

portion of the billing can be paid, for payments made by the state comptroller on behalf of the agency, board, commission or department.

Sec. 2. This Act is in effect from and after its publication in the Daily Gate City, a newspaper published in Keokuk, Iowa, and in The Red Oak Express, a newspaper published in Red Oak, Iowa, and is retroactive to January 1, 1978.

Approved April 14, 1980

I hereby certify that the foregoing Act, Senate File 2274, was published in the Daily Gate City, Keokuk, Iowa on April 17, 1980, and in The Red Oak Express, Red Oak, Iowa on April 17, 1980.

J. HERMAN SCHWEIKER, *Deputy Secretary of State*

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CHAPTER 1029  
CIGARETTES AND TOBACCO  
S. F. 2368

AN ACT relating to the administration of chapter ninety-eight (98) of the Code by the department of revenue and providing penalties.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section ninety-eight point one (98.1), subsection five (5), Code 1979, is amended to read as follows:

5. "Stamps" ~~shall mean~~ means the stamp or stamps printed, manufactured or made by authority of the director, ~~as hereinafter provided,~~ and issued, sold or circulated by the department and by the use of which the tax levied ~~hereunder~~ is paid. It ~~shall~~ also mean means any impression, indicium, or character fixed upon packages of cigarettes, ~~cigarette papers,~~ ~~or tubes~~ by metered stamping machine or device which may be authorized by the director to the holder of state or manufacturers' permits and by the use of which the tax levied ~~hereunder~~ is paid.

Sec. 2. Section ninety-eight point eight (98.8), subsection four (4), Code 1979, is amended to read as follows:

4. The department may in the enforcement of this ~~chapter~~ division recall any stamps which have been sold by the department and which have not been used, and the department shall, upon receipt of ~~such~~ recalled stamps, issue a refund for tax stamps surrendered for the face value of the stamps less the amount of the discount. The purchaser of ~~any~~ stamps shall ~~be required to~~ surrender any unused stamps for refund upon demand of the department.

Sec. 3. Section ninety-eight point nine (98.9), Code 1979, is amended to read as follows:

98.9 CHANGE OF DESIGN. The design of the stamps used may be changed as often as the director ~~may deem~~ deems necessary for the best enforcement of the provisions of this ~~chapter~~ division.

Sec. 4. Section ninety-eight point eleven (98.11), Code 1979, is amended to read as follows:

98.11 CANCELLATION OF STAMPS. ~~No-stamps~~ Stamps affixed to a package of cigarettes shall not be canceled by any letter, numeral, or other mark of identification or otherwise mutilated in any manner that will prevent or hinder the department in making an examination as to the genuineness of ~~said the stamp~~, ~~provided, however, that.~~ However, the director may require such cancellation of the tax stamps affixed to packages of cigarettes ~~or-cigarette papers~~ which is necessary ~~and-essential~~ to carry out properly the provisions of this ~~chapter~~ division.

Sec. 5. Section ninety-eight point twelve (98.12), Code 1979, is amended to read as follows:

98.12 USE OF STAMPING MACHINES. The department may purchase and supply suitable machines or devices to the holders of a state or manufacturer's permit, or authorize the leasing by the permit holder of such machines or the metering device or both, and provide under proper regulation and direction for the impression of a distinctive imprint, indicium or character upon individual packages of cigarettes, ~~-cigarette-papers-and-tubes~~ as evidence of the payment of the tax imposed by this ~~chapter~~ division, in lieu of the purchase and affixation of stamps ~~as-provided-herein~~.

~~In--the--event~~ If the director decides to purchase such the machines they shall be paid for upon order of the director out of any funds in the general fund of the state treasury not otherwise appropriated.

The machines or devices shall be so constructed as to record or meter the number of impressions or indicia made and shall at all times be open for inspection by the department.

All of the provisions of this ~~chapter~~ division relating to the collection of the tax by means of the sale and affixation of stamps shall apply in the use of the stamping machines or devices, including the right of refund ~~as provided-herein~~.

Sec. 6. Section ninety-eight point thirteen (98.13), subsections two (2), three (3), and ten (10), Code 1979, are amended to read as follows:

2. ISSUANCE. The department shall issue state permits to distributors, wholesalers, and cigarette vendors, ~~and-retailers~~ subject to the conditions ~~hereinafter~~ provided in this division. Cities may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities. Upon issuance of a retail permit by a city council or board of supervisors, such the council or board shall forthwith certify to the department the action ~~so~~ taken.

