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SENATE FILE 2197

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JUDGE

Passed Senate, Date _____ Passed House, 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:

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SF 2197 HUMAN RESOURCES

1 Section 1. NEW SECTION. 321.216C USE OF DRIVER'S LICENSE
2 OR NONOPERATOR'S IDENTIFICATION CARD BY UNDERAGE PERSON TO
3 OBTAIN CIGARETTES OR TOBACCO PRODUCTS.

4 A person who is under the age of eighteen, who alters or
5 displays or has in the person's possession a fictitious or
6 fraudulently altered driver's license or nonoperator's
7 identification card and who uses the license or card to
8 violate or attempt to violate section 453A.2, subsection 2,
9 commits a simple misdemeanor punishable by a fine of one
10 hundred dollars. The court shall forward a copy of the
11 conviction to the department.

12 Sec. 2. Section 453A.2, Code 1999, is amended by adding
13 the following new subsections:

14 NEW SUBSECTION. 2A. Possession of cigarettes or tobacco
15 products by an individual under eighteen years of age does not
16 constitute a violation under this section if the individual
17 under eighteen years of age possesses the cigarettes or
18 tobacco products as part of the individual's employment and
19 the individual is employed by a person who holds a valid
20 permit under this chapter or who lawfully offers for sale or
21 sells cigarettes or tobacco products.

22 NEW SUBSECTION. 5. A person shall not be guilty of a
23 violation of this section if conduct that would otherwise
24 constitute a violation is performed to assess compliance with
25 cigarette and tobacco products laws if any of the following
26 applies:

27 a. The compliance effort is conducted by or under the
28 supervision of law enforcement officers.

29 b. The compliance effort is conducted with the advance
30 knowledge of law enforcement officers and reasonable measures
31 are adopted by those conducting the effort to ensure that use
32 of cigarettes or tobacco products by individuals under
33 eighteen years of age does not result from participation by
34 any individual under eighteen years of age in the compliance
35 effort.

1 For the purposes of this subsection, "law enforcement
2 officer" means a peace officer as defined in section 801.4 and
3 includes persons designated under subsection 3 to enforce this
4 section.

5 Sec. 3. Section 453A.3, subsection 2, Code 1999, is
6 amended to read as follows:

7 2. A person who violates section 453A.2, subsection 2,
8 ~~shall pay a~~ is subject to one of the following:

9 a. A civil penalty pursuant to section 805.8, subsection
10 11. Failure to pay the a civil penalty imposed for a
11 violation of section 453A.2, subsection 2, is a simple
12 misdemeanor punishable as a scheduled violation under section
13 805.8, subsection 11. Notwithstanding section 602.8106 or any
14 other provision to the contrary, any civil penalty or criminal
15 fine paid under this subsection shall be retained by the city
16 or county enforcing the violation to be used for enforcement
17 of section 453A.2.

18 b. Performance of community service or attendance at
19 tobacco education classes, if available.

20 Sec. 4. NEW SECTION. 453A.4 SEIZURE OF FALSE OR ALTERED
21 DRIVER'S LICENSE OR NONOPERATOR IDENTIFICATION CARD.

22 1. If a person holding a permit under this chapter or an
23 employee of such a permittee has a reasonable belief based on
24 factual evidence that a driver's license as defined in section
25 321.1, subsection 20A, or nonoperator identification card
26 issued pursuant to section 321.190 offered by a person who
27 wishes to purchase cigarettes or tobacco products is altered
28 or falsified or belongs to another person, the permittee or
29 employee may retain the driver's license or nonoperator
30 identification card. Within twenty-four hours, the card shall
31 be delivered to the appropriate city or county law enforcement
32 agency of the jurisdiction in which the permittee's premises
33 is located, and the permittee shall file a written report of
34 the circumstances under which the card was retained. The
35 local law enforcement agency may investigate whether a

1 violation of section 321.216, 321.216A, or 321.216C has
2 occurred. If an investigation is not initiated or probable
3 cause is not established by the local law enforcement agency,
4 the driver's license or nonoperator identification card shall
5 be delivered to the person to whom it was issued. The local
6 law enforcement agency may forward the card with the report to
7 the state department of transportation for investigation, in
8 which case, the state department of transportation may
9 investigate whether a violation of section 321.216, 321.216A,
10 or 321.216C has occurred. The state department of
11 transportation shall return the card to the person to whom it
12 was issued if an investigation is not initiated or probable
13 cause is not established.

