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3/25/96 Referred to Judiciary

MAR 5 1996

Place On Calendar

HOUSE FILE 2454
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2329)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act pertaining to alcohol-related and tobacco-related
2 regulation; relating to consumption of alcohol by persons
3 under the age of twenty-one; removing the restitution limit
4 for operating-while-intoxicated defendants; requiring schools
5 to report incidents involving alcohol, tobacco, and controlled
6 substances; and providing penalties.

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

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1 Section 1. Section 123.47, Code Supplement 1995, is
2 amended to read as follows:

3 123.47 PERSONS UNDER THE AGE OF EIGHTEEN -- PENALTY.

4 A person shall not sell, give, or otherwise supply
5 alcoholic liquor, wine, or beer to any person knowing or
6 having reasonable cause to believe that person to be under the
7 age of eighteen, and a person or persons under the age of
8 eighteen shall not purchase or attempt to purchase, or
9 individually or jointly have alcoholic liquor, wine, or beer
10 in their possession or control; except in the case of liquor,
11 wine, or beer given or dispensed to a person under the age of
12 eighteen within a private home and with the knowledge,
13 presence, and consent of the parent or guardian, for beverage
14 or medicinal purposes or as administered to the person by
15 either a physician or dentist for medicinal purposes and
16 except to the extent that a person under the age of eighteen
17 may handle alcoholic beverages, wine, and beer during the
18 regular course of the person's employment by a liquor control
19 licensee, or wine or beer permittee under this chapter. A
20 person, other than a licensee or permittee, who violates this
21 section regarding the purchase of or attempt to purchase
22 alcoholic liquor, wine, or beer shall pay a twenty-five
23 seventy-five dollar penalty.

24 Sec. 2. Section 123.47A, subsection 1, Code 1995, is
25 amended to read as follows:

26 1. A person shall not sell, give, or otherwise supply
27 alcoholic liquor, wine, or beer to any person knowing or
28 having reasonable cause to believe that the person is age
29 eighteen, nineteen, or twenty. A person age eighteen,
30 nineteen, or twenty shall not purchase or possess alcoholic
31 liquor, wine, or beer. However, a person age eighteen,
32 nineteen, or twenty may possess alcoholic liquor, wine, or
33 beer given to the person within a private home with the
34 knowledge, presence, and consent of the person's parent or
35 guardian, ~~or with the signed, written consent of the parent or~~

~~1 guardian-specifying-the-date-and-place-for-the-consumption-and~~
2 ~~displayed-by-the-person-upon-demand,~~ and a person age
3 eighteen, nineteen, or twenty may handle alcoholic liquor,
4 wine, and beer during the course of the person's employment by
5 a liquor control licensee, or wine or beer permittee. A
6 person, other than a licensee or permittee, who commits a
7 first offense under this section commits a scheduled violation
8 of section 805.8, subsection 10. A person, other than a
9 licensee or permittee, who commits a second or subsequent
10 violation of this section, commits a simple misdemeanor. A
11 licensee or permittee who violates this section with respect
12 to a person who is age nineteen or twenty is guilty of a
13 simple misdemeanor punishable by a fine of not more than fifty
14 one hundred dollars. The penalty provided under this section
15 against a licensee or permittee who violates this section with
16 respect to a person who is age nineteen or twenty is the only
17 penalty which shall be imposed against a licensee or permittee
18 who violates this section. A licensee or permittee who
19 violates this section with respect to a person who is age
20 eighteen commits a simple misdemeanor, and is subject to the
21 criminal and civil penalties provided pursuant to sections
22 123.49 and 123.50 with respect to selling, giving, or
23 otherwise supplying alcoholic beverages, liquor, wine, or beer
24 to persons under legal age.

25 Sec. 3. Section 279.9, Code 1995, is amended to read as
26 follows:

27 279.9 USE OF TOBACCO, ALCOHOLIC BEVERAGES, OR CONTROLLED
28 SUBSTANCES.

29 1. The rules shall prohibit the use of tobacco and the use
30 or possession of alcoholic liquor, wine, or beer or any
31 controlled substance as defined in section 124.101, subsection
32 5, by any student of the schools and the board may suspend or
33 expel a student for a violation of a rule under this section.

34 2. The school shall report to law enforcement officials
35 all violations, in or on school premises, of school rules

1 adopted pursuant to subsection 1, or of any state law
2 pertaining to the use or possession of tobacco, alcoholic
3 liquor, wine, or beer, or of any controlled substance.

4 Sec. 4. Section 321J.2, subsection 8, Code 1995, is
5 amended to read as follows:

6 8. The court shall order a defendant convicted of or
7 receiving a deferred judgment for a violation of this section
8 to make restitution, ~~in an amount not to exceed two thousand~~
9 ~~dollars,~~ pursuant to chapter 910 for damages resulting
10 directly from the violation. An amount paid pursuant to this
11 restitution order shall be credited toward any adverse
12 judgment in a subsequent civil proceeding arising from the
13 same occurrence. However, other than establishing a credit, a
14 restitution proceeding pursuant to this section shall not be
15 given evidentiary or preclusive effect in a subsequent civil
16 proceeding arising from the same occurrence.

17 Sec. 5. Section 805.8, subsection 10, paragraph a, Code
18 Supplement 1995, is amended to read as follows:

19 a. For violations of section 123.47A, which constitute
20 first offenses as provided in that section, the scheduled fine
21 is ~~fifteen~~ seventy-five dollars.

22 EXPLANATION

23 Sections 1 and 2 of this bill amend provisions pertaining
24 to penalties for providing alcohol to underage drinkers.
25 Section 1 increases the penalty for persons other than a
26 liquor licensee or permittee who provide alcohol to persons
27 under the age of 18 from \$25 to \$75. Section 2 changes the
28 penalty for licensees or permittees who provide alcohol to
29 persons aged 19 or 20 from \$50 to \$100. Section 5 of the bill
30 changes the scheduled fine for the first offense of provision
31 of alcohol by a person other than a licensee or permittee to
32 persons aged 18, 19, or 20 from \$15 to \$75.

33 Section 2 also deletes the portion of Code section 123.47A
34 that permits a person aged 18, 19, or 20 to possess and
35 consume alcohol in a private home as long as the person has

1 written consent signed by the person's own parent.

2 Section 3 requires schools to report to law enforcement
3 authorities all violations of school policy or state law that
4 occur on school property regarding alcohol, tobacco, or
5 controlled substances.

6 Section 4 removes the \$2,000 restitution limit in the
7 operating while intoxicated (OWI) chapter, and makes all OWI
8 restitution actions subject to chapter 910, the restitution
9 chapter.

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**SENATE FILE 2454
FISCAL NOTE**

A fiscal note for Senate File 2454 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.

Senate File 2454 addresses a ruling by the Iowa Supreme Court in Hagge v. Iowa Department of Revenue and Finance (DRF). In Hagge, the Court ruled that refunds had to be paid to individuals who filed claims against income taxes paid on federal pensions from 1985 to 1988. The ruling required the State to pay approximately \$33.7 million in refunded tax and interest. Under current law, those individuals who paid tax on federal pensions between 1985 and 1988, and have not filed claims, are no longer eligible for refunds. Senate File 2454 would extend the time these individuals may file through October 30, 1996. Taxpayers would be eligible for 100.0% of the refund excluding interest. The Bill also provides for an appropriation of an amount up to \$75,000 to the DRF to cover processing costs.

ASSUMPTIONS

1. Approximately 13,000 federal retirees filed timely refund claims. Not all of these individuals filed claims for all four years. There were an average of 8,625 individuals who filed claims each of the four years.
2. The average claim for each individual in each year was approximately \$600. Due to the fact that those individuals with the most to gain filed early, and those with the least to gain filed late, this estimate assumes that average claims due to this Bill will be approximately \$450 for each affected year.
3. Approximately 5,800 additional claims will be received. This is based on the original percentage of 35.0% participation each year. Although additional individuals may file due to added publicity, there will also be individuals who don't file due to the fact that a number of affected retirees are deceased. Currently, there are no reliable estimates of either of these two effects.
4. This estimate assumes that all claims will be paid from FY 1996 funds.

FISCAL IMPACT

Senate File 2454 is expected to result in a decrease to the General Fund of approximately \$10.4 million in FY 1996. This amount includes \$75,000 for the DRF and \$10.3 million in claims.

SOURCES Department of Revenue

(LSB 4423SV, JAM)

FILED APRIL 3, 1996

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2454

H-5422

1 Amend House File 2454 as follows:
2 1. Page 2, by inserting after line 24 the
3 following:
4 "Sec. ____ . Section 123.49, subsection 1,
5 unnumbered paragraph 1, Code 1995, is amended to read
6 as follows:
7 A person shall not sell, ~~dispense~~~~-or give to-an~~
8 ~~intoxicated-person~~~~-or-one-simulating-intoxication~~, or
9 otherwise supply any alcoholic liquor beverage, wine,
10 or beer to any other person, knowing or having
11 reasonable cause to believe the other person to be
12 intoxicated or simulating intoxication."
13 2. By renumbering as necessary.

By HEATON of Henry

H-5422 FILED MARCH 18, 1996

HOUSE FILE 2454

H-5280

1 Amend House File 2454 as follows:
2 1. Page 3, by inserting after line 16 the
3 following:
4 "Sec. ____ . Section 453A.36, subsection 7,
5 unnumbered paragraph 2, Code 1995, is amended to read
6 as follows:
7 8. Violation of this section by the holder of a
8 distributor's, wholesaler's, or manufacturer's permit
9 shall be grounds for the revocation of such permit.
10 Sec. ____ . Section 453A.36, Code 1995, is amended
11 by adding the following new subsection:
12 NEW SUBSECTION. 9. A manufacturer, distributor,
13 wholesaler, retailer, distributing agent, or agent
14 thereof shall not give away cigarettes or tobacco
15 products at any time for promotion of its business or
16 product, or in any other connection to its business.
17 A violation of this subsection is a serious
18 misdemeanor."
19 2. By renumbering as necessary.

