

Ways and Means: Popc, Chair; Hanson of Delaware, Lora, Branstad, Bennett, Anderson of Jasper, Hall, Jochum, Connolly and Conion.

*To Floor 4/23*

SENATE FILE **2368**

By COMMITTEE ON WAYS AND MEANS  
*Report 4/19 (p. 1275)*  
(FORMERLY SSB 2225)

Passed Senate, Date *4/15/80 (p. 1473)* Passed House, Date *4/25/80 (p. 2491)*  
Vote: Ayes *48* Nays *0* Vote: Ayes *86* Nays *0*  
Approved *May 17, 1980*

### A BILL FOR

1 An Act relating to the administration of chapter ninety-  
2 eight (98) of the Code by the department of revenue  
3 and providing penalties.

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

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**2368**

1 Section 1. Section ninety-eight point one (98.1),  
2 subsection five (5), Code 1979, is amended to read as follows:

3 5. "Stamps" ~~shall-mean~~ means the stamp or stamps printed,  
4 manufactured or made by authority of the director, ~~as~~  
5 ~~hereinafter-provided,~~ and issued, sold or circulated by the  
6 department and by the use of which the tax levied ~~hereunder~~  
7 is paid. It ~~shall~~ also ~~mean~~ means any impression, indicium,  
8 or character fixed upon packages of cigarettes, ~~cigarette~~  
9 ~~papers, or tubes~~ by metered stamping machine or device which  
10 may be authorized by the director to the holder of state or  
11 manufacturers' permits and by the use of which the tax levied  
12 ~~hereunder~~ is paid.

13 Sec. 2. Section ninety-eight point eight (98.8), subsec-  
14 tion four (4), Code 1979, is amended to read as follows:

15 4. The department may in the enforcement of this ~~chapter~~  
16 division recall any stamps which have been sold by the  
17 department and which have not been used, and the department  
18 shall, upon receipt of ~~such~~ recalled stamps, issue a refund  
19 for tax stamps surrendered for the face value of the stamps  
20 less the amount of the discount. The purchaser of ~~any~~ stamps  
21 shall ~~be-required-to~~ surrender any unused stamps for refund  
22 upon demand of the department.

23 Sec. 3. Section ninety-eight point nine (98.9), Code 1979,  
24 is amended to read as follows:

25 98.9 CHANGE OF DESIGN. The design of the stamps used  
26 may be changed as often as the director ~~may-deem~~ deems  
27 necessary for the best enforcement of the provisions of this  
28 ~~chapter~~ division.

29 Sec. 4. Section ninety-eight point eleven (98.11), Code  
30 1979, is amended to read as follows:

31 98.11 CANCELLATION OF STAMPS. ~~No-stamps~~ Stamps affixed  
32 to a package of cigarettes shall not be canceled by any letter,  
33 numeral, or other mark of identification or otherwise mutilated  
34 in any manner that will prevent or hinder the department in  
35 making an examination as to the genuineness of ~~said~~ the stamp.

1 ~~provided, however, that.~~ However, the director may require  
2 ~~such~~ cancellation of the tax stamps affixed to packages of  
3 cigarettes ~~or cigarette papers~~ which is necessary and essential  
4 to carry out properly the provisions of this ~~chapter~~ division.

5 Sec. 5. Section ninety-eight point twelve (98.12), Code  
6 1979, is amended to read as follows:

7 98.12 USE OF STAMPING MACHINES. The department may  
8 purchase and supply suitable machines or devices to the holders  
9 of a state or manufacturer's permit, or authorize the leasing  
10 by the permit holder of such machines or the metering device  
11 or both, and provide under proper regulation and direction  
12 for the impression of a distinctive imprint, indicium or  
13 character upon individual packages of cigarettes, ~~cigarette~~  
14 ~~papers and tubes~~ as evidence of the payment of the tax imposed  
15 by this ~~chapter~~ division, in lieu of the purchase and  
16 affixation of stamps ~~as provided herein~~.

17 ~~In the event~~ If the director decides to purchase ~~such~~ the  
18 machines they shall be paid for upon order of the director  
19 out of any funds in the general fund of the state treasury  
20 not otherwise appropriated.

21 The machines or devices shall be so constructed as to  
22 record or meter the number of impressions or indicia made  
23 and shall at all times be open for inspection by the  
24 department.

25 All of the provisions of this ~~chapter~~ division relating  
26 to the collection of the tax by means of the sale and  
27 affixation of stamps shall apply in the use of the stamping  
28 machines or devices, including the right of refund ~~as provided~~  
29 ~~herein~~.

30 Sec. 6. Section ninety-eight point thirteen (98.13),  
31 subsections two (2), three (3), and ten (10), Code 1979, are  
32 amended to read as follows:

33 2. ISSUANCE. The department shall issue state permits  
34 to distributors, wholesalers, and cigarette vendors, ~~and~~  
35 ~~retailers~~ subject to the conditions ~~hereinafter~~ provided in

1 this division. Cities may issue retail permits to dealers  
2 within their respective limits. County boards of supervisors  
3 may issue retail permits to dealers in their respective  
4 counties, outside of the corporate limits of cities. Upon  
5 issuance of a retail permit by a city council or board of  
6 supervisors, ~~such~~ the council or board shall forthwith certify  
7 to the department the action ~~so~~ taken.

