

Reprinted

FEB 13 1991

HOUSE FILE 232
BY COMMITTEE ON HUMAN
RESOURCES

Place On Calendar

(SUCCESSOR TO HF 104)

Passed House, Date 3/27/91 (905) Passed Senate, Date 5/1/91 (P.1578)
Vote: Ayes 72 Nays 25 Vote: Ayes 45 Nays 2

Approved June 5, 1991

Waiver to procedure (907, 910)

A BILL FOR

3076L An Act relating to the sale and furnishing of cigarettes and
35422 tobacco products to certain persons and providing penalties.

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

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HF 232

1 Section 1. Section 98.1, subsection 21, Code 1991, is
2 amended to read as follows:

3 21. "Cigarette vending machine" means any self-service
4 device offered for public use which, upon insertion of a coin,
5 coins, paper currency, or by other means, dispenses cigarettes
6 or tobacco products without the necessity of replenishing the
7 device between each vending operation.

8 Sec. 2. Section 98.1, Code 1991, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 24. "Tobacco products" means cigars;
11 little cigars as defined in section 98.42, subsection 16;
12 cheroots; stogies; periques; granulated; plug cut, crimp cut,
13 ready rubbed, and other smoking tobacco; snuff, snuff flour;
14 cavendish; plug and twist tobacco; fine-cut and other chewing
15 tobaccos; shorts; or refuse scraps, clippings, cuttings and
16 sweepings of tobacco, and other kinds and forms of tobacco,
17 prepared in such manner as to be suitable for chewing or
18 smoking in a pipe or otherwise, or both for chewing and
19 smoking; but does not mean cigarettes.

20 Sec. 3. Section 98.2, Code 1991, is amended by striking
21 the section and inserting in lieu thereof the following:

22 98.2 PERSONS UNDER LEGAL AGE.

23 1. A person shall not sell, give, or otherwise supply any
24 tobacco, tobacco products, or cigarettes to any person under
25 eighteen years of age and a person under eighteen years of age
26 shall not purchase or attempt to purchase any tobacco, tobacco
27 products, or cigarettes.

28 2. The Iowa department of public health, a county health
29 department, a city health department, or a city may directly
30 enforce this section in district court and initiate
31 proceedings pursuant to section 98.22 before a permit-issuing
32 authority against a permit holder violating this section. The
33 Iowa department of public health, a county health department,
34 a city health department, or a city may inspect the premises
35 of a retail permit holder for purposes of enforcing this

1 section.

2 3. Payment and distribution of court costs, fees, and
3 fines in a prosecution initiated by a city or county shall be
4 made as provided in chapter 602 for violation of a city or
5 county ordinance.

6 Sec. 4. Section 98.3, Code 1991, is amended to read as
7 follows:

8 98.3 VIOLATION.

9 Any A person who ~~shall violate any of the provisions of~~
10 violates section 98.2 ~~shall for the first offense be or 98.39~~
11 is guilty of a simple misdemeanor. ~~For a second or any~~
12 ~~subsequent violation such person shall be guilty of a serious~~
13 ~~misdemeanor.~~

354230 14 Sec. 5. Section 98.13, subsections 1, 2, 3, and 6, Code
15 1991, are amended to read as follows:

16 1. PERMITS REQUIRED. Every distributor, wholesaler,
17 ~~cigarette vendor,~~ and retailer, now engaged or who desires to
18 become engaged in the sale or use of cigarettes, upon which a
19 tax is required to be paid, shall obtain a state or retail
20 cigarette permit as a distributor, wholesaler, ~~cigarette~~
21 ~~vendor,~~ or retailer, as the case may be.

22 2. ISSUANCE OR DENIAL.

23 a. The department shall issue state permits to
24 distributors, and ~~wholesalers, and cigarette vendors~~ subject
25 to the conditions provided in this division. Cities may issue
26 retail permits to dealers within their respective limits.
27 County boards of supervisors may issue retail permits to
28 dealers in their respective counties, outside of the corporate
29 limits of cities.

30 b. The department may deny the issuance of a permit to a
31 distributor, wholesaler, ~~vendor~~ or retailer who is
32 substantially delinquent in the payment of a tax due, or the
33 interest or penalty on the tax, administered by the department
34 at the time of application. If the applicant is a
35 partnership, a permit may be denied if a partner is

1 substantially delinquent on any delinquent tax, penalty or
2 interest. If the applicant is a corporation, a permit may be
3 denied if any officer having a substantial legal or equitable
4 interest in the ownership of the corporation owes any
5 delinquent tax, interest or penalty of the applicant
6 corporation.

7 3. FEES -- EXPIRATION. All permits provided for in this
8 division shall expire on June 30 of each year. A permit shall
9 not be granted or issued until the applicant has paid for the
10 period ending June 30 next, to the department or the city or
11 county granting the permit, the fees provided for in this
12 division. The annual state permit fee for a distributor,
13 cigarette-vendor, and a wholesaler is one hundred dollars when
14 the permit is granted during the months of July, August, or
15 September. However, whenever a state permit holder operates
16 more than one place of business, a duplicate state permit
17 shall be issued for each additional place of business on
18 payment of five dollars for each duplicate state permit, but
19 refunds as provided in this division do not apply to any
20 duplicate permit issued.

21 The fee for retail permits is as follows when the permit is
22 granted during the months of July, August, or September:

23 a. In places outside any city, fifty dollars.

24 b. In cities of less than fifteen thousand population,
25 seventy-five dollars.

26 c. In cities of fifteen thousand or more population, one
27 hundred dollars.

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

34 6. NO SALES WITHOUT PERMIT. No distributor, wholesaler,
35 cigarette-vendor, or retailer shall sell any cigarettes until

1 such application has been filed and the fee prescribed paid
2 for a permit and until such permit is obtained and only while
3 such permit is unrevoked and unexpired.

