

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

<p>IN RE:</p> <p>West Des Moines Hotel Associations, LLC Attn: Kinseth Hospitality Company, Inc. 801 E. 2nd Avenue Coralville, IA 52241</p> <p>d/b/a West Des Moines Marriott 1250 Jordan Creek Parkway West Des Moines, IA 50266</p> <p>Retail Alcohol License No. LC0049041</p>	<p>Docket No. D-2025-00056 DIAL Case No. 26IDRA0001</p> <p>DIRECTOR'S DESIGNEE'S FINAL ORDER</p>
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NOW, on this 25th day of February, 2026, this matter comes to the attention of the Director's Designee of the Iowa Department of Revenue ("Department") on the Notice of Appeal dated September 25, 2025, filed by attorney Elissa Holman on behalf of West Des Moines Hotel Associations, LLC d/b/a West Des Moines Marriott ("Licensee"). The Director, pursuant to Iowa Code section 123.3(18), appointed Sam Hoerr to make the final agency decision as the Director's Designee.

I. STATEMENT OF CASE

On or about May 2, 2025, the City of West Des Moines ("Local Authority") served a letter imposing a \$1,500 civil penalty and 30-day suspension against the Licensee for a second violation within two years of West Des Moines City Code section 3-2-13(B)(8) and Iowa Code section 123.49(2)(h).

A timely appeal was filed by the Licensee and a hearing was held on August 11, 2025, before Administrative Law Judge Toby Gordon ("ALJ"). Attorney Elissa Holman appeared on behalf of the Licensee and Bharabi Pandit appeared on behalf of the Local Authority.

The ALJ issued a Proposed Decision on September 3, 2025, affirming the Local Authority's imposed license suspension and civil penalty. On September 25, 2025, a timely Notice of Appeal to the Director's Designee was filed by the Licensee's counsel. Both parties submitted briefs within the established schedule.

On appeal, the Licensee argues its employee exercised reasonable care to ascertain the age of the underage customer and requests the ALJ's Proposed Decision be reversed or modified.

II. FINDINGS OF FACT

The findings of fact in the ALJ's Proposed Decision are adopted and incorporated into this ruling as if set out in full.

III. CONCLUSIONS OF LAW

Upon review of the record in this matter, the ALJ's Proposed Decision, and the appeal briefs submitted by the parties, the undersigned adopts the conclusions of law in the ALJ's Proposed Decision and are adopted and incorporated into this ruling as if set out in full.

On the conclusion that a mathematical error precludes a finding of "reasonable care."

The Licensee asserts reasonable care was exercised on March 7, 2025, when the Licensee's employee looked at the customer's identification, commented "you haven't got your horizontal I.D. yet," and served the customer a brown bottle of alcohol. The Licensee's brief asserts that a good-faith review that resulted in a miscalculation of month-and-day constituted an exercise of reasonable care. However, at hearing, the Licensee provided no authority supporting the conclusion that a calculation error when looking at a date of birth on an I.D., is an example of a good faith exercise of reasonable care. Nor did the ALJ in any way employ an irrebuttable presumption that a mere mathematical error alone constitutes a violation of the pertinent statute. Instead, as discussed below, the totality of the circumstances in this case demonstrate that the Licensee's employee indeed failed to exercise reasonable care to ascertain whether the customer was of legal drinking age before serving her a beer.

On the conclusion that the I.D. inspection was a quick and cursory review and the weight placed on the orientation of a vertical I.D.