By THOMSON of Linn

H-5280 FILED MARCH 11, 1996

HOUSE FILE 2454

H-5477

1 Amend the amendment, H-5422, to HF 2454, as
2 follows:

3 1. Page 1, by inserting after line 12 the
4 following:

5 "____. Page 2, by inserting after line 24 the
6 following:

7 "Sec. ____ Section 142B.6, Code 1995, is amended
8 to read as follows:

9 142B.6 CIVIL PENALTY FOR VIOLATION -- UNIFORM
10 APPLICATION ENFORCEMENT.

11 A person who smokes in those areas prohibited in
12 section 142B.2, or who violates section 142B.4, shall
13 pay a civil fine pursuant to section 805.8, subsection
14 11, for each violation.

15 Judicial magistrates shall hear and determine
16 violations of this chapter. The civil penalties paid
17 pursuant to this chapter shall be deposited in the
18 county treasury.

19 ~~Enforcement of this chapter shall be implemented in~~
20 ~~an equitable manner throughout the state. For the~~
21 ~~purpose of equitable and uniform implementation,~~
22 ~~application, and enforcement of state and local laws~~
23 ~~and regulations, the provisions of this chapter shall~~
24 ~~supersede any local law or regulation which is~~
25 ~~inconsistent with or conflicts with the provisions of~~
26 ~~this chapter. The Iowa department of public health~~
27 ~~shall adopt rules to enforce this chapter.~~

28 Sec. 101. NEW SECTION. 249A.30 RECOVERY OF
29 MEDICAL ASSISTANCE EXPENDITURE -- CIGARETTE AND
30 TOBACCO PRODUCTS -- RELATED MEDICAL EXPENSES BY
31 RESIDENT RECIPIENTS.

32 1. Notwithstanding chapter 668, the attorney
33 general may institute a civil action on behalf of the
34 state against any manufacturer of cigarettes or other
35 tobacco products to recover the full amount of medical
36 assistance provided by the state to a resident of the
37 state for the payment of medical services which are
38 reasonably attributable to the use of cigarettes or
39 tobacco products and all reasonable expenses
40 associated with instituting the action.

41 2. In determining liability in an action under
42 this section, all of the following shall apply:

43 a. Any manufacturer of cigarettes or other tobacco
44 products shall be strictly liable for the medical
45 expenses reasonably attributable to the use of the
46 manufacturer's product, without regard to any
47 negligence, intent, warnings, or other conduct or
48 knowledge on the part of the manufacturer.

49 b. The state may recover medical expenses, without
50 regard to the defenses of assumption of the risk,

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1 contributory or comparative negligence, or other
2 defenses which might be asserted.

3 c. Any action instituted by the attorney general
4 is independent of any rights or causes of action of
5 any individual.

6 3. In determining the extent of the liability of
7 any manufacturer under this section, the court shall
8 apply the following evidentiary presumptions:

9 a. The ratio of the expenses attributable to the
10 use of cigarettes or tobacco products produced by any
11 manufacturer to the expenses of all manufacturers is
12 presumed to be equivalent to the ratio of the sales by
13 the manufacturer within the state during the most
14 recent year for which data are available to the sales
15 of all manufacturers for that year.

16 b. The medical expenses for individuals
17 attributable to the use of cigarettes or tobacco
18 products shall be based on reliable estimates for the
19 class of persons affected, rather than proof of the
20 cause of expenses in the case of any particular
21 individual.

22 c. Estimates of medical expenses shall be based on
23 epidemiological, scientific, survey, and other data,
24 determined by the director of public health to be
25 reliable and reasonably available. The Iowa
26 department of public health shall adopt rules to
27 specify the methodology for making the estimates in
28 any action under this section.

29 d. A defendant shall have the opportunity to rebut
30 any presumption by clear and convincing evidence,
31 provided that the court shall take reasonable steps to
32 ensure that determination of damages is concluded in a
33 timely and expeditious manner and that no party to the
34 action is permitted to unduly delay the conclusion of
35 the action.

36 4. For the purposes of this section, "cigarette"
37 and "tobacco products" mean cigarette and tobacco
38 products as defined in section 453A.1."

39 _____. Page 3, by inserting after line 16 the
40 following:

41 "Sec. _____. Section 453A.2, Code 1995, is amended
42 by adding the following new subsection:

43 NEW SUBSECTION. 5. A violation of subsection 1 is
44 a violation of section 714.16, subsection 2, paragraph
45 "a".

46 Sec. _____. Section 453A.3, unnumbered paragraph 1,
47 Code 1995, is amended to read as follows:

48 A person who violates section 453A.2, subsection 1,
49 ~~or section 453A.39~~ is guilty of a simple misdemeanor.

50 Sec. _____. Section 453A.22, subsection 2,

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1 unnumbered paragraph 1, Code 1995, is amended to read
2 as follows:

3 If a retailer or employee of a retailer has
4 violated section 453A.27 or 453A.36, subsection 6, or
5 ~~453A.39~~ 8, or 9, the department or local authority, in
6 addition to the other penalties fixed for such
7 violations in this section, shall assess a penalty
8 upon the same hearing and notice as prescribed in
9 subsection 1 as follows:

10 Sec. _____. Section 453A.36, Code 1995, is amended
11 by adding the following new subsections:

12 NEW SUBSECTION. 8. A manufacturer, distributor,
13 wholesaler, retailer, distributing agent, or agent
14 thereof shall not give away cigarettes or tobacco
15 products at any time in connection with the
16 manufacturer's, distributor's, wholesaler's,
17 retailer's, or distributing agent's business or for
18 promotion of the business or product. A manufacturer,
19 distributor, wholesaler, retailer, distributing agent,
20 or agent thereof who violates this subsection is
21 guilty of a serious misdemeanor.

22 NEW SUBSECTION. 9. It is unlawful for any
23 manufacturer, distributor, wholesaler, retailer,
24 distributing agent, or agent thereof to advertise on
25 any advertising device cigarettes or other tobacco
26 products within one thousand feet of any playground,
27 school, high school, or other facility when such
28 facility is being used primarily by persons under age
29 eighteen for recreational, educational, or other
30 purposes. A manufacturer, distributor, wholesaler,
31 retailer, distributing agent, or agent thereof who
32 violates this subsection is guilty of a serious
33 misdemeanor.

34 Sec. _____. Section 453A.56, Code 1995, is amended
35 to read as follows:

36 453A.56 UNIFORM APPLICATION.

37 Enforcement of this chapter shall be implemented in
38 an equitable manner throughout the state. For the
39 purpose of equitable and uniform implementation,
40 application, and enforcement of state and local laws
41 and regulations, the provisions of this chapter shall
42 supersede any local law or regulation which is
43 inconsistent with or conflicts with the provisions of
44 this chapter, unless the local law or regulation is
45 more restrictive in application in which case the more
46 restrictive portion of the local law or regulation
47 shall supersede any inconsistent or conflicting
48 provision of this chapter."

49 _____. Page 3, by inserting after line 21 the
50 following:

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1 "Sec. _____. Section 453A.39, Code 1995, is
2 repealed.

3 Sec. _____. Section 101 of this Act, relating to the
4 recovery of medical assistance expenditures due to
5 smoking, being deemed of immediate importance, takes
6 effect upon enactment.

7 Sec. _____. RETROACTIVE APPLICABILITY. The state
8 may recover, pursuant to section 249A.30, in addition
9 to any subsequent damages, any applicable damages
10 incurred within the two years preceding the date of
11 enactment of section 249A.30 of this Act."

12 _____. Title page, by striking line 6 and inserting
13 the following: "substances; providing penalties,
14 establishing civil penalties, making penalties
15 applicable, providing effective dates, and providing a
16 repeal.""

17 2. By renumbering as necessary.

By BRAMMER of Linn

H-5477 FILED MARCH 20, 1996

HOUSE FILE 2454

H-5484

1 Amend the amendment, H-5280, to House File 2454, as
2 follows:

3 1. Page 1, by inserting after line 1 the
4 following:

5 " . Page 2, by inserting after line 24 the
6 following:

7 "Sec. . Section 142B.6, Code 1995, is amended
8 to read as follows:

9 142B.6 CIVIL PENALTY FOR VIOLATION -- UNIFORM
10 APPLICATION ENFORCEMENT.

11 A person who smokes in those areas prohibited in
12 section 142B.2, or who violates section 142B.4, shall
13 pay a civil fine pursuant to section 805.8, subsection
14 11, for each violation.

15 Judicial magistrates shall hear and determine
16 violations of this chapter. The civil penalties paid
17 pursuant to this chapter shall be deposited in the
18 county treasury.

19 ~~Enforcement of this chapter shall be implemented in~~
20 ~~an equitable manner throughout the state. For the~~
21 ~~purpose of equitable and uniform implementation,~~
22 ~~application, and enforcement of state and local laws~~
23 ~~and regulations, the provisions of this chapter shall~~
24 ~~supersede any local law or regulation which is~~
25 ~~inconsistent with or conflicts with the provisions of~~
26 ~~this chapter. The Iowa department of public health~~
27 ~~shall adopt rules to enforce this chapter.~~

28 Sec. 101. NEW SECTION. 249A.30 RECOVERY OF
29 MEDICAL ASSISTANCE EXPENDITURE -- CIGARETTE AND
30 TOBACCO PRODUCTS -- RELATED MEDICAL EXPENSES BY
31 RESIDENT RECIPIENTS.