4 Sec. 6. Section 98.22, subsection 2, Code 1991, is amended
5 by striking the subsection and inserting in lieu thereof the
6 following:

7 2. If a retailer or employee of a retailer has violated
8 section 98.2, 98.36, subsection 6, or 98.39, the department or
9 local authority, in addition to the other penalties fixed for
10 such violations of this section, shall assess a penalty upon
11 the same hearing and notice as prescribed in subsection 1 as
12 follows:

13 a. For a first violation, the violator shall be assessed a
14 civil penalty in the amount of three hundred dollars. Failure
15 to pay the civil penalty as ordered under this subsection
16 shall result in automatic suspension of the permit for a
17 period of fourteen days.

18 b. For a second violation within a period of two years,
19 the violator's permit shall be suspended for a period of
20 thirty days.

21 c. For a third violation within a period of five years,
22 the violator's permit shall be suspended for a period of sixty
23 days.

24 d. For a fourth violation within a period of five years,
25 the violator's permit shall be revoked.

3072, 3071 26 Sec. 7. Section 98.36, subsection 6, Code 1991, is amended
27 by striking the subsection and inserting in lieu thereof the
28 following:

29 6. A person shall not sell cigarettes or tobacco products
30 through a cigarette vending machine.

31 Sec. 8. Section 98.39, Code 1991, is amended by striking
32 the section and inserting in lieu thereof the following:

3102, 3111 33 98.39 FREE SAMPLES PROHIBITED.

34 A manufacturer, distributor, wholesaler, retailer, or dis-
35 tributing agent or agent thereof shall not give away

1 cigarettes or tobacco products at any time in connection with
2 the manufacturer's, distributor's, wholesaler's, retailer's,
3 or distributing agent's business or for promotion of the
4 business or product.

30175 Sec. 9. Section 98A.6, unnumbered paragraph 3, Code 1991,
6 is amended by striking the paragraph.

7 Sec. 10. Section 232.8, subsection 1, unnumbered paragraph
8 2, Code 1991, is amended to read as follows:

9 Violations by a child of provisions of chapter 98, 106,
10 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G which
11 would be simple misdemeanors if committed by an adult, and
12 violations by a child of county or municipal curfew or traffic
13 ordinances, are excluded from the jurisdiction of the juvenile
14 court and shall be prosecuted as simple misdemeanors as
15 provided by law. A child convicted of a violation excluded
16 from the jurisdiction of the juvenile court under this
17 unnumbered paragraph shall be sentenced pursuant to section
18 805.8, where applicable, and pursuant to section 903.1
19 subsection 3, for all other violations.

310220 Sec. 11. Section 551A.4, Code 1991, is amended to read as
21 follows:

22 551A.4 COMBINATION SALES.

23 In all offers for sale or sales involving cigarettes and
24 any other item at a combined price, and in all offers for
25 sale, or sales, involving the giving of any gift or concession
26 of any kind whatsoever (whether it be coupons or otherwise),
27 the wholesaler's or retailer's combined selling price shall
28 not be below the cost to the wholesaler or the cost to the
29 retailer, respectively, of the total of all articles,
30 products, commodities, gifts and concessions included in such
31 transactions. If any such articles, products, commodities,
32 gifts or concessions, ~~shall~~ are not be cigarettes, the basic
33 cost thereof shall be determined in like manner as provided in
34 section 551A.2, subsection 8. As provided in section 98.39,
35 cigarettes and tobacco products shall not be given as gifts.

1 Sec. 12. Section 903.1, subsection 3, Code 1991, is
2 amended to read as follows:

3 3. A person under eighteen years of age convicted of a
4 simple misdemeanor under chapter 98, 106, 106A, 109, 109A,
5 110, 110A, 110B, 111, 321, or 321G, or a violation of a county
6 or municipal curfew or traffic ordinance, except for an
7 offense subject to section 805.8, may be required to pay a
8 fine, not to exceed one hundred dollars, as fixed by the
9 court, or may be required to perform community service as
10 ordered by the court.

11 The criminal penalty surcharge required by section 911.2
12 shall be added to a fine imposed on a misdemeanor, and is not
13 a part of or subject to the maximums set in this section.

23423076

14 EXPLANATION

15 Section 1 broadens the definition of the products sold
16 through cigarette vending machines. Presently only cigarettes
17 are included. This change ensures that the sale of other
18 tobacco products through vending machines are also covered by
19 the statute.

20 Section 2 adds a definition of "tobacco products" to the
21 general definition section of the chapter.

22 Section 3 revises current Code language prohibiting the
23 sale or gift of cigarettes to minors by providing that persons
24 under eighteen are prohibited from purchasing or attempting to
25 purchase cigarettes, tobacco, or tobacco products. The
26 existing provision allowing purchase of tobacco products and
27 cigarettes by a person under eighteen years of age with a note
28 from a parent or guardian is eliminated. The section also
29 provides authority for direct enforcement against a permit
30 holder by cities, counties, and the state, and also allows
31 inspection of the premises at a retail permit holder for
32 enforcement purposes. A method for payment and distribution
33 of court costs, fees, and fines is also provided.

34 Section 4 deletes the higher penalty for second offense
35 violations of the acts described in section 3, by providing

1 that all violations of the section are simple misdemeanors.

2 Section 6 provides intermediate penalties for violations by
3 retail permit holders in lieu of the existing mandatory one-
4 year revocation for any offense. The section provides that a
5 retailer or an employee of a retailer who violates the
6 provisions prohibiting sale or gift to a minor, sale of
7 cigarettes or tobacco products through a vending machine, or
8 the distribution of free samples of cigarettes or tobacco
9 products, shall be subject to the following penalties; for a
10 first violation, the violation will be assessed a civil
11 penalty of \$300, and failure to pay this penalty will result
12 in suspension of the retailer's permit for 14 days; for a
13 second violation with two years, the permit will be suspended
14 for 30 days; for a third violation within five years, the
15 permit will be suspended for 60 days; and for a fourth vio-
16 lation within five years, the permit will be revoked.

17 Sections 5 and 7 prohibit vending machine sales of
18 cigarettes and tobacco products.

19 Sections 8 and 11 prohibit providing free samples of
20 cigarettes and tobacco products.

21 Section 9 removes limitation on local home rule power
22 relating to civil penalties for smoking in designated
23 nonsmoking areas.

