

Boettger  
Tinsman  
Hammond

SSB. 3206  
Human Resources

Succeeded By  
SENATE FILE SE/HF 2366  
BY (PROPOSED COMMITTEE ON  
HUMAN RESOURCES BILL BY  
CHAIRPERSON BOETTGER)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the purchase, possession, and sale of  
2 cigarettes and tobacco products and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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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, as applicable:

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. For a first or second offense, performance of community  
19 service or attendance at tobacco education classes, if  
20 available.

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

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

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

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

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

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

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

1 subsection to the Iowa department of public health within  
2 thirty days of the issuance.

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

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

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

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

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

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

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

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

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

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

35 (b) If the violation is a second offense, the scheduled

1 fine is fifty one hundred dollars.

2 (c) If the violation is a third or subsequent offense, the  
3 scheduled fine is one two hundred fifty dollars.

4 However, the fine shall not be imposed for a first or  
5 second offense if the court determines that the violator shall  
6 instead perform unpaid community service or attend tobacco  
7 education classes pursuant to section 453A.3, subsection 2.

8 (2) For failing to pay the civil penalty under section  
9 453A.2, subsection 2, or to perform the unpaid community  
10 service or to attend tobacco education classes under section  
11 453A.3, subsection 2, the scheduled criminal fine is twenty-  
12 five fifty dollars if the violation is a first offense, fifty  
13 one hundred dollars if the violation is a second offense, and  
14 one two hundred fifty dollars if the violation is a third or  
15 subsequent offense. Failure to pay the scheduled criminal  
16 fine shall not result in the person being detained in a secure  
17 facility. The complainant shall not be charged a filing fee.

18 EXPLANATION

19 This bill makes changes in the laws relating to cigarettes  
20 and tobacco products.

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

28 The bill amends Code section 453A.2 to provide that  
29 possession of cigarettes or tobacco products by an individual  
30 under the age of 18 as part of the individual's employment, if  
31 the individual is employed by a holder of a valid permit under  
32 the cigarette and tobacco products chapter or by a person who  
33 lawfully offers for sale or sells cigarettes or tobacco  
34 products, does not constitute a violation of the prohibition  
35 against a minor possessing cigarettes or tobacco products.

1 Additionally, the bill provides that a person does not violate  
 2 Code section 453A.2 if conduct that would otherwise constitute  
 3 a violation is performed to assess compliance with the law and  
 4 if either the compliance effort is conducted by or under the  
 5 supervision of law enforcement officers or the compliance  
 6 effort is conducted with the advance knowledge of law  
 7 enforcement officers and reasonable measures are adopted to  
 8 ensure that minors do not use these products as a result of  
 9 the compliance efforts.

10 The bill amends Code section 453A.3, subsection 2, to  
 11 provide that a person who violates the prohibition against a  
 12 minor smoking, using, possessing, purchasing, or attempting to  
 13 purchase tobacco, tobacco products, or cigarettes, is subject  
 14 to either a civil penalty (the current penalty) or a new  
 15 alternative penalty of performance of community service or  
 16 attendance at tobacco education classes, if available and if  
 17 the violation is a first or second offense. The bill adds a  
 18 provision to Code section 805.6, to require that the current  
 19 uniform judicial citation and complaint form include a place  
 20 for citing a person for a violation of Code section 453A.2,  
 21 subsection 2. The bill amends Code section 602.6405 to  
 22 require judicial magistrates to hear and determine violations  
 23 of and penalties for violations of Code section 453A.2,  
 24 subsection 2.

25 The bill creates a new Code section 453A.4, which provides  
 26 a procedure for seizure of a false or altered driver's license  
 27 or nonoperator's identification offered by a person who wishes  
 28 to purchase cigarettes or tobacco products. The provision is  
 29 similar to that used in the context of the purchase of  
 30 alcohol.

31 The amendment to Code section 453A.13 requires the  
 32 department of revenue and finance and cities and counties  
 33 issuing permits for the retail sales of cigarettes to submit a  
 34 copy of any application submitted to and of any permit issued  
 35 by the entity to the Iowa department of public health.

1 The amendment to Code section 453A.22 provides that if a  
2 retail permit is suspended or revoked, the suspension or  
3 revocation only applies to the place of business at which the  
4 violation occurred and not to any other place of business to  
5 which the permit applies but at which the violation did not  
6 occur. The amendment to Code section 453A.22 also requires  
7 the department of revenue and finance and cities and counties  
8 to report any suspension or revocation of a retail permit to  
9 the Iowa department of public health.

