

Senate File 2402

S-5181

1 Amend Senate File 2402 as follows:

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

4 <Section 1. Section 453A.19, Code 2024, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 5. For the purpose of enabling the
7 department to determine compliance with subchapter III, the
8 department shall have the right to inspect any premises of the
9 holder of an Iowa permit located within the state of Iowa where
10 vapor products are stored, transported, sold, or offered for
11 sale or exchanged, to examine all stocks of vapor products of
12 the permit holder, and to examine all of the records required
13 to be kept or any other records that may be kept incident to
14 the conduct of the vapor products business of the permit holder
15 or any other person dealing in vapor products. It shall be
16 unlawful for any such permit holder to fail to produce upon
17 demand of the department any records required to be kept, or to
18 hinder or prevent in any manner the inspection of the records
19 or the examination of the premises or stock as specified in
20 this subsection.

21 Sec. 2. Section 453A.35, subsection 1, paragraph b, Code
22 2024, is amended to read as follows:

23 *b.* The revenues generated from the tax on cigarettes
24 pursuant to [section 453A.6, subsection 1](#), and from the tax on
25 tobacco products as specified in section 453A.43, subsections
26 1, 2, 3, and 4, and from the fees and penalties specified in
27 subchapter III shall be credited to the health care trust fund
28 created in [section 453A.35A](#).

29 Sec. 3. Section 453A.35A, Code 2024, is amended to read as
30 follows:

31 **453A.35A Health care trust fund.**

32 1. A health care trust fund is created in the office of
33 the treasurer of state. The fund consists of the revenues
34 generated from the tax on cigarettes pursuant to section
35 453A.6, subsection 1, ~~and~~ from the tax on tobacco products

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1 as specified in [section 453A.43, subsections 1, 2, 3, and 4,](#)
2 and from the fees and penalties specified in subchapter III,
3 that are credited to the health care trust fund, annually,
4 pursuant to [section 453A.35](#). Moneys in the fund shall be
5 separate from the general fund of the state and shall not be
6 considered part of the general fund of the state. However, the
7 fund shall be considered a special account for the purposes
8 of [section 8.53](#) relating to generally accepted accounting
9 principles. Moneys in the fund shall be used only as specified
10 in [this section](#) and shall be appropriated only for the uses
11 specified. Moneys in the fund are not subject to [section 8.33](#)
12 and shall not be transferred, used, obligated, appropriated,
13 or otherwise encumbered, except as provided in [this section](#).
14 Notwithstanding [section 12C.7, subsection 2](#), interest or
15 earnings on moneys deposited in the fund shall be credited to
16 the fund.

17 2. Moneys in the fund shall be used only for purposes
18 related to health care, substance use disorder treatment and
19 prevention, and tobacco use prevention, cessation, and control,
20 including but not limited to the administration and enforcement
21 of subchapter III.

22 Sec. 4. NEW SECTION. 453A.52 Vapor products directory —
23 **established — requirements.**

24 1. By August 1, annually, following the date the director
25 first makes the vapor products directory available as specified
26 in section 453A.52A, every vapor products manufacturer where
27 vapor products are sold in the state, whether directly or
28 through a distributor, wholesaler, retailer, or similar
29 intermediary or intermediaries, shall certify under penalty of
30 perjury on a form and in the manner prescribed by the director,
31 that the vapor products manufacturer agrees to comply with this
32 subchapter and to one of the following:

33 a. That the vapor products manufacturer has received a
34 marketing authorization or similar order for the vapor product
35 from the United States food and drug administration pursuant

1 to 21 U.S.C. §387j.

2 *b.* That the vapor product was marketed in the United
3 States as of August 8, 2016, the vapor products manufacturer
4 submitted a premarket tobacco product application for the vapor
5 product to the United States food and drug administration
6 pursuant to 21 U.S.C. §387j on or before September 9, 2020,
7 and the application either remains under review by the United
8 States food and drug administration or a final decision on the
9 application has not otherwise taken effect.

10 2. A vapor products manufacturer shall submit a
11 certification form that separately lists each of the vapor
12 products manufacturer's vapor products sold in this state.

13 3. Each initial and annual certification form required to
14 be submitted under this section shall be accompanied by both
15 of the following:

16 *a.* A copy of the marketing authorization or other order
17 for each vapor product issued by the United States food and
18 drug administration pursuant to 21 U.S.C. §387j, or evidence
19 that the premarket tobacco product application for each vapor
20 product was submitted to the United States food and drug
21 administration and a final authorization or order has not yet
22 taken effect.

23 *b.* A payment of one hundred dollars for each vapor product
24 listed in the certification.