14 2. Upon taking possession of an identification card as
15 provided in subsection 1, a receipt for the card with the date
16 and hour of seizure noted shall be provided to the person from
17 whom the card is seized.

18 3. A person holding a permit under this chapter or an
19 employee of such a permittee is not subject to criminal
20 prosecution for, or to civil liability for damages alleged to
21 have resulted from, the retention and delivery of a driver's
22 license or a nonoperator identification card which is taken
23 pursuant to subsections 1 and 2. This section shall not be
24 construed to relieve a permittee or an employee of such a
25 permittee from civil liability for damages resulting from the
26 use of unreasonable force in obtaining the alleged altered or
27 falsified driver's license or identification card or the
28 driver's license or identification card believed to belong to
29 another person.

30 Sec. 5. Section 453A.13, subsection 2, Code 1999, is
31 amended by adding the following new paragraph:

32 NEW PARAGRAPH. c. The department, or a city or county,
33 shall submit a duplicate of any application for a retail
34 permit and any retail permit issued by the entity under this
35 subsection to the Iowa department of public health within

1 thirty days of the issuance.

2 Sec. 6. Section 453A.22, Code 1999, is amended by adding
3 the following new subsections:

4 NEW SUBSECTION. 4. Notwithstanding subsection 3, if a
5 retail permit is suspended or revoked under this section, the
6 suspension or revocation shall only apply to the place of
7 business at which the violation occurred and shall not apply
8 to any other place of business to which the retail permit
9 applies but at which the violation did not occur.

10 NEW SUBSECTION. 5. The department or local authority
11 shall report any citation issued to a retail permit holder,
12 and the suspension or revocation of a retail permit under this
13 section to the Iowa department of public health within thirty
14 days of the issuance of the citation or the suspension or
15 revocation of the retail permit.

16 Sec. 7. Section 602.6405, Code 1999, is amended by adding
17 the following new subsection:

18 NEW SUBSECTION. 1A. a. Magistrates shall hear and
19 determine violations of and penalties for violations of
20 section 453A.2, subsection 2.

21 b. Magistrates shall forward copies of citations issued
22 for violations of section 453A.2, subsection 2, and of their
23 dispositions to the clerk of the district court. The clerk of
24 the district court shall maintain records of citations issued
25 and the disposition of the citations, and shall forward a copy
26 of the records to the Iowa department of public health.

27 Sec. 8. Section 805.6, Code 1999, is amended by adding the
28 following new subsection:

29 NEW SUBSECTION. 2A. The uniform citation and complaint
30 shall contain a place for citing a person in violation of
31 section 453A.2, subsection 2.

32 Sec. 9. Section 805.8, subsection 11, paragraph b, Code
33 Supplement 1999, is amended to read as follows:

34 b. (1) For violations of section 453A.2, subsection 2,
35 the scheduled fine is as follows and is a civil penalty, and

1 the criminal penalty surcharge under section 911.2 shall not
2 be added to the penalty, and the court costs pursuant to
3 section 805.9, subsection 6, shall not be imposed:

4 (a) If the violation is a first offense, the scheduled
5 fine is twenty-five dollars.

6 (b) If the violation is a second offense, the scheduled
7 fine is fifty dollars.

8 (c) If the violation is a third or subsequent offense, the
9 scheduled fine is one hundred dollars.

10 However, the fine shall not be imposed if the court
11 determines that the violator shall instead perform unpaid
12 community service or attend tobacco education classes pursuant
13 to section 453A.3, subsection 2.