32 1. Notwithstanding chapter 668, the attorney
33 general may institute a civil action on behalf of the
34 state against any manufacturer of cigarettes or other
35 tobacco products to recover the full amount of medical
36 assistance provided by the state to a resident of the
37 state for the payment of medical services which are
38 reasonably attributable to the use of cigarettes or
39 tobacco products and all reasonable expenses
40 associated with instituting the action.

41 2. In determining liability in an action under
42 this section, all of the following shall apply:

43 a. Any manufacturer of cigarettes or other tobacco
44 products shall be strictly liable for the medical
45 expenses reasonably attributable to the use of the
46 manufacturer's product, without regard to any
47 negligence, intent, warnings, or other conduct or
48 knowledge on the part of the manufacturer.

49 b. The state may recover medical expenses, without
50 regard to the defenses of assumption of the risk,

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1 contributory or comparative negligence, or other
2 defenses which might be asserted.

3 c. Any action instituted by the attorney general
4 is independent of any rights or causes of action of
5 any individual.

6 3. In determining the extent of the liability of
7 any manufacturer under this section, the court shall
8 apply the following evidentiary presumptions:

9 a. The ratio of the expenses attributable to the
10 use of cigarettes or tobacco products produced by any
11 manufacturer to the expenses of all manufacturers is
12 presumed to be equivalent to the ratio of the sales by
13 the manufacturer within the state during the most
14 recent year for which data are available to the sales
15 of all manufacturers for that year.

16 b. The medical expenses for individuals
17 attributable to the use of cigarettes or tobacco
18 products shall be based on reliable estimates for the
19 class of persons affected, rather than proof of the
20 cause of expenses in the case of any particular
21 individual.

22 c. Estimates of medical expenses shall be based on
23 epidemiological, scientific, survey, and other data,
24 determined by the director of public health to be
25 reliable and reasonably available. The Iowa
26 department of public health shall adopt rules to
27 specify the methodology for making the estimates in
28 any action under this section.

29 d. A defendant shall have the opportunity to rebut
30 any presumption by clear and convincing evidence,
31 provided that the court shall take reasonable steps to
32 ensure that determination of damages is concluded in a
33 timely and expeditious manner and that no party to the
34 action is permitted to unduly delay the conclusion of
35 the action.

36 4. For the purposes of this section, "cigarette"
37 and "tobacco products" mean cigarette and tobacco
38 products as defined in section 453A.1."

39 2. Page 1, by inserting after line 3 the
40 following:

41 "Sec. _____. Section 453A.2, Code 1995, is amended
42 by adding the following new subsection:

43 NEW SUBSECTION. 5. A violation of subsection 1 is
44 a violation of section 714.16, subsection 2, paragraph
45 "a".

46 Sec. _____. Section 453A.3, unnumbered paragraph 1,
47 Code 1995, is amended to read as follows:

48 A person who violates section 453A.2, subsection 1,
49 ~~or section 453A.39~~ is guilty of a simple misdemeanor.

50 Sec. _____. Section 453A.22, subsection 2,

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Page 3

1 unnumbered paragraph 1, Code 1995, is amended to read
2 as follows:

3 If a retailer or employee of a retailer has
4 violated section 453A.27 or 453A.36, subsection 6, or
5 ~~453A.39~~ 8, or 9, the department or local authority, in
6 addition to the other penalties fixed for such
7 violations in this section, shall assess a penalty
8 upon the same hearing and notice as prescribed in
9 subsection 1 as follows:"

10 3. Page 1, line 11, by striking the word
11 "subsection" and inserting the following:
12 "subsections".

13 4. Page 1, by inserting after line 11 the
14 following:

15 "NEW SUBSECTION. 8. It is unlawful for any
16 manufacturer, distributor, wholesaler, retailer,
17 distributing agent, or agent thereof to advertise on
18 any advertising device cigarettes or other tobacco
19 products within one thousand feet of any playground,
20 school, high school, or other facility when such
21 facility is being used primarily by persons under age
22 eighteen for recreational, educational, or other
23 purposes. A manufacturer, distributor, wholesaler,
24 retailer, distributing agent, or agent thereof who
25 violates this subsection is guilty of a serious
26 misdemeanor."

27 5. Page 1, by inserting after line 18 the
28 following:

29 "Sec. _____. Section 453A.56, Code 1995, is amended
30 to read as follows:

31 453A.56 UNIFORM APPLICATION.

32 Enforcement of this chapter shall be implemented in
33 an equitable manner throughout the state. For the
34 purpose of equitable and uniform implementation,
35 application, and enforcement of state and local laws
36 and regulations, the provisions of this chapter shall
37 supersede any local law or regulation which is
38 inconsistent with or conflicts with the provisions of
39 this chapter, unless the local law or regulation is
40 more restrictive in application in which case the more
41 restrictive portion of the local law or regulation
42 shall supersede any inconsistent or conflicting
43 provision of this chapter."

44 _____. Page 3, by inserting after line 21 the
45 following:

46 "Sec. _____. Section 453A.39, Code 1995, is
47 repealed.

48 Sec. _____. Section 101 of this Act, relating to the
49 recovery of medical assistance expenditures due to
50 smoking, being deemed of immediate importance, takes

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1 effect upon enactment.

2 Sec. _____. RETROACTIVE APPLICABILITY. The state
3 may recover, pursuant to section 249A.30, in addition
4 to any subsequent damages, any applicable damages
5 incurred within the two years preceding the date of
6 enactment of section 249A.30 of this Act."

7 _____. Title page, by striking line 6 and inserting
8 the following: "substances; providing penalties,
9 establishing civil penalties, making penalties
10 applicable, providing an effective date, and providing
11 a repeal.""

12 6. By renumbering as necessary.

By BRAMMER of Linn

H-5484 FILED MARCH 20, 1996

HOUSE FILE 2454

H-5501

1 Amend the amendment, H-5422, to House File 2454, as
2 follows:

3 1. Page 1, by inserting after line 12 the
4 following:

5 "____. Page 2, by inserting after line 24 the
6 following:

7 "Sec. ____ Section 142B.6, Code 1995, is amended
8 to read as follows:

9 142B.6 CIVIL PENALTY FOR VIOLATION -- UNIFORM
10 APPLICATION ENFORCEMENT.

11 A person who smokes in those areas prohibited in
12 section 142B.2, or who violates section 142B.4, shall
13 pay a civil fine pursuant to section 805.8, subsection
14 11, for each violation.

15 Judicial magistrates shall hear and determine
16 violations of this chapter. The civil penalties paid
17 pursuant to this chapter shall be deposited in the
18 county treasury.

19 ~~Enforcement of this chapter shall be implemented in~~
20 ~~an equitable manner throughout the state. For the~~
21 ~~purpose of equitable and uniform implementation,~~
22 ~~application, and enforcement of state and local laws~~
23 ~~and regulations, the provisions of this chapter shall~~
24 ~~supersede any local law or regulation which is~~
25 ~~inconsistent with or conflicts with the provisions of~~
26 ~~this chapter.~~ The Iowa department of public health
27 shall adopt rules to enforce this chapter.

28 Sec. 101. NEW SECTION. 249A.30 RECOVERY OF
29 MEDICAL ASSISTANCE EXPENDITURE -- CIGARETTE AND
30 TOBACCO PRODUCTS -- RELATED MEDICAL EXPENSES BY
31 RESIDENT RECIPIENTS.

32 1. Notwithstanding chapter 668, the attorney
33 general may institute a civil action on behalf of the
34 state against any manufacturer of cigarettes or other
35 tobacco products to recover the full amount of medical
36 assistance provided by the state to a resident of the
37 state for the payment of medical services which are
38 reasonably attributable to the use of cigarettes or
39 tobacco products and all reasonable expenses
40 associated with instituting the action.

41 2. In determining liability in an action under
42 this section, all of the following shall apply:

43 a. Any manufacturer of cigarettes or other tobacco
44 products shall be strictly liable for the medical
45 expenses reasonably attributable to the use of the
46 manufacturer's product, without regard to any
47 negligence, intent, warnings, or other conduct or
48 knowledge on the part of the manufacturer.

49 b. The state may recover medical expenses, without
50 regard to the defenses of assumption of the risk,

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1 contributory or comparative negligence, or other
2 defenses which might be asserted.

3 c. Any action instituted by the attorney general
4 is independent of any rights or causes of action of
5 any individual.

6 3. In determining the extent of the liability of
7 any manufacturer under this section, the court shall
8 apply the following evidentiary presumptions:

9 a. The ratio of the expenses attributable to the
10 use of cigarettes or tobacco products produced by any
11 manufacturer to the expenses of all manufacturers is
12 presumed to be equivalent to the ratio of the sales by
13 the manufacturer within the state during the most
14 recent year for which data are available to the sales
15 of all manufacturers for that year.

16 b. The medical expenses for individuals
17 attributable to the use of cigarettes or tobacco
18 products shall be based on reliable estimates for the
19 class of persons affected, rather than proof of the
20 cause of expenses in the case of any particular
21 individual.

22 c. Estimates of medical expenses shall be based on
23 epidemiological, scientific, survey, and other data,
24 determined by the director of public health to be
25 reliable and reasonably available. The Iowa
26 department of public health shall adopt rules to
27 specify the methodology for making the estimates in
28 any action under this section.