The ALJ concluded in the proposed decision that reasonable care was not exercised to ascertain the customer's age due to many factors, including the vertical orientation of the identification indicating a person under the legal age. While the server in this case should have reasonably been alerted by the vertical orientation of the cooperating individual's driver's license, that additional scrutiny of the license was warranted to verify whether the holder was of legal drinking age before serving her an alcoholic beverage because that person was under the age of 21 at least when the license was issued, this one factor alone was not deemed determinative. *See Motif, Ltd. v. Iowa Dept. of Commerce-Alcoholic Beverage Div.*, No. 11-0328, 2011 WL 4378166 at *3 (Iowa Ct. App. Sept. 21, 2011). The ALJ also addressed the environment of the licensed premises, in which the bar contained no other customers visible in the video to distract or deter the employee's attention. Additionally, the employee testified at hearing he had been bartending for 20 years and the ALJ expressed that checking the month and day of birth, along with the year, would be a familiar and important task in that occupation. All of these factors were weighed when determining whether reasonable care was exercised to ascertain the customer was of legal age.

On the conclusion that the Licensee's employee failed to exercise "reasonable care" under Iowa Code § 123.49(2)(h).

Under the reasonable care standard, a licensee must ensure that employees are thoroughly familiar with the date by which a person must have been born in order to be over the legal drinking age. The driver's license presented to the server in this case contained all information necessary to allow that server to easily and correctly determine the cooperating individual's age on the date of the compliance check. The sale here should have been declined

as a careful examination of the customer's driver's license would have revealed that the customer was only 20 years old.

The Licensee claims that the ALJ's proposed decision misapplies the "reasonable care" standard and misinterprets the legislative intent of Iowa Code section 123.49(2)(h). The Iowa Supreme Court stated the purpose of the legislative language used in Iowa Code section 123.49(2)(h) was to give licensees "freedom from routine 'carding' when the age of the customer is known or reasonably beyond question." *Jim O. v. City of Cedar Rapids*, 587 N.W. 2d. 476 (Iowa 1998). Yet, the misfortune of misreading the driver's license described by the Licensee in this case does not absolve the responsibility of the Licensee.

The agency has consistently held that the reasonable care standard requires more than just requesting the customer's identification. Licensees and their employees must carefully examine the customer's photo identification to verify that the person presenting the ID is in fact over the age of 21. The value of requesting a driver's license or other identification is thwarted if the employees of a retail alcohol licensee fail to scrutinize the information on the ID card and accurately calculate the holder's age. Consequently, a miscalculation or careless review of a driver's license constitutes a failure to exercise reasonable care, especially, when as in this case the age of the customer is not known or is not reasonably beyond question. *See Motif, Ltd.*, 2011 WL 4378166 at *3.

The standard of proof in contested case hearings is a preponderance of the evidence. In determining the preponderance of the evidence, the Director's Designee has a statutory duty to consider only that evidence which is "the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on such evidence even if it would be inadmissible in a jury trial." Iowa Code § 17A.14(1). The Director's Designee has determined that the preponderance of the evidence established the Licensee sold an alcoholic beverage to a customer under the legal age, and failed to exercise reasonable care to ascertain whether they were under the legal age, in violation of Iowa Code section 123.49(2)(h).

On December 10, 2025, the Licensee filed a Motion to Strike the Local Authority's Second Responsive Brief due to the Local Authority's responsive brief being filed untimely, as stated in Iowa Administrative Code rule 701–6.26(6):

Unless otherwise ordered, within 30 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 30 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The director may resolve the appeal on the briefs or provide an opportunity for oral argument. The director may shorten or extend the briefing period as appropriate.

The Local Authority filed a resistance to the motion on December 10, 2025, arguing the brief was filed timely by the deadline provided for by the Director in the Order to Review Proposed Decision issued on October 1, 2025.

Iowa Administrative Code rule 701–6.26(5) mandates that the Director's Designee impose a schedule for consideration of the appeal. On October 1, 2025, the Director's Designee ordered that "[o]bjections, exceptions, or briefs filed in this matter shall be received no later than the close of business on October 31, 2025. Any party may file a responsive brief no later than the close of business on December 1, 2025." See Director's Order to Review Proposed Decision, p. 1. Both parties submitted their initial briefs by the close of business on October 31, 2025. The Local Authority submitted a responsive brief by the close of business on December 1, 2025, however the Licensee did not submit a responsive brief.

