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SENATE FILE 272
BY VANDE HOEF

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the sale, purchase, and furnishing of
2 cigarettes and tobacco products to certain persons and
3 providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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5#272

1 Section 1. Section 98.1, Code 1991, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 24. "Tobacco products" means cigars;
4 little cigars as defined in section 98.42, subsection 16;
5 cheroots; stogies; periques; granulated, plug cut, crimp cut,
6 ready rubbed, and other smoking tobacco; snuff; snuff flour;
7 cavendish; plug and twist tobacco; fine-cut and other chewing
8 tobaccos; shorts; or refuse scraps, clippings, cuttings, and
9 sweepings of tobacco; and other kinds and forms of tobacco,
10 prepared in such manner as to be suitable for chewing or
11 smoking in a pipe or otherwise, or both for chewing and
12 smoking; but does not mean cigarettes.

13 Sec. 2. Section 98.2, Code 1991, is amended by striking
14 the section and inserting in lieu thereof the following:

15 98.2 PERSONS UNDER LEGAL AGE.

16 1. A person shall not sell, give, or otherwise supply any
17 tobacco products or cigarettes to any person under twenty-one
18 years of age. A person under twenty-one years of age shall
19 not purchase or attempt to purchase any tobacco products or
20 cigarettes. Proof of age is required before purchase.

21 2. The Iowa department of public health, a county health
22 department, a city health department, or a city may directly
23 enforce this section in district court and initiate
24 proceedings pursuant to section 98.22 before a permit-issuing
25 authority against a permit holder violating this section. The
26 Iowa department of public health, a county health department,
27 a city health department, or a city may inspect the premises
28 of a retail permit holder for purposes of enforcing this
29 section.

30 3. Payment and distribution of court costs, fees, and
31 fines in a prosecution initiated by a city or county shall be
32 made as provided in chapter 602 for violation of a city or
33 county ordinance.

34 4. Holders of retail permits shall post the following
35 notice or an equivalent notice at the point of sale of

1 tobacco, tobacco products, or cigarettes: "You must be
2 twenty-one years of age or older in order to purchase tobacco
3 products, cigarettes, or alcoholic beverages. State law
4 requires proof of age before purchase."

5 Sec. 3. Section 98.3, Code 1991, is amended to read as
6 follows:

7 98.3 VIOLATION.

8 Any A person who ~~shall violate any of the provisions of~~
9 violates section 98.2 ~~shall for the first offense be or 98.39~~
10 is guilty of a simple misdemeanor. ~~For a second or any~~
11 ~~subsequent violation such person shall be guilty of a serious~~
12 ~~misdemeanor.~~

13 Sec. 4. Section 98.22, subsection 2, Code 1991, is amended
14 by striking the subsection and inserting in lieu thereof the
15 following:

16 2. If a retailer or employee of a retailer has violated
17 section 98.2, 98.36, or 98.39, the department or local
18 authority, in addition to the other penalties fixed for such
19 violations of this section, shall assess a penalty upon the
20 same hearing and notice as prescribed in subsection 1 as
21 follows:

22 a. For a first violation, the violator shall be assessed a
23 civil penalty in the amount of three hundred dollars. Failure
24 to pay the civil penalty as ordered under this subsection
25 shall result in automatic suspension of the permit for a
26 period of fourteen days.

27 b. For a second violation within a period of two years,
28 the violator's permit shall be suspended for a period of
29 thirty days.

30 c. For a third violation within a period of five years,
31 the violator's permit shall be suspended for a period of sixty
32 days.

33 d. For a fourth violation within a period of five years,
34 the violator's permit shall be revoked.

35 Sec. 5. Section 98.39, Code 1991, is amended by striking

1 the section and inserting in lieu thereof the following:

2 98.39 FREE SAMPLES PROHIBITED.