24 Sections 10 and 12 coordinate the bill's provisions with
25 the juvenile justice chapter of the Code. This will allow
26 enforcement against juveniles in the same manner as adults for
27 commission of a simple misdemeanor, except that a \$100 fine or
28 community service may be imposed on a juvenile.

29 The bill may include a state mandate as defined in section
30 25B.3.

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HOUSE FILE 232

H-3077

1 Amend House File 232 as follows:

2 1. Page 5, by striking lines 5 and 6 and
3 inserting the following:

4 "DIVISION III
5 Sec. ____ . NEW SECTION. 98.51 UNIFORM
6 APPLICATION.

7 Enforcement of this chapter shall be implemented in
8 an equitable manner throughout the state. For the
9 purpose of equitable and uniform implementation,
10 application, and enforcement of state and local laws
11 and regulations, the provisions of this chapter shall
12 supersede any local law or regulation which is
13 inconsistent with or conflicts with the provisions of
14 this chapter."

15 2. By renumbering as necessary.

By PAVICH of Pottawattamie
BISIGNANO of Polk
IVERSON of Wright
LUNDBY of Linn

SCHRADER of Marion
RENAUD of Polk
JAY of Appanoose

H-3077 FILED FEBRUARY 20, 1991

Adopted 3/27 (p. 905)

HOUSE FILE 232

H-3095

1 Amend House File 232 as follows:

2 1. Page 1, by striking line 26 and inserting the
3 following: "shall not smoke, use, purchase, or
4 attempt to purchase any tobacco, tobacco".

By OLLIE of Clinton

H-3095 FILED FEBRUARY 27, 1991

Adopted 3/27 (p. 899)

HOUSE FILE 232

H-3131

1 Amend House File 232 as follows:

2 1. By striking page 2, line 6, through page 4,
3 line 3.

4 2. Page 4, line 30, by inserting after the word
5 "machine." the following: "This subsection shall not
6 apply to a person holding a class "C" liquor license
7 or a class "B" beer permit for a commercial
8 establishment under chapter 123, provided that the
9 commercial establishment is not also licensed as a
10 food service establishment under chapter 137B."

By GRUBBS of Scott

H-3131 FILED MARCH 4, 1991

6/10 3/27

HOUSE FILE 232

H-3071

1 Amend House File 232 as follows:

- 2 1. Page 1, by striking lines 1 through 7.
- 3 2. By striking page 2, line 14, through page 4,
- 4 line 3.
- 5 3. Page 4, by striking lines 26 through 30.
- 6 4. By renumbering as necessary.

By SCHRADER of Marion

H-3071 FILED FEBRUARY 18, 1991

A- *Amended (911)* C- *Lost (902)*

B- *Adopted 2/27*

HOUSE FILE 232

H-3076

1 Amend House File 232 as follows:

- 2 1. Page 6, by inserting after line 13 the fol-
- 3 lowing:

4 "Sec. 13. COMPENSATION FOR TAKING OF PRIVATE PROP-

5 ERTY. The general assembly finds that the prohibition

6 of cigarette vending machines provided for in this Act

7 is a taking of private property. Cigarette vendors

8 as defined in section 98.1, subsection 22, who own

9 cigarette vending machines, are entitled to just

10 compensation pursuant to this section.

11 Within one year of the effective date of this Act,

12 a cigarette vendor may file with the director of

13 revenue and finance, on forms approved by the

14 director, a claim for compensation resulting from the

15 prohibition of the use of cigarette vending machines.

16 The cigarette vendor shall list on the approved forms

17 the number of machines owned, the date purchased, the

18 amount paid, the fair market value, and such

19 information as may be required by the director.

20 The director shall acquire at fair market value the

21 cigarette vending machines owned by cigarette vendors

22 doing business in this state after making a

23 determination of the ownership and value of the

24 cigarette vending machines. If a cigarette vendor

25 disagrees with the director's determination of fair

26 market value, the question of the value shall be

27 submitted to binding arbitration conducted under the

28 auspices of the American arbitration association.

29 The director shall pay the just compensation

30 determined pursuant to this section to each cigarette

31 vendor entitled to the compensation from revenues

32 collected pursuant to chapter 98. There is

33 appropriated such amounts as necessary from revenues

34 collected pursuant to chapter 98 to carry out the

35 provisions of this section."

- 36 2. Title page, line 2, by inserting after the
- 37 word "persons" the following: ", making an
- 38 appropriation,".

By BISIGNANO of Polk

HARBOR of Mills

PETERSON of Carroll

McNEAL of Hardin

H-3076 FILED FEBRUARY 20, 1991

2/25 3/27

HOUSE FILE 232

H-3111

1 Amend House File 232 as follows:

2 1. Page 4, line 33, by striking the word
3 "PROHIBITED" and inserting the following:
4 "RESTRICTED".

5 2. Page 4, line 34, by inserting before the word
6 "A" the following: "1."

7 3. Page 5, line 1, by striking the words "or
8 tobacco products".

9 4. Page 5, by inserting after line 4 the
10 following:

11 "2. a. A manufacturer, distributor, wholesaler,
12 retailer, or distributing agent or agent thereof shall
13 not give away tobacco products to any person under
14 eighteen years of age, or within five hundred feet of
15 any playground, school, high school, or other facility
16 when such facility is being used primarily by persons
17 under age eighteen for recreational, educational, or
18 other purposes.

19 5. Proof of age shall be required if a reasonable
20 person could conclude on the basis of outward
21 appearances that a prospective recipient of a sample
22 may be under eighteen years of age.

23 c. Persons engaged in sampling shall secure stocks
24 of samples in safe locations in order to avoid
25 inadvertent distribution of samples contrary to the
26 provisions of this section.

27 d. Sampling shall cease at a particular location
28 when circumstances arise such that make it apparent
29 that sampling cannot continue in a manner consistent
30 with the provisions of this section. Sampling may
31 resume at that location when such circumstances
32 abate."

33 5. Page 5, line 34, by striking the word "As" and
34 inserting the following: "Except as".

35 6. By renumbering as necessary.