8 3. FEES--EXPIRATION. All permits provided for in this  
9 ~~chapter~~ division shall expire on June 30 of each year. ~~No~~  
10 A permit shall not be granted or issued until the applicant  
11 ~~shall-have~~ has paid for the period ending June 30 next, to  
12 the department or the city or county granting ~~such~~ the permit,  
13 the fees provided for in this ~~chapter~~ division. The annual  
14 state permit fee for a distributor, cigarette vendor, and  
15 wholesaler ~~shall-be~~ is one hundred dollars when the permit  
16 is granted during the months of July, August, or September,  
17 ~~provided-that~~. However, whenever a state permit holder ~~shall~~  
18 ~~operate~~ operates more than one place of business, a duplicate  
19 state permit shall be issued for each additional place of  
20 business on payment of five dollars for each ~~such~~ duplicate  
21 state permit, but refunds as provided in this ~~chapter~~-~~shall~~  
22 division do not apply to any duplicate permit issued.

23 The fee for retail permits ~~to-be-issued-under-the-provisions~~  
24 ~~of-this-chapter~~-~~shall-be~~ is as follows when the permit is  
25 granted during the months of July, August, or September:

- 26 a. In places outside any city, fifty dollars.  
27 b. In cities of less than fifteen thousand population,  
28 seventy-five dollars.  
29 c. In cities of fifteen thousand or more population, one  
30 hundred dollars.

31 If any permit is granted during the months of October,  
32 November, or December, the ~~said~~ fee shall be three-fourths  
33 of the above maximum schedule; if granted during the months  
34 of January, February, or March, one-half of ~~said~~ the maximum  
35 schedule, and if granted during the months of April, May,

1 or June, one-fourth of the said maximum schedule.

2 10. PERMIT DISPLAYED. The permit shall, at all times,  
3 be publicly displayed by the distributor, wholesaler, or  
4 retailer, at ~~his~~ the place of business, so as to be easily  
5 seen by the public and the persons authorized to inspect the  
6 same place of business. The proprietor or keeper of any  
7 building or place ~~wherein~~ where cigarettes shall ~~be~~ are kept  
8 for sale, or with intent to sell, shall upon request of any  
9 agent of the department or any peace officer exhibit ~~his~~ the  
10 permit ~~to-se-keep-and-sell~~. His A refusal or failure to se  
11 exhibit ~~such~~ the permit shall ~~be~~ is prima-facie evidence that  
12 ~~such~~ the cigarettes are kept for sale or with intent to sell  
13 in violation of ~~the-provisions-of~~ this ~~chapter~~ division.

14 Sec. 7. Section ninety-eight point fourteen (98.14), Code  
15 1979, is amended to read as follows:

16 98.14 BONDS.

17 1. No state or manufacturer's permit shall be issued until  
18 the applicant ~~therefer-shall-file~~ files a bond, with good  
19 and sufficient surety, to be approved by the director, which  
20 bond shall be in favor of the state and conditioned upon the  
21 payment of taxes, damages, fines, penalties, and costs adjudged  
22 against the permit holder for violation of any of the  
23 provisions of this ~~chapter~~ division.

24 ~~Said~~ The bonds shall be on forms prescribed by the director  
25 and in the following amounts:

26 a. State permit, not less than five hundred dollars.

27 b. Manufacturer's permit, not less than five thousand  
28 dollars.

29 2. ~~No-distributor-or~~ A person shall not engage in  
30 interstate business unless ~~he~~ the person files a bond, with  
31 good and sufficient surety in an amount of not less than one  
32 thousand dollars. The amount of the bond required of ~~such~~  
33 ~~distributor-or-other~~ the person shall be fixed by the director,  
34 subject to the minimum limitation ~~herein~~ provided in this  
35 section. ~~Said~~ The bond shall ~~be-approved~~ is subject to

1 approval by the director and shall be payable to the state  
2 in Des Moines, Polk county, and conditioned upon the payment  
3 of taxes, damages, fines, penalties, and costs adjudged against  
4 the ~~permit-holder~~ person for violation of any of the  
5 requirements of this ~~chapter~~ division affecting said  
6 ~~distributor-or-ether~~ the person, on a form prescribed by the  
7 director.

8 3. An additional bond or a new bond may be required by  
9 the director at any time an existing bond becomes insufficient  
10 or the surety thereon becomes unsatisfactory, which additional  
11 bond, or new bond, shall be supplied within ten days after  
12 demand. On failure to supply a new bond or additional bond  
13 within ten days after demand, the director may cancel any  
14 existing bond made and secured by and for ~~said-distributor~~  
15 ~~or-ether~~ the person. ~~in-the-event-said~~ If the bond is  
16 canceled, ~~said-distributor-or-ether~~ the person shall within  
17 forty-eight hours after receiving cigarettes or forty-eight  
18 hours after ~~said~~ the cancellation, excluding Sundays and legal  
19 holidays, cause any cigarettes in ~~his~~ the person's possession  
20 to have the requisite amount of stamps affixed to represent  
21 the tax ~~as-herein-provided~~.

22 Sec. 8. Section ninety-eight point fifteen (98.15), subsec-  
23 tion one (1), Code 1979, is amended to read as follows:

24 1. The director ~~is-authorized-to~~ may prescribe ~~such~~ the  
25 forms ~~as-may-be~~ necessary for the efficient administration  
26 of this ~~chapter~~ division and ~~is-authorized-to~~ may require  
27 ~~such~~ uniform books and records to be used and kept by each  
28 permit holder as deemed necessary. The director may also  
29 require each permit holder to keep and retain in his or her  
30 possession evidence on prescribed forms of all transactions  
31 involving the purchase and sale of cigarettes or the purchase  
32 and use of stamps ~~as-herein-provided~~. ~~All-of-such~~ The evidence  
33 shall be kept for a period of two years from the date of each  
34 transaction, for the inspection at all times by the department.