29 d. A defendant shall have the opportunity to rebut
30 any presumption by clear and convincing evidence,
31 provided that the court shall take reasonable steps to
32 ensure that determination of damages is concluded in a
33 timely and expeditious manner and that no party to the
34 action is permitted to unduly delay the conclusion of
35 the action.

36 4. For the purposes of this section, "cigarette"
37 and "tobacco products" mean cigarette and tobacco
38 products as defined in section 453A.1."

39 _____. Page 3, by inserting after line 16 the
40 following:

41 "Sec. _____. Section 422B.1, subsections 3, 4, 5, 6,
42 8, and 9, Code Supplement 1995, are amended to read as
43 follows:

44 3. A local option tax shall be imposed only after
45 an election at which a majority of those voting on the
46 question favors imposition and shall then be imposed
47 until repealed as provided in subsection 6, paragraph
48 "a". If the tax is a local vehicle tax imposed by a
49 county, it shall apply to all incorporated and
50 unincorporated areas of the county. If the tax is a

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1 local sales and services tax or a local cigarette and
2 tobacco tax imposed by a county, it shall only apply
3 to those incorporated areas and the unincorporated
4 area of that county in which a majority of those
5 voting in the area on the tax favors its imposition.
6 For purposes of the local sales and services tax or a
7 local cigarette and tobacco tax, all cities contiguous
8 to each other shall be treated as part of one
9 incorporated area and the tax would be imposed in each
10 of those contiguous cities only if the majority of
11 those voting in the total area covered by the
12 contiguous cities favors its imposition. For purposes
13 of the local sales and services tax or a local
14 cigarette and tobacco tax, a city is not contiguous to
15 another city if the only road access between the two
16 cities is through another state.

17 4. a. A county board of supervisors shall direct
18 within thirty days the county commissioner of
19 elections to submit the question of imposition of a
20 local vehicle tax, or a local sales and services tax,
21 or a local cigarette and tobacco tax to the registered
22 voters of the incorporated and unincorporated areas of
23 the county upon receipt of a petition, requesting
24 imposition of a local vehicle tax, or a local sales
25 and services tax, or a local cigarette and tobacco
26 tax, signed by eligible electors of the whole county
27 equal in number to five percent of the persons in the
28 whole county who voted at the last preceding state
29 general election. In the case of a local vehicle tax,
30 the petition requesting imposition shall specify the
31 rate of tax and the classes, if any, that are to be
32 exempt. If more than one valid petition is received,
33 the earliest received petition shall be used.

34 b. The question of the imposition of a local sales
35 and services tax or a local cigarette and tobacco tax
36 shall be submitted to the registered voters of the
37 incorporated and unincorporated areas of the county
38 upon receipt by the county commissioner of elections
39 of the motion or motions, requesting such submission,
40 adopted by the governing body or bodies of the city or
41 cities located within the county or of the county, for
42 the unincorporated areas of the county, representing
43 at least one half of the population of the county.
44 Upon adoption of such motion, the governing body of
45 the city or county, for the unincorporated areas,
46 shall submit the motion to the county commissioner of
47 elections and in the case of the governing body of the
48 city shall notify the board of supervisors of the
49 adoption of the motion. The county commissioner of
50 elections shall keep a file on all the motions

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1 received and, upon reaching the population
2 requirements, shall publish notice of the ballot
3 proposition concerning the imposition of the local
4 sales and services tax or a local cigarette and
5 tobacco tax. A motion ceases to be valid at the time
6 of the holding of the regular election for the
7 election of members of the governing body which
8 adopted the motion. The county commissioner of
9 elections shall eliminate from the file any motion
10 that ceases to be valid. The manner provided under
11 this paragraph for the submission of the question of
12 imposition of a local sales and services tax or a
13 local cigarette and tobacco tax is an alternative to
14 the manner provided in paragraph "a".

15 5. The county commissioner of elections shall
16 submit the question of imposition of a local option
17 tax at a state general election or at a special
18 election held at any time other than the time of a
19 city regular election. The election shall not be held
20 sooner than sixty days after publication of notice of
21 the ballot proposition. The ballot proposition shall
22 specify the type and rate of tax and in the case of a
23 vehicle tax the classes that will be exempt and in the
24 case of a local sales and services tax or a local
25 cigarette and tobacco tax the date it will be imposed.
26 The ballot proposition shall also specify the
27 approximate amount of local option tax revenues that
28 will be used for property tax relief and shall contain
29 a statement as to the specific purpose or purposes for
30 which the revenues shall otherwise be expended. If
31 the county board of supervisors decides under
32 subsection 6 to specify a date on which the local
33 option sales and services tax or a local cigarette and
34 tobacco tax shall automatically be repealed, the date
35 of the repeal shall also be specified on the ballot.
36 The rate of the vehicle tax shall be in increments of
37 one dollar per vehicle as set by the petition seeking
38 to impose the tax. The rate of a local sales and
39 services tax shall not be more than one percent as set
40 by the governing body. The rate of the cigarette and
41 tobacco tax shall not be more than ten percent as set
42 by the governing body. The state commissioner of
43 elections shall establish by rule the form for the
44 ballot proposition which form shall be uniform
45 throughout the state.

46 6. a. If a majority of those voting on the
47 question of imposition of a local option tax favor
48 imposition of a local option tax, the governing body
49 of that county shall impose the tax at the rate
50 specified for an unlimited period. However, in the

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1 case of a local sales and services tax or a local
2 cigarette and tobacco tax, the county shall not impose
3 the tax in any incorporated area or the unincorporated
4 area if the majority of those voting on the tax in
5 that area did not favor its imposition. For purposes
6 of the local sales and services tax or a local
7 cigarette and tobacco tax, all cities contiguous to
8 each other shall be treated as part of one
9 incorporated area and the tax shall be imposed in each
10 of those contiguous cities only if the majority of
11 those voting on the tax in the total area covered by
12 the contiguous cities favored its imposition. The
13 local option tax may be repealed or the rate increased
14 or decreased or the use thereof changed after an
15 election at which a majority of those voting on the
16 question of repeal or rate or use change favored the
17 repeal or rate or use change. The election at which
18 the question of repeal or rate or use change is
19 offered shall be called and held in the same manner
20 and under the same conditions as provided in
21 subsections 4 and 5 for the election on the imposition
22 of the local option tax. However, in the case of a
23 local sales and services tax or a local cigarette and
24 tobacco tax where the tax has not been imposed
25 countywide, the question of repeal or imposition or
26 rate or use change shall be voted on only by the
27 registered voters of the areas of the county where the
28 tax has been imposed or has not been imposed, as
29 appropriate. However, the governing body of the
30 incorporated area or unincorporated area where the
31 local sales and services tax or a local cigarette and
32 tobacco tax is imposed may, upon its own motion,
33 request the county commissioner of elections to hold
34 an election in the incorporated or unincorporated
35 area, as appropriate, on the question of the change in
36 use of local sales and services tax revenues. The
37 election may be held at any time but not sooner than
38 sixty days following publication of the ballot
39 proposition. If a majority of those voting in the
40 incorporated or unincorporated area on the change in
41 use favor the change, the governing body of that area
42 shall change the use to which the revenues shall be
43 used. The ballot proposition shall list the present
44 use of the revenues, the proposed use, and the date
45 after which revenues received will be used for the new
46 use.

47 When submitting the question of the imposition of a
48 local sales and services tax or a local cigarette and
49 tobacco tax, the county board of supervisors may
50 direct that the question contain a provision for the

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1 repeal, without election, of the local sales and
2 services tax or a local cigarette and tobacco tax on a
3 specific date, which date shall be the end of a
4 calendar quarter.

5 b. Within ten days of the election at which a
6 majority of those voting on the question favors the
7 imposition, repeal, or change in the rate of a local
8 option tax, the governing body shall give written
9 notice to the director of revenue and finance or, in
10 the case of a local vehicle tax, to the director of
11 the department of transportation, of the result of the
12 election.

13 8. Local option taxes authorized to be imposed as
14 provided in this chapter are a local sales and
15 services tax, a local cigarette and tobacco tax, and a
16 local vehicle tax. The rate of the tax shall be in
17 increments of one dollar per vehicle for a vehicle tax
18 as set on the petition seeking to impose the vehicle
19 tax. The rate of a local sales and services tax shall
20 not be more than one percent as set by the governing
21 body. The rate of the local cigarette and tobacco tax
22 shall not be more than ten percent as set by the
23 governing body.

24 9. In a county that has imposed a local option
25 sales and services tax or a local option cigarette and
26 tobacco tax, the board of supervisors shall,
27 notwithstanding any contrary provision of this
28 chapter, repeal the local option ~~sales-and-services~~
29 tax in the unincorporated areas or in an incorporated
30 city area in which the tax has been imposed upon
31 adoption of its own motion for repeal in the
32 unincorporated areas or upon receipt of a motion
33 adopted by the governing body of that incorporated
34 city area requesting repeal. The board of supervisors
35 shall repeal the local option ~~sales-and-services~~ tax
36 effective at the end of the calendar quarter during
37 which it adopted the repeal motion or the motion for
38 the repeal was received. For purposes of this
39 subsection, incorporated city area includes an
40 incorporated city which is contiguous to another
41 incorporated city.