By BROWN of Lucas

GRONINGA of Cerro Gordo

RENAUD of Polk

HANSEN of Woodbury

MERTZ of Kossuth

LUNDBY of Linn

SISIGNANO of Polk

SHERZAN of Polk

PONCY of Wapello

IVERSON of Wright

KNAPP of Dubuque

JOCHUM of Dubuque

KOENIGS of Mitchell

H-3111 FILED FEBRUARY 27, 1991

W/D 5/27

HOUSE FILE 232

H-3102

1 Amend House File 232 as follows:

2 1. Page 4, line 33, by striking the words "FREE
3 SAMPLES PROHIBITED" and inserting the following:
4 "TOBACCO PRODUCT AND CIGARETTE SAMPLES -- RESTRICTIONS -
5 - ADMINISTRATION".

6 2. Page 4, line 34, by inserting before the word
7 "A" the following: "1."

8 3. Page 5, line 4, by inserting after the word
9 "product" the following: ", except as provided in
10 subsection 2".

11 4. Page 5, by inserting after line 4, the
12 following:

13 "2. a. A manufacturer, distributor, wholesaler,
14 retailer, or distributing agent or agent thereof shall
15 not give away any cigarettes or tobacco products to
16 any person under eighteen years of age, or within five
17 hundred feet of any playground, school, high school,
18 or other facility when such facility is being used
19 primarily by persons under age eighteen for
20 recreational, educational, or other purposes.

21 b. Proof of age shall be required if a reasonable
22 person could conclude on the basis of outward
23 appearance that a prospective recipient of a sample
24 may be under eighteen years of age.

25 c. Persons engaged in sampling shall secure stocks
26 of samples in safe locations in order to avoid
27 inadvertent distribution of samples contrary to the
28 provisions of this section.

29 d. Sampling shall cease at a particular location
30 when circumstances arise that make it apparent that
31 sampling cannot continue in a manner consistent with
32 the provisions of this section; however, sampling may
33 resume at that location when such circumstances abate.

34 e. All tobacco products and cigarette samples
35 shall be shipped to a distributor that has a permit to
36 stamp tobacco products and cigarettes or little cigars
37 with Iowa tax. The manufacturer shipping samples
38 under this section shall send an affidavit to the
39 director stating the quantity and to whom the samples
40 were shipped. The distributor receiving the shipment
41 shall send an affidavit to the director stating the
42 quantity and from whom the samples were shipped.
43 These affidavits shall be duly notarized and submitted
44 to the director at time of shipment and receipt of the
45 samples. The distributor shall pay the tax on samples
46 by separate remittance along with the affidavit."

47 5. Page 5, by striking lines 20 through 35.

48 6. By renumbering as necessary.

By PAVICH of Pottawattamie

IVERSON of Wright

LUNDBY of Linn

JAY of Appanoose

HANSEN of Woodbury

RENAUD of Polk

BROWN of Lucas

CONNORS of Polk

GRONINGA of Cerro Gordo

BISIGNANO of Polk

H-3102 FILED FEBRUARY 27, 1991

Adopted 2/27 (7 904)

HOUSE FILE 232

H-3300

1 Amend House File 232 as follows:

2 1. Page 4, line 10, by striking the word "of" and
3 inserting the following: "in".

4 2. Page 4, by striking lines 27 through 30, and
5 inserting the following: "to read as follows:

6 6. Any sales of cigarettes or tobacco products
7 made through a cigarette vending machine are subject
8 to rules and penalties relative to retail sales of
9 cigarettes and tobacco products provided for in this
10 ~~division chapter. No cigarettes shall be sold through~~
11 ~~any cigarette vending machine unless the cigarettes~~
12 ~~have been properly stamped or metered as provided by~~
13 ~~this division, and in case of violation of this~~
14 ~~provision, the permit of the dealer authorizing retail~~
15 ~~sales of cigarettes shall be canceled.~~ Payment of the
16 license fee as provided in section 98.13 authorizes a
17 cigarette vendor to sell cigarettes or tobacco
18 products through vending machines, provided that the
19 following conditions are met: the machines are
20 located in places where the machines are under the
21 supervision of a person of legal age who is
22 responsible for prevention of purchase by minors from
23 the machines; the machines are equipped with a lock-
24 out device under the control of a person of legal age
25 who shall directly regulate the sale of items through
26 the machines, and which shall include a mechanism to
27 prevent the machines from functioning if the power
28 source for the lock-out device fails or if the lock-
29 out device is disabled, and a mechanism to ensure that
30 only one pack of cigarettes or one tobacco product is
31 dispensed at a time; and the location where the
32 machines are placed is covered by a local retail
33 permit. However, a lock-out device is not required
34 for machines operated in the following locations, if
35 the machines are not to be placed in a doorway or
36 other area readily accessible to minors: a commercial
37 establishment holding a class "C" liquor license or a
38 class "B" beer permit under chapter 123, if the
39 establishment is not also licensed as a food service
40 establishment under chapter 137B; a private facility
41 not open to the public; or a workplace not open to the
42 public. This section does not require a retail
43 licensee to buy a cigarette vendor's permit if the
44 retail licensee is in fact the owner of the cigarette
45 vending machines and the machines are operated in the
46 location described in the retail permit."

47 3. Page 6, by inserting after line 13, the
48 following:

49 "Sec. ____ . EFFECTIVE DATES AND TRANSITION
50 PROVISION. Section 5 of this Act takes effect July 1,

H-3300

Page 2

1 1994. Section 7 of this Act takes effect upon
2 enactment. However, section 7 of this Act shall not
3 be enforced against persons in relationship to
4 cigarette vending machines in operation on or before
5 the enactment of this Act until July 1, 1994."

6 4. Title page, line 2, by inserting after the
7 word "penalties" the following: "and effective
8 dates".

9 5. By renumbering as necessary.

By TEAFORD of Black Hawk
PLASIER of Sioux
CARPENTER of Polk

H-3300 FILED MARCH 22, 1991

w/c 3/27 (3 895)

HOUSE FILE 232

H-3301

1 Amend House File 232 as follows:

2 1. Page 1, line 32, by striking the word "The".