35 Sec. 9. Section ninety-eight point seventeen (98.17),

1 subsections two (2) and four (4), Code 1979, are amended to  
2 read as follows:

3 2. Upon receipt of the application ~~and~~, bond and ~~the~~  
4 permit fee ~~herein-provided-for~~, the department may issue to  
5 every distributing agent for the place of business designated  
6 a nonassignable consecutively numbered permit, authorizing  
7 the storing, and distribution of unstamped cigarettes within  
8 this state when ~~such~~ the distribution is made upon interstate  
9 orders only. A distributing agent may also transport unstamped  
10 cigarettes in ~~his~~ the agent's own conveyances to the state  
11 boundary for distribution outside the state, and any  
12 nonresident customer of ~~such~~ the distributor may purchase  
13 and convey unstamped cigarettes to the state line for  
14 distribution outside the state. ~~Such~~ The nonresident purchaser  
15 shall ~~be-required-to~~ have in his or her possession an invoice  
16 evidencing the purchase of ~~such~~ the unstamped cigarettes,  
17 which must be exhibited upon request to any peace officer  
18 or agent charged with the enforcement of this ~~chapter~~ division.

19 4. It ~~shall-be~~ is unlawful for any distributing agent  
20 to sell at retail cigarettes, ~~cigarette-papers-or-tubes~~ from  
21 automobiles, trucks, or any similar conveyances.

22 Sec. 10. Section ninety-eight point eighteen (98.18),  
23 Code 1979, is amended to read as follows:

24 98.18 FORMS FOR RECORDS AND REPORTS. The department shall  
25 furnish, without charge, to holders of the various permits,  
26 ~~such~~ forms in sufficient quantities ~~as-will~~ to enable ~~such~~  
27 permit holders to make the reports required to be made under  
28 this ~~chapter~~ division. The permit holders shall furnish at  
29 their own expense ~~such~~ the books, records, and invoices, as  
30 are required to be used and kept, but ~~such~~ the books, records,  
31 and invoices shall be in exact conformity to the forms  
32 prescribed for that purpose by the director, and shall be  
33 kept and used in the manner prescribed by the director,  
34 ~~provided-that~~. However, the director may, by express order  
35 in certain cases, authorize permit holders to keep their

1 records in a manner and upon forms other than those so  
2 prescribed. ~~Sueh~~ The authorization may be revoked at any  
3 time.

4 Sec. 11. Section ninety-eight point twenty-two (98.22),  
5 Code 1979, is amended to read as follows:

6 98.22 REVOCATION OF PERMIT.

7 1. If any person holding a permit issued by the department  
8 ~~under the-provisions-of~~ this ~~chapter~~ division, including a  
9 retailer permit for railway car, has willfully violated the  
10 provisions of section 98.2, the department shall revoke the  
11 permit issued ~~sueh~~ the person upon ~~sueh~~ notice and hearing  
12 ~~as-is-hereinafter-provided~~. If ~~sueh~~ the person violates any  
13 other provision of this ~~chapter~~ division, or any rule  
14 promulgated ~~hereunder~~ under this division, the department  
15 may revoke the permit issued to ~~said~~ the person, after giving  
16 ~~sueh~~ the permit holder an opportunity to be heard upon ~~five~~  
17 ten days' written notice stating the reason for ~~sueh~~ the  
18 contemplated revocation and the time and place at which ~~he~~  
19 the person may appear and be heard. The ~~said~~ hearing shall  
20 be held in the county of the permit holder's place of business,  
21 or in a county in or through which it transacts business.  
22 ~~Sueh~~ The notice shall be given by mailing a copy ~~thereof~~ by  
23 certified mail to the permit holder's place of business as  
24 the same appears on ~~his~~ the application for a permit. If,  
25 upon ~~sueh~~ hearing, the department ~~shall-find~~ finds that ~~sueh~~  
26 the violation has occurred, the department may revoke the  
27 permit ~~or-permits~~.

28 2. If any retailer has violated any of the provisions  
29 of section 98.2, the board of supervisors or the city council  
30 which issued the permit shall revoke ~~his-permit-or~~ the  
31 retailer's permits and if any ~~sueh~~ retailer violates any other  
32 provisions of this ~~chapter~~ division, the board of supervisors  
33 or the city council which issued the permit may revoke ~~his~~  
34 ~~permit-or~~ the retailer's permits upon the same hearing and  
35 notice as ~~is~~ prescribed in ~~the-preceding-paragraph~~ subsection

1 one (1) of this section.

2 3. If a permit is revoked ~~ne~~ a new permit shall not be  
3 issued to the permit holder for any place of business, or  
4 to any other person for the place of business at which ~~sueh~~  
5 the violation occurred, until one year has expired from the  
6 date of revocation, unless good cause to the contrary is shown  
7 to the issuing authority.

8 Sec. 12. Section ninety-eight point twenty-three (98.23),  
9 subsections one (1) and two (2), Code 1979, are amended to  
10 read as follows:

11 1. Subject to ~~the-provisions-of~~ this ~~chapter~~ division,  
12 a retailer's permit may be issued by the department to any  
13 dining car company, sleeping car company, railroad or railway  
14 company. ~~Sueh~~ The permit shall authorize the holder ~~thereof~~  
15 to keep for sale, and sell, cigarettes at retail on any dining  
16 car, sleeping car, or passenger car operated by ~~sueh~~ the  
17 applicant in, through, or across the state of Iowa, subject  
18 to all of the restrictions imposed upon retailers under this  
19 ~~chapter~~ division. The application for ~~sueh~~ the permit shall  
20 be in ~~sueh~~ the form and contain ~~sueh~~ the information ~~as-may~~  
21 ~~be~~ required by the director. Each ~~sueh~~ permit shall ~~be~~ is  
22 good throughout the state. Only one ~~sueh~~ permit shall ~~be~~  
23 is required for all cars operated in this state by ~~sueh~~ the  
24 applicant, but a duplicate of ~~sueh~~ the permit ~~issued-as-herein~~  
25 ~~provided~~ shall be posted in each car in which ~~sueh~~ cigarettes  
26 are sold and no further permit shall be required or tax levied  
27 for the privilege of selling cigarettes in ~~sueh~~ the cars.  
28 No cigarettes shall be sold in ~~sueh~~ the cars without having  
29 affixed thereto stamps evidencing the payment of the tax as  
30 provided in this ~~chapter~~ division.

