



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

April 11, 2003

The Honorable Chester Culver
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

Senate File 401, an Act relating to tobacco retailers and providing penalties and providing applicability provisions and an effective date.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Vilsack".

Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House





SENATE FILE 401

AN ACT

RELATING TO TOBACCO RETAILERS AND PROVIDING PENALTIES AND
PROVIDING APPLICABILITY PROVISIONS AND AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 453A.2, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. If a county health department, a city health department, or a city has not assessed a penalty pursuant to section 453A.22, subsection 2, for a violation of subsection 1, within sixty days of the adjudication of the violation, the matter shall be transferred to and be the exclusive responsibility of the Iowa department of public health. Following transfer of the matter, if the violation is contested, the Iowa department of public health shall request an administrative hearing before an administrative law judge, assigned by the division of administrative hearings of the department of inspections and appeals in accordance with the provisions of section 10A.801, to adjudicate the matter pursuant to chapter 17A.

Sec. 2. NEW SECTION. 453A.2A TOBACCO COMPLIANCE EMPLOYEE TRAINING PROGRAM.

1. The alcoholic beverages division of the department of commerce shall develop a tobacco compliance employee training program not to exceed two hours in length for employees and prospective employees of tobacco retailers to inform the employees about state and federal laws and regulations regarding the sale of cigarettes and tobacco products to persons under eighteen years of age and compliance with and the importance of laws regarding the sale of cigarettes and tobacco products to persons under eighteen years of age.

2. The tobacco compliance employee training program shall be made available to employees and prospective employees of tobacco retailers at no cost to the employee, the prospective employee, or the retailer, and in a manner which is as convenient and accessible to the extent practicable throughout the state so as to encourage attendance. Contingent upon the availability of specified funds for provision of the program, the division shall schedule the program on at least a monthly basis and the program shall be available at a location in at least a majority of counties.

3. Upon completion of the tobacco compliance employee training program, an employee or prospective employee shall receive a certificate of completion, which shall be valid for a period of two years, unless the employee or prospective employee is convicted of a violation of section 453A.2, subsection 1, in which case the certificate shall be void.

4. The tobacco compliance employee training program shall also offer periodic continuing employee training and recertification for employees who have completed initial training and received certificates of completion.

Sec. 3. Section 453A.22, subsection 2, Code 2003, is amended to read as follows:

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 5A, 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 ~~sixty~~ 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 ~~revoked~~ 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.

Sec. 4. Section 453A.22, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 2A. 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.2A at the time of the violation. A retailer may assert only once in a four-year period the bar under either this subsection or subsection 2B 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.

NEW SUBSECTION. 2B. 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 retailer provides written documentation that the employee of the retailer has completed an in-house tobacco compliance employee training program or a tobacco compliance employee training program which is substantially similar to the I Pledge program which is approximately one hour in length as developed by the alcoholic beverages division of the department of commerce. 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.

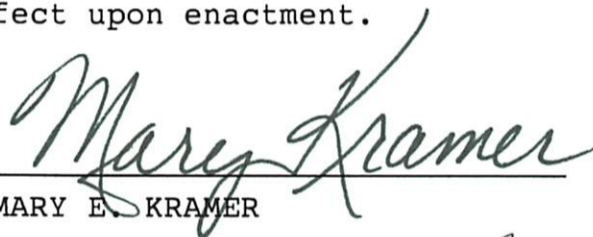
Sec. 5. APPLICABILITY PROVISIONS.

1. Notwithstanding any provision of law to the contrary, the section of this Act creating section 453A.2, subsection 5A, is applicable to violations pending on the effective date of this Act for which a penalty has not been assessed under section 453A.22, subsection 2.

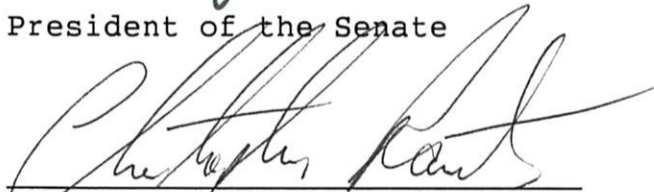
2. Notwithstanding section 453A.22, subsection 2, Code 2003, the section of this Act amending section 453A.22, subsection 2, is applicable to each violation of section 453A.2, subsection 1, by a retailer or an employee of a retailer which is pending on the effective date of this Act and for which a penalty has not been assessed under section 453A.22, subsection 2, Code 2003.

Sec. 6. Section 453A.22, subsection 2B, as enacted by this Act, is repealed one year from the effective date of this Act.

Sec. 7. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.


MARY E. KRAMER

President of the Senate



CHRISTOPHER C. RANTS

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 401, Eightieth General Assembly.



MICHAEL E. MARSHALL

Secretary of the Senate

Approved april 11, 2003



THOMAS J. VILSACK

Governor