10 Additionally, the amendment to Code section 805.8 is a  
11 conforming amendment to reflect the option of requiring  
12 performance of unpaid community service or attendance at  
13 tobacco education classes as an alternative to payment of a  
14 scheduled fine for violations of Code section 453A.2,  
15 subsection 2, for a first or second offense relating to a  
16 minor's use, possession, or purchase of cigarettes or tobacco  
17 products.

18 The amendment to Code section 805.8, increases the  
19 scheduled fines and scheduled criminal fines for failure to  
20 comply with the initial penalty. The scheduled fine for a  
21 first offense is increased from \$25 to \$50, for a second  
22 offense from \$50 to \$100, and for a third or subsequent  
23 offense, from \$100 to \$250. Additionally, the penalty for  
24 failure to pay the civil penalty or for failure to perform the  
25 unpaid community service or to attend the tobacco education  
26 classes is increased from \$25 to \$50 for a first offense, from  
27 \$50 to \$100 for a second offense, and from \$100 to \$250 for a  
28 third or subsequent offense.

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REPRINTED

FILED FEB 28 '00

SENATE FILE 2366  
BY COMMITTEE ON  
HUMAN RESOURCES

(SUCCESSOR TO SSB 3206)

Passed Senate, <sup>(p. 604)</sup> Date 3-9-00 Passed House, <sup>(p. 1163)</sup> Date 3/30/00  
Vote: Ayes 48 Nays 0 Vote: Ayes 86 Nays 9  
Approved April 17, 2000

(p. 1026)

Re-passed 4-5-00  
Vote 48-0

A BILL FOR

1 An Act relating to the purchase, possession, and sale of  
2 cigarettes and tobacco products and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2366

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, as applicable:

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. For a first or second offense, performance of community  
19 service or attendance at tobacco education classes, if  
20 available.

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

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

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

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

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

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

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

1 subsection to the Iowa department of public health within  
2 thirty days of the issuance.

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

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

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

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

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

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

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

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

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

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

35 (b) If the violation is a second offense, the scheduled

1 fine is fifty one hundred dollars.

2 (c) If the violation is a third or subsequent offense, the  
3 scheduled fine is one two hundred fifty dollars.

4 However, the fine shall not be imposed for a first or  
5 second offense if the court determines that the violator shall  
6 instead perform unpaid community service or attend tobacco  
7 education classes pursuant to section 453A.3, subsection 2.

8 (2) For failing to pay the civil penalty under section  
9 453A.2, subsection 2, or to perform the unpaid community  
10 service or to attend tobacco education classes under section  
11 453A.3, subsection 2, the scheduled criminal fine is twenty-  
12 five fifty dollars if the violation is a first offense, fifty  
13 one hundred dollars if the violation is a second offense, and  
14 one two hundred fifty dollars if the violation is a third or  
15 subsequent offense. Failure to pay the scheduled criminal  
16 fine shall not result in the person being detained in a secure  
17 facility. The complainant shall not be charged a filing fee.

18

#### EXPLANATION

19 This bill makes changes in the laws relating to cigarettes  
20 and tobacco products.

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

28 The bill amends Code section 453A.2 to provide that  
29 possession of cigarettes or tobacco products by an individual  
30 under the age of 18 as part of the individual's employment, if  
31 the individual is employed by a holder of a valid permit under  
32 the cigarette and tobacco products chapter or by a person who  
33 lawfully offers for sale or sells cigarettes or tobacco  
34 products, does not constitute a violation of the prohibition  
35 against a minor possessing cigarettes or tobacco products.

1 Additionally, the bill provides that a person does not violate  
2 Code section 453A.2 if conduct that would otherwise constitute  
3 a violation is performed to assess compliance with the law and  
4 if either the compliance effort is conducted by or under the  
5 supervision of law enforcement officers or the compliance  
6 effort is conducted with the advance knowledge of law  
7 enforcement officers and reasonable measures are adopted to  
8 ensure that minors do not use these products as a result of  
9 the compliance efforts.

10 The bill amends Code section 453A.3, subsection 2, to  
11 provide that a person who violates the prohibition against a  
12 minor smoking, using, possessing, purchasing, or attempting to  
13 purchase tobacco, tobacco products, or cigarettes, is subject  
14 to either a civil penalty (the current penalty) or a new  
15 alternative penalty of performance of community service or  
16 attendance at tobacco education classes, if available and if  
17 the violation is a first or second offense. The bill adds a  
18 provision to Code section 805.6, to require that the current  
19 uniform judicial citation and complaint form include a place  
20 for citing a person for a violation of Code section 453A.2,  
21 subsection 2. The bill amends Code section 602.6405 to  
22 require judicial magistrates to hear and determine violations  
23 of and penalties for violations of Code section 453A.2,  
24 subsection 2.

