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[SF 345](#) – Paraphernalia Regulation (LSB1126SV.2)  
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Fiscal Note Version – As amended by House amendment [S-5050](#)

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## **Description**

[Senate File 345](#), as amended by House amendment [S-5050](#), relates to the regulation of certain tobacco-related products, including devices involved with the usage of these products, and establishes licensing fees and sales and excise tax collection procedures. The Bill as amended defines “device” as any equipment or product, made in whole or in part of glass and metal, that is designed for use in inhaling through combustion tobacco, hemp, other plant materials, or a controlled substance. The definition of “device” does not include vapor products and other certain smokable tobacco-related products. Under the Bill as amended, retailers who sell these devices will be taxed at a rate of 40.0% of the sales price in addition to sales and use tax.

In addition to a tobacco retailer permit, device retailers, including delivery sale device retailers, are required to apply for a device retailer permit. The device retailer permit fee totaling \$1,500 annually is to be collected by the State and may be remitted to cities and counties that approve such permits. Cities and counties that approve device retailer permits must submit the information to the Iowa Department of Revenue (IDR), and the IDR must submit the current list of all device retailer permits to the Department of Health and Human Services (HHS) quarterly.

The Bill as amended creates a Specialty Courts and Diversion Programs Fund under the control of the Office of Drug Control Policy. All excise taxes collected on devices and permit fee revenue (except for fees remitted to counties and cities) are deposited into this Fund. Moneys in the Fund are appropriated to the Office of Drug Control Policy for support of specialty courts and diversion programs to address underlying substance use disorder-related and mental health-related issues that contribute to the contact of individuals with the justice system.

The sale of devices is prohibited to any individual under the age of 21. In addition to the provisions under Iowa Code chapter [453A](#), the Bill as amended creates various requirements for device retailers and establishes civil penalties for the willful violation of those requirements. Additionally, a device retailer permit holder, a device delivery sale permit holder, or another individual who violates the provisions of the Bill as amended is guilty of a serious misdemeanor. The Bill as amended modifies the simple misdemeanor penalty for the manufacture, delivery, sale, or possession of drug paraphernalia by making it punishable as a scheduled fine. A first violation is punishable by a scheduled fine of \$260, and a second or subsequent violation is punishable by a scheduled fine of \$520.

The Bill as amended takes effect January 1, 2025.

## **Background**

Iowa Code chapter 453A provides for cigarette and tobacco taxation and regulation, including license suspension, license revocation provisions, and penalties that apply to tobacco retailers, device retailers, and device delivery sale permit holders, as well as those who do not hold permits.

A serious misdemeanor is punishable by confinement for no more than one year and a fine of at least \$430 but no more than \$2,560. A simple misdemeanor is punishable by confinement for no more than 30 days and a fine of at least \$105 but no more than \$855.

### **Assumptions**

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner length of stay (LOS); revocation rates; plea bargaining; and other criminal justice system policies and practices.
- A lag effect of six months is assumed from the effective date of the Bill as amended to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.
- The IDR estimates there are approximately 100 currently licensed tobacco stores in the State. Of these stores, approximately 35 sell devices regulated under the Bill as amended and will apply for a device retailer permit.
- Total device sales at these stores in FY 2022 were estimated as a percentage of the retailers' total sales. The estimations are as follows: 4 stores had 100.0% device sales, 7 stores had 50.0% device sales, and 24 stores had 25.0% device sales. Estimated sales of devices were approximately \$6.6 million in FY 2022.
- Additional non-tobacco-specific stores (convenience stores, gas stations, etc.) that currently sell devices regulated under the Bill as amended will not apply for a device retailer permit.
- According to the HHS, there are currently 3,597 locations, including non-tobacco-specific stores, that sell tobacco and require compliance checks.
- The additional cost of devices will not affect sales for other products.
- Permit fees collected for out-of-state retailers cannot be determined.
- Growth from FY 2022 to FY 2023 was based on the Revenue Estimating Conference (REC) growth of sales tax (3.9%).
- Growth trends in future fiscal years are assumed to be 2.0%.

