

H-8007

1 Amend House File 2109 as follows:

2 1. By striking everything after the enacting clause
3 and inserting:

4 <Section 1. NEW SECTION. 142B.1 Definitions.

5 As used in this chapter, unless the context
6 otherwise requires:

7 1. "*Electronic smoking device*" means any product
8 containing or delivering nicotine or other substance
9 intended for human consumption that can be used by a
10 person to simulate smoking including through inhalation
11 of vapor or aerosol from the product. "*Electronic*
12 *smoking device*" does not include any product that
13 has been approved by the United States food and drug
14 administration for sale as a tobacco cessation product
15 and is being marketed and sold solely for that approved
16 purpose.

17 2. "*Retail permit*" means a permit issued pursuant
18 to section 453A.13 or 453A.47A to retailers of
19 cigarettes or tobacco products.

20 3. "*Retailer*" means any person in this state who
21 sells, distributes, or offers for sale for consumption
22 or possesses for the purpose of sale for consumption,
23 electronic smoking devices irrespective of quantity or
24 amount or the number of sales.

25 Sec. 2. NEW SECTION. 142B.2 Retail permits
26 required.

27 1. It shall be unlawful for a person other than
28 a holder of a retail permit to act as a retailer and
29 sell, distribute, or offer for sale electronic smoking
30 devices at retail under this chapter.

31 2. A retailer shall not sell, distribute, or
32 offer for sale any electronic smoking device until
33 an application has been filed and the fee prescribed
34 paid for a retail permit and until such retail permit
35 is obtained and only while such retail permit is not
36 suspended, unrevoked, or unexpired.

37 3. The provisions of chapter 453A applicable to
38 retail permit holders including but not limited to
39 section 453A.13, 453A.22, 453A.47A, and 453A.50 shall
40 also apply to retailers under this chapter, with the
41 exception of the application to electronic smoking
42 devices of requirements relating to the imposition of
43 a tax on and the affixing of stamps to cigarettes or
44 tobacco products.

45 Sec. 3. NEW SECTION. 142B.3 Access to electronic
46 smoking devices — compliance checks — manner of sale
47 — samples — penalties.

48 1. A person shall not sell, give, or otherwise
49 supply any electronic smoking device to any person
50 under eighteen years of age.

1 2. A person under eighteen years of age shall not
2 use, possess, purchase, or attempt to purchase any
3 electronic smoking device.

4 3. A retailer shall not sell or offer for sale
5 electronic smoking devices through the use of a
6 self-service display.

7 4. Any sales of electronic smoking devices made
8 through a cigarette vending machine are subject
9 to rules relative to retail sales of cigarettes
10 and tobacco products provided for in chapter 453A,
11 including section 453A.36, subsection 6.

12 5. A retailer shall not give away electronic
13 smoking devices at any time in connection with the
14 retailer's business or for promotion of the business
15 or device including to any person under eighteen years
16 of age, or within five hundred feet of any playground,
17 school, high school, or other facility when such
18 facility is being used primarily by persons under
19 age eighteen for recreational, educational, or other
20 purposes.

21 6. Possession of an electronic smoking device by an
22 individual under a person eighteen years of age does
23 not constitute a violation under this section if the
24 individual under eighteen years of age possesses the
25 electronic smoking device as part of the individual's
26 employment and the individual is employed by a person
27 who holds a valid retail permit.

28 7. a. The alcoholic beverages division of the
29 department of commerce, a county, or a city may
30 directly enforce subsections 1 and 2 in district court
31 and initiate proceedings pursuant to section 453A.22
32 before a permit-issuing authority which issued the
33 retail permit against a retail permit holder violating
34 this section.

35 b. Payment and distribution of court costs, fees,
36 and fines in a prosecution initiated by a city or
37 county relating to subsection 1 or 2 shall be made as
38 provided in chapter 602 for violation of a city or
39 county ordinance.