42 Sec. ____ . NEW SECTION. 422B.5 LOCAL CIGARETTE
43 AND TOBACCO TAX.

44 A local cigarette and tobacco tax at the rate of
45 not more than ten percent may be imposed by a county
46 on the gross receipts from sales of cigarettes and
47 tobacco products sold at retail by a retailer as
48 defined under chapter 422, division IV. A local
49 cigarette and tobacco tax shall be imposed only if the
50 retailer is required under section 422.53 to have a

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1 state tax permit to collect the state sales and
2 services tax. A local cigarette and tobacco tax is
3 applicable to transactions within those incorporated
4 and unincorporated areas of the county where it is
5 imposed and shall be collected by all persons required
6 to collect state gross receipts taxes. All cities
7 contiguous to each other shall be treated as part of
8 one incorporated area and the tax would be imposed in
9 each of those contiguous cities only if the majority
10 of those voting in the total area covered by the
11 contiguous cities favor its imposition.

12 The amount of the sale, for purposes of determining
13 the amount of the local cigarette and tobacco tax,
14 does not include the amount of any state gross
15 receipts taxes but does include the amount of any tax
16 imposed under chapter 453A.

17 A tax permit other than the state tax permit
18 required under section 422.53 shall not be required by
19 local authorities.

20 Sec. ____ . NEW SECTION. 422B.6 ADMINISTRATION.

21 A local cigarette and tobacco tax shall be imposed
22 either January 1, April 1, July 1 or October 1
23 following the notification of the director of revenue
24 and finance.

25 A local cigarette and tobacco tax shall be repealed
26 only on March 31, June 30, September 30, or December
27 31. However, a local cigarette and tobacco tax shall
28 not be repealed before the tax has been in effect for
29 one year. At least forty days before the imposition
30 or repeal of the tax, a county shall provide notice of
31 the action by certified mail to the director of
32 revenue and finance.

33 The director of revenue and finance shall
34 administer a local cigarette and tobacco tax as nearly
35 as possible in conjunction with the administration of
36 state gross receipts tax laws. The director shall
37 provide appropriate forms or provide on the regular
38 state tax forms for reporting local cigarette and
39 tobacco tax liability.

40 The ordinance of a county board of supervisors
41 imposing a local cigarette and tobacco tax shall adopt
42 by reference the applicable provisions of the
43 appropriate sections of chapter 422, division IV. All
44 powers and requirements of the director to administer
45 the state gross receipts tax law are applicable to the
46 administration of a local sales and services tax law,
47 including but not limited to, the provisions of
48 sections 422.25, subsection 4, 422.30, 422.48 to
49 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69,
50 subsection 1, and 422.70 to 422.75. Local officials

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1 shall confer with the director of revenue and finance
2 for assistance in drafting the ordinance imposing a
3 local cigarette and tobacco tax. A certified copy of
4 the ordinance shall be filed with the director as soon
5 as possible after passage.

6 The director, in consultation with local officials,
7 shall collect and account for a local cigarette and
8 tobacco tax. The director shall certify each quarter
9 the amount of local cigarette and tobacco tax receipts
10 and any interest and penalties to be credited to the
11 "local cigarette and tobacco tax fund" established in
12 the office of the treasurer of state.

13 All local tax moneys and interest and penalties
14 received or refunded one hundred eighty days or more
15 after the date on which the county repeals its local
16 cigarette and tobacco tax shall be deposited in or
17 withdrawn from the state general fund.

18 Sec. . NEW SECTION. 422B.7 PAYMENT TO LOCAL
19 GOVERNMENTS.

20 1. The director shall credit the local cigarette
21 and tobacco tax receipts and interest and penalties
22 from the tax imposed in the unincorporated area of a
23 county to the county's account in the local cigarette
24 and tobacco tax fund and from the tax imposed in the
25 unincorporated area of a city to the city's account in
26 the local cigarette and tobacco tax fund. If the
27 director is unable to determine from which county any
28 of the receipts were collected, those receipts shall
29 be allocated among the possible counties based on
30 allocation rules adopted by the director.

31 2. a. The director of revenue and finance within
32 fifteen days of the beginning of each fiscal year
33 shall send to each city or county where the local
34 option tax is imposed, an estimate of the amount of
35 tax moneys each city or county will receive for the
36 year and for each quarter of the year. At the end of
37 each quarter, the director may revise the estimates
38 for the year and remaining quarters.

39 b. The director of revenue and finance shall remit
40 ninety percent of the estimate tax receipts for the
41 city or county to the city or county after the end of
42 each quarter no later than the following dates:
43 November 10, February 10, May 10, and August 10.

44 c. The director of revenue and finance shall remit
45 a final payment of the remainder of tax moneys due the
46 city or county for the fiscal year before the due date
47 for the payment of the first quarter of the next
48 fiscal year. If an overpayment has resulted during
49 the previous fiscal year, the first payment of the new
50 fiscal year shall be adjusted to reflect any

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1 overpayment.

2 3. Local cigarette and tobacco tax moneys received
3 by a city or county shall be expended by the city or
4 county for the purpose of educating minors on the
5 addictiveness and harmful effects of cigarettes and
6 tobacco products and enforcing federal, state, and
7 local cigarette and tobacco laws.

8 Sec. _____. Section 422B.8, unnumbered paragraph 1,
9 Code Supplement 1995, is amended to read as follows:

10 A local sales and services tax at the rate of not
11 more than one percent may be imposed by a county on
12 the gross receipts taxed by the state under chapter
13 422, division IV. A local sales and services tax
14 shall be imposed on the same basis as the state sales
15 and services tax and may not be imposed on the sale of
16 any property or on any service not taxed by the state,
17 except the tax shall not be imposed on the gross
18 receipts from the sale of motor fuel or special fuel
19 as defined in chapter 452A, on the gross receipts from
20 the sale of cigarettes and tobacco products as defined
21 in chapter 453A, on the gross receipts from the rental
22 of rooms, apartments, or sleeping quarters which are
23 taxed under chapter 422A during the period the hotel
24 and motel tax is imposed, on the gross receipts from
25 the sale of natural gas or electric energy in a city
26 or county where the gross receipts are subject to a
27 franchise fee or user fee during the period the
28 franchise or user fee is imposed, on the gross
29 receipts from the sale of equipment by the state
30 department of transportation, and on the gross
31 receipts from the sale of a lottery ticket or share in
32 a lottery game conducted pursuant to chapter 99E. A
33 local sales and services tax is applicable to
34 transactions within those incorporated and
35 unincorporated areas of the county where it is imposed
36 and shall be collected by all persons required to
37 collect state gross receipts taxes. All cities
38 contiguous to each other shall be treated as part of
39 one incorporated area and the tax would be imposed in
40 each of those contiguous cities only if the majority
41 of those voting in the total area covered by the
42 contiguous cities favor its imposition.

43 Sec. _____. Section 453A.2, Code 1995, is amended by
44 adding the following new subsection:

45 NEW SUBSECTION. 5. A violation of subsection 1 is
46 a violation of section 714.16, subsection 2, paragraph
47 "a".

48 Sec. _____. Section 453A.3, unnumbered paragraph 1,
49 Code 1995, is amended to read as follows:

50 A person who violates section 453A.2, subsection 1,

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1 or-section-453A.39 is guilty of a simple misdemeanor.
2 Sec. _____. Section 453A.22, subsection 2,
3 unnumbered paragraph 1, Code 1995, is amended to read
4 as follows:

5 If a retailer or employee of a retailer has
6 violated section 453A.27 or 453A.36, subsection 6, or
7 453A.39 8, or 9, the department or local authority, in
8 addition to the other penalties fixed for such
9 violations in this section, shall assess a penalty
10 upon the same hearing and notice as prescribed in
11 subsection 1 as follows:

12 Sec. _____. Section 453A.36, subsection 6, Code
13 1995, is amended to read as follows:

14 6. Any sales of cigarettes or tobacco products
15 made through a cigarette vending machine are subject
16 to rules and penalties relative to retail sales of
17 cigarettes and tobacco products provided for in this
18 chapter. No cigarettes shall be sold through any
19 cigarette vending machine unless the cigarettes have
20 been properly stamped or metered as provided by this
21 division, and in case of violation of this provision,
22 the permit of the dealer authorizing retail sales of
23 cigarettes shall be canceled. Payment of the license
24 fee as provided in section 453A.13 authorizes a
25 cigarette vendor to sell cigarettes or tobacco
26 products through vending machines, ~~provided that the~~
27 ~~following conditions are met:--the machines are~~
28 ~~located in places where the machines are under the~~
29 ~~supervision of a person of legal age who is~~
30 ~~responsible for prevention of purchase by minors from~~
31 ~~the machines; the machines are equipped with a lock-~~
32 ~~out device under the control of a person of legal age~~
33 ~~who shall directly regulate the sale of items through~~
34 ~~the machines; and which shall include a mechanism to~~
35 ~~prevent the machines from functioning if the power~~
36 ~~source for the lock-out device fails or if the lock-~~
37 ~~out device is disabled; and a mechanism to ensure that~~
38 ~~only one pack of cigarettes or one tobacco product is~~
39 ~~dispensed at a time; and the location where the~~
40 ~~machines are placed is covered by a local retail~~
41 ~~permit. However, a lock-out device is not required~~
42 ~~for machines operated in the following locations; if~~
43 ~~the machines are not to be placed in a doorway or~~
44 ~~other area readily accessible to minors:--a commercial~~
45 ~~establishment holding a class "C" liquor license or a~~
46 ~~class "B" beer permit under chapter 123; if the~~
47 ~~establishment is not also licensed as a food service~~
48 ~~establishment under chapter 137B; a private facility~~
49 ~~not open to the public; or a workplace not open to the~~
50 public. Cigarettes or tobacco products shall not be

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1 sold through a vending machine unless the vending
2 machine is located in a bar and unless the vending
3 machine is placed behind the counter from which
4 alcoholic beverages are served or in another location
5 in the bar which is not accessible to the public. For
6 the purposes of this subsection, "bar" means bar as
7 defined in section 142B.1. This section does not
8 require a retail licensee to buy a cigarette vendor's
9 permit if the retail licensee is in fact the owner of
10 the cigarette vending machines and the machines are
11 operated in the location described in the retail
12 permit.

