

453A.36 Unlawful acts.

1. Except as otherwise provided in this division, it is unlawful for any person to have in the person's 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 division, without having affixed to each individual package of cigarettes, the proper stamp evidencing the payment of the tax and the absence of the stamp on the individual package of cigarettes is notice to all persons that the tax has not been paid and is prima facie evidence of the nonpayment of the tax.

2. No person, other than a common carrier and a distributor's truck bearing the distributor's name and permit number in plain view on the outside of such truck, shall transport within this state cigarettes upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes; and no person shall fail or refuse, upon demand of agent of the department, or any peace officer to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.

3. No person shall use, sell, offer for sale, or possess for the purpose of use or sale, within this state, any previously used stamp or stamps, or attach any such previously used stamps to an individual package of cigarettes, nor shall any person purchase stamps from any person other than the department or sell stamps purchased from the department.

4. No person shall knowingly use, consume, or smoke, within this state, cigarettes upon which a tax is required to be paid, without said tax having been paid.

5. No person, unless the person be the holder of a permit, or the holder's representative, shall solicit the sale of cigarettes, provided that this section shall not prevent solicitation by a nonpermit holder for the sale of cigarettes to any state permit holder.

6. Any sales of cigarettes or tobacco products made through a cigarette vending machine are subject to rules and penalties relative to retail sales of cigarettes and tobacco products 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 products through vending machines. However, cigarettes or tobacco products 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 products 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. It shall be unlawful for a person other than a holder of a retail permit to sell cigarettes at retail. No state permit holder shall 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.

8. It shall be unlawful for a holder of a retail permit to sell or distribute any cigarettes or tobacco products, including but not limited to a single or loose cigarette, that are not contained within a sealed carton, pack, or package as provided by the manufacturer, which carton, pack, or package bears the health warning that is required by federal law.

9. It is unlawful for a person to ship or import into the state, or to offer for sale, sell, distribute, transport, or possess within this state, cigarettes or tobacco products previously exported from or manufactured for use outside the United States.

10. a. It is unlawful for a person to ship or import into this state or to offer for sale, sell, distribute, transport, or possess counterfeit cigarettes, knowing such cigarettes are counterfeit cigarettes or having reasonable cause to believe that such cigarettes are counterfeit cigarettes.

b. For purposes of this subsection and section 453A.32, "*counterfeit cigarettes*" means cigarettes, packages of cigarettes, cartons of cigarettes or other containers of cigarettes with

a label, trademark, service mark, trade name, device, design, or word adopted or used by a cigarette manufacturer to identify its product that is false or used without authority of the cigarette manufacturer.

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

[C24, §1573; C27, 31, 35, §1573, 1575-a2; C39, §1556.31; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.36]

91 Acts, ch 240, §6

C93, §453A.36

97 Acts, ch 136, §1; 2000 Acts, ch 1104, §1, 2; 2004 Acts, ch 1073, §43; 2007 Acts, ch 186, §44, 45

Referred to in §453A.22, 453A.36A