31 2. As a condition precedent to the issuing of a retailer's  
32 permit for railway car, the applicant shall file with the  
33 department a bond in favor of the state for the benefit of  
34 all parties interested in the amount of five hundred dollars  
35 conditioned upon the payment of all taxes, fines and penalties

1 and costs in this ~~chapter~~-~~provided~~ division.

2 Sec. 13. Section ninety-eight point twenty-eight (98.28),  
3 Code 1979, is amended to read as follows:

4 98.28 ASSESSMENT OF TAX BY DEPARTMENT. If after any  
5 audit, examination of records, or other investigation the  
6 department finds that any person has sold cigarettes, without  
7 stamps affixed thereto as required by this ~~chapter~~ division  
8 or that any person has failed to pay any tax ~~herein~~ imposed  
9 upon ~~such~~ the person, the department shall fix and determine  
10 the amount of tax due, and shall assess ~~such~~ the tax against  
11 ~~such~~ the person, together with a penalty, which is ~~hereby~~  
12 imposed, equal to the amount of ~~said~~ the tax. If any person  
13 fails to furnish evidence satisfactory to the director showing  
14 purchases of sufficient stamps to stamp unstamped cigarettes  
15 purchased by ~~him~~ the person, the presumption shall be that  
16 ~~such~~ the cigarettes were sold without the proper stamps affixed  
17 thereto. Within two years after the return is filed or within  
18 two years after the return became due, whichever is later,  
19 the department shall examine it and determine the correct  
20 amount of tax.

21 Sec. 14. Section ninety-eight point thirty-one (98.31),  
22 Code 1979, is amended to read as follows:

23 98.31 CIVIL PENALTY FOR CERTAIN VIOLATIONS. If a permit  
24 holder ~~shall-(1)-fail~~ fails to keep any of the records required  
25 to be kept by the provisions of this ~~chapter~~ division, or  
26 ~~(2)-if-a-permit-holder-shall-sell-any~~ sells cigarettes upon  
27 which a tax is required to be paid by this ~~chapter~~ division  
28 without at the time having a valid permit, or ~~(3)~~ if any a  
29 distributor, wholesaler, or distributing agent ~~shall-fail~~  
30 fails to make any reports to the department required ~~herein~~  
31 ~~to-be-made~~, or ~~(4)-make~~ makes a false or incomplete report  
32 with the intent to evade tax to the department, or ~~(5)~~ if  
33 any a distributing agent ~~shall-store-any~~ stores unstamped  
34 cigarettes in the state or ~~distribute~~ distributes or ~~delivers~~  
35 any delivers unstamped cigarettes within this state without

1 at the time of said storage or delivery having a valid permit,  
2 or ~~(6)~~ if any a person affected by this ~~chapter-shall-fail~~  
3 division fails or ~~refuse~~ refuses to abide by the any of its  
4 provisions hereof or the rules promulgated ~~hereunder,-or~~  
5 ~~violate-the-same,-he-shall-be~~ under this division, the person  
6 is civilly liable to the state as a penalty in the sum of  
7 fifty dollars for each offense. Each violation ~~shall~~  
8 ~~constitute is~~ a separate offense, and the same violation ~~shall~~  
9 ~~constitute is~~ a separate offense for each day it continues.  
10 However, if a violation is due to reasonable cause, the  
11 director of revenue shall waive or reduce the penalty imposed  
12 under this section.

13 Sec. 15. Section ninety-eight point thirty-two (98.32),  
14 subsection one (1), Code 1979, is amended to read as follows:  
15 1. All cigarettes on which taxes are imposed by this  
16 ~~chapter~~ division, which ~~shall-be~~ are found in the possession  
17 or custody, or within the control of any person, for the  
18 purpose of being sold or removed by ~~him~~ the person in violation  
19 of this ~~chapter~~ division, and all cigarettes which are removed  
20 or are deposited or concealed in any place with intent to  
21 avoid payment of taxes ~~levied-thereon~~, and any automobile,  
22 truck, boat, conveyance, or other vehicle whatsoever, used  
23 in the removal or transportation of ~~such~~ cigarettes for such  
24 purpose, and all equipment ~~of~~ or other tangible personal  
25 property incident to and used for such purpose, found in the  
26 place, building, or vehicle where ~~such~~ cigarettes are found,  
27 may be seized by the department, with or without process and  
28 ~~the-same~~ shall be from the time of ~~such~~ the seizure forfeited  
29 to the state of Iowa, ~~and-a.~~ A proceeding in the nature of  
30 a proceeding in rem shall be filed in a court of competent  
31 jurisdiction in the county of seizure to maintain ~~such~~ the  
32 seizure and declare and perfect said the forfeiture as  
33 ~~hereinafter-provided~~. All ~~such~~ cigarettes, vehicles, and  
34 property ~~so~~ seized as ~~afesaid~~, remaining in the possession  
35 or custody of the department, sheriff or other officer for

1 forfeiture or other disposition as provided by law, shall  
2 ~~be deemed to be in the custody of law and irrepleviable~~ are  
3 not subject to replevin.

4 Sec. 16. Section ninety-eight point thirty-three (98.33),  
5 Code 1979, is amended to read as follows:

6 98.33 SEIZURE NOT TO AFFECT CRIMINAL PROSECUTION. The  
7 seizure, forfeiture, and sale of cigarettes, tobacco products,  
8 and other property under the terms and conditions hereinabove  
9 set out, shall not constitute any defense to the person owning  
10 or having control or possession of ~~such~~ the property from  
11 criminal prosecution for any act or omission made or offense  
12 committed under this chapter or from liability to pay penalties  
13 provided by this chapter.