3. FEES--EXPIRATION. All permits provided for in this ~~chapter~~ division shall expire on June 30 of each year. ~~No A~~ permit shall not be granted or issued until the applicant ~~shall-have~~ has paid for the period ending June 30 next, to the department or the city or county granting such the permit, the fees provided for in this ~~chapter~~ division. The annual state permit fee for a distributor, cigarette vendor, and wholesaler ~~shall-be~~ is one hundred dollars when the permit is granted during the months of July, August, or September, ~~provided-that.~~ However, whenever a state permit holder ~~shall~~

~~operate~~ operates more than one place of business, a duplicate state permit shall be issued for each additional place of business on payment of five dollars for each ~~such~~ duplicate state permit, but refunds as provided in this ~~chapter shall~~ division do not apply to any duplicate permit issued.

The fee for retail permits ~~to--be-issued-under-the-provisions-of-this chapter shall-be~~ is as follows when the permit is granted during the months of July, August, or September:

- a. In places outside any city, fifty dollars.
- b. In cities of less than fifteen thousand population, seventy-five dollars.
- c. In cities of fifteen thousand or more population, one hundred dollars.

If any permit is granted during the months of October, November, or December, the ~~said~~ fee shall be three-fourths of the above maximum schedule; if granted during the months of January, February, or March, one-half of ~~said~~ the maximum schedule, and if granted during the months of April, May, or June, one-fourth of the ~~said~~ maximum schedule.

10. PERMIT DISPLAYED. The permit shall, at all times, be publicly displayed by the distributor, wholesaler, or retailer, at ~~his~~ the place of business, so as to be easily seen by the public and the persons authorized to inspect the ~~same~~ place of business. The proprietor or keeper of any building or place ~~wherein~~ where cigarettes ~~shall-be~~ are kept for sale, or with intent to sell, shall upon request of any agent of the department or any peace officer exhibit ~~his~~ the permit ~~to-keep-and-sell~~. ~~His~~ A refusal or failure to ~~so~~ exhibit ~~such~~ the permit ~~shall-be~~ is prima-facie evidence that ~~such~~ the cigarettes are kept for sale or with intent to sell in violation of ~~the provisions-of~~ this ~~chapter~~ division.

Sec. 7. Section ninety-eight point fourteen (98.14), Code 1979, is amended to read as follows:

98.14 BONDS.

1. No state or manufacturer's permit shall be issued until the applicant ~~therefor--shall--file~~ files a bond, with good and sufficient surety, to be approved by the director, which bond shall be in favor of the state and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the permit holder for violation of any of the provisions of this ~~chapter~~ division.

~~Said~~ The bonds shall be on forms prescribed by the director and in the following amounts:

- a. State permit, not less than five hundred dollars.
  - b. Manufacturer's permit, not less than five thousand dollars.
2. ~~No-distributor-or~~ A person shall not engage in interstate business unless ~~he~~ the person files a bond, with good and sufficient surety in an amount of not less than one thousand dollars. The amount of the bond required of ~~such--distributor--or--either~~ the person shall be fixed by the director, subject to the minimum limitation ~~herein~~ provided in this section. ~~Said~~ The bond ~~shall-be-approved~~ is subject to approval by the director and ~~shall be~~ payable to the state in Des Moines, Polk county, and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the ~~permit-holder~~ person for violation of any of the requirements of

this ~~chapter~~ division affecting ~~said-distributor-or-ether~~ the person, on a form prescribed by the director.

3. An additional bond or a new bond may be required by the director at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond, or new bond, shall be supplied within ten days after demand. On failure to supply a new bond or additional bond within ten days after demand, the director may cancel any existing bond made and secured by and for ~~said-distributor-or-ether~~ the person. ~~In-the-event~~ said ~~If the~~ bond is canceled, ~~said-distributor--or--ether~~ the person shall within forty-eight hours after receiving cigarettes or forty-eight hours after ~~said~~ the cancellation, excluding Sundays and legal holidays, cause any cigarettes in ~~his~~ the person's possession to have the requisite amount of stamps affixed to represent the tax ~~as-herein-provided~~.