14 (2) For failing to pay the civil penalty under section
15 453A.2, subsection 2, or to perform the unpaid community
16 service or to attend tobacco education classes under section
17 453A.3, subsection 2, the scheduled criminal fine is twenty-
18 five dollars if the violation is a first offense, fifty
19 dollars if the violation is a second offense, and one hundred
20 dollars if the violation is a third or subsequent offense.
21 Failure to pay the scheduled criminal fine shall not result in
22 the person being detained in a secure facility. The
23 complainant shall not be charged a filing fee.

24 EXPLANATION

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

27 The bill creates new Code section 321.216C, which makes the
28 use of a driver's license or nonoperator's identification card
29 by a person under the age of 18 to obtain cigarettes or
30 tobacco products a simple misdemeanor. This provision is
31 similar to the use of the same documents in obtaining alcohol.
32 The procedure for seizing such documents is established in the
33 bill under new Code section 453A.3A.

34 The bill amends Code section 453A.2 to provide that
35 possession of cigarettes or tobacco products by an individual

1 under the age of 18 as part of the individual's employment, if
2 the individual is employed by a holder of a valid permit under
3 the cigarette and tobacco products chapter or by a person who
4 lawfully offers for sale or sells cigarettes or tobacco
5 products, does not constitute a violation of the prohibition
6 against a minor possessing cigarettes or tobacco products.
7 Additionally, the bill provides that a person does not violate
8 Code section 453A.2 if conduct that would otherwise constitute
9 a violation is performed to assess compliance with the law and
10 if either the compliance effort is conducted by or under the
11 supervision of law enforcement officers or the compliance
12 effort is conducted with the advance knowledge of law
13 enforcement officers and reasonable measures are adopted to
14 ensure that minors do not use these products as a result of
15 the compliance efforts.

16 The bill amends Code section 453A.3, subsection 2, to
17 provide that a person who violates the prohibition against a
18 minor smoking, using, possessing, purchasing, or attempting to
19 purchase tobacco, tobacco products, or cigarettes, is subject
20 to either a civil penalty (the current penalty) or a new
21 alternative penalty of performance of community service or
22 attendance at tobacco education classes, if available. The
23 bill adds a provision to Code section 805.6, to require that
24 the current uniform judicial citation and complaint form
25 include a place for citing a person for a violation of Code
26 section 453A.2, subsection 2. The bill amends Code section
27 602.6405 to require judicial magistrates to hear and determine
28 violations of and penalties for violations of Code section
29 453A.2, subsection 2, and to require the clerks of the
30 district court to maintain records of the citations and their
31 dispositions and to forward copies of the records to the Iowa
32 department of public health.

33 The bill creates a new Code section 453A.4, which provides
34 a procedure for seizure of a false or altered driver's license
35 or nonoperator identification offered by a person who wishes

1 to purchase cigarettes or tobacco products. The provision is
2 similar to that used in the context of the purchase of
3 alcohol.

4 The amendment to Code section 453A.13 requires the
5 department of revenue and finance and cities and counties
6 issuing permits for the retail sales of cigarettes to submit a
7 copy of any application submitted to and of any permit issued
8 by the entity to the Iowa department of public health.

9 The amendment to Code section 453A.22 provides that if a
10 retail permit is suspended or revoked, the suspension or
11 revocation only applies to the place of business at which the
12 violation occurred and not to any other place of business to
13 which the permit applies but at which the violation did not
14 occur. The amendment to Code section 453A.22 also requires
15 the department of revenue and finance and cities and counties
16 to report any citations issued to a retail permit holder and
17 any suspension or revocation of a retail permit to the Iowa
18 department of public health.

19 The amendment to Code section 805.8 is a conforming
20 amendment to reflect the option of requiring performance of
21 unpaid community service or attendance at tobacco education
22 classes as an alternative to payment of a scheduled fine for
23 violations of Code section 453A.2, subsection 2, relating to a
24 minor's use, possession, or purchase of cigarettes or tobacco
25 products.

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