3 A manufacturer, distributor, wholesaler, retailer, or dis-
4 tributing agent or agent thereof shall not give away
5 cigarettes or tobacco products at any time in connection with
6 the manufacturer's, distributor's, wholesaler's, retailer's,
7 or distributing agent's business or for promotion of the
8 business or product.

9 Sec. 6. Section 98A.6, unnumbered paragraph 3, Code 1991,
10 is amended by striking the paragraph.

11 Sec. 7. Section 232.8, subsection 1, unnumbered paragraph
12 2, Code 1991, is amended to read as follows:

13 Violations by a child of provisions of chapter 98, 106,
14 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G which
15 would be simple misdemeanors if committed by an adult, and
16 violations by a child of county or municipal curfew or traffic
17 ordinances, are excluded from the jurisdiction of the juvenile
18 court and shall be prosecuted as simple misdemeanors as
19 provided by law. A child convicted of a violation excluded
20 from the jurisdiction of the juvenile court under this
21 unnumbered paragraph shall be sentenced pursuant to section
22 805.8, where applicable, and pursuant to section 903.1,
23 subsection 3, for all other violations.

24 Sec. 8. Section 903.1, subsection 3, Code 1991, is amended
25 to read as follows:

26 3. A person under eighteen years of age convicted of a
27 simple misdemeanor under chapter 98, 106, 106A, 109, 109A,
28 110, 110A, 110B, 111, 321, or 321G, or a violation of a county
29 or municipal curfew or traffic ordinance, except for an
30 offense subject to section 805.8, may be required to pay a
31 fine, not to exceed one hundred dollars, as fixed by the
32 court, or may be required to perform community service as
33 ordered by the court.

34 The criminal penalty surcharge required by section 911.2
35 shall be added to a fine imposed on a misdemeanor, and is not

1 a part of or subject to the maximums set in this section.

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EXPLANATION

3 Section 1 adds a definition of "tobacco products" to the
4 general definition section of the chapter.

5 Section 2 revises current Code language prohibiting the
6 sale or gift of cigarettes to minors by providing that persons
7 under 21 are prohibited from purchasing or attempting to
8 purchase cigarettes or tobacco products. The existing
9 provision allowing purchase of tobacco products and cigarettes
10 by a person under 18 years of age with a note from a parent or
11 guardian is also eliminated. Proof of age is required before
12 purchase. The section also provides authority for direct
13 enforcement against a permit holder by cities, counties, and
14 the state, and also allows inspection of the premises of a
15 retail permit holder for enforcement purposes. A method for
16 payment and distribution of court costs, fees, and fines is
17 also provided. Retailers are required to post notice
18 regarding proper age of a purchaser and proof of age.

19 Section 3 deletes the higher penalty for second offense
20 violations of the acts described in section 3, by providing
21 that all violations of the section are simple misdemeanors.

22 Section 4 provides intermediate penalties for violations by
23 retail permit holders in lieu of the existing mandatory one-
24 year revocation for any offense. The section provides that a
25 retailer or an employee of a retailer who violates the
26 provisions prohibiting sale or gift to a minor, or the
27 distribution of free samples of cigarettes or tobacco
28 products, shall be subject to the following penalties: for a
29 first violation, the violation will be assessed a civil
30 penalty of \$300, and failure to pay this penalty will result
31 in suspension of the retailer's permit for 14 days; for a
32 second violation within two years, the permit will be
33 suspended for 30 days; for a third violation within five
34 years, the permit will be suspended for 60 days; and for a
35 fourth violation within five years, the permit will be

1 revoked.

2 Section 5 prohibits providing free samples of cigarettes
3 and tobacco products.

4 Section 6 deletes a provision providing for supersession of
5 state law over local law or regulation regarding smoking in
6 prohibited areas, allowing more local option.

7 Sections 7 and 8 coordinate the bill's provisions with the
8 juvenile justice chapter of the Code. This will allow
9 enforcement against juveniles in the same manner as adults for
10 commission of a simple misdemeanor, except that a \$100 fine or
11 community service may be imposed on a juvenile.

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