14 Sec. 17. Section ninety-eight point thirty-six (98.36),  
15 subsections one (1) and six (6), Code 1979, are amended to  
16 read as follows:

17 1. Except as otherwise provided in this ~~chapter~~ division,  
18 it ~~shall be~~ is unlawful for any person to have in his or her  
19 possession for sale, distribution, or use, or for any other  
20 purpose, in excess of forty cigarettes, or to sell, distribute,  
21 use, or present as a gift or prize cigarettes upon which a  
22 tax is required to be paid by this ~~chapter~~ division, without  
23 having affixed to each individual package of cigarettes ~~or~~  
24 cigarette-papers, the proper stamp evidencing the payment  
25 of ~~such~~ the tax and the absence of ~~said~~ the stamp on ~~said~~  
26 the individual package of cigarettes ~~shall be~~ is notice to  
27 all persons that the tax has not been paid and ~~shall be~~ is  
28 prima-facie evidence of the nonpayment of ~~said~~ the tax.

29 6. Any sales of cigarettes made through a cigarette vending  
30 machine ~~shall be~~ are subject to rules and penalties relative  
31 to retail sales of cigarettes provided for in this ~~chapter~~  
32 division. No cigarettes shall be sold through any cigarette  
33 vending machine unless ~~such~~ the cigarettes ~~shall~~ have been  
34 properly stamped or metered as provided by this ~~chapter~~  
35 division, and in case of violation of this provision, the

1 permit of the dealer authorizing retail sales of cigarettes  
 2 shall be canceled. Payment of the license fee as provided  
 3 in section 98.13 ~~shall authorize~~ authorizes a cigarette vendor  
 4 to sell cigarettes through ~~a vending-machine-or~~ vending  
 5 machines, provided that the ~~machine-or~~ machines are located  
 6 in ~~a place-or~~ places where the ~~machine-or~~ machines are under  
 7 the supervision of a ~~responsible~~ person of legal age who ~~will~~  
 8 be is responsible for prevention of purchase by minors from  
 9 ~~such-machine-or~~ the machines and the location where the machine  
 10 ~~or~~ machines are placed is covered by a local retail permit.  
 11 ~~Nothing-herein-shall~~ This section does not require a retail  
 12 licensee to buy a cigarette vendor's permit if the retail  
 13 licensee is in fact the owner of the cigarette vending machine  
 14 ~~or~~ machines and the ~~machine-or~~ machines are operated in the  
 15 location described in the retail permit.

16 Sec. 18. Section ninety-eight point thirty-seven (98.37),  
 17 Code 1979, is amended to read as follows:

18 98.37 CERTAIN OFFENSES AND PENALTIES PROVIDED. ~~Whoever~~  
 19 ~~shall-violate-any~~ A person who violates a provision of this  
 20 ~~chapter-shall-be~~ division is guilty of a simple misdemeanor  
 21 unless otherwise provided in this division.

22 EXPLANATION

23 The bill changes many references in chapter 98 from "the  
 24 chapter" to "the division" because many of the provisions  
 25 relating to cigarettes are not applicable to cigars and other  
 26 tobaccos. The bill also changes the five-day notice period  
 27 to ten days and permits the hearings to be held in Des Moines.  
 28 The bill also permits a reduction in penalties at the discre-  
 29 tion of the director of revenue. The bill takes effect July  
 30 first following enactment.

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SENATE FILE 2368

AN ACT

RELATING TO THE ADMINISTRATION OF CHAPTER NINETY-EIGHT (98)  
OF THE CODE BY THE DEPARTMENT OF REVENUE AND PROVIDING  
PENALTIES.

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

Section 1. Section ninety-eight point one (98.1),  
subsection five (5), Code 1979, is amended to read as follows:

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manufactured or made by authority of the director, ~~as~~  
~~hereinafter provided,~~ and issued, sold or circulated by the  
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is paid. It ~~shall also mean~~ means any impression, indicium,  
or character fixed upon packages of cigarettes, ~~cigarette~~  
~~papers, or tubes~~ by metered stamping machine or device which  
may be authorized by the director to the holder of state or  
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less the amount of the discount. The purchaser of any stamps  
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upon demand of the department.

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98.11 CANCELLATION OF STAMPS. ~~No stamps~~ Stamps affixed  
to a package of cigarettes shall not be canceled by any letter,  
numeral, or other mark of identification or otherwise mutilated  
in any manner that will prevent or hinder the department in  
making an examination as to the genuineness of ~~said the stamp,~~  
~~provided, however, that.~~ However, the director may require  
~~such~~ cancellation of the tax stamps affixed to packages of  
cigarettes ~~or cigarette papers~~ which is necessary ~~and essential~~  
to carry out properly the provisions of this ~~chapter~~ division.

Sec. 5. Section ninety-eight point twelve (98.12), Code  
1979, is amended to read as follows:

98.12 USE OF STAMPING MACHINES. The department may  
purchase and supply suitable machines or devices to the holders  
of a state or manufacturer's permit, or authorize the leasing  
by the permit holder of such machines or the metering device  
or both, and provide under proper regulation and direction  
for the impression of a distinctive imprint, indicium or  
character upon individual packages of cigarettes, ~~cigarette~~  
~~papers and tubes~~ as evidence of the payment of the tax imposed  
by this ~~chapter~~ division, in lieu of the purchase and  
affixation of stamps ~~as provided herein~~.

~~In-the-event~~ If the director decides to purchase ~~such the~~ machines they shall be paid for upon order of the director out of any funds in the general fund of the state treasury not otherwise appropriated.

