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[SF 345](#) – Paraphernalia Regulation (LSB1126SV.1)  
Staff Contact: Maria Wagenhofer (515.281.5270) [maria.wagenhofer@legis.iowa.gov](mailto:maria.wagenhofer@legis.iowa.gov)  
Fiscal Note Version – As Amended and Passed by the Senate

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**Description**

[Senate File 345](#) 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 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 SF 345, 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 totals \$1,500 annually and may be collected by the State or, if applicable, cities and counties that grant such permits. Cities and counties that issue device retailer permits must submit the information to the Alcoholic Beverages Division (ABD), and the ABD must submit the current list of all device retailer permits to the Department of Health and Human Services (HHS) quarterly.

The Bill creates a Specialty Courts Program Fund under the control of the Governor’s Office of Drug Control Policy. All excise taxes collected on devices and permit fee revenue (except for fees collected by counties and cities) are deposited into this Fund. Moneys in the Fund are appropriated to the Governor’s Office of Drug Control Policy for support of specialty courts 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 creates various requirements for device retailers and establishes civil penalties for the willful violation of those requirements. Additionally, a person holding a device retailer permit or device delivery sale permit who violates the provisions of SF 345 is guilty of a serious misdemeanor.

Senate File 345 takes effect January 1, 2024.

**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.

**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 this Bill 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 Department of Revenue estimates there are approximately 100 currently licensed tobacco stores in the State. Of these stores, approximately 35 sell devices regulated under the Bill and will apply for a device retailer permit.
- Total device sales at these stores from FY 2022 were estimated as a percentage of the retailers' total sales. The estimations include: 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 will not apply for a device retailer permit.
- 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 REC growth of sales tax (3.9%).
- Growth trends in future fiscal years are based on the Consumer Price Index (CPI-U) less food and energy average estimated increases of 2.2% from FY 2024 to FY 2028.

**Correctional Impact**

The correctional impact of SF 345 cannot be determined. The Bill establishes a new crime, and subsequent convictions cannot be estimated due to a lack of data

**Table 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 20, 2023, for information related to the correctional system.

**Table 1 — Sentencing Estimates and LOS**

| Conviction Offense Class | Percent Ordered to State Prison | FY 22 Avg LOS in Prison in Months (All Releases) | FY 22 Marginal Cost Per Day Prison | Percent Ordered to Probation | FY 22 Avg LOS on Probation in Months | FY 22 Avg Cost Per Day Probation | Percent Sentenced to CBC Residential Facility | FY 22 Marginal Cost Per Day CBC | Percent Ordered to County Jail | Avg Length of Stay in County Jail | Marginal Cost Per Day Jail | FY 22 Avg LOS on Parole in Months | FY 22 Marginal Cost Per Day Parole |
|--------------------------|---------------------------------|--|------------------------------------|------------------------------|--------------------------------------|----------------------------------|---|---------------------------------|--------------------------------|-----------------------------------|----------------------------|-----------------------------------|------------------------------------|
| Serious Misdemeanor      | 1.9%                            | 5.5  | \$23.42                            | 51.2%                        | 13.7                                 | \$7.27                           | 0.9%  | \$20.67                         | 73.3%                          | N/A                               | \$50.00                    | 0.5                               | \$7.27                             |

**Minority Impact**

The minority impact of SF 345 is unknown. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 20, 2023, for information related to minorities in the criminal justice system.

**Fiscal Impact**

**Excise Tax**

Senate File 345 is estimated to result in revenue of \$1.4 million in FY 2024 and \$2.9 million in FY 2025 to the Specialty Courts Program Fund as a result of the excise tax collected. **Table 2** provides revenue estimates for the Fund through FY 2028.

**Table 2 — Revenue Estimates to the Specialty Courts Program Fund (In Millions)**

| <b>Fiscal Year</b> | <b>Excise Tax Revenue</b> |
|--------------------|---------------------------|
| FY 2024            | \$ 1.4                    |
| FY 2025            | 2.9                       |
| FY 2026            | 2.9                       |
| FY 2027            | 3.0                       |
| FY 2028            | 3.1                       |

**Permit Fee**

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

**Correctional Fiscal Impact**

Senate File 345 establishes a new crime, and the resulting cost to the justice system cannot be determined. The average State cost per serious misdemeanor conviction ranges from \$400 to \$5,600, 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 offense established by SF 345 may increase civil penalty revenue, but the impact is unknown.

**Additional Fiscal Impact**

The cost to the ABD 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 ABD to perform the compliance checks.

**Sources**

- Department of Revenue
- Department of Commerce, Alcoholic Beverages Division
- Department of Health and Human Services
- Department of Corrections
- Criminal and Juvenile Justice Planning Division, Department of Human Rights
- Legislative Services Agency analysis

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/s/ Jennifer Acton

March 7, 2023

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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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