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HUMAN RESOURCES

HOUSE FILE 2067
BY THOMSON and BRUNKHORST

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

A BILL FOR

1 An Act relating to tobacco products and cigarettes, providing
2 penalties, providing for an increased tax on cigarettes, and
3 providing for appropriations.

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

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HF 2067

1 Section 1. Section 142B.1, Code 1997, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 1A. "Child day care facility" means a
4 licensed child care center, group day care home, or registered
5 family day care home as defined in section 237A.1, or a child
6 care home registered under section 237A.3A.

7 Sec. 2. Section 142B.2, Code 1997, is amended by adding
8 the following new subsections:

9 NEW SUBSECTION. 5. Notwithstanding subsection 1, smoking
10 is prohibited in child day care facilities and facility-
11 operated vehicles during hours of operation of the facility
12 while child day care is being provided in any program area,
13 child-occupied room, or vehicle, and is prohibited at all
14 times in food preparation areas of child day care facilities.

15 NEW SUBSECTION. 6. Notwithstanding subsection 1, smoking
16 is prohibited on all property under the control of a
17 kindergarten, elementary school, or secondary school.

18 Sec. 3. Section 249A.4, Code Supplement 1997, is amended
19 by adding the following new subsection:

20 NEW SUBSECTION. 15. Adopt rules pursuant to chapter 17A
21 to provide smoking cessation products to recipients of medical
22 assistance.

23 Sec. 4. Section 453A.3, Code Supplement 1997, is amended
24 to read as follows:

25 453A.3 PENALTY.

26 1. A person other than a retailer or an employee of a
27 retailer who violates section 453A.2, subsection 1, or section
28 453A.39 is guilty of a simple misdemeanor. A retailer or an
29 employee of a retailer who violates section 453A.2, subsection
30 1, or section 453A.39, is guilty of a serious misdemeanor
31 punishable by a fine of two hundred fifty dollars.

32 2. A person who violates section 453A.2, subsection 2,
33 shall-pay is subject to one of the following:

34 a. Payment of a civil penalty pursuant to section 805.8,
35 subsection 11. Failure to pay the a civil penalty imposed for

1 a violation of section 453A.2, subsection 2, is a simple
2 misdemeanor punishable as a scheduled violation under section
3 805.8, subsection 11. Notwithstanding section 602.8106 or any
4 other provision to the contrary, any civil penalty or fine
5 paid under this subsection shall be retained by the city or
6 county enforcing the violation to be used for enforcement of
7 section 453A.2.

8 b. Performance of not more than twenty-five hours of
9 court-ordered, unpaid community service. The community
10 service may include, but is not limited to, service for a
11 local governmental or nonprofit public health service entity.

12 3. The judicial department shall develop a civil citation
13 form for the purpose of citing a person in violation of
14 section 453A.2, subsection 2. Judicial magistrates shall hear
15 and determine violations of and penalties for violations of
16 that subsection.

17 Sec. 5. Section 453A.6, Code 1997, is amended to read as
18 follows:

19 453A.6 TAX IMPOSED.

20 1. There is imposed, and shall be collected and paid to
21 the department, the following taxes on all cigarettes used or
22 otherwise disposed of in this state for any purpose
23 whatsoever:

24 Class A. On cigarettes weighing not more than three pounds
25 per thousand, ~~eighteen-mills~~ one and nine-tenths cents on each
26 such cigarette.

27 Class B. On cigarettes weighing more than three pounds per
28 thousand, ~~eighteen-mills~~ one and nine-tenths cents on each
29 such cigarette.

30 2. The said tax shall be paid only once by the person
31 making the "first sale" in this state, and shall become due
32 and payable as soon as such cigarettes are subject to a "first
33 sale" in Iowa, it being intended to impose the tax as soon as
34 such cigarettes are received by any person in Iowa for the
35 purpose of making a "first sale" of same. If the person

1 making the "first sale" did not pay such tax, it shall be paid
2 by any person into whose possession such cigarettes come until
3 said tax has been paid in full. No person, however, shall be
4 required to pay a tax on cigarettes brought into this state on
5 or about the person in quantities of forty cigarettes or less,
6 when such cigarettes have had the individual packages or seals
7 thereof broken and when such cigarettes are actually used by
8 said person and not sold or offered for sale.

