

FEB 9 1998

JUDICIARY

HOUSE FILE

2180

BY DODERER, MYERS, and
MASCHER

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

A BILL FOR

1 An Act relating to cigarettes and tobacco products and providing
2 penalties.

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

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

HF 2180

1 Section 1. Section 321.218, subsection 1, Code Supplement
2 1997, is amended to read as follows:

3 1. A person whose motor vehicle license or operating
4 privilege has been denied, canceled, suspended, or revoked as
5 provided in this chapter, or as provided in section 252J.8 or
6 section 901.5, subsection 10, or as provided in section 453A.3
7 and who operates a motor vehicle upon the highways of this
8 state while the license or privilege is denied, canceled,
9 suspended, or revoked, commits a serious misdemeanor.

10 Sec. 2. Section 321A.17, Code 1997, is amended by adding
11 the following new subsection:

12 NEW SUBSECTION. 7. This section does not apply to a
13 person whose license is suspended under section 453A.3.

14 Sec. 3. Section 453A.1, Code 1997, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 20A. "Self-service display" means any
17 manner of product display, placement, or storage from which a
18 person purchasing the product may take possession of the
19 product, prior to purchase, without assistance from the
20 retailer or employee of the retailer, in removing the product
21 from a restricted access location.

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

24 453A.3 PENALTY.

25 1. A person who violates section 453A.2, subsection 1, or
26 section 453A.39 is guilty of a simple misdemeanor.

27 2. A person who violates section 453A.2, subsection 2, for
28 whom the violation is a first or second offense, shall pay a
29 civil penalty pursuant to section 805.8, subsection 11.

30 Failure to pay the civil penalty imposed for a violation of
31 section 453A.2, subsection 2, is a simple misdemeanor

32 punishable as a scheduled violation under section 805.8,

33 subsection 11. Notwithstanding section 602.8106 or any other

34 provision to the contrary, any civil penalty or fine paid

35 under this subsection shall be retained by the city or county

1 enforcing the violation to be used for enforcement of section
2 453A.2.

3 3. A person who violates section 453A.2, subsection 2, for
4 whom the violation is a third or subsequent offense is subject
5 to the following:

6 a. The motor vehicle license of the person shall be
7 suspended by the state department of transportation until the
8 person reaches the age of eighteen and the person shall pay a
9 civil penalty pursuant to section 805.8, subsection 11. The
10 court may order the person to perform twenty-five hours of
11 unpaid community service in lieu of the fine. However, the
12 court shall not waive the suspension of the motor vehicle
13 license of the person.

14 b. The clerk of the district court shall forward a copy of
15 the order suspending the motor vehicle license of the person
16 to the state department of transportation. The state
17 department of transportation shall suspend the license of the
18 person for the period prescribed in the order. The state
19 department of transportation shall establish procedures by
20 rule for suspending the motor vehicle license of the person
21 and for issuing to the person a temporary restricted license
22 under section 321.215, as if the suspension was ordered under
23 chapter 321.

24 c. The state department of transportation shall, on
25 application, issue a temporary restricted license to a person
26 whose motor vehicle license is suspended under this subsection
27 allowing the person to drive to and from the person's home and
28 specified places at specified times which can be verified by
29 the department and which are required by the person's full-
30 time or part-time employment, continuing health care or the
31 continuing health care of another who is dependent upon the
32 person, continuing education while enrolled in an educational
33 institution on a part-time or full-time basis and while
34 pursuing a course of study leading to a diploma, degree, or
35 other certification of successful educational completion,

1 substance abuse treatment, or court-ordered community service
2 responsibilities.

3 d. A person for whom a motor vehicle license is suspended
4 under this section is not subject to chapter 321A and the
5 suspension shall not be grounds for determination of risk,
6 rates, or premiums in any policy of insurance issued to or for
7 the person.

8 e. The state department of transportation shall develop a
9 civil citation form for the purpose of citing persons under
10 this subsection. Judicial magistrates shall hear and
11 determine violations of this subsection. Notwithstanding
12 section 602.8106 or any other provision to the contrary, any
13 civil penalty paid under this subsection shall be retained by
14 the city or county enforcing the violation to be used for
15 enforcement of section 453A.2.

