

MAR 21 1996
JUDICIARY

HOUSE FILE 2482
BY BRAMMER

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

A BILL FOR

1 An Act relating to the recovery of medical assistance
2 expenditures due to smoking and providing effective date and
3 retroactive applicability provisions.

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

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HF 2482

1 Section 1. NEW SECTION. 249A.30 RECOVERY OF MEDICAL
2 ASSISTANCE EXPENDITURE -- CIGARETTE AND TOBACCO PRODUCTS --
3 RELATED MEDICAL EXPENSES BY RESIDENT RECIPIENTS.

4 1. Notwithstanding chapter 668, the attorney general may
5 institute a civil action on behalf of the state against any
6 manufacturer of cigarettes or other tobacco products to
7 recover the full amount of medical assistance provided by the
8 state to a resident of the state for the payment of medical
9 services which are reasonably attributable to the use of
10 cigarettes or tobacco products and all reasonable expenses
11 associated with instituting the action.

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

14 a. Any manufacturer of cigarettes or other tobacco
15 products shall be strictly liable for the medical expenses
16 reasonably attributable to the use of the manufacturer's
17 product, without regard to any negligence, intent, warnings,
18 or other conduct or knowledge on the part of the manufacturer.

19 b. The state may recover medical expenses, without regard
20 to the defenses of assumption of the risk, contributory or
21 comparative negligence, or other defenses which might be
22 asserted.

23 c. Any action instituted by the attorney general is
24 independent of any rights or causes of action of any
25 individual.

26 3. In determining the extent of the liability of any
27 manufacturer under this section, the court shall apply the
28 following evidentiary presumptions:

29 a. The ratio of the expenses attributable to the use of
30 cigarettes or tobacco products produced by any manufacturer to
31 the expenses of all manufacturers is presumed to be equivalent
32 to the ratio of the sales by the manufacturer within the state
33 during the most recent year for which data are available to
34 the sales of all manufacturers for that year.

35 b. The medical expenses for individuals attributable to

1 the use of cigarettes or tobacco products shall be based on
2 reliable estimates for the class of persons affected, rather
3 than proof of the cause of expenses in the case of any
4 particular individual.

5 c. Estimates of medical expenses shall be based on
6 epidemiological, scientific, survey, and other data,
7 determined by the director of public health to be reliable and
8 reasonably available. The Iowa department of public health
9 shall adopt rules to specify the methodology for making the
10 estimates in any action under this section.

11 d. A defendant shall have the opportunity to rebut any
12 presumption by clear and convincing evidence, provided that
13 the court shall take reasonable steps to ensure that
14 determination of damages is concluded in a timely and
15 expeditious manner and that no party to the action is
16 permitted to unduly delay the conclusion of the action.

17 4. For the purposes of this section, "cigarette" and
18 "tobacco products" mean cigarette and tobacco products as
19 defined in section 453A.1.

20 Sec. 2. EFFECTIVE DATE. This Act, being deemed of
21 immediate importance, takes effect upon enactment.

22 Sec. 3. RETROACTIVE APPLICABILITY. The state may recover,
23 in addition to any subsequent damages, any applicable damages
24 incurred within the two years preceding the date of enactment
25 of this Act.

26 EXPLANATION

27 This bill establishes a cause of action to be brought by
28 the attorney general for the recovery of medical assistance
29 expenses, made on behalf of a resident of the state who is a
30 recipient for medical expenses reasonably attributable to the
31 use of cigarettes and other tobacco products, from a
32 manufacturer of cigarettes or tobacco products doing business
33 in the state. The bill establishes criteria for determining
34 liability and the amount of medical expenses recoverable. The
35 bill provides that the chapter regarding comparative fault is

1 not applicable to the cause of action established in this
2 bill. The bill takes effect upon enactment and damages may be
3 collected for up to two years preceding the date of enactment.

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