

2-4-97 Judiciary

FILED FEB 4 1997

SENATE FILE 110
BY JENSEN

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

A BILL FOR

1 An Act increasing the scheduled civil penalty for possession of
2 tobacco, tobacco products, or cigarettes by a minor, and
3 providing for retention of the moneys collected by the city or
4 county enforcing the provision.

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

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S.F. 110

1 Section 1. Section 453A.2, subsection 4, Code 1997, is
2 amended to read as follows:

3 4. Payment Unless otherwise provided in section 805.8,
4 subsection 11, payment and distribution of court costs, fees,
5 and fines in a prosecution initiated by a city or county shall
6 be made as provided in chapter 602 for violation of a city or
7 county ordinance.

8 Sec. 2. Section 805.8, subsection 11, Code 1997, is
9 amended to read as follows:

10 11. SMOKING VIOLATIONS.

11 a. For violations of section 142B.6 or section 453A.2,
12 subsection 2, unless otherwise provided in paragraph "b", the
13 scheduled fine is twenty-five dollars, and is a civil penalty,
14 and-the.

15 b. For violations of section 453A.2, subsection 2, if the
16 violation is possession of tobacco, tobacco products, or
17 cigarettes by a person under eighteen years of age, the
18 scheduled fine is one hundred dollars, and is a civil penalty.
19 Notwithstanding section 453A.2, subsection 4, and sections
20 602.8106 and 602.8108, any civil penalty paid pursuant to this
21 paragraph shall be deposited in the treasury of the city or
22 county enforcing the paragraph.

23 c. The criminal penalty surcharge under section 911.2
24 shall not be added to the penalty under paragraph "a" or "b",
25 and the court costs pursuant to section 805.9, subsection 6,
26 shall not be imposed.

27 d. If the civil penalty assessed for a violation of
28 section 142B.6 is not paid in a timely manner, a citation
29 shall be issued for the violation in the manner provided in
30 section 804.1. However, a person under age eighteen shall not
31 be detained in a secure facility for failure to pay the civil
32 penalty. The complainant shall not be charged a filing fee.

33 e. For failing to pay the a civil penalty under section
34 453A.2, the scheduled fine is twenty-five dollars. Failure to
35 pay the scheduled fine shall not result in the person being

1 detained in a secure facility. The complainant shall not be
2 charged a filing fee.

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EXPLANATION

4 This bill provides for an increase in the amount of the
5 scheduled civil penalty from \$25 to \$100 for a violation which
6 is the possession of tobacco, tobacco products, or cigarettes
7 by a person under 18 years of age. The bill provides for the
8 retention of the moneys collected by the city or county
9 enforcing the provision.

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SENATE FILE 110

S-3047

1 Amend Senate File 110 as follows:

2 1. Page 1, by striking lines 1 and 2 and

3 inserting the following:

4 "Sec. ____ . Section 453A.2, subsections 1, 2, and
5 4, Code 1997, are amended to read as follows:

6 1. A person shall not sell, give, or otherwise
7 supply any tobacco, tobacco products, or cigarettes to
8 any person under eighteen twenty-one years of age. A
9 person who sells, gives, or otherwise supplies any
10 tobacco, tobacco products, or cigarettes to any person
11 shall require proof of age in the form of photographic
12 identification if a reasonable person could conclude
13 on the basis of outward appearance that a prospective
14 recipient may be under twenty-five years of age.

15 2. A person under eighteen twenty-one years of age
16 shall not smoke, use, possess, purchase, or attempt to
17 purchase any tobacco, tobacco products, or
18 cigarettes."

19 2. Page 1, by inserting after line 7 the
20 following:

21 "Sec. ____ . Section 453A.13, subsections 2, 3, and
22 4, Code 1997, are amended by striking the subsections
23 and renumbering the subsequent subsections, and
24 inserting in lieu thereof the following:

25 2. Issuance or denial.

26 a. The department shall issue state permits to
27 distributors, wholesalers, and cigarette vendors
28 subject to the conditions provided in this division.