The machines or devices shall be so constructed as to record or meter the number of impressions or indicia made and shall at all times be open for inspection by the department.

All of the provisions of this ~~chapter~~ division relating to the collection of the tax by means of the sale and affixation of stamps shall apply in the use of the stamping machines or devices, including the right of refund ~~as-provided herein~~.

Sec. 6. Section ninety-eight point thirteen (98.13), subsections two (2), three (3), and ten (10), Code 1979, are amended to read as follows:

2. ISSUANCE. The department shall issue state permits to distributors, wholesalers, and cigarette vendors, and retailers subject to the conditions ~~hereinafter~~ provided in this division. Cities may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities. Upon issuance of a retail permit by a city council or board of supervisors, ~~such the~~ council or board shall forthwith certify to the department ~~the action~~ taken.

3. FEES--EXPIRATION. All permits provided for in this ~~chapter~~ division shall expire on June 30 of each year. ~~No~~ A permit shall not be granted or issued until the applicant ~~shall-have~~ has paid for the period ending June 30 next, to the department or the city or county granting ~~such the~~ permit, the fees provided for in this ~~chapter~~ division. The annual state permit fee for a distributor, cigarette vendor, and wholesaler ~~shall-be~~ is one hundred dollars when the permit is granted during the months of July, August, or September;

~~provided-that.~~ However, whenever a state permit holder ~~shall~~ operates more than one place of business, a duplicate state permit shall be issued for each additional place of business on payment of five dollars for each ~~such~~ duplicate state permit, but refunds as provided in this ~~chapter-shall~~ division do not apply to any duplicate permit issued.

The fee for retail permits ~~to-be-issued-under-the-provisions of-this-chapter-shall-be~~ is as follows when the permit is granted during the months of July, August, or September:

- a. In places outside any city, fifty dollars.
- b. In cities of less than fifteen thousand population, seventy-five dollars.
- c. In cities of fifteen thousand or more population, one hundred dollars.

If any permit is granted during the months of October, November, or December, the ~~said~~ fee shall be three-fourths of the above maximum schedule; if granted during the months of January, February, or March, one-half of ~~said the~~ maximum schedule, and if granted during the months of April, May, or June, one-fourth of the ~~said~~ maximum schedule.

10. PERMIT DISPLAYED. The permit shall, at all times, be publicly displayed by the distributor, wholesaler, or retailer, at ~~his the~~ place of business, so as to be easily seen by the public and the persons authorized to inspect the ~~same place of business~~. The proprietor or keeper of any building or place ~~wherein~~ where cigarettes ~~shall-be~~ are kept for sale, or with intent to sell, shall upon request of any agent of the department or any peace officer exhibit ~~his the~~ permit ~~to-keep-and-sell~~. ~~His~~ A refusal or failure to ~~so~~ exhibit ~~such the~~ permit ~~shall-be~~ is prima-facie evidence that ~~such the~~ cigarettes are kept for sale or with intent to sell in violation of ~~the-provisions-of this chapter division~~.

Sec. 7. Section ninety-eight point fourteen (98.14), Code 1979, is amended to read as follows:

## 98.14 BONDS.

1. No state or manufacturer's permit shall be issued until the applicant ~~therefor shall file~~ files a bond, with good and sufficient surety, to be approved by the director, which bond shall be in favor of the state and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the permit holder for violation of any of the provisions of this ~~chapter~~ division.

Said The bonds shall be on forms prescribed by the director and in the following amounts:

- a. State permit, not less than five hundred dollars.
- b. Manufacturer's permit, not less than five thousand dollars.

2. ~~No distributor or~~ A person shall not engage in interstate business unless he the person files a bond, with good and sufficient surety in an amount of not less than one thousand dollars. The amount of the bond required of ~~each distributor or other the~~ person shall be fixed by the director, subject to the minimum limitation ~~herein~~ provided in this section. Said The bond ~~shall be approved~~ is subject to approval by the director and shall be payable to the state in Des Moines, Polk county, and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the permit-holder person for violation of any of the requirements of this ~~chapter~~ division affecting said ~~distributor or other the~~ person, on a form prescribed by the director.

3. An additional bond or a new bond may be required by the director at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond, or new bond, shall be supplied within ten days after demand. On failure to supply a new bond or additional bond within ten days after demand, the director may cancel any existing bond made and secured by and for ~~said distributor or other the~~ person. ~~in the event said~~ if the bond is

~~canceled, said distributor or other the~~ person shall within forty-eight hours after receiving cigarettes or forty-eight hours after ~~said the~~ cancellation, excluding Sundays and legal holidays, cause any cigarettes in ~~his the~~ person's possession to have the requisite amount of stamps affixed to represent the tax ~~as herein provided~~.

Sec. 8. Section ninety-eight point fifteen (98.15), subsection one (1), Code 1979, is amended to read as follows:

1. The director ~~is authorized to may~~ prescribe ~~such the~~ forms ~~as may be~~ necessary for the efficient administration of this ~~chapter~~ division and ~~is authorized to may~~ require ~~such~~ uniform books and records to be used and kept by each permit holder as deemed necessary. The director may also require each permit holder to keep and retain in his or her possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps ~~as herein provided~~. ~~All of such The~~ evidence shall be kept for a period of two years from the date of each transaction, for the inspection at all times by the department.

