

453A.22 Revocation suspension civil penalty.

1. If a person holding a permit issued by the department under this division, including a retailer permit for railway car, has willfully violated section 453A.2, the department shall revoke the permit upon notice and hearing. If the person violates any other provision of this division, or a rule adopted under this division, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing before the department may be held at a site in the state as the department may direct. The notice shall be given by mailing a copy to the permit holder's place of business as it appears on the application for a permit. If, upon hearing, the department finds that the violation has occurred, the department may revoke the permit.

2. If a retailer or employee of a retailer has violated section 453A.2 or section 453A.36, subsection 6, the department or local authority, or the Iowa department of public health following transfer of the matter to the Iowa department of public health pursuant to section 453A.2, subsection 6, in addition to the other penalties fixed for such violations in this section, shall assess a penalty upon the same hearing and notice as prescribed in subsection 1 as follows:

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

b. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars or the retailer's permit shall be suspended for a period of thirty days. The retailer may select its preference in the penalty to be applied under this paragraph.

c. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars and the retailer's permit shall be suspended for a period of thirty days.

d. For a fourth violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars and the retailer's permit shall be suspended for a period of sixty days.

e. For a fifth violation within a period of four years, the retailer's permit shall be revoked.

3. If an employee of a retailer violates section 453A.2, subsection 1, the retailer shall not be assessed a penalty under subsection 2, and the violation shall be deemed not to be a violation of section 453A.2, subsection 1, for the purpose of determining the number of violations for which a penalty may be assessed pursuant to subsection 2, if the employee holds a valid certificate of completion of the tobacco compliance employee training program pursuant to section 453A.5 at the time of the violation. A retailer may assert only once in a four-year period the bar under this subsection against assessment of a penalty pursuant to subsection 2, for a violation of section 453A.2, that takes place at the same place of business location.

4. Reserved.

5. If a permit is revoked 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 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.

6. Notwithstanding subsection 5, if a retail permit is suspended or revoked under this section, the suspension or revocation shall only apply to the place of business at which the violation occurred and shall not apply to any other place of business to which the retail permit applies but at which the violation did not occur.

7. The department or local authority shall report the suspension or revocation of a retail permit under this section to the Iowa department of public health within thirty days of the suspension or revocation of the retail permit.

8. For the purposes of this section, "*retailer*" means retailer as defined in sections 453A.1 and 453A.42 and "*retail permit*" includes permits issued to retailers under division I or division II of this chapter.

[C24, 27, 31, 35, § 1559; C39, § **1556.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 98.22]

86 Acts, ch 1007, § 6; 86 Acts, ch 1241, § 2; 89 Acts, ch 251, §1; 91 Acts, ch 240, §5

C93, § 453A.22

2000 Acts, ch 1105, §6, 7; 2000 Acts, ch 1232, §71, 95; 2003 Acts, ch 26, §37; 2005 Acts, ch 93, §3; 2006 Acts, ch 1030, §41

2003 amendments to subsection 2 apply to violations of §453A.2, subsection 1, by retailers or retailers' employees which are pending on April 11, 2003, and for which a penalty has not been assessed under §453A.22, subsection 2, Code 2003; 2003 Acts, ch 26, §5, 7