The Director's Designee finds that the Licensee is not addressing the most relevant portion of the administrative rule when it states "*[u]nless otherwise ordered*, within 30 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 30 days thereafter, any party may file a responsive brief." Iowa Admin. Code r. 701–6.26(6) (emphasis added). The Director's Designee ordered a schedule for consideration of the appeal as mandated and provided specific deadline dates for clarity. The Local Authority's Second Responsive Brief

was filed on December 1, 2025, the final stated deadline for responsive briefs, and is considered timely.

ORDER

IT IS THEREFORE ORDERED that the Licensee's Motion to Strike filed on December 10, 2025, should be denied.

IT IS FURTHER ORDERED that the ALJ's Proposed Decision to affirm the Local Authority's imposed civil penalty and suspension is hereby **AFFIRMED**.

The parties are hereby notified that pursuant to Iowa Code section 17A.19, this Order constitutes final agency action for the purpose of Iowa Code chapters 17A and 123. This Order becomes final, unless a party to the hearing files a Petition for Judicial Review with the Iowa District Court within 30 days from the date of this Order.

Moreover, the parties are notified that pursuant to Iowa Code section 17A.19(5), the filing of a petition for judicial review does not automatically stay execution or enforcement of the Department's action. The Department may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review. If the Department refuses to grant the stay or other temporary remedies, the court may grant the relief.

DATED this 25th day of February, 2026, in Des Moines, Iowa.

IOWA DEPARTMENT OF REVENUE

A handwritten signature in black ink, appearing to read 'S. Hoerr', with a long horizontal line extending to the right.

SAM HOERR
Director's Designee

A copy was filed in the Iowa Department of Inspections, Appeals, and Licensing's Administrative Electronic Document Management System (AEDMS) and also sent to:

West Des Moines Hotel Associates, LLC, Attn: Kinseth Hospitality Co., Inc., 801 E. 2nd Avenue, Coralville, IA 52241, mschultz@kinseth.com (by certified and electronic mail)

West Des Moines Marriott, Attn: Lance Riedl, General Manager 1250 Jordan Creek Pkwy, West Des Moines, IA 50266 (by certified and electronic mail)

Elissa Holman, Counsel for Licensee, eholman@dickinsonbradshaw.com (by certified and electronic mail)

Bharabi Pandit, Counsel for the City of West Des Moines (by certified and electronic mail)

John Lundquist, Assistant Attorney General and counsel for the Iowa Department of Revenue (by electronic mail)

Toby J. Gordon, Administrative Law Judge (by electronic mail)

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION

In the Matter of:)	
)	
)	Case No. 26IDRA0001
West Des Moines Hotel Associates, LLC)	Docket No: D-2025-00056
Attn: Kinseth Hospitality Company, Inc.)	
801 E. 2 nd Avenue)	
Coralville, IA 52241)	
)	
d/b/a West Des Moines Marriott)	PROPOSED DECISION
1250 Jordan Creek Parkway)	
West Des Moines, IA 50266)	
)	

STATEMENT OF THE CASE

On August 11, 2025, a telephone hearing was held before the undersigned concerning the above matter. At that time, Wes Des Moines Assistant City Attorney, Bharabi Pandit, was present and represented the City of West Des Moines (“City”). The City called witnesses Tatum Lundberg n/k/a Lechtenberg (“Lechtenberg”), and West Des Moines Police Officers Samuel Hansen (“Hansen”) and Ravi Venkatesh, (“Venkatesh”). Attorney Elissa Holman appeared and represented the Respondent, West Des Moines Hotel Associates, LLC, d/b/a West Des Moines Marriott, a/k/a Kinseth Hospitality Companies (“Marriott”). The Marriott called Senahid Becirovic (“Becirovic”), an employee of the Marriott, to testify. The undersigned took official notice of the underlying administrative file. The City submitted exhibits A – H, which were admitted into the record, without objection. The Marriott offered Exhibits 1-3, which were also admitted into the record without objection.