29 b. The department or the Iowa department of public
30 health, as applicable, may deny the issuance of a
31 permit to a distributor, wholesaler, vendor, or
32 retailer who is substantially delinquent in the
33 payment of a tax due, or the interest or penalty on
34 the tax, administered by the department at the time of
35 application. If the applicant is a partnership, a
36 permit may be denied if a partner is substantially
37 delinquent on any delinquent tax, penalty, or
38 interest. If the applicant is a corporation, a permit
39 may be denied if any officer having a substantial
40 legal or equitable interest in the ownership of the
41 corporation owes any delinquent tax, interest, or
42 penalty of the applicant corporation.

43 3. Fees -- expiration. All permits provided for
44 in this division shall expire on June 30 of each year.
45 A permit shall not be granted or issued until the
46 applicant has paid for the period ending June 30 next,
47 to the department or the Iowa department of public
48 health, the fees provided for in this division.

49 a. The annual state permit fee for a distributor,
50 cigarette vendor, and wholesaler is one hundred

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1 dollars when the permit is granted during the months
2 of July, August, or September. However, whenever a
3 state permit holder operates more than one place of
4 business, a duplicate state permit shall be issued for
5 each additional place of business on payment of five
6 dollars for each duplicate state permit, but refunds
7 as provided in this division do not apply to any
8 duplicate permit issued.

9 b. The fee for retail permits which are to be
10 issued by the Iowa department of public health is as
11 follows:

12 (1) For establishments located within the
13 corporate limits of cities of ten thousand population
14 and over the following:

15 (a) For establishments of less than fifteen
16 hundred square feet, one hundred twenty-five dollars.

17 (b) For establishments of fifteen hundred square
18 feet but less than two thousand square feet, one
19 hundred seventy-five dollars.

20 (c) For establishments of two thousand square feet
21 but less than five thousand square feet, two hundred
22 fifty dollars.

23 (d) For establishments of five thousand square
24 feet or more, three hundred seventy-five dollars.

25 (2) For establishments located within the
26 corporate limits of cities of over fifteen hundred and
27 less than ten thousand population the following:

28 (a) For establishments of less than fifteen
29 hundred square feet, seventy-five dollars.

30 (b) For establishments of fifteen hundred square
31 feet but less than two thousand square feet, one
32 hundred twenty-five dollars.

33 (c) For establishments of two thousand square feet
34 but less than five thousand square feet, one hundred
35 seventy-five dollars.

36 (d) For establishments of five thousand square
37 feet or more, two hundred fifty dollars.

38 (3) For establishments located within the
39 corporate limits of cities of fifteen hundred
40 population or less the following:

41 (a) For establishments of less than fifteen
42 hundred square feet, thirty-five dollars and fifty
43 cents.

44 (b) For establishments of fifteen hundred square
45 feet but less than two thousand square feet, seventy-
46 five dollars.

47 (c) For establishments of two thousand square feet
48 but less than five thousand square feet, one hundred
49 twenty-five dollars.

50 (d) For establishments of five thousand square

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1 feet or more, one hundred seventy-five dollars.

2 (4) For establishments located outside the
3 corporate limits of any city, a sum equal to that
4 charged in the incorporated city located nearest the
5 premises to be permitted, and in case there is doubt
6 as to which of two or more differing corporate limits
7 is the nearest, the fee which is the largest shall
8 prevail. However, if an establishment is located in
9 an unincorporated town, for purposes of this
10 subsection the unincorporated town shall be treated as
11 if it is a city.

12 Sec. ____ . Section 453A.22, subsections 1 and 2,
13 Code 1997, are amended to read as follows:

14 1. If a person holding a permit issued by the
15 department or the Iowa department of public health
16 under this division, including a retailer permit for
17 railway car, has willfully violated section 453A.2,
18 the department shall revoke the permit upon notice and
19 hearing. If the person violates any other provision
20 of this division, or a rule adopted under this
21 division, or is substantially delinquent in the
22 payment of a tax administered by the department or the
23 interest or penalty on the tax, or if the person is a
24 corporation and if any officer having a substantial
25 legal or equitable interest in the ownership of the
26 corporation owes any delinquent tax of the permit-
27 holding corporation, or interest or penalty on the
28 tax, administered by the department, the department
29 may revoke the permit issued to the person, after
30 giving the permit holder an opportunity to be heard
31 upon ten days' written notice stating the reason for
32 the contemplated revocation and the time and place at
33 which the person may appear and be heard. The hearing
34 before the department may be held at a site in the
35 state as the department may direct. The notice shall
36 be given by mailing a copy to the permit holder's
37 place of business as it appears on the application for
38 a permit. If, upon hearing, the department finds that
39 the violation has occurred, the department may revoke
40 the permit.