25 The bill creates a new Code section 453A.4, which provides  
26 a procedure for seizure of a false or altered driver's license  
27 or nonoperator's identification offered by a person who wishes  
28 to purchase cigarettes or tobacco products. The provision is  
29 similar to that used in the context of the purchase of  
30 alcohol.

31 The amendment to Code section 453A.13 requires the  
32 department of revenue and finance and cities and counties  
33 issuing permits for the retail sales of cigarettes to submit a  
34 copy of any application submitted to and of any permit issued  
35 by the entity to the Iowa department of public health.

1 The amendment to Code section 453A.22 provides that if a  
2 retail permit is suspended or revoked, the suspension or  
3 revocation only applies to the place of business at which the  
4 violation occurred and not to any other place of business to  
5 which the permit applies but at which the violation did not  
6 occur. The amendment to Code section 453A.22 also requires  
7 the department of revenue and finance and cities and counties  
8 to report any suspension or revocation of a retail permit to  
9 the Iowa department of public health.

10 Additionally, the amendment to Code section 805.8 is a  
11 conforming amendment to reflect the option of requiring  
12 performance of unpaid community service or attendance at  
13 tobacco education classes as an alternative to payment of a  
14 scheduled fine for violations of Code section 453A.2,  
15 subsection 2, for a first or second offense relating to a  
16 minor's use, possession, or purchase of cigarettes or tobacco  
17 products.

18 The amendment to Code section 805.8, increases the  
19 scheduled fines and scheduled criminal fines for failure to  
20 comply with the initial penalty. The scheduled fine for a  
21 first offense is increased from \$25 to \$50, for a second  
22 offense from \$50 to \$100, and for a third or subsequent  
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27 \$50 to \$100 for a second offense, and from \$100 to \$250 for a  
28 third or subsequent offense.

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## SENATE FILE 2366

S-5104

1 Amend Senate File 2366 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 321.216C USE OF  
5 DRIVER'S LICENSE OR NONOPERATOR'S IDENTIFICATION CARD  
6 BY UNDERAGE PERSON TO OBTAIN CIGARETTES OR TOBACCO  
7 PRODUCTS.

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

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

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

28 NEW SUBSECTION. 5. A person shall not be guilty  
29 of a violation of this section if conduct that would  
30 otherwise constitute a violation is performed to  
31 assess compliance with cigarette and tobacco products  
32 laws if any of the following applies:

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

35 b. The compliance effort is conducted with the  
36 advance knowledge of law enforcement officers and  
37 reasonable measures are adopted by those conducting  
38 the effort to ensure that use of cigarettes or tobacco  
39 products by individuals under eighteen years of age  
40 does not result from participation by any individual  
41 under eighteen years of age in the compliance effort.

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

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

48 2. A person who violates section 453A.2,  
49 subsection 2, ~~shall pay a~~ is subject to the following,  
50 as applicable:

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

11 b. For a first offense, performance of community  
12 service or attendance at tobacco education classes, if  
13 available.

14 c. For a second offense, performance of thirty  
15 hours of community service, and attendance at tobacco  
16 education classes, if available.

17 d. For a third or subsequent offense, performance  
18 of forty hours of community service and suspension of  
19 the person's driver's license for a period of thirty  
20 days. The clerk of the district court shall forward a  
21 copy of the order suspending the motor vehicle license  
22 of the person to the state department of  
23 transportation. Upon receipt of the copy of the order  
24 from the clerk of the district court, the state  
25 department of transportation shall notify the person  
26 that the person's driver's license will be suspended  
27 effective ten days from the date of the notice. The  
28 state department of transportation shall establish  
29 procedures, by rule, to effect the suspension of a  
30 person's driver's license pursuant to this section  
31 including surrender of the person's driver's license  
32 to the department and including issuance to the person  
33 of a temporary restricted license under section  
34 321.215, as if the suspension was ordered under  
35 chapter 321.