3 2. By striking page 1, line 33 through page 2,

4 line 1.

By TEAFORD of Black Hawk
PLASIER of Sioux
CARPENTER of Polk

H-3301 FILED MARCH 22, 1991

Adopted 3/27

HOUSE FILE 232

H-3342

1 Amend House File 232 as follows:

2 1. By striking page 2, line 14 through page 4,
3 line 3.

4 2. Page 4, line 10, by striking the word "of" and
5 inserting the following: "in".

6 3. Page 4, by striking lines 27 through 30, and
7 inserting the following: "to read as follows:

8 6. Any sales of cigarettes or tobacco products
9 made through a cigarette vending machine are subject
10 to rules and penalties relative to retail sales of
11 cigarettes and tobacco products provided for in this
12 division chapter. No cigarettes shall be sold through
13 any cigarette vending machine unless the cigarettes
14 have been properly stamped or metered as provided by
15 this division, and in case of violation of this
16 provision, the permit of the dealer authorizing retail
17 sales of cigarettes shall be canceled. Payment of the
18 license fee as provided in section 98.13 authorizes a
19 cigarette vendor to sell cigarettes or tobacco
20 products through vending machines, provided that the
21 following conditions are met: the machines are
22 located in places where the machines are under the
23 supervision of a person of legal age who is
24 responsible for prevention of purchase by minors from
25 the machines; the machines are equipped with a lock-
26 out device under the control of a person of legal age
27 who shall directly regulate the sale of items through
28 the machines, and which shall include a mechanism to
29 prevent the machines from functioning if the power
30 source for the lock-out device fails or if the lock-
31 out device is disabled, and a mechanism to ensure that
32 only one pack of cigarettes or one tobacco product is
33 dispensed at a time; and the location where the
34 machines are placed is covered by a local retail
35 permit. However, a lock-out device is not required
36 for machines operated in the following locations, if
37 the machines are not to be placed in a doorway or
38 other area readily accessible to minors: a commercial
39 establishment holding a class "C" liquor license or a
40 class "B" beer permit under chapter 123, if the
41 establishment is not also licensed as a food service
42 establishment under chapter 137B; a private facility
43 not open to the public; or a workplace not open to the
44 public. This section does not require a retail
45 licensee to buy a cigarette vendor's permit if the
46 retail licensee is in fact the owner of the cigarette
47 vending machines and the machines are operated in the
48 location described in the retail permit."

49 4. Page 6, by inserting after line 13, the
50 following:

H-3342

Page 2

- 1 "Sec. ____ . EFFECTIVE DATE AND TRANSITION
2 PROVISION. Section 7 of this Act takes effect upon
3 enactment. However, section 7 of this Act shall not
4 be enforced against persons in relationship to
5 cigarette vending machines in operation on or before
6 the enactment of this Act until July 1, 1994."
7 5. Title page, line 2, by inserting after the
8 word "penalties" the following: "and an effective
9 date".
10 6. By renumbering as necessary.

By TEAFORD of Black Hawk
PLASIER of Sioux
CARPENTER of Polk

H-3342 FILED MARCH 26, 1991

B. Adopted A. Passed o/c 2/27 (j. 901)

HOUSE FILE 232

H-3336

- 1 Amend the amendment, H-3300, to House File 232 as
2 follows:
3 1. Page 2, line 1, by striking the figure "1994"
4 and inserting the following: "1996".
5 2. Page 2, line 5, by striking the figure "1994"
6 and inserting the following: "1996".

By GRUBBS of Scott

H-3336 FILED MARCH 26, 1991

Passed o/c 3/27

HOUSE FILE 232
FISCAL NOTE

A fiscal note for House File 232 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 232 relates to the sale and furnishing of cigarettes and tobacco products to persons under the age of 18. Individuals under the age of 18 would not be allowed to purchase tobacco products from retailers. Additionally, cigarettes and tobacco products would no longer be available for sale from vending machines. The bill provides for enhanced enforcement mechanisms against retailers found to be selling cigarettes or tobacco products to persons under the age of 18. The bill also prohibits providing free samples of cigarettes and tobacco products.

Assumptions

1. Currently, persons under the age of 18, purchase significant amounts of cigarettes and tobacco products.
2. The bill will significantly reduce the number of persons under the age of 18 able to purchase cigarettes and tobacco products.

Fiscal Effect

The effect of this legislation would be to reduce State General Fund revenues from the cigarette tax and tobacco products. Depending on the degree of compliance, it is estimated the General Fund reduction would range from \$0.1 to \$2.0 million.

The bill would also likely result in an increase in the number of charges filed in District Court and may thus have an impact on court activities. However, it seems unlikely the bill would significantly impact the corrections system.

Sources: Department of Human Rights
Justice Department

(LSB 1368hv, PDD)

FILED FEBRUARY 27, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 232
FISCAL NOTE

A fiscal note for H-3076 to House File 232 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

H-3076 to House File 232 provides that the State of Iowa shall acquire the cigarette vending machines at fair market value. Vendors are required to file a claim within one year of the effective date of House File 232.

Assumptions

1. According to the National Automatic Merchandising Association, there are about 340,000 cigarette vending machines in the United States.
2. Iowa's share of this total is assumed to be equivalent to the percent of U.S. population living in Iowa (1.1%); thus the number of machines in Iowa is estimated to be 3,740, or 1.1% of total cigarette vending machines in the U.S.
3. The cigarette vending machines would cost the State about \$500 per machine.
4. Transportation costs would be about \$40,000 for vehicle and personnel costs.
5. Annual storage costs for these machines are estimated to be \$300,000.
6. Reconditioning costs would average \$100 per machine.
7. Resale costs would average \$100 per machine.
8. Marketing costs would be about \$100,000.

Fiscal Effect

Transportation/delivery:	(\$ 40,000)
Purchase machines (\$500 X 3,470):	(1,735,000)
Storage costs (one-year):	(300,000)
Recondition machines (\$100 X 3,470):	(347,000)
Resale costs (\$100 X 3,470):	(347,000)
Marketing	(100,000)
Subtotal	(\$2,869,000)

Est. income from
sales of machines
to out-of-state buyers: (\$800 X 3,470) = \$2,776,000

Est. net cost to State: (\$ 93,000)

Source: Department of General Services
National Automatic Merchandising Association
Vendors Exchange, Inc.

