

CHAPTER 1109

ALTERNATIVE NICOTINE AND VAPOR PRODUCTS

H.F. 2109

AN ACT relating to vapor products and alternative nicotine products, and providing penalties.

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

Section 1. Section 453A.1, subsection 21, Code 2014, is amended to read as follows:

21. “Retailer” shall mean and include every person in this state who shall sell, distribute, or offer for sale for consumption or possess for the purpose of sale for consumption, cigarettes, alternative nicotine products, or vapor products irrespective of quantity or amount or the number of sales.

Sec. 2. Section 453A.1, Code 2014, is amended by adding the following new subsections:

NEW SUBSECTION. 01. “*Alternative nicotine product*” means a product, not consisting of or containing tobacco, that provides for the ingestion into the body of nicotine, whether by chewing, absorbing, dissolving, inhaling, snorting, or sniffing, or by any other means. “*Alternative nicotine product*” does not include cigarettes, tobacco products, or vapor products, or a product that is regulated as a drug or device by the United States food and drug administration under chapter V of the federal Food, Drug, and Cosmetic Act.

NEW SUBSECTION. 26A. “*Vapor product*” means any noncombustible product, which may or may not contain nicotine, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from a solution or other substance. “*Vapor product*” includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any cartridge or other container of a solution or other substance, which may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. “*Vapor product*” does not include a product regulated as a drug or device by the United States food and drug administration under chapter V of the federal Food, Drug, and Cosmetic Act.

Sec. 3. Section 453A.2, subsections 1, 2, 3, and 8, Code 2014, are amended to read as follows:

1. A person shall not sell, give, or otherwise supply any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes to any person under eighteen years of age.

2. A person under eighteen years of age shall not smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes.

3. Possession of ~~cigarettes or tobacco,~~ tobacco products, alternative nicotine products, vapor products, or cigarettes by an individual under eighteen years of age does not constitute a violation under this section if the individual under eighteen years of age possesses the ~~cigarettes or tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes~~ as part of the individual’s employment and the individual is employed by a person who holds a valid permit under this chapter or who lawfully offers for sale or sells cigarettes or tobacco products.

8. a. A person shall not be guilty of a violation of this section if conduct that would otherwise constitute a violation is performed to assess compliance with ~~cigarette and tobacco,~~ tobacco products, alternative nicotine products, vapor products, or cigarette laws if any of the following applies:

(1) The compliance effort is conducted by or under the supervision of law enforcement officers.

(2) The compliance effort is conducted with the advance knowledge of law enforcement officers and reasonable measures are adopted by those conducting the effort to ensure that use of ~~cigarettes or tobacco,~~ tobacco products, alternative nicotine products, vapor products,

or cigarettes by individuals under eighteen years of age does not result from participation by any individual under eighteen years of age in the compliance effort.

b. For the purposes of this subsection, “law enforcement officer” means a peace officer as defined in section 801.4 and includes persons designated under subsection 4 to enforce this section.

Sec. 4. Section 453A.4, subsection 1, Code 2014, is amended to read as follows:

1. If a person holding a permit under this chapter or an employee of such a permittee has a reasonable belief based on factual evidence that a driver’s license as defined in section 321.1, subsection 20A, or nonoperator’s identification card issued pursuant to section 321.190 offered by a person who wishes to purchase ~~cigarettes or tobacco~~, tobacco products, alternative nicotine products, vapor products, or cigarettes is altered or falsified or belongs to another person, the permittee or employee may retain the driver’s license or nonoperator’s identification card. Within twenty-four hours, the card shall be delivered to the appropriate city or county law enforcement agency of the jurisdiction in which the permittee’s premises are located, and the permittee shall file a written report of the circumstances under which the card was retained. The local law enforcement agency may investigate whether a violation of section 321.216, 321.216A, or 321.216C has occurred. If an investigation is not initiated or probable cause is not established by the local law enforcement agency, the driver’s license or nonoperator’s identification card shall be delivered to the person to whom it was issued. The local law enforcement agency may forward the card with the report to the state department of transportation for investigation, in which case, the state department of transportation may investigate whether a violation of section 321.216, 321.216A, or 321.216C has occurred. The state department of transportation shall return the card to the person to whom it was issued if an investigation is not initiated or probable cause is not established.

Sec. 5. Section 453A.5, subsection 1, Code 2014, is amended to read as follows:

1. The alcoholic beverages division of the department of commerce shall develop a tobacco compliance employee training program not to exceed two hours in length for employees and prospective employees of retailers, as defined in sections 453A.1 and 453A.42, to inform the employees about state and federal laws and regulations regarding the sale of ~~cigarettes and tobacco~~, tobacco products, alternative nicotine products, vapor products, and cigarettes to persons under eighteen years of age and compliance with and the importance of laws regarding the sale of ~~cigarettes and tobacco~~, tobacco products, alternative nicotine products, vapor products, and cigarettes to persons under eighteen years of age.