Sec. 9. Section ninety-eight point seventeen (98.17), subsections two (2) and four (4), Code 1979, are amended to read as follows:

2. Upon receipt of the application ~~and~~ bond and the permit fee ~~herein provided for~~, the department may issue to every distributing agent for the place of business designated a nonassignable consecutively numbered permit, authorizing the storing, and distribution of unstamped cigarettes within this state when ~~such the~~ distribution is made upon interstate orders only. A distributing agent may also transport unstamped cigarettes in ~~his the~~ agent's own conveyances to the state boundary for distribution outside the state, and any nonresident customer of ~~such the~~ distributor may purchase and convey unstamped cigarettes to the state line for distribution outside the state. ~~Such The~~ nonresident purchaser shall ~~be required to~~ have in his or her possession an invoice

evidencing the purchase of ~~such the~~ unstamped cigarettes, which must be exhibited upon request to any peace officer or agent charged with the enforcement of this ~~chapter division~~.

4. It ~~shall be is~~ unlawful for any distributing agent to sell at retail cigarettes, ~~cigarette-papers-or-tubes~~ from automobiles, trucks, or any similar conveyances.

Sec. 10. Section ninety-eight point eighteen (98.18), Code 1979, is amended to read as follows:

98.18 FORMS FOR RECORDS AND REPORTS. The department shall furnish, without charge, to holders of the various permits, ~~such forms in sufficient quantities as-will~~ to enable ~~such~~ permit holders to make the reports required to be made under this ~~chapter division~~. The permit holders shall furnish at their own expense ~~such the~~ books, records, and invoices, ~~as are~~ required to be used and kept, but ~~such the~~ books, records, and invoices shall be in exact conformity to the forms prescribed for that purpose by the director, and shall be kept and used in the manner prescribed by the director, ~~provided-that.~~ However, the director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed. ~~Such The~~ authorization may be revoked at any time.

Sec. 11. Section ninety-eight point twenty-two (98.22), Code 1979, is amended to read as follows:

98.22 REVOCATION OF PERMIT.

1. If any person holding a permit issued by the department under ~~the-provisions-of~~ this ~~chapter division~~, including a retailer permit for railway car, has willfully violated the provisions of section 98.2, the department shall revoke the permit issued ~~such the~~ person upon ~~such~~ notice and hearing ~~as-is-hereinafter-provided~~. If ~~such the~~ person violates any other provision of this ~~chapter division~~, or any rule promulgated ~~hereunder under this division~~, the department may revoke the permit issued to ~~said the~~ person, after giving

~~such the~~ permit holder an opportunity to be heard upon ~~five~~ ten days' written notice stating the reason for ~~such the~~ contemplated revocation and the time and place at which ~~he~~ the person may appear and be heard. The ~~said~~ hearing shall be held in the county of the permit holder's place of business, or in a county in or through which it transacts business. ~~Such The~~ notice shall be given by mailing a copy ~~thereof~~ by certified mail to the permit holder's place of business as ~~the same appears on his the~~ application for a permit. If, upon ~~such~~ hearing, the department ~~shall-find~~ finds that ~~such the~~ violation has occurred, the department may revoke the permit ~~or-permits~~.

2. If any retailer has violated any of the provisions of section 98.2, the board of supervisors or the city council which issued the permit shall revoke ~~his-permit-or the~~ retailer's permits and if any ~~such~~ retailer violates any other provisions of this ~~chapter division~~, the board of supervisors or the city council which issued the permit may revoke ~~his permit-or the retailer's~~ permits upon the same hearing and notice as ~~is~~ prescribed in ~~the-preceding-paragraph~~ subsection one (1) of this section.

3. If a permit is revoked ~~no a~~ new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which ~~such the~~ violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority.

Sec. 12. Section ninety-eight point twenty-three (98.23), subsections one (1) and two (2), Code 1979, are amended to read as follows:

1. Subject to ~~the-provisions-of~~ this ~~chapter division~~, a retailer's permit may be issued by the department to any dining car company, sleeping car company, railroad or railway company. ~~Such The~~ permit shall authorize the holder ~~thereof~~ to keep for sale, and sell, cigarettes at retail on any dining

car, sleeping car, or passenger car operated by ~~such the~~ applicant in, through, or across the state of Iowa, subject to all of the restrictions imposed upon retailers under this ~~chapter~~ division. The application for ~~such the~~ permit shall be in ~~such the~~ form and contain ~~such the~~ information ~~as may~~ be required by the director. Each ~~such~~ permit ~~shall be~~ is good throughout the state. Only one ~~such~~ permit ~~shall be~~ is required for all cars operated in this state by ~~such the~~ applicant, but a duplicate of ~~such the~~ permit ~~issued as herein~~ provided shall be posted in each car in which ~~such~~ cigarettes are sold and no further permit shall be required or tax levied for the privilege of selling cigarettes in ~~such the~~ cars. No cigarettes shall be sold in ~~such the~~ cars without having affixed thereto stamps evidencing the payment of the tax as provided in this ~~chapter~~ division.

2. As a condition precedent to the issuing of a retailer's permit for railway car, the applicant shall file with the department a bond in favor of the state for the benefit of all parties interested in the amount of five hundred dollars conditioned upon the payment of all taxes, fines and penalties and costs in this ~~chapter~~ provided division.

Sec. 13. Section ninety-eight point twenty-eight (98.28), Code 1979, is amended to read as follows:

98.28 ASSESSMENT OF TAX BY DEPARTMENT. If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes, without stamps affixed thereto as required by this ~~chapter~~ division or that any person has failed to pay any tax ~~herein~~ imposed upon ~~such the~~ person, the department shall fix and determine the amount of tax due, and shall assess ~~such the~~ tax against ~~such the~~ person, together with a penalty, which is ~~hereby~~ imposed, equal to the amount of ~~said the~~ tax. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by ~~him the~~ person, the presumption shall be that

~~such the~~ cigarettes were sold without the proper stamps affixed thereto. Within two years after the return is filed or within two years after the return became due, whichever is later, the department shall examine it and determine the correct amount of tax.