(LSB 1368hv.2, PDD)

FILED MARCH 26, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

Senate Human Resources 4/2 De Pass 4/11/91 (p. 1198)

HOUSE FILE 232
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO HF 104)

(As Amended and Passed by the House March 27, 1991)

as further amended & Senate
Passed House, Date 5/2/91 (p. 2111) Passed Senate, Date 5/1/91 (p. 1578)
Vote: Ayes 79 Nays 16 Vote: Ayes 45 Nays 2
Approved June 5, 1991

*motion to reconsider (p. 1580)
1. June 5/3 (p. 1635)*

A BILL FOR

1 An Act relating to the sale and furnishing of cigarettes and
2 tobacco products to certain persons and providing penalties
3 and an effective date.

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

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House Amendments

Deleted Language

1 Section 1. Section 98.1, subsection 21, Code 1991, is
2 amended to read as follows:

3 21. "Cigarette vending machine" means any self-service
4 device offered for public use which, upon insertion of a coin,
5 coins, paper currency, or by other means, dispenses cigarettes
6 or tobacco products without the necessity of replenishing the
7 device between each vending operation.

8 Sec. 2. Section 98.1, Code 1991, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 24. "Tobacco products" means cigars;
11 little cigars as defined in section 98.42, subsection 16;
12 cheroots; stogies; periques; granulated; plug cut, crimp cut,
13 ready rubbed, and other smoking tobacco; snuff, snuff flour;
14 cavendish; plug and twist tobacco; fine-cut and other chewing
15 tobaccos; shorts; or refuse scraps, clippings, cuttings and
16 sweepings of tobacco, and other kinds and forms of tobacco,
17 prepared in such manner as to be suitable for chewing or
18 smoking in a pipe or otherwise, or both for chewing and
19 smoking; but does not mean cigarettes.

20 Sec. 3. Section 98.2, Code 1991, is amended by striking
21 the section and inserting in lieu thereof the following:

22 98.2 PERSONS UNDER LEGAL AGE.

23 1. A person shall not sell, give, or otherwise supply any
24 tobacco, tobacco products, or cigarettes to any person under
25 eighteen years of age and a person under eighteen years of age
26 shall not smoke, use, purchase, or attempt to purchase any
27 tobacco, tobacco products, or cigarettes.

28 2. The Iowa department of public health, a county health
29 department, a city health department, or a city may directly
30 enforce this section in district court and initiate
31 proceedings pursuant to section 98.22 before a permit-issuing
* 32 authority against a permit holder violating this section.

33 3. Payment and distribution of court costs, fees, and
34 fines in a prosecution initiated by a city or county shall be
35 made as provided in chapter 602 for violation of a city or

1 county ordinance.

2 Sec. 4. Section 98.3, Code 1991, is amended to read as
3 follows:

4 98.3 VIOLATION.

5 Any A person who ~~shall-violate-any-of-the-provisions-of~~
6 violates section 98.2 shall-for-the-first-offense-be or 98.39
7 is guilty of a simple misdemeanor. ~~For-a-second-or-any~~
8 ~~subsequent-violation-such-person-shall-be-guilty-of-a-serious~~
9 ~~misdemeanor-~~

* 10 Sec. 5. Section 98.22, subsection 2, Code 1991, is amended
11 by striking the subsection and inserting in lieu thereof the
12 following:

13 2. If a retailer or employee of a retailer has violated
14 section 98.2, 98.36, subsection 6, or 98.39, the department or
15 local authority, in addition to the other penalties fixed for
16 such violations in this section, shall assess a penalty upon
17 the same hearing and notice as prescribed in subsection 1 as
18 follows:

19 a. For a first violation, the violator shall be assessed a
20 civil penalty in the amount of three hundred dollars. Failure
21 to pay the civil penalty as ordered under this subsection
22 shall result in automatic suspension of the permit for a
23 period of fourteen days.

24 b. For a second violation within a period of two years,
25 the violator's permit shall be suspended for a period of
26 thirty days.

27 c. For a third violation within a period of five years,
28 the violator's permit shall be suspended for a period of sixty
29 days.

30 d. For a fourth violation within a period of five years,
31 the violator's permit shall be revoked.

32 Sec. 6. Section 98.36, subsection 6, Code 1991, is amended
33 to read as follows:

34 6. Any sales of cigarettes or tobacco products made
35 through a cigarette vending machine are subject to rules and

1 penalties relative to retail sales of cigarettes and tobacco
2 products provided for in this division chapter. No cigarettes
3 shall be sold through any cigarette vending machine unless the
4 cigarettes have been properly stamped or metered as provided
5 by this division, and in case of violation of this provision,
6 the permit of the dealer authorizing retail sales of
7 cigarettes shall be canceled. Payment of the license fee as
8 provided in section 98.13 authorizes a cigarette vendor to
9 sell cigarettes or tobacco products through vending machines,
10 provided that the following conditions are met: the machines
11 are located in places where the machines are under the
12 supervision of a person of legal age who is responsible for
13 prevention of purchase by minors from the machines; the
14 machines are equipped with a lock-out device under the control
15 of a person of legal age who shall directly regulate the sale
16 of items through the machines, and which shall include a
17 mechanism to prevent the machines from functioning if the
18 power source for the lock-out device fails or if the lock-out
19 device is disabled, and a mechanism to ensure that only one
20 pack of cigarettes or one tobacco product is dispensed at a
21 time; and the location where the machines are placed is
22 covered by a local retail permit. However, a lock-out device
23 is not required for machines operated in the following
24 locations, if the machines are not to be placed in a doorway
25 or other area readily accessible to minors: a commercial
26 establishment holding a class "C" liquor license or a class
27 "B" beer permit under chapter 123, if the establishment is not
28 also licensed as a food service establishment under chapter
29 137B; a private facility not open to the public; or a
30 workplace not open to the public. This section does not
31 require a retail licensee to buy a cigarette vendor's permit
32 if the retail licensee is in fact the owner of the cigarette
33 vending machines and the machines are operated in the location
34 described in the retail permit.