16 Sec. 5. Section 453A.13, subsection 2, Code 1997, is
17 amended by adding the following new paragraph:

18 NEW PARAGRAPH. c. The department, or a city or county,
19 shall submit a duplicate of any retail permit issued by the
20 entity under this subsection to the Iowa department of public
21 health within thirty days of the issuance.

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

24 3. FEES -- EXPIRATION.

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

1 each duplicate state permit, but refunds as provided in this
2 division do not apply to any duplicate permit issued.

3 b. The fee for retail permits is as follows when the
4 permit is granted during the months of July, August, or
5 September:

6 a- (1) In places outside any city, fifty one hundred
7 dollars.

8 b- (2) In cities of less than fifteen thousand population,
9 seventy-five one hundred fifty dollars.

10 c- (3) In cities of fifteen thousand or more population,
11 one two hundred dollars.

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

18 d. Cities and counties may use any revenues generated from
19 the retail permit fees, which are in excess of the
20 administrative costs associated with the issuance of permits,
21 for the exclusive purpose of enforcing chapter 142B, section
22 453A.2, and section 453A.36, subsection 6.

23 Sec. 7. Section 453A.22, Code 1997, is amended by adding
24 the following new subsection:

25 NEW SUBSECTION. 4. The department or local authority
26 shall report the revocation of a retail permit under this
27 section to the Iowa department of public health within thirty
28 days of the revocation.

29 Sec. 8. NEW SECTION. 453A.32A PENALTY -- POSSESSION IN
30 VIOLATION OF CHAPTER.

31 1. In addition to the seizure and forfeiture procedures
32 applicable under section 453A.32 and any other penalties
33 imposed for violation of this division, a distributor,
34 wholesaler, or retailer found in the possession, custody, or
35 control of cigarettes in excess of three cases, for the

1 purpose of being sold or removed by the person in violation of
2 this division, or for the purpose of being removed, deposited,
3 or concealed in any place with intent to avoid payment of
4 taxes, is subject to a civil penalty of ten thousand dollars.

5 2. A common carrier found transporting cigarettes in
6 excess of three cases for the purpose of being sold or removed
7 by the person in violation of this division or for the purpose
8 of being removed, deposited, or concealed in any place with
9 intent to avoid payment of taxes, is subject to the suspension
10 of the common carrier's motor vehicle license in this state
11 for a period of five years.

12 3. An individual who is not required to hold a permit
13 under this division who is found in possession, custody, or
14 control or who is found transporting cigarettes in excess of
15 one case in violation of this division or with the intent to
16 avoid payment of taxes is subject to suspension of the
17 individual's motor vehicle license in this state for one year.

18 Sec. 9. Section 453A.36, Code Supplement 1997, is amended
19 by adding the following new subsection:

20 NEW SUBSECTION. 8. A person shall not advertise
21 cigarettes or tobacco products on any advertising device
22 within five hundred feet of the perimeter of any playground,
23 elementary school, or secondary school. For the purposes of
24 this subsection, "advertising device" means any outdoor sign,
25 display, device, figure, painting, drawing, message, placard,
26 poster, billboard, or any other device designed, intended, or
27 used to advertise or give information in the nature of
28 advertising, but does not include an advertising device on a
29 bus, taxi, or other vehicle. In addition to any other
30 penalties fixed for violations under this chapter, a person
31 who violates this subsection is subject to a civil penalty of
32 up to one hundred dollars for each day of violation.

33 Sec. 10. NEW SECTION. 453A.36A SELF-SERVICE SALES
34 PROHIBITED.

35 Except as provided in section 453A.36, subsection 6, a

1 retailer shall not sell or offer for sale cigarettes or
2 tobacco products through the use of a self-service display.
3 This section shall not be construed to prevent the use of
4 humidors or specially constructed areas for the selection of
5 cigars, if the sale of the cigars takes place through a face-
6 to-face exchange.

7 Sec. 11. Section 513C.3, subsection 16, Code 1997, is
8 amended to read as follows:

9 16. "Rating characteristics" means demographic
10 characteristics of individuals which are considered by the
11 carrier in the determination of premium rates for the
12 individuals and which are approved by the commissioner.

13 "Rating characteristics" includes the use of cigarettes or
14 tobacco products by individuals.