Sec. 14. Section ninety-eight point thirty-one (98.31), Code 1979, is amended to read as follows:

98.31 CIVIL PENALTY FOR CERTAIN VIOLATIONS. If a permit holder ~~shall~~ ~~(1)~~ fails to keep any of the records required to be kept by the provisions of this ~~chapter~~ division, or ~~(2)~~ ~~if a permit holder shall sell any~~ sells cigarettes upon which a tax is required to be paid by this ~~chapter~~ division without at the time having a valid permit, or ~~(3)~~ ~~if any a~~ distributor, wholesaler, or distributing agent ~~shall~~ ~~fail~~ fails to make any reports to the department required ~~herein to be made~~, or ~~(4)~~ ~~make~~ makes a false or incomplete report with the intent to evade tax to the department, or ~~(5)~~ ~~if any a~~ distributing agent ~~shall~~ ~~store any~~ stores unstamped cigarettes in the state or ~~distribute~~ distributes or ~~deliver~~ any delivers unstamped cigarettes within this state without at the time of said storage or delivery having a valid permit, or ~~(6)~~ ~~if any a~~ person affected by this ~~chapter~~ shall ~~fail~~ division fails or ~~refuse~~ refuses to abide by the any of its provisions hereof or the rules promulgated ~~hereunder, or violate the same, he shall be~~ under this division, the person is civilly liable to the state as a penalty in the sum of fifty dollars for each offense. Each violation ~~shall~~ constitute is a separate offense, and the same violation ~~shall~~ constitute is a separate offense for each day it continues. However, if a violation is due to reasonable cause, the director of revenue shall waive or reduce the penalty imposed under this section.

Sec. 15. Section ninety-eight point thirty-two (98.32), subsection one (1), Code 1979, is amended to read as follows:

1. All cigarettes on which taxes are imposed by this

~~chapter division~~, which ~~shall be~~ are found in the possession or custody, or within the control of any person, for the purpose of being sold or removed by ~~him~~ the person in violation of this ~~chapter division~~, and all cigarettes which are removed or are deposited or concealed in any place with intent to avoid payment of taxes ~~levied thereon~~, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal or transportation of ~~such~~ cigarettes for such purpose, and all equipment ~~of or~~ other tangible personal property incident to and used for such purpose, found in the place, building, or vehicle where ~~such~~ cigarettes are found, may be seized by the department, with or without process and ~~the same~~ shall be from the time of ~~such~~ the seizure forfeited to the state of Iowa ~~and a~~. A proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain ~~such~~ the seizure and declare and perfect ~~said~~ the forfeiture as ~~hereinafter provided~~. All ~~such~~ cigarettes, vehicles, and property ~~so~~ seized ~~as aforesaid~~, remaining in the possession or custody of the department, sheriff or other officer for forfeiture or other disposition as provided by law, ~~shall be deemed to be in the custody of law and irrepleviable~~ are not subject to replevin.

Sec. 16. Section ninety-eight point thirty-three (98.33), Code 1979, is amended to read as follows:

98.33 SEIZURE NOT TO AFFECT CRIMINAL PROSECUTION. The seizure, forfeiture, and sale of cigarettes, tobacco products, and other property under the terms and conditions hereinabove set out, shall not constitute any defense to the person owning or having control or possession of ~~such~~ the property from criminal prosecution for any act or omission made or offense committed under this chapter or from liability to pay penalties provided by this chapter.

Sec. 17. Section ninety-eight point thirty-six (98.36), subsections one (1) and six (6), Code 1979, are amended to read as follows:

1. Except as otherwise provided in this ~~chapter division~~, it ~~shall be~~ is unlawful for any person to have in his or her 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 ~~chapter division~~, without having affixed to each individual package of cigarettes ~~or cigarette papers~~, the proper stamp evidencing the payment of ~~such~~ the tax and the absence of ~~said~~ the stamp on ~~said~~ the individual package of cigarettes ~~shall be~~ is notice to all persons that the tax has not been paid and ~~shall be~~ is prima-facie evidence of the nonpayment of ~~said~~ the tax.

6. Any sales of cigarettes made through a cigarette vending machine ~~shall be~~ are subject to rules and penalties relative to retail sales of cigarettes provided for in this ~~chapter division~~. No cigarettes shall be sold through any cigarette vending machine unless ~~such~~ the cigarettes ~~shall~~ have been properly stamped or metered as provided by this ~~chapter division~~, and in case of violation of this provision, the permit of the dealer authorizing retail sales of cigarettes shall be canceled. Payment of the license fee as provided in section 98.13 ~~shall authorize~~ authorizes a cigarette vendor to sell cigarettes through ~~a vending machine or~~ vending machines, provided that the ~~machine or~~ machines are located in ~~a place or~~ places where the ~~machine or~~ machines are under the supervision of a responsible person of legal age who ~~will~~ is responsible for prevention of purchase by minors from ~~such machine or~~ the machines and the location where the ~~machine or~~ machines are placed is covered by a local retail permit. ~~Nothing herein shall~~ This section does not require a retail licensee to buy a cigarette vendor's permit if the retail licensee is in fact the owner of the cigarette vending ~~machine or~~ machines and the ~~machine or~~ machines are operated in the location described in the retail permit.

Sec. 18. Section ninety-eight point thirty-seven (98.37), Code 1979, is amended to read as follows:

98.37 CERTAIN OFFENSES AND PENALTIES PROVIDED. ~~Whoever shall violate any~~ A person who violates a provision of this chapter shall be division is guilty of a simple misdemeanor unless otherwise provided in this division.

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TERRY E. BRANSTAD  
President of the Senate

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WILLIAM H. HARBOR  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2368, Sixty-eighth General Assembly.

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FRANK J. STORK  
Secretary of the Senate

Approved 5/17, 1980

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ROBERT D. RAY  
Governor