36 The state department of transportation shall, on  
37 application, issue a temporary restricted license to a  
38 person whose motor vehicle license is suspended under  
39 this paragraph "d", allowing the person to drive to  
40 and from the person's home and specified places at  
41 specified times which can be verified by the  
42 department and which are required by the person's  
43 full-time or part-time employment, continuing health  
44 care or the continuing health care of another who is  
45 dependent upon the person, continuing education while  
46 enrolled in an educational institution on a part-time  
47 or full-time basis and while pursuing a course of  
48 study leading to a diploma, degree, or other  
49 certification of successful educational completion,  
50 substance abuse treatment, or court-ordered community

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Page 3

1 service responsibilities.  
2 A person for whom a motor vehicle license is  
3 suspended under this paragraph is not subject to  
4 chapter 321A and the suspension shall not be grounds  
5 for determination of risk, rates, or premiums in any  
6 policy of insurance issued to or for the person.  
7 Sec. 4. NEW SECTION. 453A.4 SEIZURE OF FALSE OR  
8 ALTERED DRIVER'S LICENSE OR NONOPERATOR'S  
9 IDENTIFICATION CARD.

10 1. If a person holding a permit under this chapter  
11 or an employee of such a permittee has a reasonable  
12 belief based on factual evidence that a driver's  
13 license as defined in section 321.1, subsection 20A,  
14 or nonoperator's identification card issued pursuant  
15 to section 321.190 offered by a person who wishes to  
16 purchase cigarettes or tobacco products is altered or  
17 falsified or belongs to another person, the permittee  
18 or employee may retain the driver's license or  
19 nonoperator's identification card. Within twenty-four  
20 hours, the card shall be delivered to the appropriate  
21 city or county law enforcement agency of the  
22 jurisdiction in which the permittee's premises is  
23 located, and the permittee shall file a written report  
24 of the circumstances under which the card was  
25 retained. The local law enforcement agency may  
26 investigate whether a violation of section 321.216,  
27 321.216A, or 321.216C has occurred. If an  
28 investigation is not initiated or probable cause is  
29 not established by the local law enforcement agency,  
30 the driver's license or nonoperator's identification  
31 card shall be delivered to the person to whom it was  
32 issued. The local law enforcement agency may forward  
33 the card with the report to the state department of  
34 transportation for investigation, in which case, the  
35 state department of transportation may investigate  
36 whether a violation of section 321.216, 321.216A, or  
37 321.216C has occurred. The state department of  
38 transportation shall return the card to the person to  
39 whom it was issued if an investigation is not  
40 initiated or probable cause is not established.

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

45 3. A person holding a permit under this chapter or  
46 an employee of such a permittee is not subject to  
47 criminal prosecution for, or to civil liability for  
48 damages alleged to have resulted from, the retention  
49 and delivery of a driver's license or a nonoperator's  
50 identification card which is taken pursuant to

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1 subsections 1 and 2. This section shall not be  
2 construed to relieve a permittee or an employee of  
3 such a permittee from civil liability for damages  
4 resulting from the use of unreasonable force in  
5 obtaining the alleged altered or falsified driver's  
6 license or identification card or the driver's license  
7 or identification card believed to belong to another  
8 person.

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

11 NEW PARAGRAPH. c. The department, or a city or  
12 county, shall submit a duplicate of any application  
13 for a retail permit and any retail permit issued by  
14 the entity under this subsection to the Iowa  
15 department of public health within thirty days of the  
16 issuance.

17 Sec. 6. Section 453A.22, subsection 2, paragraphs  
18 c and d, Code 1999, are amended to read as follows:

19 c. For a third violation within a period of five  
20 three years, the violator's permit shall be suspended  
21 for a period of sixty days.

22 d. For a fourth violation within a period of five  
23 three years, the violator's permit shall be revoked.

24 Sec. 7. Section 453A.22, Code 1999, is amended by  
25 adding the following new subsections:

26 NEW SUBSECTION. 4. Notwithstanding subsection 3,  
27 if a retail permit is suspended or revoked under this  
28 section, the suspension or revocation shall only apply  
29 to the place of business at which the violation  
30 occurred and shall not apply to any other place of  
31 business to which the retail permit applies but at  
32 which the violation did not occur.

33 NEW SUBSECTION. 5. The department or local  
34 authority shall report the suspension or revocation of  
35 a retail permit under this section to the Iowa  
36 department of public health within thirty days of the  
37 suspension or revocation of the retail permit.

38 Sec. 8. Section 602.6405, Code 1999, is amended by  
39 adding the following new subsection:

40 NEW SUBSECTION. 1A. a. Magistrates shall hear  
41 and determine violations of and penalties for  
42 violations of section 453A.2, subsection 2.