On or about May 2, 2025, the city of West Des Moines issued a letter to the Marriott claiming the Marriott was subject to a \$1,500.00 civil penalty and a 30-day suspension of their liquor license for violation of West Des Moines City Code section 3-2-13(B)(8) and Iowa Code section 123.49(2)(h). The licensee filed a timely appeal.

ISSUE

Whether a second violation of Iowa Code section 123.49(2)(h) occurred and the City properly sought to impose a \$1,500.00 civil penalty and 30-day suspension of the liquor license prescribed by Iowa Code sections 123.39 and 123.50(3)(b), against the Marriott for providing alcohol to a person under legal age, in violation of Iowa Code section 123.49(2)(h) and West Des Moines City Code 3-2-13(B)(8).

FINDINGS OF FACT

The facts in this case are not substantially in dispute. The parties agree that on March 7, 2025, Becirovic, an employee of Marriott, sold alcohol to Lechtenberg, who was under the legal age at the time. On March 7, 2025, Lechtenberg assisted the West Des Moines City Police with “compliance checks,” also described as a “sting” operation, on a number of licensed alcohol retail establishments in West Des Moines, including the Marriott. The Police Department had about 4 or 5 teams on that day checking a large number of alcohol venders in the city. (Officer Hansen, Testimony).

The Appellant submitted a 1 minute and 13 second video (Ex. 3), showing Lechtenberg entering the Marriott alone and sitting at the otherwise empty bar. There is no audio with the video. No other patrons of the bar are seen in the video. About 40 seconds after Lechtenberg sits at the bar, Becirovic approaches her and a conversation of a few seconds occurs, when Becirovic presumably takes her order. He then walks away from Lechtenberg, and retrieves a brown bottle. It appears that Becirovic opens the bottle and casts the bottle cap aside, and returns to Lechtenberg, placing the opened bottle of alcohol in front of her. He then presumably asks to see Lechtenberg’s identification, because she provides it to him. Becirovic has a bit of conversation with Lechtenberg, while looking at her driver’s license for about 9 seconds. During that time, he holds the license vertically and turns it horizontally for a brief time. Becirovic then returns the license to Lechtenberg and the video ends, as Becirovic appears to begin to walk away.

Lechtenberg testified that on March 7, 2025, she was 20 years old, and therefore underage. She stated that the bottle Becirovic provided to her, which is seen in the video, was a Bud Light beer. She stated that her driver’s license, which she showed to Becirovic, was her actual license with the correct date of birth, of June 14, 2004. She was 20 years old at the time, and would not be 21 years old for over three months. When she handed Becirovic her license, he commented to her, “you haven’t got your horizontal I.D. yet.”

Officer Hansen was in plain clothes in the lobby area of the Marriott, within sight and sound distance of Lechtenberg and Becirovic. He testified that a uniformed officer was called into the Marriott to issue the citation to Becirovic, after the purchase was made. (Ex. D). Officer Venkatesh was outside the Marriott and was called in to issue Becirovic the citation for the illegal sale of alcohol to a minor. Venkatesh did not observe the incident occur, and relied on the statements of witnesses, including Officer Hansen.

Around the time the citation was being issued, Becirovic said to Hansen that the year on Lechtenberg’s I.D. was o.k. to serve her alcohol. Hansen told Becirovic, that one must also look at the month and day of the date of birth, not just the year, to confirm a person’s age.