### **Correctional Impact**

Senate File 345 as amended modifies the penalty for the manufacture, delivery, sale, or possession of drug paraphernalia by making it punishable as a scheduled fine. In FY 2023, 2,412 individuals were convicted, of whom 362 were sentenced to jail, under Iowa Code section [124.414](#). Under the Bill as amended, no individuals would be sentenced to jail for a violation of Iowa Code section 124.414. A conviction for a simple misdemeanor does not result in a prison sentence but does carry the possibility of confinement for up to 30 days in jail. Marginal county jail costs are estimated to be \$50 per day, but there is insufficient information to determine any costs related to LOS.

Senate File 345 as amended also establishes two new serious misdemeanors related to device retailer permit holders, device delivery sale permit holders, and other individuals who violate the provisions of new Iowa Code chapter 453E. Convictions related to new Iowa Code chapter 453E cannot be estimated due to a lack of data.

**Figure 1** provides estimates for sentencing to State prison, parole, probation, or Community-Based Corrections (CBC) residential facilities; LOS under those supervisions; and supervision marginal costs per day for all convictions of serious misdemeanors. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 16, 2024, for information related to the correctional system.

**Figure 1 — Sentencing Estimates and LOS**

Conviction Offense Class	Percent Ordered to State Prison	FY 2023 Avg LOS in Prison (All Releases)	Marginal Prison Cost Per Day	Percent Ordered to Probation	FY23 Field Avg LOS on Probation	Avg Cost Per Day on Probation	Percent Sentenced to CBC Residential Facility	Marginal Cost CBC Per Day	Percent Ordered to County Jail	Marginal Cost Per Day Jail	FY 23 Field Avg LOS on Parole	Marginal Cost Per Day Parole
Serious Misdemeanor	1.7%	6.6	\$24.94	53.0%	19.2	\$7.67	1.2%	\$20.00	74.2%	\$50.00	N/A	\$7.67

**Minority Impact**

The minority impact of SF 345 as amended is unknown. Of the 2,412 individuals convicted in FY 2023 of the manufacture, delivery, sale, or possession of drug paraphernalia under Iowa Code section 124.414, 79.3% were White, 12.2% were Black, and 8.5% were of other races. Racial data for individuals sentenced to jail is unknown. Iowa’s population is 89.8% White, 4.4% Black, and 5.8% other races. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 16, 2024, for information related to minorities in the criminal justice system.

**Fiscal Impact**

**Excise Tax**

Senate File 345 as amended is estimated to result in revenue of \$1.4 million in FY 2025 and \$2.9 million in FY 2026 to the Specialty Courts and Diversion Programs Fund as a result of the excise tax collected. **Figure 2** provides revenue estimates for the Fund through FY 2029.

**Figure 2 — Revenue Estimates to the Specialty Courts and Diversion Programs Fund (In Millions)**

Fiscal Year	Excise Tax Revenue
FY 2025	\$ 1.4
FY 2026	2.9
FY 2027	3.0
FY 2028	3.0
FY 2029	3.1

**Permit Fee**

Permit fee revenue is estimated to be \$50,000 annually. This revenue will be deposited into the Specialty Courts and Diversion Programs Fund unless remitted to a city or county. Any permit fee remitted to a city or county will be credited to the respective city or county’s general fund.

**Correctional Fiscal Impact**

Senate File 345 as amended establishes new crimes and modifies an existing penalty. The resulting cost to the justice system cannot be determined. The average State cost per serious misdemeanor conviction ranges from \$400 to \$6,900, which includes operating costs incurred by the Judicial Branch, the State Public Defender, and the DOC. The cost would be incurred across multiple fiscal years for prison and parole supervision. In addition, the new offenses established by SF 345 as amended may increase civil penalty revenue, but the impact is unknown.

**Additional Fiscal Impact**

The cost to the IDR to update its electronic I-PLEDGE Tobacco Enforcement Program reporting system, which would be used for data entry related to device retailer permit applications collected from localities, is estimated at \$11,000. If the number of licensed tobacco retailers increases, there may be increased costs for the HHS associated with the annual compliance checks on tobacco retailers, but the total impact is unknown. The cost of one compliance check

on a tobacco retailer in the State is \$75. The HHS contracts with the IDR to perform the compliance checks.

**Sources**

Iowa Department of Revenue  
Department of Health and Human Services  
Department of Corrections  
Criminal and Juvenile Justice Planning, Department of Management  
Legislative Services Agency analysis

/s/ Jennifer Acton

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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