43 b. Magistrates shall forward copies of citations  
44 issued for violations of section 453A.2, subsection 2,  
45 and of their dispositions to the clerk of the district  
46 court. The clerk of the district court shall maintain  
47 records of citations issued and the dispositions of  
48 citations, and shall forward a copy of the records to  
49 the Iowa department of public health.

50 Sec. 9. Section 805.6, Code 1999, is amended by

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1 adding the following new subsection:

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

5 Sec. 10. Section 805.8, subsection 11, paragraph  
6 b, Code Supplement 1999, is amended to read as  
7 follows:

8 b. (1) For violations of section 453A.2,  
9 subsection 2, the scheduled fine is as follows and is  
10 a civil penalty, and the criminal penalty surcharge  
11 under section 911.2 shall not be added to the penalty,  
12 and the court costs pursuant to section 805.9,  
13 subsection 6, shall not be imposed:

14 (a) If the violation is a first offense, the  
15 scheduled fine is twenty-five fifty dollars.

16 (b) If the violation is a second offense, the  
17 scheduled fine is fifty one hundred dollars.

18 (c) If the violation is a third or subsequent  
19 offense, the scheduled fine is one two hundred fifty  
20 dollars.

21 However, the fine shall not be imposed for a first  
22 or second offense if the court determines that the  
23 violator shall instead perform unpaid community  
24 service or attend tobacco education classes pursuant  
25 to section 453A.3, subsection 2.

26 (2) For failing to pay the civil penalty under  
27 section ~~453A.2~~ 453A.3, subsection 2, or to perform the  
28 unpaid community service or to attend tobacco  
29 education classes under section 453A.3, subsection 2,  
30 the scheduled criminal fine is twenty-five fifty  
31 dollars if the violation is a first offense, fifty one  
32 hundred dollars if the violation is a second offense,  
33 and one two hundred fifty dollars if the violation is  
34 a third or subsequent offense. Failure to pay the  
35 scheduled criminal fine shall not result in the person  
36 being detained in a secure facility. The complainant  
37 shall not be charged a filing fee."

By NANCY BOETTGER

MICHAEL E. GRONSTAL

STEWART IVERSON, Jr.

MATT MCCOY

*W/D 3-9-00 (P. 604)*  
S-5104 FILED MARCH 8, 2000

## SENATE FILE 2366

S-5114

1 Amend Senate File 2366 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 321.216C USE OF  
5 DRIVER'S LICENSE OR NONOPERATOR'S IDENTIFICATION CARD  
6 BY UNDERAGE PERSON TO OBTAIN CIGARETTES OR TOBACCO  
7 PRODUCTS.

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

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

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

28 NEW SUBSECTION. 5. A person shall not be guilty  
29 of a violation of this section if conduct that would  
30 otherwise constitute a violation is performed to  
31 assess compliance with cigarette and tobacco products  
32 laws if any of the following applies:

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

35 b. The compliance effort is conducted with the  
36 advance knowledge of law enforcement officers and  
37 reasonable measures are adopted by those conducting  
38 the effort to ensure that use of cigarettes or tobacco  
39 products by individuals under eighteen years of age  
40 does not result from participation by any individual  
41 under eighteen years of age in the compliance effort.

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

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

48 2. A person who violates section 453A.2,  
49 subsection 2, ~~shall pay a~~ is subject to the following,  
50 as applicable:

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

11 b. For a first offense, performance of community  
12 service or attendance at tobacco education classes, if  
13 available.

14 c. For a second offense, performance of thirty  
15 hours of community service, and attendance at tobacco  
16 education classes, if available.

17 d. For a third or subsequent offense, performance  
18 of forty hours of community service and suspension of  
19 the person's driver's license for a period of thirty  
20 days. The clerk of the district court shall forward a  
21 copy of the order suspending the motor vehicle license  
22 of the person to the state department of  
23 transportation. Upon receipt of the copy of the order  
24 from the clerk of the district court, the state  
25 department of transportation shall notify the person  
26 that the person's driver's license will be suspended  
27 effective ten days from the date of the notice. The  
28 state department of transportation shall establish  
29 procedures, by rule, to effect the suspension of a  
30 person's driver's license pursuant to this paragraph  
31 "d" including surrender of the person's driver's  
32 license to the department and including issuance to  
33 the person of a temporary restricted license under  
34 section 321.215, as if the suspension was ordered  
35 under chapter 321.