Sec. 8. Section ninety-eight point fifteen (98.15), subsection one (1), Code 1979, is amended to read as follows:

1. The director ~~is-authorized-to~~ may prescribe ~~such~~ the forms ~~as-may-be~~ necessary for the efficient administration of this ~~chapter~~ division and ~~is~~ authorized--to may require ~~such~~ uniform books and records to be used and kept by each permit holder as deemed necessary. The director may also require each permit holder to keep and retain in his or her possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps ~~as-herein-provided~~. ~~All-of-such~~ The evidence shall be kept for a period of two years from the date of each transaction, for the inspection at all times by the department.

Sec. 9. Section ninety-eight point seventeen (98.17), subsections two (2) and four (4), Code 1979, are amended to read as follows:

2. Upon receipt of the application ~~and,~~ bond and ~~the~~ permit fee ~~herein~~ provided--for, the department may issue to every distributing agent for the place of business designated a nonassignable consecutively numbered permit, authorizing the storing, and distribution of unstamped cigarettes within this state when ~~such~~ the distribution is made upon interstate orders only. A distributing agent may also transport unstamped cigarettes in ~~his~~ the agent's own conveyances to the state boundary for distribution outside the state, and any nonresident customer of ~~such~~ the distributor may purchase and convey unstamped cigarettes to the state line for distribution outside the state. ~~Such~~ The nonresident purchaser shall ~~be--required--to~~ have in his or her possession an invoice evidencing the purchase of ~~such~~ the unstamped cigarettes, which must be exhibited upon request to any peace officer or agent charged with the enforcement of this ~~chapter~~ division.

4. It ~~shall-be~~ is unlawful for any distributing agent to sell at retail cigarettes, ~~cigarette-papers--or--tubes~~ from automobiles, trucks, or any similar conveyances.

Sec. 10. Section ninety-eight point eighteen (98.18), Code 1979, is amended to read as follows:

98.18 FORMS FOR RECORDS AND REPORTS. The department shall furnish, without charge, to holders of the various permits, ~~such~~ forms in sufficient quantities ~~as-will~~ to enable ~~such~~ permit holders to make the reports required to be made under this ~~chapter~~ division. The permit holders shall furnish at

their own expense such the books, records, and invoices, ~~as-are~~ required to be used and kept, but such the books, records, and invoices shall be in exact conformity to the forms prescribed for that purpose by the director, and shall be kept and used in the manner prescribed by the director, ~~provided that.~~ However, the director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed. Such The authorization may be revoked at any time.

Sec. 11. Section ninety-eight point twenty-two (98.22), Code 1979, is amended to read as follows:

98.22 REVOCATION OF PERMIT.

1. If any person holding a permit issued by the department under ~~the provisions of this chapter~~ division, including a retailer permit for railway car, has willfully violated the provisions of section 98.2, the department shall revoke the permit issued such the person upon such notice and hearing ~~as--is-hereinafter-provided.~~ If such the person violates any other provision of this ~~chapter~~ division, or any rule promulgated ~~hereunder~~ under this division, the department may revoke the permit issued to ~~said~~ the person, after giving such the permit holder an opportunity to be heard upon ~~five~~ ten days' written notice stating the reason for such the contemplated revocation and the time and place at which ~~he~~ the person may appear and be heard. The ~~said~~ hearing shall be held in the county of the permit holder's place of business, or in a county in or through which it transacts business. Such The notice shall be given by mailing a copy ~~thereof~~ by certified mail to the permit holder's place of business as the same appears on ~~his~~ the application for a permit. If, upon such hearing, the department ~~shall--find~~ finds that such the violation has occurred, the department may revoke the permit ~~or permits.~~

2. If any retailer has violated any of the provisions of section 98.2, the board of supervisors or the city council which issued the permit shall revoke ~~his-permit-or~~ the retailer's permits and if any such retailer violates any other provisions of this ~~chapter~~ division, the board of supervisors or the city council which issued the permit may revoke ~~his-permit-or~~ the retailer's permits upon the same hearing and notice as ~~is~~ prescribed in ~~the preceding-paragraph~~ subsection one (1) of this section.

3. If a permit is revoked ~~no~~ a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which such the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority.