Becirovic testified that upon receiving Lechtenberg’s I.D. he went back to the register to scan it, but the scanner was not working, and he had to calculate the date in his head. However, this is not shown in the Appellant’s video exhibit 3. He can be seen talking with Lechtenberg while looking at the driver’s license for about 9 seconds. He does not leave Lechtenberg to go the register. Becirovic testified that English is his second language, but did not indicate how that

impacted his ability to exercise reasonable care to ascertain Lechtenberg's age. Becirovic apparently relied on the birth year without considering the month and day of birth, when he approved the sale of alcohol to Lechtenberg. He testified that he looked at Lechtenberg's I.D. for over 20 seconds. This is not shown on the video submitted by the Appellant, which shows at best, a 9 second review, while speaking to Lechtenberg and moving the I.D. from vertical to horizontal and back to vertical. Becirovic testified that he has been bartending for 20 years and has not had this happen before.

I conclude the I.D. inspection conducted by Becirovic was a quick, cursory review. It is noted that a bartender with 20 years of experience should recognize the significance of a vertically displayed driver's license and what that means regarding a person's age when the license was issued. Also, a bar tender with 20 years of experience should also understand the importance of looking at the month and day of birth in addition to the year. That is to say, checking I.D.'s was not a new task that Becirovic would have been unfamiliar with.

The City submitted exhibits E and F showing that on September 22, 2023 Alicia Jones, was cited for "employee – supplying alcohol to person under legal age," in violation of Iowa Code section 123.49(2)(h). (Ex. F). The Defendant was found guilty of October 22, 2023. Id. On October 30, 2023, the City imposed a civil penalty of \$500.00 for a first violation of Iowa Code section 123.49(2)(h) and City Code section 3-2-13(B)(8), against the Marriott. Id.

CONCLUSIONS OF LAW

Iowa Code section 123.49(2)(h) provides, in relevant part:

2. A person or club holding a liquor control license or retail wine or beer permit under this chapter, and the person's or club's agents or employees, shall not do any of the following:

...

h. Sell, give, or otherwise supply any alcoholic beverage, wine or beer to any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, or permit any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, to consume any alcoholic beverage, wine, or beer.

The Iowa Code defines legal age as twenty-one years of age or more.¹

The preponderance of the evidence in this case establishes that on October 30, 2023, the Marriott was ordered to pay a civil penalty of \$500.00 for a first violation of Iowa Code section 123.49(2)(h) and 123.50(3)(a), which occurred on September 22, 2023. In addition, it is also clear that the licensee's employee, Becirovic, on March 7, 2024, sold an alcoholic beverage to Lechtenberg, who was underage at the time.

¹ Iowa Code § 123.3(24).

The fighting issue in this case, is whether Becirovic, exercised “reasonable care” to ascertain that Lechtenberg was under the legal age, or if he made an excusable error. First it is noted the Appellant provides no authority supporting the conclusion that a calculation error when looking at a date of birth on an I.D., is an example of a good faith exercise of reasonable care. The City points to State v. Casey’s General 587 N.W.2d 599, 602 IA (1998), however, that case is inapplicable in this administrative hearing. Casey’s provides that a corporate employer cannot be held vicariously *criminally* liable for the actions of an employee, who sold alcohol to a minor, without proof that the employer had knowledge of, directed, sanctioned or approved of the actions of the defendant. Casey’s, 587 N.W.2d at 602. This is not a criminal case, but merely an assessment of a civil penalty through an administrative proceeding. In fact, Casey’s provides affirmation of the fact that “

In this case, a well-seasoned bar tender of 20 years, approached a customer seated at the bar, at a time when no other patrons were present. From the video, it is clear that no one else was clamoring for the bartender’s attention, and there was no apparent urgency that might have impacted Becirovic’s ability to focus and exercise reasonable care when investigating Lechtenberg’s age. He looked at a vertical license, which should have been a red flag, commented on it while chatting briefly with Lechtenberg, and sold her the alcoholic drink. Becirovic told officer’s that the year was correct on the license but he apparently failed to notice the month and day of Lechtenberg’s birthday. At hearing, he suggested he made a calculation error when considering that a person born in June 2024 would not yet be 21 years old in March, 2025. However, I cannot find from these facts that Becirovic used “reasonable care” to ascertain Lechtenberg’s age to ensure she was of legal age to purchase alcohol. This conduct constitutes violations of Iowa Code section 123.49(2)(h) and City Code section n3-2-12(B)(8), for which the licensee is liable. Based on the October, 2023 first violation, which occurred less than two years before this incident, the appropriate civil penalty in this case, is \$1,500.00 and a 30-day suspension of the liquor license, per Iowa Code section 123.50(3)(b).