35 Sec. 7. Section 98.39, Code 1991, is amended by striking

1 the section and inserting in lieu thereof the following:

2 98.39 TOBACCO PRODUCT AND CIGARETTE SAMPLES -- RESTRICTIONS -
3 - ADMINISTRATION.

4 1. A manufacturer, distributor, wholesaler, retailer, or
5 distributing agent or agent thereof shall not give away
6 cigarettes or tobacco products at any time in connection with
7 the manufacturer's, distributor's, wholesaler's, retailer's,
8 or distributing agent's business or for promotion of the
9 business or product, except as provided in subsection 2.

10 2. a. A manufacturer, distributor, wholesaler, retailer,
11 or distributing agent or agent thereof shall not give away any
12 cigarettes or tobacco products to any person under eighteen
13 years of age, or within five hundred feet of any playground,
14 school, high school, or other facility when such facility is
15 being used primarily by persons under age eighteen for
16 recreational, educational, or other purposes.

17 b. Proof of age shall be required if a reasonable person
18 could conclude on the basis of outward appearance that a
19 prospective recipient of a sample may be under eighteen years
20 of age.

21 c. Persons engaged in sampling shall secure stocks of
22 samples in safe locations in order to avoid inadvertent
23 distribution of samples contrary to the provisions of this
24 section.

25 d. Sampling shall cease at a particular location when
26 circumstances arise that make it apparent that sampling cannot
27 continue in a manner consistent with the provisions of this
28 section; however, sampling may resume at that location when
29 such circumstances abate.

30 e. All tobacco products and cigarette samples shall be
31 shipped to a distributor that has a permit to stamp tobacco
32 products and cigarettes or little cigars with Iowa tax. The
33 manufacturer shipping samples under this section shall send an
34 affidavit to the director stating the quantity and to whom the
35 samples were shipped. The distributor receiving the shipment

1 shall send an affidavit to the director stating the quantity
2 and from whom the samples were shipped. These affidavits
3 shall be duly notarized and submitted to the director at time
4 of shipment and receipt of the samples. The distributor shall
5 pay the tax on samples by separate remittance along with the
6 affidavit.

7 DIVISION III

8 Sec. 8. NEW SECTION. 98.51 UNIFORM APPLICATION.

9 Enforcement of this chapter shall be implemented in an
10 equitable manner throughout the state. For the purpose of
11 equitable and uniform implementation, application, and
12 enforcement of state and local laws and regulations, the
13 provisions of this chapter shall supersede any local law or
14 regulation which is inconsistent with or conflicts with the
15 provisions of this chapter.

16 Sec. 9. Section 232.8, subsection 1, unnumbered paragraph
17 2, Code 1991, is amended to read as follows:

18 Violations by a child of provisions of chapter 98, 106,
19 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G which
20 would be simple misdemeanors if committed by an adult, and
21 violations by a child of county or municipal curfew or traffic
22 ordinances, are excluded from the jurisdiction of the juvenile
23 court and shall be prosecuted as simple misdemeanors as
24 provided by law. A child convicted of a violation excluded
25 from the jurisdiction of the juvenile court under this
26 unnumbered paragraph shall be sentenced pursuant to section
27 805.8, where applicable, and pursuant to section 903.1,
28 subsection 3, for all other violations.

* 29 Sec. 10. Section 903.1, subsection 3, Code 1991, is
30 amended to read as follows:

31 3. A person under eighteen years of age convicted of a
32 simple misdemeanor under chapter 98, 106, 106A, 109, 109A,
33 110, 110A, 110B, 111, 321, or 321G, or a violation of a county
34 or municipal curfew or traffic ordinance, except for an
35 offense subject to section 805.8, may be required to pay a

1 fine, not to exceed one hundred dollars, as fixed by the
2 court, or may be required to perform community service as
3 ordered by the court.

4 The criminal penalty surcharge required by section 911.2
5 shall be added to a fine imposed on a misdemeanor, and is not
6 a part of or subject to the maximums set in this section.

7 Sec. 11. EFFECTIVE DATE AND TRANSITION PROVISION. Section
8 6 of this Act takes effect upon enactment. However, section 6
9 of this Act shall not be enforced against persons in
10 relationship to cigarette vending machines in operation on or
11 before the enactment of this Act until July 1, 1994.

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SENATE AMENDMENT TO HOUSE FILE 232

H-4045

1 Amend House File 232, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 4, line 30, by striking the words
4 "tobacco products and".

5 2. Page 4, lines 31 and 32, by striking the words
6 "tobacco products and".

RECEIVED FROM THE SENATE

H-4045 FILED MAY 3, 1991

House concurred 5/6/91 (p. 2110)

HOUSE FILE 232

S-3413

- 1 Amend House File 232, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 4, line 30, by striking the words
- 4 "tobacco products and".
- 5 2. Page 4, lines 31 and 32, by striking the words
- 6 "tobacco products and".

By AL STURGEON
FLORENCE BUHR
MARY KRAMER

S-3413 FILED APRIL 15, 1991

Adopted 5/1/91 (p. 1575)

HOUSE FILE 232

S-3663

- 1 Amend House File 232, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 5, by striking lines 8 through 15.
- 4 2. By renumbering as necessary.

By JEAN LLOYD-JONES

S-3663 FILED MAY 1, 1991

LOST (p. 1577)

HOUSE FILE 232

AN ACT

RELATING TO THE SALE AND FURNISHING OF CIGARETTES AND TOBACCO PRODUCTS TO CERTAIN PERSONS AND PROVIDING PENALTIES AND AN EFFECTIVE DATE.

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

Section 1. Section 98.1, subsection 21, Code 1991, is amended to read as follows:

21. "Cigarette vending machine" means any self-service device offered for public use which, upon insertion of a coin, coins, paper currency, or by other means, dispenses cigarettes or tobacco products without the necessity of replenishing the device between each vending operation.