25 4. A vapor products manufacturer required to submit a
26 certification form under this section shall notify the director
27 within thirty business days of any material change to the
28 certification form, including the issuance or denial of a
29 marketing authorization or other order by the United States
30 food and drug administration pursuant to 21 U.S.C. §387j, or
31 any other order or action by the United States food and drug
32 administration that affects the authorization of the vapor
33 product to be introduced or delivered into interstate commerce
34 for commercial distribution in the United States.

35 5. *a.* The director shall maintain and make publicly

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1 available a vapor products directory that lists all
2 vapor products manufacturers and vapor products for which
3 certification forms have been submitted.

4 *b.* The director shall make the directory available on the
5 department's internet site.

6 *c.* The director shall update the directory as necessary in
7 order to correct mistakes, ensure accuracy, and add or remove
8 vapor products on at least a monthly basis.

9 *d.* The director shall notify each retailer, distributor, and
10 wholesaler of any change to the directory on at least a monthly
11 basis via electronic communication.

12 6. *a.* The director shall provide a vapor products
13 manufacturer with notice and an opportunity to cure
14 deficiencies before removing the vapor products manufacturer or
15 a vapor product from the directory.

16 *b.* The director shall not remove a vapor products
17 manufacturer or the vapor products manufacturer's vapor product
18 from the directory until at least fifteen business days after
19 the vapor products manufacturer has been given notice of an
20 intended action. Notice shall be sufficient and be deemed
21 immediately received by a vapor products manufacturer if the
22 notice is sent either electronically or by facsimile to an
23 electronic mail address or facsimile number, as applicable,
24 provided by the vapor products manufacturer in the vapor
25 products manufacturer's most recent certification filed under
26 this section.

27 *c.* The vapor products manufacturer shall have fifteen
28 business days from the date of service of the notice of
29 intended action to establish that the vapor products
30 manufacturer or the vapor product should be included in the
31 directory.

32 *d.* A determination by the director to not include or to
33 remove a vapor products manufacturer or a vapor product from
34 the directory shall be subject to review by the filing of a
35 civil action for prospective declaratory or injunctive relief.

1 7. If a vapor product is removed from the directory,
2 the director shall notify each retailer, distributor,
3 and wholesaler of the removal of the vapor product and
4 the effective date of such removal from the directory via
5 electronic communication.

6 8. If a vapor product is removed from the directory, each
7 retailer, distributor, and wholesaler shall have twenty-one
8 business days from the day such vapor product is removed from
9 the directory to remove the vapor product from its inventory
10 and return the vapor product to the vapor products manufacturer
11 for disposal. After twenty-one business days following removal
12 from the directory, the vapor products of a vapor products
13 manufacturer identified in the notice of removal are contraband
14 and are subject to seizure, forfeiture, and destruction, and
15 shall not be purchased or sold in the state. The cost of such
16 seizure, forfeiture, and destruction shall be borne by the
17 person from whom the vapor products are confiscated.

18 **Sec. 5. NEW SECTION. 453A.52A Vapor products —**
19 **requirements.**

20 Beginning October 1, 2024, or on the date the director
21 first makes the vapor products directory available for public
22 inspection on the department's internet site, whichever is
23 later, all of the following shall apply to vapor products in
24 this state:

25 1. A person shall not sell or offer for sale a vapor product
26 in this state that is not included in the vapor products
27 directory, and a vapor products manufacturer shall not sell,
28 either directly or through a distributor, wholesaler, retailer,
29 or similar intermediary or intermediaries, a vapor product
30 in this state that is not included in the vapor products
31 directory.

32 2. A retailer shall purchase vapor products for resale to
33 consumers only from a distributor or subjobber with a valid
34 license issued pursuant to this chapter.

35 **Sec. 6. NEW SECTION. 453A.52B Penalties.**

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1 1. A retailer, distributor, or wholesaler who sells or
2 offers for sale a vapor product in this state that is not
3 included in the vapor products directory established in
4 this subchapter shall be subject to all of the following, as
5 applicable:

6 a. A civil penalty of three hundred dollars per day for each
7 vapor product offered for sale in violation of this subsection
8 until the offending vapor product is removed from the market
9 or until the offending vapor product is properly listed on the
10 directory.

11 b. For a second violation within a period of two years, a
12 retailer shall be assessed a civil penalty of one thousand five
13 hundred dollars or the retailer's permit shall be suspended for
14 a period of thirty days.

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

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

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

25 2. A vapor products manufacturer whose vapor products are
26 not listed in the vapor products directory and are sold in this
27 state, whether directly or through a distributor, wholesaler,
28 retailer, or similar intermediary or intermediaries, is subject
29 to a civil penalty of one thousand dollars per day for each
30 vapor product offered for sale in violation of this subsection
31 until the offending vapor product is removed from the market
32 or until the offending vapor product is properly listed on the
33 directory.