The Appellant also argued in closing that the citation was improper because the officer who issued the citation did not witness the event. This argument is disregarded. There is no legal authority the undersigned is aware of to suggest that law enforcement must personally witness a crime before issuing a citation or making an arrest. Such a standard would make criminal law enforcement virtually impossible. The fact the officer who did not observe the incident, was the one who issued the citation, in no way invalidates the citation as a matter of law.

ORDER

IT IS THEREFORE ORDERED, pursuant to Iowa Code sections 123.50(3)(b), that for the second offense of selling alcohol to an underage person, which occurred on March 7, 2025, at the Marriott. The West Des Moines Hotel Associates, LLC/Kinseth Hospitality Company, Inc, d/b/a West Des Moines Marriott, shall serve a 30-day liquor license suspension and shall pay a civil penalty of \$1,500 to the City of West Des Moines, Attn: Legal Department, P.O. Box 65320, West Des Moines, Iowa 50265, within 30 days of the date this proposed decision becomes final.

The 30-day license suspension shall commence on a date and time to be designated by the City of West Des Moines and communicated to the licensee by the same method used in service of the second violation order, and shall be completed within six (6) months after the date this proposed decision becomes final. The licensee shall not sell any alcoholic beverages during the period of suspension.

Dated this 3rd day of September, 2025.



Toby J. Gordon
Administrative Law Judge

cc: West Des Moines Hotel Associates, LLC, Attn: Kinseth Hospitality Co., Inc., 801 E. 2nd Avenue, Coralville, IA 52241, mschultz@kinseth.com (By Certified, Regular Mail and Email)

West Des Moines Marriott, Attn: Lance Riedl, General Manager 1250 Jordan Creek Pkwy, West Des Moines, IA 50266 (By Certified and Regular Mail)

Elissa Holman, Counsel for Appellant, eholman@dickinsonbradshaw.com (By AEDMS)

City of West Des Moines, Respondent, 4200 Mills Civic Pkwy, West Des Moines, IA 50265, (By Certified, Regular Mail and Email)

Bharabi Pandit, Counsel for Respondent, bharabi.pandit@wdm.iowa.gov (By AEDMS)

John Lundquist, AG, (By AEDMS)

IDR Staff: Alana Stamas, Tyler Ackerson, Scherael Thurston-Shell, Madelyn Brooke Cutler, Abigail Sills, Kerry Carskadon, Jason Hohn (By AEDMS)

APPEAL RIGHTS

Pursuant to the administrative rules of the Department, any adversely affected party may appeal a proposed decision to the Director within thirty (30) days after issuance of the proposed decision. In addition, the Administrator may initiate review of a proposed decision on the Administrator's own motion at any time within thirty (30) days following the issuance of a proposed decision. Iowa Admin. Code r. 701-6.26(99G,123,17A) (formerly 185-10.27(1)-(2)(17A)). "The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the director within the time provided in rule 701—6.26(99G,123,17A)." 701-6.25(2)(99G,123,17A). "'Director' means the director of the department or the director's designee." "'Department' means the Iowa department of revenue." Iowa Admin. Code r. 701-6.2(99G,123,17A).

Case Title: IN RE THE MATTER OF WEST DES MOINES HOTEL
ASSOCIATES, LLC D/B/A WEST DES MOINES MARRIOTT (D-
2025-00056)
Case Number: 26IDRA0001
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Toby Gordon', written over a horizontal line.

Toby Gordon, Administrative Law Judge