40 c. If a county or a city has not assessed a penalty
41 as provided in section 453A.22, subsection 2, for a
42 violation of subsection 1, within sixty days of the
43 adjudication of the violation, the matter shall be
44 transferred to and be the exclusive responsibility of
45 the alcoholic beverages division of the department
46 of commerce. Following transfer of the matter, if
47 the violation is contested, the alcoholic beverages
48 division of the department of commerce shall request
49 an administrative hearing before an administrative
50 law judge, assigned by the division of administrative

1 hearings of the department of inspections and appeals
2 in accordance with the provisions of section 10A.801,
3 to adjudicate the matter pursuant to chapter 17A.

4 *d.* The provisions of section 453A.4 relating
5 to seizure of a false or altered driver's license
6 or nonoperator's identification card shall apply
7 to retailers and employees of retailers under this
8 chapter.

9 *e.* The alcoholic beverages division of the
10 department of commerce shall enhance and utilize the
11 tobacco compliance employee training program developed
12 pursuant to section 453A.5 to assess compliance with
13 subsections 1 and 2 by employees and prospective
14 employees of retailers. Civil penalties assessed under
15 section 453A.22 for violations of this subsections 1
16 and 2 shall be deposited in the tobacco compliance
17 employee training fund created in section 453A.2.

18 **Sec. 4. NEW SECTION. 142B.4 Penalties.**

19 1. *a.* (1) A person, other than a retailer, who
20 violates section 142B.3, subsection 1, is subject to
21 the same penalties applicable to a violation of section
22 453A.2, subsection 1.

23 (2) An employee of a retailer who violates section
24 142B.3, subsection 1, is subject to the same penalties
25 applicable to a violation of section 453A.2, subsection
26 1.

27 *b.* A person who violates section 142B.2, subsection
28 2, is subject to the same penalties applicable to
29 violations of section 453A.2, subsection 2.

30 *c.* (1) A person shall not be guilty of a violation
31 of section 142B.3, subsection 1 or 2, if conduct that
32 would otherwise constitute a violation is performed to
33 assess compliance with electronic smoking device laws
34 if any of the following applies:

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

37 (b) The compliance effort is conducted with the
38 advance knowledge of law enforcement officers and
39 reasonable measures are adopted by those conducting
40 the effort to ensure that use of electronic smoking
41 devices by individuals under eighteen years of age does
42 not result from participation by any individual under
43 eighteen years of age in the compliance effort.

44 *d.* For the purposes of paragraph "*c*", "*law*
45 *enforcement officer*" means a peace officer as defined
46 in section 801.4 and includes persons designated under
47 section 142B.3, subsection 7, to enforce this section.

48 2. *a.* A retailer who violates section 142B.3,
49 subsection 3, is subject to the same penalties
50 applicable to a violation of section 453A.36A.

1 *b.* A retailer who willfully violates section
2 142B.3, subsection 1 or 2, or who violates another
3 provision of this chapter, is subject to the applicable
4 provisions of section 453A.22 for violations of section
5 453A.2 or other provisions of chapter 453A.

6 *c.* A retailer or employee of a retailer who
7 violates section 142B.3, subsection 1 or 3, is subject
8 to the provisions of section 453A.22 applicable to
9 a violation of section 453A.2 or section 453A.36,
10 subsection 6.

11 *d.* A retailer or an employee who violates section
12 142B.3, subsection 1, is subject to the provisions of
13 section 453A.22, subsection 3.

14 *e.* Section 453A.22, subsections 5, 6, and 7 shall
15 also apply to the suspensions or revocations of retail
16 permits resulting under this subsection.

17 3. Retailers shall be subject to other penalties
18 specified under chapter 453A including those specified
19 for certain violations pursuant to section 453A.31,
20 453A.37, and 453A.47A applicable to retail permit
21 holders.>

22 2. Title page, lines 1 and 2, by striking <vapor
23 products and alternative nicotine products> and
24 inserting <electronic smoking devices>

T. OLSON of Linn

ABDUL-SAMAD of Polk

ANDERSON of Polk

BERRY of Black Hawk

GAINES of Polk

GASKILL of Wapello

HALL of Woodbury

HANSON of Jefferson

HEDDENS of Story

JACOBY of Johnson

KEARNS of Lee

KELLEY of Jasper

LENSING of Johnson

MASCHER of Johnson

H. MILLER of Webster

OLDSON of Polk

PRICHARD of Floyd

STAED of Linn

STECKMAN of Cerro Gordo