Sec. 6. Section 453A.13, subsection 1, Code 2014, is amended to read as follows:

1. *Permits required.* Every distributor, wholesaler, cigarette vendor, and retailer, now engaged or who desires to become engaged in the sale or use of cigarettes, upon which a tax is required to be paid, and every retailer now engaged or who desires to become engaged in selling, offering for sale, or distributing alternative nicotine products or vapor products shall obtain a state or retail cigarette permit as a distributor, wholesaler, cigarette vendor, or retailer, as the case may be.

Sec. 7. Section 453A.13, subsections 6, 9, and 10, Code 2014, are amended to read as follows:

6. *No sales without permit.* ~~No~~ A distributor, wholesaler, cigarette vendor, or retailer shall not sell any cigarettes, alternative nicotine products, or vapor products until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is unrevoked and unexpired.

9. *Permit — form and contents.* Each permit issued shall describe clearly the place of business for which it is issued, shall be nonassignable, consecutively numbered, designating the kind of permit, and shall authorize the sale of cigarettes, alternative nicotine products, or vapor products in this state subject to the limitations and restrictions herein contained. The retail permits shall be upon forms furnished by the department or on forms made available or approved by the department.

10. *Permit displayed.* The permit shall, at all times, be publicly displayed by the distributor, wholesaler, or retailer at the place of business so as to be easily seen by the public and

the persons authorized to inspect the place of business. The proprietor or keeper of any building or place where cigarettes ~~and other~~, alternative nicotine products, vapor products, or tobacco products are kept for sale, or with intent to sell, shall upon request of any agent of the department or any peace officer exhibit the permit. A refusal or failure to exhibit the permit is prima facie evidence that the cigarettes, alternative nicotine products, vapor products, tobacco, or other tobacco products are kept for sale or with intent to sell in violation of this division.

Sec. 8. Section 453A.36, subsections 6, 7, and 11, Code 2014, are amended to read as follows:

6. Any sales of ~~cigarettes or tobacco, tobacco products, alternative nicotine products, vapor products or cigarettes~~ made through a cigarette vending machine are subject to rules and penalties relative to retail sales of ~~cigarettes and tobacco, tobacco products, alternative nicotine products, vapor products and cigarettes~~ provided for in this chapter. Cigarettes shall not be sold through any cigarette vending machine unless the cigarettes have been properly stamped or metered as provided by this division, and in case of violation of this provision, the permit of the dealer authorizing retail sales of cigarettes shall be revoked. Payment of the permit fee as provided in section 453A.13 authorizes a cigarette vendor to sell ~~cigarettes or tobacco, tobacco products, alternative nicotine products, vapor products and cigarettes~~ through vending machines. However, ~~cigarettes or tobacco, tobacco products, alternative nicotine products, vapor products and cigarettes~~ shall not be sold through a vending machine unless the vending machine is located in a place where the retailer ensures that no person younger than eighteen years of age is present or permitted to enter at any time. ~~Cigarettes or Tobacco, tobacco products, alternative nicotine products, vapor products and cigarettes~~ shall not be sold through any cigarette vending machine if such products are placed together with any nontobacco product, other than matches, in the cigarette vending machine. This section does not require a retail permit holder to buy a cigarette vendor's permit if the retail permit holder is in fact the owner of the cigarette vending machines and the machines are operated in the location described in the retail permit.

7. *a.* It shall be unlawful for a person other than a ~~holder of a retailer~~ as defined in section 453A.1 or 453A.42 who holds a valid retail permit, as applicable, to sell tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes at retail.

b. ~~No A~~ state permit holder shall not sell or distribute cigarettes at wholesale to any person in the state of Iowa who does not hold a permit authorizing the retail sale of cigarettes or who does not hold a state permit as a manufacturer, distributing agent, wholesaler, or distributor.

11. Violation of this section by the holder of a retailer's, distributor's, wholesaler's or manufacturer's permit shall be grounds for the revocation of such permit.

Sec. 9. Section 453A.36A, subsection 1, Code 2014, is amended to read as follows:

1. ~~Beginning January 1, 1999, except~~ Except as provided in section 453A.36, subsection 6, a retailer shall not sell or offer for sale ~~cigarettes or tobacco, tobacco products, in a quantity of less than a carton, alternative nicotine products, vapor products, or cigarettes~~ through the use of a self-service display.

Sec. 10. Section 453A.39, Code 2014, is amended to read as follows:

453A.39 Tobacco product, tobacco products, alternative nicotine products, vapor products, and cigarette samples — restrictions — administration.

1. A manufacturer, distributor, wholesaler, retailer, or distributing agent, or agent thereof, shall not give away cigarettes or tobacco products at any time in connection with the manufacturer's, distributor's, wholesaler's, retailer's, or distributing agent's business or for promotion of the business or product, except as provided in subsection 2.