34 3. Any vapor products manufacturer that knowingly makes a
35 false representation in any of the information required by this

1 subchapter is guilty of a serious misdemeanor for each false
2 representation.

3 4. Knowingly shipping or receiving vapor products in
4 violation of this subchapter is an unfair practice and a
5 violation of section 714.16.

6 5. In any action brought by the state to enforce this
7 subchapter, the state shall be entitled to recover the costs
8 of investigation and prosecution, expert witness fees, court
9 costs, and reasonable attorney fees.

10 Sec. 7. NEW SECTION. **453A.52C Compliance checks.**

11 1. Each distributor or retailer that distributes or sells
12 vapor products in this state shall be subject to unannounced
13 compliance checks conducted by the department or peace officers
14 as defined in section 801.4 for purposes of enforcing this
15 subchapter. Peace officers who conduct compliance checks
16 pursuant to this section shall forward the results of any
17 compliance check to the department in a manner prescribed by
18 the department within thirty business days after the compliance
19 check is conducted.

20 2. Any unannounced follow-up compliance checks of a
21 noncompliant retailer or distributor shall be conducted within
22 thirty business days after any violation of this subchapter.

23 3. The director shall publish the results of all compliance
24 checks performed under this section at least annually and shall
25 make the results available to the public upon request.

26 Sec. 8. NEW SECTION. **453A.52D Agent for service of process.**

27 1. A nonresident vapor products manufacturer that has not
28 registered to do business in the state as a foreign corporation
29 or business entity shall, as a condition precedent to being
30 included or retained in the vapor products directory, appoint
31 and continually engage without interruption the services of
32 an agent in this state to act as agent for service of process
33 on whom all process, and any action or proceeding against the
34 vapor products manufacturer concerning or arising out of the
35 enforcement of this subchapter, may be served in any manner

1 authorized by law. Such service shall constitute legal and
2 valid service of process on the vapor products manufacturer.
3 The vapor products manufacturer shall provide the name,
4 address, telephone number, and proof of the appointment and
5 availability of such agent to the director.

6 2. The vapor products manufacturer shall provide notice
7 to the director thirty calendar days prior to termination of
8 the authority of an agent and shall further provide proof to
9 the satisfaction of the director of the appointment of a new
10 agent no less than five calendar days prior to the termination
11 of an existing agent appointment. In the event an agent
12 terminates an agency appointment, the manufacturer shall notify
13 the director of the termination within five calendar days and
14 shall include proof to the satisfaction of the director of the
15 appointment of a new agent.

16 3. A vapor products manufacturer whose vapor products
17 are sold in this state, who has not appointed and engaged
18 the services of an agent as required by this section, shall
19 be deemed to have appointed the secretary of state as its
20 agent for service of process. However, the appointment of the
21 secretary of state as agent shall not satisfy the condition
22 precedent for the vapor products manufacturer to be included or
23 retained in the vapor products directory.

24 **Sec. 9. NEW SECTION. 453A.52E Proceeds paid to health care**
25 **trust fund.**

26 The revenues generated from the payment of fees and
27 penalties provided for under this subchapter shall be credited
28 to the health care trust fund created in section 453A.35A and
29 used for the administration and enforcement of this subchapter.

30 **Sec. 10. NEW SECTION. 453A.52F Annual reports.**

31 By January 15, annually, following the date the director
32 first makes the vapor products directory available as specified
33 in section 453A.52A, the director shall submit a report to the
34 general assembly regarding the status of the vapor products
35 directory, vapor products manufacturers, the vapor products

1 included in the directory, revenue and expenditures related to
2 administration of this subchapter, and enforcement activities
3 undertaken pursuant to this subchapter.

4 Sec. 11. NEW SECTION. **453A.52G Adoption of rules.**

5 The director shall adopt rules pursuant to chapter 17A to
6 administer this subchapter.

7 Sec. 12. **CODE EDITOR DIRECTIVES.**

8 1. The Code editor is directed to create a new subchapter IV
9 in chapter 453A as follows: Subchapter IV shall be entitled
10 "Uniform Application of Chapter".

11 2. The Code editor shall transfer section 453A.56 to the new
12 subchapter IV.

13 3. The Code editor is directed to create a new subchapter
14 III in chapter 453A as follows: Subchapter III shall be
15 entitled "Vapor Products Directory and Regulation" and include
16 sections 453A.52A through 453A.52G.

17 4. The Code editor may modify subchapter titles if necessary
18 and is directed to correct internal references in the Code as
19 necessary due to enactment of this section.>

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