9 3. Payment of such tax shall be evidenced by stamps
10 purchased from the department and securely affixed to each
11 individual package of cigarettes in amounts equal to the tax
12 thereon as imposed by this chapter, or by the impressing of an
13 indicium upon individual packages of cigarettes, under
14 regulations prescribed by the director.

15 Sec. 6. Section 453A.13, subsection 3, Code 1997, is
16 amended to read as follows:

17 3. FEES -- EXPIRATION.

18 a. All permits provided for in this division shall expire
19 on June 30 of each year. A permit shall not be granted or
20 issued until the applicant has paid for the period ending June
21 30 next, to the department or the city or county granting the
22 permit, the fees provided for in this division. The annual
23 state permit fee for a distributor, cigarette vendor, and
24 wholesaler is one hundred dollars when the permit is granted
25 during the months of July, August, or September. However,
26 whenever a state permit holder operates more than one place of
27 business, a duplicate state permit shall be issued for each
28 additional place of business on payment of five dollars for
29 each duplicate state permit, but refunds as provided in this
30 division do not apply to any duplicate permit issued.

31 b. The fee for retail permits is as follows when the
32 permit is granted during the months of July, August, or
33 September:

34 a- (1) In places outside any city, fifty seventy-five
35 dollars.

1 b= (2) In cities of less than fifteen thousand population,
2 ~~seventy-five~~ one hundred dollars.

3 c= (3) In cities of fifteen thousand or more population,
4 one hundred twenty-five dollars.

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

11 Sec. 7. Section 453A.36, Code Supplement 1997, is amended
12 by adding the following new subsections:

13 NEW SUBSECTION. 8. A person shall not advertise
14 cigarettes or tobacco products on any advertising device
15 within one thousand feet of the perimeter of any kindergarten,
16 elementary school, or secondary school. For the purposes of
17 this subsection, "advertising device" means any outdoor sign,
18 display, device, figure, painting, drawing, message, placard,
19 poster, billboard, or any other device designed, intended, or
20 used to advertise or give information in the nature of
21 advertising, but does not include an advertising device on the
22 interior windows of a location which holds a retail permit
23 which is visible from the exterior or an advertising device on
24 a bus, taxi, or other vehicle. In addition to any other
25 penalties fixed for violations under this chapter, a person
26 who violates this subsection is subject to a civil penalty of
27 one hundred dollars for each day of violation.

28 NEW SUBSECTION. 9. Unless otherwise provided in this
29 subsection, a person shall not sell cigarettes or tobacco
30 products through self-service displays in this state. A
31 person may sell cigarettes through a self-service display if
32 the cigarettes are packaged in an amount at least as great as
33 a carton or if the self-service display is located in an area
34 where the retailer ensures that no person younger than
35 eighteen years of age is present or permitted to enter at any

1 time. This subsection does not prohibit the sale of
2 cigarettes or tobacco products through vending machines if in
3 compliance with subsection 6.

4 Sec. 8. Section 453A.39, Code 1997, is amended to read as
5 follows:

6 453A.39 TOBACCO PRODUCT PRODUCTS AND CIGARETTE-SAMPLES
7 CIGARETTES -- RESTRICTIONS -- ADMINISTRATION.

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

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

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

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

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

34 e. All cigarette samples shall be shipped to a distributor
35 that has a permit to stamp cigarettes or little cigars with

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

10 3. A manufacturer, distributor, wholesaler, retailer,
11 distributing agent, or agent thereof shall not sell or cause
12 to be sold, and shall not distribute or give away or cause to
13 be distributed or given away, individual cigarettes or any
14 cigarette package that contains fewer than twenty cigarettes.

15 Sec. 9. Section 805.8, subsection 11, paragraph b, Code
16 Supplement 1997, is amended to read as follows:

17 b. (1) For violations of section 453A.2, subsection 2,
18 the scheduled fine is ~~as follows~~ one hundred dollars and is a
19 civil penalty, and the criminal penalty surcharge under
20 section 911.2 shall not be added to the penalty, and the court
21 costs pursuant to section 805.9, subsection 6, shall not be
22 imposed. However, the fine shall not be imposed if the court
23 determines that the violator shall instead perform unpaid
24 community service pursuant to section 453A.3, subsection 2.