2. *a.* All cigarette samples shall be shipped only to a distributor that has a permit to stamp cigarettes or little cigars with Iowa tax. All cigarette samples must have a cigarette stamp. The manufacturer shipping samples under this section shall send an affidavit to the director stating the shipment information, including the date shipped, quantity, and to whom the samples were shipped. The distributor receiving the shipment shall send an affidavit to the director stating the shipment information, including the date shipped, quantity, and from

whom the samples were shipped. These affidavits shall be duly notarized and submitted to the director at the time of shipment and receipt of the samples. The distributor shall pay the tax on samples by separate remittance along with the affidavit.

b. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away any cigarettes or tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes to any person under eighteen years of age, or within five hundred feet of any playground, school, high school, or other facility when such facility is being used primarily by persons under age eighteen for recreational, educational, or other purposes.

c. Proof of age shall be required if a reasonable person could conclude on the basis of outward appearance that a prospective recipient of a sample may be under eighteen years of age.

Sec. 11. Section 453A.42, subsection 10, Code 2014, is amended to read as follows:

10. "Retailer" means any person engaged in the business of selling tobacco, tobacco products, alternative nicotine products, or vapor products to ultimate consumers.

Sec. 12. Section 453A.47A, subsections 1, 2, 4, 5, and 10, Code 2014, are amended to read as follows:

1. *Permits required.* A person shall not engage in the business of a retailer of tobacco, tobacco products, alternative nicotine products, or vapor products at any place of business without first having received a permit as a ~~tobacco products~~ retailer.

2. *No sales without permit.* A retailer shall not sell any tobacco, tobacco products, alternative nicotine products, or vapor products, until an application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is not suspended, unrevoked, or unexpired.

4. *Retailer — cigarettes and tobacco, tobacco products, alternative nicotine products, and vapor products.* A retailer, as defined in section 453A.1, who holds a permit under division I of this chapter is not required to also obtain a retail permit under this division. However, if a retailer, as defined in section 453A.1, only holds a permit under division I of this chapter and that permit is suspended, revoked, or expired, the retailer shall not sell any cigarettes or tobacco, tobacco products, alternative nicotine products, or vapor products, during the time which the permit is suspended, revoked, or expired.

5. *Separate permit.* A separate retail permit shall be required of a distributor or subjobber if the distributor or subjobber sells tobacco, tobacco products, alternative nicotine products, or vapor products at retail.

10. *Records and reports of retailers.*

a. The director shall prescribe the forms necessary for the efficient administration of this section and may require uniform books and records to be used and kept by each retailer or other person as deemed necessary.

b. Every retailer shall, when requested by the department, make additional reports as the department deems necessary and proper and shall at the request of the department furnish full and complete information pertaining to any transaction of the retailer involving the purchase or sale or use of tobacco, tobacco products, alternative nicotine products, or vapor products.

Sec. 13. Section 805.8C, subsection 3, Code 2014, is amended to read as follows:

3. ~~Smoking violations~~ *Violations related to smoking, tobacco, tobacco products, alternative nicotine products, vapor products, and cigarettes.*

a. For violations described in section 142D.9, subsection 1, the scheduled fine is fifty dollars, and is a civil penalty, and the criminal penalty surcharge under section 911.1 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed. If the civil penalty assessed for a violation described in section 142D.9, subsection 1, is not paid in a timely manner, a citation shall be issued for the violation in the manner provided in section 804.1. However, a person under age eighteen shall not be detained in a secure facility for failure to pay the civil penalty. The complainant shall not be charged a filing fee.

b. For violations of section 453A.2, subsection 1, by an employee of a retailer, the scheduled fine is as follows:

- (1) If the violation is a first offense, the scheduled fine is one hundred dollars.
- (2) If the violation is a second offense, the scheduled fine is two hundred fifty dollars.
- (3) If the violation is a third or subsequent offense, the scheduled fine is five hundred dollars.

c. For violations of section 453A.2, subsection 2, the scheduled fine is as follows and is a civil penalty, and the criminal penalty surcharge under section 911.1 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed:

- (1) If the violation is a first offense, the scheduled fine is fifty dollars.
- (2) If the violation is a second offense, the scheduled fine is one hundred dollars.
- (3) If the violation is a third or subsequent offense, the scheduled fine is two hundred fifty dollars.

Sec. 14. APPLICATION TO EXISTING PRODUCTS. Nothing in this Act shall be construed to prohibit the department of revenue from collecting taxes imposed on cigarettes or tobacco products subject to taxation under chapter 453A prior to July 1, 2014.

Sec. 15. CODE EDITOR DIRECTIVE. The Code editor shall modify the title of chapter 453A to read "Cigarette and Tobacco Taxes and Regulation of Alternative Nicotine Products and Vapor Products".

Approved May 23, 2014