15 Sec. 12. Section 513C.5, Code 1997, is amended by adding
16 the following new subsection:

17 NEW SUBSECTION. 9. Notwithstanding any provision of law
18 to the contrary, the use of cigarettes or tobacco products by
19 individuals may be considered as a rating characteristic in
20 the determination of premium rates which are approved by the
21 commissioner.

22 Sec. 13. Section 805.8, subsection 11, paragraph b, Code
23 Supplement 1997, is amended to read as follows:

24 b. (1) For violations of section 453A.2, subsection 2, the
25 scheduled fine is as follows and is a civil penalty, and the
26 criminal penalty surcharge under section 911.2 shall not be
27 added to the penalty, and the court costs pursuant to section
28 805.9, subsection 6, shall not be imposed:

29 (a) If the violation is a first offense, the scheduled
30 fine is ~~twenty-five~~ fifty dollars.

31 (b) If the violation is a second offense, the scheduled
32 fine is fifty seventy-five dollars.

33 (c) If the violation is a third or subsequent offense, the
34 scheduled fine is one hundred dollars. However, the court may
35 order the person to perform twenty-five hours of unpaid

1 community service in lieu of the fine.

2 (2) For failing to pay the civil penalty under section
3 453A.2, subsection 2, the scheduled fine is twenty-five fifty
4 dollars if the violation is a first offense, fifty seventy-
5 five dollars if the violation is a second offense, and one
6 hundred dollars if the violation is a third or subsequent
7 offense unless the court orders the person to perform
8 community service in lieu of the fine. Failure to pay the
9 scheduled fine shall not result in the person being detained
10 in a secure facility. The complainant shall not be charged a
11 filing fee.

12 EXPLANATION

13 This bill makes changes relating to tobacco products. The
14 bill changes the penalty for smoking, using, possessing,
15 purchasing, or attempting to purchase tobacco, tobacco
16 products, or cigarettes by a person under 18 years of age from
17 a scheduled fine of \$25, \$50, or \$100 to \$50, \$75, or \$100
18 with the option of serving community service in lieu of the
19 \$100 fine for a third offense. The bill also provides that
20 for a third offense, the person's motor vehicle license is
21 suspended until the person reaches age 18. Any civil penalty
22 or fine paid is to be retained by the city or county enforcing
23 the violation. The bill also provides for the issuance of a
24 temporary restricted license, for certain activities, to a
25 person for whom a license is suspended, including employment
26 and education-related activities, and provides that suspension
27 of a person's license does not make the person subject to the
28 chapter relating to motor vehicle financial responsibility and
29 is not grounds for the determination of risk, rates, or
30 premiums in any insurance policy issued to or for the person.
31 However, the bill does provide that if a person drives while
32 the person's license is suspended, the person commits a
33 serious misdemeanor.

34 The bill also requires the department of revenue and
35 finance and cities and counties issuing permits for the retail

1 sales of cigarettes to submit a copy of any permit issued by
2 the entity to the Iowa department of public health.

3 The bill also increases the annual fee for a retail sales
4 permit from \$50 to \$100 for an establishment outside city
5 limits, from \$75 to \$150 for cities with a population of less
6 than 15,000 persons, and from \$100 to \$200 for cities with a
7 population of 15,000 or more. The increased fees continue to
8 be retained by the issuing cities and counties which may
9 dedicate excess revenue to enforcement of smoking and youth
10 access laws.

11 The bill also prohibits outdoor advertising of cigarettes
12 or other tobacco products within 500 feet of any playground,
13 elementary school, or secondary school. Exemptions are made
14 for advertising devices on vehicles. A civil penalty of up to
15 \$100 may be imposed for each day a person is in violation of
16 the prohibition.

17 The bill prohibits self-service sales of cigarettes or
18 tobacco products with the exception of vending machines and
19 humidors. The bill also provides that insurance rating
20 characteristics may include the use of cigarettes or tobacco
21 products.

22 The bill provides a penalty of \$10,000 for a distributor,
23 wholesaler, or retailer who is found in possession, control,
24 or custody of cigarettes in excess of three cases for the
25 purpose of being sold or removed in violation of the chapter
26 or for the purpose of being removed, deposited, or concealed
27 with the intent of avoiding payment of taxes. A common
28 carrier found in such violation is subject to suspension of
29 the common carrier's state motor vehicle license for a period
30 of five years. An individual other than those named above
31 found in such violation is subject to revocation of the
32 person's state motor vehicle license for one year.

33

34

35