13 Sec. _____. Section 453A.36, Code 1995, is amended
14 by adding the following new subsections:

15 NEW SUBSECTION. 8. A manufacturer, distributor,
16 wholesaler, retailer, distributing agent, or agent
17 thereof shall not give away cigarettes or tobacco
18 products at any time in connection with the
19 manufacturer's, distributor's, wholesaler's,
20 retailer's, or distributing agent's business or for
21 promotion of the business or product. A manufacturer,
22 distributor, wholesaler, retailer, distributing agent,
23 or agent thereof who violates this subsection is
24 guilty of a serious misdemeanor.

25 NEW SUBSECTION. 9. It is unlawful for any
26 manufacturer, distributor, wholesaler, retailer,
27 distributing agent, or agent thereof to advertise on
28 any advertising device cigarettes or other tobacco
29 products within one thousand feet of any playground,
30 school, high school, or other facility when such
31 facility is being used primarily by persons under age
32 eighteen for recreational, educational, or other
33 purposes. A manufacturer, distributor, wholesaler,
34 retailer, distributing agent, or agent thereof who
35 violates this subsection is guilty of a serious
36 misdemeanor.

37 Sec. _____. Section 453A.56, Code 1995, is amended
38 to read as follows:

39 453A.56 UNIFORM APPLICATION.

40 Enforcement of this chapter shall be implemented in
41 an equitable manner throughout the state. For the
42 purpose of equitable and uniform implementation,
43 application, and enforcement of state and local laws
44 and regulations, the provisions of this chapter shall
45 supersede any local law or regulation which is
46 inconsistent with or conflicts with the provisions of
47 this chapter, unless the local law or regulation is
48 more restrictive in application in which case the more
49 restrictive portion of the local law or regulation
50 shall supersede any inconsistent or conflicting

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1 provision of this chapter. This section and any other
2 provision in this chapter shall not prohibit the
3 imposition of a local option cigarette and tobacco tax
4 under chapter 422B."

5 _____. Page 3, by inserting after line 21 the
6 following:

7 "Sec. _____. Section 453A.39, Code 1995, is
8 repealed.

9 Sec. _____. Section 101 of this Act, relating to the
10 recovery of medical assistance expenditures due to
11 smoking, being deemed of immediate importance, takes
12 effect upon enactment.

13 Sec. _____. RETROACTIVE APPLICABILITY. The state
14 may recover, pursuant to section 249A.30, in addition
15 to any subsequent damages, any applicable damages
16 incurred within the two years preceding the date of
17 enactment of section 249A.30 of this Act."

18 _____. Title page, by striking line 6 and inserting
19 the following: "substances; providing funding for
20 enforcement and education purposes relating to
21 cigarettes and tobacco products by allowing a local
22 option cigarette and tobacco tax; providing penalties,
23 establishing civil penalties, making penalties
24 applicable, providing effective dates, and providing a
25 repeal.""

26 2. By renumbering as necessary.

By BRAMMER of Linn

H-5501 FILED MARCH 20, 1996

HOUSE FILE 2454

H-5502

1 Amend the amendment, H-5280, to House File 2454, as
2 follows:

3 1. Page 1, by inserting after line 1 the
4 following:

5 "_____. Page 2, by inserting after line 24 the
6 following:

7 "Sec. _____. Section 142B.6, Code 1995, is amended
8 to read as follows:

9 142B.6 CIVIL PENALTY FOR VIOLATION -- UNIFORM
10 APPLICATION ENFORCEMENT.

11 A person who smokes in those areas prohibited in
12 section 142B.2, or who violates section 142B.4, shall
13 pay a civil fine pursuant to section 805.8, subsection
14 11, for each violation.

15 Judicial magistrates shall hear and determine
16 violations of this chapter. The civil penalties paid
17 pursuant to this chapter shall be deposited in the
18 county treasury.

19 ~~Enforcement of this chapter shall be implemented in~~
20 ~~an equitable manner throughout the state. For the~~
21 ~~purpose of equitable and uniform implementation,~~
22 ~~application, and enforcement of state and local laws~~
23 ~~and regulations, the provisions of this chapter shall~~
24 ~~supersede any local law or regulation which is~~
25 ~~inconsistent with or conflicts with the provisions of~~
26 ~~this chapter.~~ The Iowa department of public health
27 shall adopt rules to enforce this chapter.

28 Sec. 101. NEW SECTION. 249A.30 RECOVERY OF
29 MEDICAL ASSISTANCE EXPENDITURE -- CIGARETTE AND
30 TOBACCO PRODUCTS -- RELATED MEDICAL EXPENSES BY
31 RESIDENT RECIPIENTS.

32 1. Notwithstanding chapter 668, the attorney
33 general may institute a civil action on behalf of the
34 state against any manufacturer of cigarettes or other
35 tobacco products to recover the full amount of medical
36 assistance provided by the state to a resident of the
37 state for the payment of medical services which are
38 reasonably attributable to the use of cigarettes or
39 tobacco products and all reasonable expenses
40 associated with instituting the action.

41 2. In determining liability in an action under
42 this section, all of the following shall apply:

43 a. Any manufacturer of cigarettes or other tobacco
44 products shall be strictly liable for the medical
45 expenses reasonably attributable to the use of the
46 manufacturer's product, without regard to any
47 negligence, intent, warnings, or other conduct or
48 knowledge on the part of the manufacturer.

49 b. The state may recover medical expenses, without
50 regard to the defenses of assumption of the risk,

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1 contributory or comparative negligence, or other
2 defenses which might be asserted.

3 c. Any action instituted by the attorney general
4 is independent of any rights or causes of action of
5 any individual.

6 3. In determining the extent of the liability of
7 any manufacturer under this section, the court shall
8 apply the following evidentiary presumptions:

9 a. The ratio of the expenses attributable to the
10 use of cigarettes or tobacco products produced by any
11 manufacturer to the expenses of all manufacturers is
12 presumed to be equivalent to the ratio of the sales by
13 the manufacturer within the state during the most
14 recent year for which data are available to the sales
15 of all manufacturers for that year.

16 b. The medical expenses for individuals
17 attributable to the use of cigarettes or tobacco
18 products shall be based on reliable estimates for the
19 class of persons affected, rather than proof of the
20 cause of expenses in the case of any particular
21 individual.

22 c. Estimates of medical expenses shall be based on
23 epidemiological, scientific, survey, and other data,
24 determined by the director of public health to be
25 reliable and reasonably available. The Iowa
26 department of public health shall adopt rules to
27 specify the methodology for making the estimates in
28 any action under this section.

29 d. A defendant shall have the opportunity to rebut
30 any presumption by clear and convincing evidence,
31 provided that the court shall take reasonable steps to
32 ensure that determination of damages is concluded in a
33 timely and expeditious manner and that no party to the
34 action is permitted to unduly delay the conclusion of
35 the action.

36 4. For the purposes of this section, "cigarette"
37 and "tobacco products" mean cigarette and tobacco
38 products as defined in section 453A.1."

39 2. Page 1, by inserting after line 3 the
40 following:

41 "Sec. _____. Section 422B.1, subsections 3, 4, 5,
42 6, 8, and 9, Code Supplement 1995, are amended to read
43 as follows:

44 3. A local option tax shall be imposed only after
45 an election at which a majority of those voting on the
46 question favors imposition and shall then be imposed
47 until repealed as provided in subsection 6, paragraph
48 "a". If the tax is a local vehicle tax imposed by a
49 county, it shall apply to all incorporated and
50 unincorporated areas of the county. If the tax is a

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1 local sales and services tax or a local cigarette and
2 tobacco tax imposed by a county, it shall only apply
3 to those incorporated areas and the unincorporated
4 area of that county in which a majority of those
5 voting in the area on the tax favors its imposition.
6 For purposes of the local sales and services tax or a
7 local cigarette and tobacco tax, all cities contiguous
8 to each other shall be treated as part of one
9 incorporated area and the tax would be imposed in each
10 of those contiguous cities only if the majority of
11 those voting in the total area covered by the
12 contiguous cities favors its imposition. For purposes
13 of the local sales and services tax or a local
14 cigarette and tobacco tax, a city is not contiguous to
15 another city if the only road access between the two
16 cities is through another state.

17 4. a. A county board of supervisors shall direct
18 within thirty days the county commissioner of
19 elections to submit the question of imposition of a
20 local vehicle tax, or a local sales and services tax,
21 or a local cigarette and tobacco tax to the registered
22 voters of the incorporated and unincorporated areas of
23 the county upon receipt of a petition, requesting
24 imposition of a local vehicle tax, or a local sales
25 and services tax, or a local cigarette and tobacco
26 tax, signed by eligible electors of the whole county
27 equal in number to five percent of the persons in the
28 whole county who voted at the last preceding state
29 general election. In the case of a local vehicle tax,
30 the petition requesting imposition shall specify the
31 rate of tax and the classes, if any, that are to be
32 exempt. If more than one valid petition is received,
33 the earliest received petition shall be used.

