



[SF 363](#) – Paraphernalia Regulation (LSB1117SV)
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Fiscal Note Version – New

Description

[Senate File 363](#) relates to the regulation of certain tobacco-related products, including devices involved with the usage of these products and establishes licensing fees and sales and excise tax collection procedures. The Bill defines devices as any equipment or product, made in whole or in part of glass and metal, that is designed for use in inhaling through combustion tobacco, hemp, other plant materials, or a controlled substance. The definition of device does not include vapor products and other certain smokable tobacco-related products. Under SF 363, retailers who sell these devices, which would otherwise be characterized as drug paraphernalia but are currently exempt due to their intended use with tobacco products, will be taxed at a rate of 40.0% of the sales price in addition to sales and use tax.

In addition to a tobacco retailer permit, device retailers, including delivery sale device retailers, are required to apply for a device retailer permit. The device retailer permit fee totals \$1,500 and may be collected by the State, or if applicable, cities and counties that grant such permits.

Senate File 363 establishes the Specialty Courts Program Fund under the control of the Governor's Office of Drug Control Policy. The Fund will consist of moneys collected from device retailer permit fees (with the exception of fees collected by counties and cities) as well as the sales and use tax, and an excise tax of 40.0% paid on retail devices. The Bill states that the moneys in the Fund are only to be used as appropriations from the Fund for the purpose of supporting specialty courts to address underlying substance use disorder-related and mental health-related issues that contribute to the contact of individuals with the justice system. Pursuant to Iowa Code section [8.33](#), moneys are not subject to reversion and any interest or earnings on the deposited money will be credited to the Fund.

The sale of devices is prohibited to any individual under the age of 21. The Bill sets forth various requirements of device retailers related to recordkeeping, product marketing, labeling, sale and delivery, and the confirmation of identity and age of the purchaser and establishes civil penalties for the willful violation of those requirements. Additionally, a person holding a device retailer permit or device delivery sale permit who violates the provisions of SF 363 by marketing or selling a device to be used or attempted to be used in combination with a controlled substance to knowingly or intentionally and primarily inject, ingest, inhale, or otherwise introduce a controlled substance into the human body is guilty of a serious misdemeanor and subsequent civil penalties.

Background

Current law under Iowa Code chapter [453A](#) provides for cigarette and tobacco taxation and regulation, including penalties and license suspension and revocation provisions and penalties that are applicable to tobacco retailers, device retailer and device delivery sale permit holders, as well those who do not hold permits.

A serious misdemeanor is punishable by confinement for no more than one year and a fine of at least \$430 but no more than \$2,560.

Assumptions

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner length of stay (LOS); revocation rates; plea bargaining; and other criminal justice system policies and practices.
- A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.
- Data regarding estimated device sales and existing device retailers is based on FY 2019 data, as these numbers accurately reflect the state of the market rather than the variances in sales resulting from the effects of the COVID-19 pandemic in FY 2020.
- At the close of FY 2019, there were approximately 100 licensed tobacco retailers in the State. Based on the inventory advertised on store websites, it is estimated that there are currently 35 retailers in the State that sell the devices regulated under SF 363. Most of these retailers sell additional items such as clothing and accessories.
- The Department of Revenue estimates that the total sales of devices subject to the 40.0% excise tax in FY 2019 was \$3.1 million.
- **Table 1** provides a breakdown of the 35 retailers by the percentage that device sales comprise of the retailers’ total sales.
 - Device sales at 4 of the retailers comprised 90.0% of their total sales.
 - Device sales at 7 of the retailers comprised 25.0% of their total sales.
 - Device sales at 24 of the retailers comprised 10.0% of their total sales.

Table 1 — Estimated Device Sales, FY 2019

Device Sales as Percent of Total Sales	Estimated Number of Retailers	Estimated Sales of Devices
90.0%	4	\$ 939,000
25.0%	7	965,000
10.0%	24	1,200,000
Total	35	\$ 3,104,000

- It is assumed that the 35 retailers currently selling devices already possess a tobacco retail permit and will therefore only need to apply for a device retail permit or delivery sale device retail permit.
- The Department of Public Health (IDPH) and the Alcoholic Beverages Division (ABD) of the Department of Commerce, who operate under a Memorandum of Understanding in completing retail compliance investigations, may see an increase in retail compliance checks as a result of the new permit proposed in this Bill.
- Permit fees for out-of-state device retailers cannot be determined at this time.

Correctional Impact

The correctional impact of SF 363 cannot be determined. The Bill establishes a new crime, and subsequent convictions cannot be estimated due to a lack of data.

Table 2 provides estimates for sentencing to State prison, parole, probation, or CBC residential facilities; length of stay (LOS) under those supervisions; and supervision marginal costs per day for all convictions of serious misdemeanors. The LOS data is not applicable to simple misdemeanors. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 22, 2021, for information related to the correctional system.

Table 2 — Sentencing Estimate and Length of Stay (LOS)

Conviction Offense Class	Percent to Prison	Avg Length of Stay in Prison (months)	FY 20 Marginal Cost Per Day Prison	Percent Ordered to Probation	Avg LOS on Probation	Avg Cost Per Day on Probation	Percent Sentenced to CBC Residential Facility	FY 20 Marginal Cost CBC Per Day	Percent Ordered to County Jail	Avg Length of Stay in County Jail	Marginal Cost Per Day	Avg LOS on Parole	FY 20 Average Cost Per Day Parole
Serious Misdemeanor	2.0%	5.0	\$20.33	56.0%	13.4	\$5.38	1.0%	\$14.78	69.0%	N/A	\$50.00	2.4	\$5.38

Minority Impact

The minority impact of SF 363 is unknown. Refer to the LSA Memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 27, 2021, for information related to minorities in the criminal justice system.

Fiscal Impact

The DOR estimates that SF 363 will result in a total of \$1.36 million in revenue being deposited in the Specialty Court Fund in FY 2022. **Table 3** provides revenue estimates to the Fund through FY 2026 and accounts for the change in Consumer Price Index in order to trend sales of devices.

Table 3 — Fiscal Impact of Senate File 363

(Dollars in Millions)

Fiscal Year	Excise Tax Revenue	Permit Fee Revenue	Total Specialty Court Fund Revenue
FY 2022	\$ 1.30	\$ 0.50	\$ 1.36
FY 2023	1.33	0.50	1.38
FY 2024	1.36	0.50	1.41
FY 2025	1.39	0.50	1.44
FY 2026	1.42	0.50	1.47

Senate File 363 establishes a new criminal offense, and the resulting cost to the justice system cannot be estimated. **Table 4** shows estimates for the average State cost per offense class type. The estimates include operating costs incurred by the Judicial Branch, the State Public Defender, and the DOC for one additional conviction. The cost would be incurred across multiple fiscal years for prison and parole supervision.

Table 4 — Average State Cost Per Offense Class Type

Offense Class	Total Minimum Cost	Total Maximum Cost
Serious Misdemeanor	\$ 410	\$ 7,500

Additionally, it cannot be determined if SF 363 will lead to an increase in applications of tobacco retail permits and subsequently, device retail and/or delivery sale device retail permits. An increased amount of applications may result in a minimal cost increase for both the IDPH and the ABD, but the extent of that cost increase cannot be determined at this time.

Sources

Department of Revenue
Iowa Alcoholic Beverages Division
Department of Public Health
LSA analysis
Criminal and Juvenile Justice Planning Division, Department of Human Rights
Department of Corrections

/s/ Holly M. Lyons

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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