Sec. 2. Section 98.1, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 24. "Tobacco products" means cigars; little cigars as defined in section 98.42, subsection 16; cheroots; stogies; periques; granulated; plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; or refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or stoking in a pipe or otherwise, or both for chewing and sacking; but does not mean cigarettes.

Sec. 3. Section 98.2, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

98.2 PERSONS UNDER LEGAL AGE.

1. A person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age and a person under eighteen years of age shall not smoke, use, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes.

2. The Iowa department of public health, a county health department, a city health department, or a city may directly enforce this section in district court and initiate proceedings pursuant to section 98.22 before a permit-issuing authority against a permit holder violating this section.

3. Payment and distribution of court costs, fees, and fines in a prosecution initiated by a city or county shall be made as provided in chapter 602 for violation of a city or county ordinance.

Sec. 4. Section 98.3, Code 1991, is amended to read as follows:

98.3 VIOLATION.

Any a person who ~~shall violate any of the provisions of~~ violates section 98.2 ~~shall for the first offense be or 98.39~~ is guilty of a simple misdemeanor. ~~For a second or any subsequent violation such person shall be guilty of a serious misdemeanor.~~

Sec. 5. Section 98.22, subsection 2, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

2. If a retailer or employee of a retailer has violated section 98.2, 98.36, subsection 6, or 98.39, the department or local authority, 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 violator 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 violator's permit shall be suspended for a period of thirty days.

c. For a third violation within a period of five years, the violator's permit shall be suspended for a period of sixty days.

d. For a fourth violation within a period of five years, the violator's permit shall be revoked.

Sec. 6. Section 98.36, subsection 6, Code 1991, is amended to read as follows:

6. Any sales of cigarettes or tobacco products made through a cigarette vending machine are subject to rules and penalties relative to retail sales of cigarettes and tobacco products provided for in this division chapter. No cigarettes shall be sold through any cigarette vending machine unless the cigarettes have been properly stamped or metered as provided by this 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 authorizes a cigarette vendor to sell cigarettes or tobacco products through vending machines, provided that the following conditions are met: the machines are located in places where the machines are under the supervision of a person of legal age who is responsible for prevention of purchase by minors from the machines; the machines are equipped with a lock-out device under the control of a person of legal age who shall directly regulate the sale of items through the machines, and which shall include a mechanism to prevent the machines from functioning if the power source for the lock-out device fails or if the lock-out device is disabled, and a mechanism to ensure that only one pack of cigarettes or one tobacco product is dispensed at a time; and the location where the machines are placed is covered by a local retail permit. However, a lock-out device is not required for machines operated in the following locations, if the machines are not to be placed in a doorway or other area readily accessible to minors: a commercial establishment holding a class "C" liquor license or a class "B" beer permit under chapter 123, if the establishment is not also licensed as a food service establishment under chapter 127B; a private facility not open to the public or a workplace not open to the public. 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 machines and the machines are operated in the location described in the retail permit.

Sec. 7. Section 98.39, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

98.39 TOBACCO PRODUCT AND CIGARETTE SAMPLES -- RESTRICTIONS -- ADMINISTRATION.

1. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away cigarettes or tobacco products at any time in connection with the manufacturer's, distributor's, wholesaler's, retailer's, or distributing agent's business or for promotion of the business or product, except as provided in subsection 2.

2. a. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away any cigarettes or tobacco products to any person under eighteen years of age, or within five hundred feet of any playground, school, high school, or other facility when such facility is being used primarily by persons under age eighteen for recreational, educational, or other purposes.

b. Proof of age shall be required if a reasonable person could conclude on the basis of outward appearance that a prospective recipient of a sample may be under eighteen years of age.

c. Persons engaged in sampling shall secure stocks of samples in safe locations in order to avoid inadvertent distribution of samples contrary to the provisions of this section.

d. Sampling shall cease at a particular location when circumstances arise that make it apparent that sampling cannot continue in a manner consistent with the provisions of this section; however, sampling may resume at that location when such circumstances abate.

e. All cigarette samples shall be shipped to a distributor that has a permit to stamp cigarettes or little cigars with Iowa tax. The manufacturer shipping samples under this section shall send an affidavit to the director stating the

quantity and to whom the samples were shipped. The distributor receiving the shipment shall send an affidavit to the director stating the quantity and from whom the samples were shipped. These affidavits shall be duly notarized and submitted to the director at time of shipment and receipt of the samples. The distributor shall pay the tax on samples by separate remittance along with the affidavit.

DIVISION III

Sec. 8. NEW SECTION. 98.51 UNIFORM APPLICATION.

Enforcement of this chapter shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

Sec. 9. Section 232.8, subsection 1, unnumbered paragraph 2, Code 1991, is amended to read as follows:

Violations by a child of provisions of chapter 28, 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G which would be simple misdemeanors if committed by an adult, and violations by a child of county or municipal curfew or traffic ordinances, are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. A child convicted of a violation excluded from the jurisdiction of the juvenile court under this unnumbered paragraph shall be sentenced pursuant to section 805.8, where applicable, and pursuant to section 903.1, subsection 3, for all other violations.

Sec. 10. Section 903.1, subsection 3, Code 1991, is amended to read as follows:

3. A person under eighteen years of age convicted of a simple misdemeanor under chapter 28, 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G, or a violation of a county or municipal curfew or traffic ordinance, except for an offense subject to section 805.8, may be required to pay a fine, not to exceed one hundred dollars, as fixed by the

court, or may be required to perform community service as ordered by the court.

The criminal penalty surcharge required by section 911.2 shall be added to a fine imposed on a misdemeanor, and is not a part of or subject to the maximums set in this section.

Sec. 11. EFFECTIVE DATE AND TRANSITION PROVISION. Section 6 of this Act takes effect upon enactment. However, section 6 of this Act shall not be enforced against persons in relationship to cigarette vending machines in operation on or before the enactment of this Act until July 1, 1994.

ROBERT C. ARNOULD
Speaker of the House

JOE J. WELSH
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 232, Seventy-fourth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved *June 5*, 1991

TERRY E. BRANSTAD
Governor

HF 232