41 2. If a retailer or employee of a retailer has
42 violated section 453A.2, 453A.36, subsection 6, or
43 453A.39, the department or local authority, in
44 addition to the other penalties fixed for such
45 violations in this section, shall assess a penalty
46 upon the same hearing and notice as prescribed in
47 subsection 1 as follows:

48 a. For a first violation, the violator shall be
49 assessed a civil penalty in the amount of three
50 hundred dollars. Failure to pay the civil penalty as

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1 ordered under this subsection shall result in
2 automatic suspension of the permit for a period of
3 fourteen days.

4 b. For a second violation ~~within a period of two~~
5 years, the violator's permit shall be suspended for a
6 period of thirty days.

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

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

12 Sec. ____ . Section 453A.23, subsections 1 and 3,
13 Code 1997, are amended to read as follows:

14 1. Subject to this division, a retailer's permit
15 may be issued by the Iowa department of public health
16 to any dining car company, sleeping car company,
17 railroad or railway company. The permit shall
18 authorize the holder to keep for sale, and sell,
19 cigarettes at retail on any dining car, sleeping car,
20 or passenger car operated by the applicant in,
21 through, or across the state of Iowa, subject to all
22 of the restrictions imposed upon retailers under this
23 division. The application for the permit shall be in
24 the form and contain the information required by the
25 director. Each permit is good throughout the state.
26 Only one permit is required for all cars operated in
27 this state by the applicant, but a duplicate of the
28 permit shall be posted in each car in which cigarettes
29 are sold and no further permit shall be required or
30 tax levied for the privilege of selling cigarettes in
31 the cars. No cigarettes shall be sold in the cars
32 without having affixed thereto stamps evidencing the
33 payment of the tax as provided in this division.

34 3. The annual fee for a retailer's permit for
35 railway cars shall be twenty-five dollars and two
36 dollars for each duplicate thereof, which fee shall be
37 paid to the department. The Iowa department of public
38 health shall issue duplicates of such permits from
39 time to time as applied for by such companies.

40 Sec. ____ . Section 453A.35, Code 1997, is amended
41 to read as follows:

42 453A.35 TAX AND FEES PAID TO GENERAL FUND.

43 The proceeds derived from the sale of stamps and
44 the payment of taxes, fees and penalties provided for
45 under this chapter, and the permit fees received from
46 all permits issued by the department, shall be
47 credited to the general fund of the state. ~~All permit~~
48 ~~fees provided for in this chapter and collected by~~
49 ~~cities in the issuance of permits granted by the~~
50 ~~cities shall be paid to the treasurer of the city~~

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~~1 where the permit is effective, or to another city~~
~~2 officer as designated by the council, and credited to~~
~~3 the general fund of the city. -- Permit fees so~~
~~4 collected by counties shall be paid to the county~~
~~5 treasurer. The proceeds derived from the payment of~~
~~6 retail permit fees and penalties received from all~~
~~7 permits issued by the Iowa department of public health~~
~~8 shall be credited to the general fund of the state and~~
~~9 are appropriated to the Iowa department of public~~
~~10 health for programs related to cigarette, tobacco, and~~
~~11 tobacco products-related programs.~~

12 Sec. ____ . Section 453A.39, subsection 2,
13 paragraphs a and b, Code 1997, are amended to read as
14 follows:

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

24 b. Proof of age in the form of photographic
25 identification shall be required if a reasonable
26 person could conclude on the basis of outward
27 appearance that a prospective recipient of a sample
28 may be under eighteen twenty-five years of age."

29 3. Page 1, line 17, by striking the word
30 "eighteen" and inserting the following: "twenty-one".

31 4. Title page, line 1, by inserting after the
32 word "Act" the following: "relating to cigarettes,
33 tobacco, and tobacco products including".

34 5. Title page, line 4, by inserting after the
35 word "provision" the following: "providing for the
36 issuance of retail cigarette permits and collection of
37 permit fees by the Iowa department of public health,
38 increasing the age of a minor to twenty-one years of
39 age or younger and providing penalties."

40 6. By renumbering as necessary.

By ROD HALVORSON

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