25 ~~{a}--if-the-violation-is-a-first-offense,-the-scheduled~~
26 ~~fine-is-twenty-five-dollars-~~

27 ~~{b}--if-the-violation-is-a-second-offense,-the-scheduled~~
28 ~~fine-is-fifty-dollars-~~

29 ~~{c}--if-the-violation-is-a-third-or-subsequent-offense,-the~~
30 ~~scheduled-fine-is-one-hundred-dollars-~~

31 (2) For failing to pay the civil penalty or perform the
32 alternative community service under section 453A.2 453A.3,
33 subsection 2, the scheduled fine is ~~twenty-five-dollars-if-the~~
34 ~~violation-is-a-first-offense,-fifty-dollars-if-the-violation~~
35 ~~is-a-second-offense,-and one hundred dollars if-the-violation~~

1 is-a-third-or-subsequent-offense. Failure to pay the
2 scheduled fine shall not result in the person being detained
3 in a secure facility. The complainant shall not be charged a
4 filing fee.

5 Sec. 10. APPROPRIATIONS -- PREVENTION, COMPLIANCE CHECKS,
6 CESSATION PROGRAM. There is appropriated from the general
7 fund of the state for the fiscal year beginning July 1, 1998,
8 and ending June 30, 1999, the following amounts, or so much
9 thereof as is necessary, to be used for the purposes
10 designated:

11 To the department of human services for a smoking cessation
12 program to be provided to individuals who are recipients of
13 medical assistance, including the provision of smoking
14 cessation products:

15 \$ 1,000,000

16 To the Iowa department of public health for the development
17 and implementation of a teen smoking prevention program:

18 \$ 2,000,000

19 To the Iowa department of public health for the performance
20 of compliance checks on retailers of cigarettes or tobacco
21 products:

22 \$ 150,000

23 EXPLANATION

24 This bill makes changes in the laws relating to cigarettes
25 and tobacco products.

26 The bill defines "child day care facility" for purposes of
27 Code chapter 142, relating to smoking prohibitions, and
28 prohibits smoking in such facilities and in facility-operated
29 vehicles during certain times.

30 The bill increases the tax on cigarettes from 1.8 cents per
31 cigarette to 1.9 cents per cigarette. The bill also changes
32 the use of mills in assessing the tax to the use of cents.
33 One mill equals one one-thousandth of a cent. The effect of
34 the bill, as an example, is to increase the tax on a pack of
35 20 cigarettes from 36 cents per pack to 38 cents per pack.

1 The bill also prohibits the display and sale of tobacco
2 products and cigarettes from self-service displays but allows
3 cigarettes to be sold from self-service displays if packaged
4 in a carton or larger package and also provides an exemption
5 for areas of an establishment in which minors are not allowed
6 or present.

7 The bill increases the criminal penalty for a retailer or
8 employee of a retailer who sells, gives, or otherwise supplies
9 tobacco products or cigarettes to a person under 18 years of
10 age from \$100 to \$250.

11 The bill also increases the annual fee for a retail sales
12 permit from \$50 to \$75 for an establishment outside city
13 limits, from \$75 to \$100 for cities with a population of less
14 than 15,000 persons, and from \$100 to \$125 for cities with a
15 population of 15,000 or more.

16 The bill prohibits outdoor advertising of cigarettes or
17 other tobacco products within 1,000 feet of any kindergarten,
18 elementary school, or secondary school. Exemptions are made
19 for such advertising from the interior windows which is
20 visible from the exterior of retail establishments which are
21 within 1,000 feet of any kindergarten, elementary school, or
22 secondary school and for vehicles. A \$100 civil penalty is
23 imposed for each day a person is in violation of the
24 prohibition.

25 The bill prohibits the sale, distribution, or gift of packs
26 of cigarettes which contain less than 20 cigarettes and of
27 individual cigarettes.

28 The bill establishes a flat fine of \$100 for any person who
29 violates the provision which prohibits a person who is under
30 18 years of age from smoking, using, possessing, purchasing,
31 or attempting to purchase cigarettes or any other tobacco
32 product. An alternative to the civil penalty of the
33 performance of 25 or fewer hours of community service is also
34 provided. The fine for failure to pay the civil penalty or
35 perform the community service is also set at \$100.

1 The bill directs the director of the department of human
2 services to adopt rules to provide smoking cessation products
3 to recipients of medical assistance.

4 The bill also makes appropriations to the department of
5 human services for the medical assistance smoking cessation
6 program and to the Iowa department of public health for a teen
7 smoking prevention program and for compliance checks on
8 businesses that sell tobacco products and cigarettes.

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