chicago & N. Transp. Co. v. Iowa Transp. Regulation Bd.*, 322 N.W.2d 273, 276 (Iowa 1982); *General Telephone Co. v. Iowa State Commerce Comm’n.*, 275 N.W.2d 364, 367 (Iowa 1979) (in contested cases “our review is limited to those questions considered by [the administrative agency]”). Failure to raise an issue before the agency constitutes a failure to exhaust required administrative remedies that precludes judicial review over those issues. *Shell Oil Co. v. Bair*, 417 N.W.2d 425, 429 (Iowa 1987). “All administrative remedies must be exhausted before an aggrieved party is

entitled to judicial review of an administrative decision.” *Klein*, 968 N.W.2d at 230 (quoting *Riley v. Boxa*, 542 N.W.2d 519, 521 (Iowa 1996)).

The district court correctly declined to address Beecher’s unpreserved constitutional argument. *See* D0016, Ruling at 5. Review of the certified agency record of the contested case proceeding underlying this appeal reveals that at no time did Beecher raise either at hearing or on further review to the IDR director *any* constitutional claims, let alone a specific void for vagueness argument. *See generally* D0006 (Certified Agency Record). Decrying the general “fairness” of the regulatory scheme at issue in this case in no way put the IDR on notice that Beecher was actually purporting to claim that Iowa code section 123.50(3) was unconstitutionality vague.

Because Beecher’s constitutional argument was not presented to the ABD/IDR below, it is not now preserved for appellate review. *E.g.*, *Klein*, 968 N.W.2d at 235 (listing cases).

Argument.

Nonetheless, the statute in question is not unconstitutionally vague. A statute cannot be so vague that “it does not give persons of ordinary understanding fair notice that certain conduct is prohibited.”

State v. Heinrichs, 845 N.W.2d 450, 454 (Iowa Ct. App. 2013). Additionally, “due process requires that statutes provide those clothed with authority sufficient guidance to prevent the exercise of power in an arbitrary or discriminatory fashion.” *Heinrichs*, 845 N.W.2d at 454.

Unlike trying to determine what constitutes an “emergency” or a “dangerous” dog, the language of Iowa Code section 123.50(3) is not ambiguous or susceptible to arbitrary implementation. As noted above, the relevant statute imposes set penalties upon a retail alcohol licensee based upon the entry of a criminal conviction against one of the licensee’s employees. *Randall’s Intern. Inc.*, 429 N.W.2d at 165. The applicable penalty is easily discerned simply by counting the number of convictions found to have been entered within the applicable window of time. *See* Iowa Code § 123.50(3). Thus, Beecher had more than fair notice of both the prohibited conduct and the consequences of that conduct in this case.

As noted above, once a criminal conviction is entered against a licensee’s employee, the IDR has no discretion but to enter the mandated statutory penalty. *See Walnut Brewery, Inc.*, 775 N.W.2d at 732-33. Thus, IDR could not exercise its enforcement powers in an arbitrary or discriminatory fashion as it lacked discretion to impose any penalty other

than that which was entered. Beecher's true objection appears to be with the Dubuque Police Department for issuing two separate citations against its employee, or the Dubuque County Attorney for prosecuting this matter as two separate cases. Neither of those actions are within the IDR's control. The fairness of the police department's or the county attorney's actions should have been raised within the scope of the employee's criminal prosecution, not through a collateral attack on the validity of those criminal proceedings in this administrative action. Yet, it is hardly an abuse of prosecutorial discretion to criminally charge and ultimately convict a convenience store clerk of twice violating Iowa Code section 123.49(2)(h) when that clerk made two separate and distinct sales to two different underage persons.

In the end analysis, this Court has long held that liquor licensees like Beecher are not entitled to "a right of participation in its employee's criminal proceeding as an element of due process in the license suspension proceedings." *Randall's Intern. Inc.*, 429 N.W.2d at 165. Thus, due process concerns do not prohibit the State of Iowa from holding Beecher administratively accountable for its employee's multiple

improper acts in this case. *Id.* Beecher's constitutional claim accordingly fails as a matter of law.

CONCLUSION

For the above-stated reasons, the district court's ruling denying Beecher's petition for judicial review was correct and should be affirmed.

CONDITIONAL REQUEST FOR ORAL ARGUMENT

Appellee Iowa Department of Revenue does not believe that oral argument is necessary in this matter. Should the Court grant the Appellant oral argument, the Department would request time equal to that of the Appellant.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g) and 6,903(1)(i)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 4,799 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on January 29, 2025, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/ John R. Lundquist

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