Sec. 12. Section ninety-eight point twenty-three (98.23), subsections one (1) and two (2), Code 1979, are amended to read as follows:

1. Subject to ~~the-provisions--of~~ this ~~chapter~~ division, a retailer's permit may be issued by the department to any dining car company, sleeping car company, railroad or railway company. Such The permit shall authorize the holder ~~thereof~~ to keep for sale, and sell, cigarettes at retail on any dining car, sleeping car, or passenger car operated by such the applicant in, through, or across the state of Iowa, subject to all of the restrictions

imposed upon retailers under this ~~chapter~~ division. The application for ~~such~~ the permit shall be in ~~such~~ the form and contain ~~such~~ the information ~~as may~~ be required by the director. Each ~~such~~ permit ~~shall be~~ is good throughout the state. Only one ~~such~~ permit ~~shall be~~ is required for all cars operated in this state by ~~such~~ the applicant, but a duplicate of ~~such~~ the permit ~~issued--as--herein--provided~~ shall be posted in each car in which ~~such~~ cigarettes are sold and no further permit shall be required or tax levied for the privilege of selling cigarettes in ~~such~~ the cars. No cigarettes shall be sold in ~~such~~ the cars without having affixed thereto stamps evidencing the payment of the tax as provided in this ~~chapter~~ division.

2. As a condition precedent to the issuing of a retailer's permit for railway car, the applicant shall file with the department a bond in favor of the state for the benefit of all parties interested in the amount of five hundred dollars conditioned upon the payment of all taxes, fines and penalties and costs in this ~~chapter-provided~~ division.

Sec. 13. Section ninety-eight point twenty-eight (98.28), Code 1979, is amended to read as follows:

98.28 ASSESSMENT OF TAX BY DEPARTMENT. If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes, without stamps affixed thereto as required by this ~~chapter~~ division or that any person has failed to pay any tax ~~herein~~ imposed upon ~~such~~ the person, the department shall fix and determine the amount of tax due, and shall assess ~~such~~ the tax against ~~such~~ the person, together with a penalty, which is ~~hereby~~ imposed, equal to the amount of ~~said~~ the tax. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by ~~him~~ the person, the presumption shall be that ~~such~~ the cigarettes were sold without the proper stamps affixed thereto. Within two years after the return is filed or within two years after the return became due, whichever is later, the department shall examine it and determine the correct amount of tax.

Sec. 14. Section ninety-eight point thirty-one (98.31), Code 1979, is amended to read as follows:

98.31 CIVIL PENALTY FOR CERTAIN VIOLATIONS. If a permit holder ~~shall-(1)~~ fail ~~fails~~ to keep any of the records required to be kept by the provisions of this ~~chapter~~ division, or ~~(2)-if-a-permit-holder-shall-sell-any~~ sells cigarettes upon which a tax is required to be paid by this ~~chapter~~ division without at the time having a valid permit, or ~~(3)~~ if any a distributor, wholesaler, or distributing agent ~~shall-fail~~ fails to make any reports to the department required ~~herein--to--be--made~~, or ~~(4)--make~~ makes a false or incomplete report with the intent to evade tax to the department, or ~~(5)~~ if any a distributing agent ~~shall-store-any~~ stores unstamped cigarettes in the state or ~~distribute~~ distributes or ~~deliver-any~~ delivers unstamped cigarettes within this state without at the time of ~~said~~ storage or delivery having a valid permit, or ~~(6)~~ if any a person affected by this ~~chapter-shall-fail~~ division ~~fails~~ or ~~refuse~~ refuses to abide by the any of its provisions hereof or the rules promulgated ~~hereunder, or violate the same, he--shall--be~~ under this division, the person is civilly liable to the state as a penalty in the sum of fifty dollars for each offense. Each violation ~~shall-constitute~~ is a

separate offense, and the same violation ~~shall constitute~~ is a separate offense for each day it continues. However, if a violation is due to reasonable cause, the director of revenue shall waive or reduce the penalty imposed under this section.