34 b. The question of the imposition of a local sales
35 and services tax or a local cigarette and tobacco tax
36 shall be submitted to the registered voters of the
37 incorporated and unincorporated areas of the county
38 upon receipt by the county commissioner of elections
39 of the motion or motions, requesting such submission,
40 adopted by the governing body or bodies of the city or
41 cities located within the county or of the county, for
42 the unincorporated areas of the county, representing
43 at least one half of the population of the county.
44 Upon adoption of such motion, the governing body of
45 the city or county, for the unincorporated areas,
46 shall submit the motion to the county commissioner of
47 elections and in the case of the governing body of the
48 city shall notify the board of supervisors of the
49 adoption of the motion. The county commissioner of
50 elections shall keep a file on all the motions

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1 received and, upon reaching the population
2 requirements, shall publish notice of the ballot
3 proposition concerning the imposition of the local
4 sales and services tax or a local cigarette and
5 tobacco tax. A motion ceases to be valid at the time
6 of the holding of the regular election for the
7 election of members of the governing body which
8 adopted the motion. The county commissioner of
9 elections shall eliminate from the file any motion
10 that ceases to be valid. The manner provided under
11 this paragraph for the submission of the question of
12 imposition of a local sales and services tax or a
13 local cigarette and tobacco tax is an alternative to
14 the manner provided in paragraph "a".

15 5. The county commissioner of elections shall
16 submit the question of imposition of a local option
17 tax at a state general election or at a special
18 election held at any time other than the time of a
19 city regular election. The election shall not be held
20 sooner than sixty days after publication of notice of
21 the ballot proposition. The ballot proposition shall
22 specify the type and rate of tax and in the case of a
23 vehicle tax the classes that will be exempt and in the
24 case of a local sales and services tax or a local
25 cigarette and tobacco tax the date it will be imposed.
26 The ballot proposition shall also specify the
27 approximate amount of local option tax revenues that
28 will be used for property tax relief and shall contain
29 a statement as to the specific purpose or purposes for
30 which the revenues shall otherwise be expended. If
31 the county board of supervisors decides under
32 subsection 6 to specify a date on which the local
33 option sales and services tax or a local cigarette and
34 tobacco tax shall automatically be repealed, the date
35 of the repeal shall also be specified on the ballot.
36 The rate of the vehicle tax shall be in increments of
37 one dollar per vehicle as set by the petition seeking
38 to impose the tax. The rate of a local sales and
39 services tax shall not be more than one percent as set
40 by the governing body. The rate of the cigarette and
41 tobacco tax shall not be more than ten percent as set
42 by the governing body. The state commissioner of
43 elections shall establish by rule the form for the
44 ballot proposition which form shall be uniform
45 throughout the state.

46 6. a. If a majority of those voting on the
47 question of imposition of a local option tax favor
48 imposition of a local option tax, the governing body
49 of that county shall impose the tax at the rate
50 specified for an unlimited period. However, in the

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1 case of a local sales and services tax or a local
2 cigarette and tobacco tax, the county shall not impose
3 the tax in any incorporated area or the unincorporated
4 area if the majority of those voting on the tax in
5 that area did not favor its imposition. For purposes
6 of the local sales and services tax or a local
7 cigarette and tobacco tax, all cities contiguous to
8 each other shall be treated as part of one
9 incorporated area and the tax shall be imposed in each
10 of those contiguous cities only if the majority of
11 those voting on the tax in the total area covered by
12 the contiguous cities favored its imposition. The
13 local option tax may be repealed or the rate increased
14 or decreased or the use thereof changed after an
15 election at which a majority of those voting on the
16 question of repeal or rate or use change favored the
17 repeal or rate or use change. The election at which
18 the question of repeal or rate or use change is
19 offered shall be called and held in the same manner
20 and under the same conditions as provided in
21 subsections 4 and 5 for the election on the imposition
22 of the local option tax. However, in the case of a
23 local sales and services tax or a local cigarette and
24 tobacco tax where the tax has not been imposed
25 countywide, the question of repeal or imposition or
26 rate or use change shall be voted on only by the
27 registered voters of the areas of the county where the
28 tax has been imposed or has not been imposed, as
29 appropriate. However, the governing body of the
30 incorporated area or unincorporated area where the
31 local sales and services tax or a local cigarette and
32 tobacco tax is imposed may, upon its own motion,
33 request the county commissioner of elections to hold
34 an election in the incorporated or unincorporated
35 area, as appropriate, on the question of the change in
36 use of local sales and services tax revenues. The
37 election may be held at any time but not sooner than
38 sixty days following publication of the ballot
39 proposition. If a majority of those voting in the
40 incorporated or unincorporated area on the change in
41 use favor the change, the governing body of that area
42 shall change the use to which the revenues shall be
43 used. The ballot proposition shall list the present
44 use of the revenues, the proposed use, and the date
45 after which revenues received will be used for the new
46 use.

47 When submitting the question of the imposition of a
48 local sales and services tax or a local cigarette and
49 tobacco tax, the county board of supervisors may
50 direct that the question contain a provision for the

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1 repeal, without election, of the local sales and
2 services tax or a local cigarette and tobacco tax on a
3 specific date, which date shall be the end of a
4 calendar quarter.

5 b. Within ten days of the election at which a
6 majority of those voting on the question favors the
7 imposition, repeal, or change in the rate of a local
8 option tax, the governing body shall give written
9 notice to the director of revenue and finance or, in
10 the case of a local vehicle tax, to the director of
11 the department of transportation, of the result of the
12 election.

13 8. Local option taxes authorized to be imposed as
14 provided in this chapter are a local sales and
15 services tax, a local cigarette and tobacco tax, and a
16 local vehicle tax. The rate of the tax shall be in
17 increments of one dollar per vehicle for a vehicle tax
18 as set on the petition seeking to impose the vehicle
19 tax. The rate of a local sales and services tax shall
20 not be more than one percent as set by the governing
21 body. The rate of the local cigarette and tobacco tax
22 shall not be more than ten percent as set by the
23 governing body.

24 9. In a county that has imposed a local option
25 sales and services tax or a local option cigarette and
26 tobacco tax, the board of supervisors shall,
27 notwithstanding any contrary provision of this
28 chapter, repeal the local option ~~sales-and-services~~
29 tax in the unincorporated areas or in an incorporated
30 city area in which the tax has been imposed upon
31 adoption of its own motion for repeal in the
32 unincorporated areas or upon receipt of a motion
33 adopted by the governing body of that incorporated
34 city area requesting repeal. The board of supervisors
35 shall repeal the local option ~~sales-and-services~~ tax
36 effective at the end of the calendar quarter during
37 which it adopted the repeal motion or the motion for
38 the repeal was received. For purposes of this
39 subsection, incorporated city area includes an
40 incorporated city which is contiguous to another
41 incorporated city.

42 Sec. ____ . NEW SECTION. 422B.5 LOCAL CIGARETTE
43 AND TOBACCO TAX.

44 A local cigarette and tobacco tax at the rate of
45 not more than ten percent may be imposed by a county
46 on the gross receipts from sales of cigarettes and
47 tobacco products sold at retail by a retailer as
48 defined under chapter 422, division IV. A local
49 cigarette and tobacco tax shall be imposed only if the
50 retailer is required under section 422.53 to have a

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1 state tax permit to collect the state sales and
2 services tax. A local cigarette and tobacco tax is
3 applicable to transactions within those incorporated
4 and unincorporated areas of the county where it is
5 imposed and shall be collected by all persons required
6 to collect state gross receipts taxes. All cities
7 contiguous to each other shall be treated as part of
8 one incorporated area and the tax would be imposed in
9 each of those contiguous cities only if the majority
10 of those voting in the total area covered by the
11 contiguous cities favor its imposition.

12 The amount of the sale, for purposes of determining
13 the amount of the local cigarette and tobacco tax,
14 does not include the amount of any state gross
15 receipts taxes but does include the amount of any tax
16 imposed under chapter 453A.

17 A tax permit other than the state tax permit
18 required under section 422.53 shall not be required by
19 local authorities.

20 Sec. ____ . NEW SECTION. 422B.6 ADMINISTRATION.

21 A local cigarette and tobacco tax shall be imposed
22 either January 1, April 1, July 1 or October 1
23 following the notification of the director of revenue
24 and finance.

25 A local cigarette and tobacco tax shall be repealed
26 only on March 31, June 30, September 30, or December
27 31. However, a local cigarette and tobacco tax shall
28 not be repealed before the tax has been in effect for
29 one year. At least forty days before the imposition
30 or repeal of the tax, a county shall provide notice of
31 the action by certified mail to the director of
32 revenue and finance.

33 The director of revenue and finance shall
34 administer a local cigarette and tobacco tax as nearly
35 as possible in conjunction with the administration of
36 state gross receipts tax laws. The director shall
37 provide appropriate forms or provide on the regular
38 state tax forms for reporting local cigarette and
39 tobacco tax liability.

40 The ordinance of a county board of supervisors
41 imposing a local cigarette and tobacco tax shall adopt
42 by reference the applicable provisions of the
43 appropriate sections of chapter 422, division IV. All
44 powers and requirements of the director to administer
45 the state gross receipts tax law are applicable to the
46 administration of a local sales and services tax law,
47 including but not limited to, the provisions of
48 sections 422.25, subsection 4, 422.30, 422.48 to
49 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69,
50 subsection 1, and 422.70 to 422.75. Local officials

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1 shall confer with the director of revenue and finance
2 for assistance in drafting the ordinance imposing a
3 local cigarette and tobacco tax. A certified copy of
4 the ordinance shall be filed with the director as soon
5 as possible after passage.

6 The director, in consultation with local officials,
7 shall collect and account for a local cigarette and
8 tobacco tax. The director shall certify each quarter
9 the amount of local cigarette and tobacco tax receipts
10 and any interest and penalties to be credited to the
11 "local cigarette and tobacco tax fund" established in
12 the office of the treasurer of state.