Sec. 15. Section ninety-eight point thirty-two (98.32), subsection one (1), Code 1979, is amended to read as follows:

1. All cigarettes on which taxes are imposed by this ~~chapter~~ division, which ~~shall be~~ are found in the possession or custody, or within the control of any person, for the purpose of being sold or removed by ~~him~~ the person in violation of this ~~chapter~~ division, and all cigarettes which are removed or are deposited or concealed in any place with intent to avoid payment of taxes ~~levied thereon~~, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal or transportation of ~~such~~ cigarettes for such purpose, and all equipment ~~of~~ or other tangible personal property incident to and used for such purpose, found in the place, building, or vehicle where ~~such~~ cigarettes are found, may be seized by the department, with or without process and ~~the same~~ shall be from the time of ~~such~~ the seizure forfeited to the state of Iowa, ~~and a~~. A proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain ~~such~~ the seizure and declare and perfect ~~said~~ the forfeiture ~~as hereinafter--provided~~. All ~~such~~ cigarettes, vehicles, and property ~~so~~ seized ~~as aforesaid~~, remaining in the possession or custody of the department, sheriff or other officer for forfeiture or other disposition as provided by law, ~~shall be deemed to be in the custody of law and--irrepleviable~~ are not subject to replevin.

Sec. 16. Section ninety-eight point thirty-three (98.33), Code 1979, is amended to read as follows:

98.33 SEIZURE NOT TO AFFECT CRIMINAL PROSECUTION. The seizure, forfeiture, and sale of cigarettes, tobacco products, and other property under the terms and conditions hereinabove set out, shall not constitute any defense to the person owning or having control or possession of ~~such~~ the property from criminal prosecution for any act or omission made or offense committed under this chapter or from liability to pay penalties provided by this chapter.

Sec. 17. Section ninety-eight point thirty-six (98.36), subsections one (1) and six (6), Code 1979, are amended to read as follows:

1. Except as otherwise provided in this ~~chapter~~ division, it ~~shall be~~ is unlawful for any person to have in his or her possession for sale, distribution, or use, or for any other purpose, in excess of forty cigarettes, or to sell, distribute, use, or present as a gift or prize cigarettes upon which a tax is required to be paid by this ~~chapter~~ division, without having affixed to each individual package of cigarettes ~~or--cigarette papers~~, the proper stamp evidencing the payment of ~~such~~ the tax and the absence of ~~said~~ the stamp on ~~said~~ the individual package of cigarettes ~~shall be~~ is notice to all persons that the tax has not been paid and ~~shall be~~ is prima-facie evidence of the nonpayment of ~~said~~ the tax.

6. Any sales of cigarettes made through a cigarette vending machine ~~shall be~~ are subject to rules and penalties relative to retail sales of cigarettes

provided for in this ~~chapter~~ division. No cigarettes shall be sold through any cigarette vending machine unless ~~such~~ the cigarettes shall have been properly stamped or metered as provided by this ~~chapter~~ division, and in case of violation of this provision, the permit of the dealer authorizing retail sales of cigarettes shall be canceled. Payment of the license fee as provided in section 98.13 ~~shall authorize~~ authorizes a cigarette vendor to sell cigarettes through ~~a vending machine or~~ vending machines, provided that the ~~machine or~~ machines are located in ~~a place or~~ places where the ~~machine or~~ machines are under the supervision of a ~~responsible~~ person of legal age who ~~will be~~ is responsible for prevention of purchase by minors from ~~such machine or~~ the machines and the location where the ~~machine or~~ machines are placed is covered by a local retail permit. ~~Nothing herein shall~~ This section does not require a retail licensee to buy a cigarette vendor's permit if the retail licensee is in fact the owner of the cigarette vending ~~machine or~~ machines and the ~~machine or~~ machines are operated in the location described in the retail permit.

Sec. 18. Section ninety-eight point thirty-seven (98.37), Code 1979, is amended to read as follows:

98.37 CERTAIN OFFENSES AND PENALTIES PROVIDED. ~~Whoever shall violate any~~ A person who violates a provision of this ~~chapter shall be~~ division is guilty of a simple misdemeanor unless otherwise provided in this division.

Approved May 17, 1980

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CHAPTER 1030  
TOBACCO ADVERTISING NEAR SCHOOLS  
H. F. 2163

AN ACT repealing the prohibition against advertising the sale of tobacco near public schools.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Sections ninety-eight point forty (98.40) and ninety-eight point forty-one (98.41), Code 1979, are repealed.

Approved April 21, 1980