13 All local tax moneys and interest and penalties
14 received or refunded one hundred eighty days or more
15 after the date on which the county repeals its local
16 cigarette and tobacco tax shall be deposited in or
17 withdrawn from the state general fund.

18 Sec. . NEW SECTION. 422B.7 PAYMENT TO LOCAL
19 GOVERNMENTS.

20 1. The director shall credit the local cigarette
21 and tobacco tax receipts and interest and penalties
22 from the tax imposed in the unincorporated area of a
23 county to the county's account in the local cigarette
24 and tobacco tax fund and from the tax imposed in the
25 unincorporated area of a city to the city's account in
26 the local cigarette and tobacco tax fund. If the
27 director is unable to determine from which county any
28 of the receipts were collected, those receipts shall
29 be allocated among the possible counties based on
30 allocation rules adopted by the director.

31 2. a. The director of revenue and finance within
32 fifteen days of the beginning of each fiscal year
33 shall send to each city or county where the local
34 option tax is imposed, an estimate of the amount of
35 tax moneys each city or county will receive for the
36 year and for each quarter of the year. At the end of
37 each quarter, the director may revise the estimates
38 for the year and remaining quarters.

39 b. The director of revenue and finance shall remit
40 ninety percent of the estimate tax receipts for the
41 city or county to the city or county after the end of
42 each quarter no later than the following dates:
43 November 10, February 10, May 10, and August 10.

44 c. The director of revenue and finance shall remit
45 a final payment of the remainder of tax moneys due the
46 city or county for the fiscal year before the due date
47 for the payment of the first quarter of the next
48 fiscal year. If an overpayment has resulted during
49 the previous fiscal year, the first payment of the new
50 fiscal year shall be adjusted to reflect any

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1 overpayment.

2 3. Local cigarette and tobacco tax moneys received
3 by a city or county shall be expended by the city or
4 county for the purpose of educating minors on the
5 addictiveness and harmful effects of cigarettes and
6 tobacco products and enforcing federal, state, and
7 local cigarette and tobacco laws.

8 Sec. _____. Section 422B.8, unnumbered paragraph 1,
9 Code Supplement 1995, is amended to read as follows:

10 A local sales and services tax at the rate of not
11 more than one percent may be imposed by a county on
12 the gross receipts taxed by the state under chapter
13 422, division IV. A local sales and services tax
14 shall be imposed on the same basis as the state sales
15 and services tax and may not be imposed on the sale of
16 any property or on any service not taxed by the state,
17 except the tax shall not be imposed on the gross
18 receipts from the sale of motor fuel or special fuel
19 as defined in chapter 452A, on the gross receipts from
20 the sale of cigarettes and tobacco products as defined
21 in chapter 453A, on the gross receipts from the rental
22 of rooms, apartments, or sleeping quarters which are
23 taxed under chapter 422A during the period the hotel
24 and motel tax is imposed, on the gross receipts from
25 the sale of natural gas or electric energy in a city
26 or county where the gross receipts are subject to a
27 franchise fee or user fee during the period the
28 franchise or user fee is imposed, on the gross
29 receipts from the sale of equipment by the state
30 department of transportation, and on the gross
31 receipts from the sale of a lottery ticket or share in
32 a lottery game conducted pursuant to chapter 99E. A
33 local sales and services tax is applicable to
34 transactions within those incorporated and
35 unincorporated areas of the county where it is imposed
36 and shall be collected by all persons required to
37 collect state gross receipts taxes. All cities
38 contiguous to each other shall be treated as part of
39 one incorporated area and the tax would be imposed in
40 each of those contiguous cities only if the majority
41 of those voting in the total area covered by the
42 contiguous cities favor its imposition.

43 Sec. _____. Section 453A.2, Code 1995, is amended by
44 adding the following new subsection:

45 NEW SUBSECTION. 5. A violation of subsection 1 is
46 a violation of section 714.16, subsection 2, paragraph
47 "a".

48 Sec. _____. Section 453A.3, unnumbered paragraph 1,
49 Code 1995, is amended to read as follows:

50 A person who violates section 453A.2, subsection 1,

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1 ~~or section 453A.39~~ is guilty of a simple misdemeanor.
2 Sec. ____ . Section 453A.22, subsection 2,
3 unnumbered paragraph 1, Code 1995, is amended to read
4 as follows:

5 If a retailer or employee of a retailer has
6 violated section 453A.27 or 453A.36, subsection 6, or
7 ~~453A.39~~ 8, or 9, the department or local authority, in
8 addition to the other penalties fixed for such
9 violations in this section, shall assess a penalty
10 upon the same hearing and notice as prescribed in
11 subsection 1 as follows:

12 Sec. ____ . Section 453A.36, subsection 6, Code
13 1995, is amended to read as follows:

14 6. Any sales of cigarettes or tobacco products
15 made through a cigarette vending machine are subject
16 to rules and penalties relative to retail sales of
17 cigarettes and tobacco products provided for in this
18 chapter. No cigarettes shall be sold through any
19 cigarette vending machine unless the cigarettes have
20 been properly stamped or metered as provided by this
21 division, and in case of violation of this provision,
22 the permit of the dealer authorizing retail sales of
23 cigarettes shall be canceled. Payment of the license
24 fee as provided in section 453A.13 authorizes a
25 cigarette vendor to sell cigarettes or tobacco
26 products through vending machines, ~~provided that the~~
27 ~~following conditions are met:--the machines are~~
28 ~~located in places where the machines are under the~~
29 ~~supervision of a person of legal age who is~~
30 ~~responsible for prevention of purchase by minors from~~
31 ~~the machines; the machines are equipped with a lock-~~
32 ~~out device under the control of a person of legal age~~
33 ~~who shall directly regulate the sale of items through~~
34 ~~the machines; and which shall include a mechanism to~~
35 ~~prevent the machines from functioning if the power~~
36 ~~source for the lock-out device fails or if the lock-~~
37 ~~out device is disabled; and a mechanism to ensure that~~
38 ~~only one pack of cigarettes or one tobacco product is~~
39 ~~dispensed at a time; and the location where the~~
40 ~~machines are placed is covered by a local retail~~
41 ~~permit. However, a lock-out device is not required~~
42 ~~for machines operated in the following locations; if~~
43 ~~the machines are not to be placed in a doorway or~~
44 ~~other area readily accessible to minors:--a commercial~~
45 ~~establishment holding a class "C" liquor license or a~~
46 ~~class "B" beer permit under chapter 123; if the~~
47 ~~establishment is not also licensed as a food service~~
48 ~~establishment under chapter 137B; a private facility~~
49 ~~not open to the public; or a workplace not open to the~~
50 ~~public.~~ Cigarettes or tobacco products shall not be

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1 sold through a vending machine unless the vending
2 machine is located in a bar and unless the vending
3 machine is placed behind the counter from which
4 alcoholic beverages are served or in another location
5 in the bar which is not accessible to the public. For
6 the purposes of this subsection, "bar" means bar as
7 defined in section 142B.1. This section does not
8 require a retail licensee to buy a cigarette vendor's
9 permit if the retail licensee is in fact the owner of
10 the cigarette vending machines and the machines are
11 operated in the location described in the retail
12 permit."

13 3. Page 1, line 11, by striking the word
14 "subsection" and inserting the following:
15 "subsections".

16 4. Page 1, by inserting after line 11 the
17 following:

18 "NEW SUBSECTION. 8. It is unlawful for any
19 manufacturer, distributor, wholesaler, retailer,
20 distributing agent, or agent thereof to advertise on
21 any advertising device cigarettes or other tobacco
22 products within one thousand feet of any playground,
23 school, high school, or other facility when such
24 facility is being used primarily by persons under age
25 eighteen for recreational, educational, or other
26 purposes. A manufacturer, distributor, wholesaler,
27 retailer, distributing agent, or agent thereof who
28 violates this subsection is guilty of a serious
29 misdemeanor."

30 5. Page 1, by inserting after line 18 the
31 following:

32 "Sec. ____ . Section 453A.56, Code 1995, is amended
33 to read as follows:

34 453A.56 UNIFORM APPLICATION.

35 Enforcement of this chapter shall be implemented in
36 an equitable manner throughout the state. For the
37 purpose of equitable and uniform implementation,
38 application, and enforcement of state and local laws
39 and regulations, the provisions of this chapter shall
40 supersede any local law or regulation which is
41 inconsistent with or conflicts with the provisions of
42 this chapter, unless the local law or regulation is
43 more restrictive in application in which case the more
44 restrictive portion of the local law or regulation
45 shall supersede any inconsistent or conflicting
46 provision of this chapter. This section and any other
47 provision in this chapter shall not prohibit the
48 imposition of a local option cigarette and tobacco tax
49 under chapter 422B.

50 ____ . Page 3, by inserting after line 21 the

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1 following:

2 "Sec. _____. Section 453A.39, Code 1995, is
3 repealed.

4 Sec. _____. Section 101 of this Act, relating to the
5 recovery of medical assistance expenditures due to
6 smoking, being deemed of immediate importance, takes
7 effect upon enactment.

8 Sec. _____. RETROACTIVE APPLICABILITY. The state
9 may recover, pursuant to section 249A.30, in addition
10 to any subsequent damages, any applicable damages
11 incurred within the two years preceding the date of
12 enactment of section 249A.30 of this Act."

13 _____. Title page, by striking line 6 and inserting
14 the following: "substances; providing funding for
15 enforcement and education purposes relating to
16 cigarettes and tobacco products by allowing a local
17 option cigarette and tobacco tax; providing penalties,
18 establishing civil penalties, making penalties
19 applicable, providing an effective date, and providing
20 a repeal.""

21 6. By renumbering as necessary.

By BRAMMER of Linn

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