36 The state department of transportation shall, on  
37 application, issue a temporary restricted license to a  
38 person whose motor vehicle license is suspended under  
39 this paragraph "d", allowing the person to drive to  
40 and from the person's home and specified places at  
41 specified times which can be verified by the  
42 department and which are required by the person's  
43 full-time or part-time employment, continuing health  
44 care or the continuing health care of another who is  
45 dependent upon the person, continuing education while  
46 enrolled in an educational institution on a part-time  
47 or full-time basis and while pursuing a course of  
48 study leading to a diploma, degree, or other  
49 certification of successful educational completion,  
50 substance abuse treatment, or court-ordered community

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1 service responsibilities.

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

7 Sec. 4. NEW SECTION. 453A.4 SEIZURE OF FALSE OR  
8 ALTERED DRIVER'S LICENSE OR NONOPERATOR'S  
9 IDENTIFICATION CARD.

10 1. If a person holding a permit under this chapter  
11 or an employee of such a permittee has a reasonable  
12 belief based on factual evidence that a driver's  
13 license as defined in section 321.1, subsection 20A,  
14 or nonoperator's identification card issued pursuant  
15 to section 321.190 offered by a person who wishes to  
16 purchase cigarettes or tobacco products is altered or  
17 falsified or belongs to another person, the permittee  
18 or employee may retain the driver's license or  
19 nonoperator's identification card. Within twenty-four  
20 hours, the card shall be delivered to the appropriate  
21 city or county law enforcement agency of the  
22 jurisdiction in which the permittee's premises is  
23 located, and the permittee shall file a written report  
24 of the circumstances under which the card was  
25 retained. The local law enforcement agency may  
26 investigate whether a violation of section 321.216,  
27 321.216A, or 321.216C has occurred. If an  
28 investigation is not initiated or probable cause is  
29 not established by the local law enforcement agency,  
30 the driver's license or nonoperator's identification  
31 card shall be delivered to the person to whom it was  
32 issued. The local law enforcement agency may forward  
33 the card with the report to the state department of  
34 transportation for investigation, in which case, the  
35 state department of transportation may investigate  
36 whether a violation of section 321.216, 321.216A, or  
37 321.216C has occurred. The state department of  
38 transportation shall return the card to the person to  
39 whom it was issued if an investigation is not  
40 initiated or probable cause is not established.

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

45 3. A person holding a permit under this chapter or  
46 an employee of such a permittee is not subject to  
47 criminal prosecution for, or to civil liability for  
48 damages alleged to have resulted from, the retention  
49 and delivery of a driver's license or a nonoperator's  
50 identification card which is taken pursuant to

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1 subsections 1 and 2. This section shall not be  
2 construed to relieve a permittee or an employee of  
3 such a permittee from civil liability for damages  
4 resulting from the use of unreasonable force in  
5 obtaining the alleged altered or falsified driver's  
6 license or identification card or the driver's license  
7 or identification card believed to belong to another  
8 person.

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

11 NEW PARAGRAPH. c. The department, or a city or  
12 county, shall submit a duplicate of any application  
13 for a retail permit and any retail permit issued by  
14 the entity under this subsection to the Iowa  
15 department of public health within thirty days of the  
16 issuance.

17 Sec. 6. Section 453A.22, subsection 2, paragraphs  
18 c and d, Code 1999, are amended to read as follows:

19 c. For a third violation within a period of five  
20 three years, the violator's permit shall be suspended  
21 for a period of sixty days.

22 - d. For a fourth violation within a period of five  
23 three years, the violator's permit shall be revoked.

24 Sec. 7. Section 453A.22, Code 1999, is amended by  
25 adding the following new subsections:

26 NEW SUBSECTION. 4. Notwithstanding subsection 3,  
27 if a retail permit is suspended or revoked under this  
28 section, the suspension or revocation shall only apply  
29 to the place of business at which the violation  
30 occurred and shall not apply to any other place of  
31 business to which the retail permit applies but at  
32 which the violation did not occur.

33 NEW SUBSECTION. 5. The department or local  
34 authority shall report the suspension or revocation of  
35 a retail permit under this section to the Iowa  
36 department of public health within thirty days of the  
37 suspension or revocation of the retail permit.

38 Sec. 8. Section 602.6405, Code 1999, is amended by  
39 adding the following new subsection:

40 NEW SUBSECTION. 1A. a. Magistrates shall hear  
41 and determine violations of and penalties for  
42 violations of section 453A.2, subsection 2.

43 b. Magistrates shall forward copies of citations  
44 issued for violations of section 453A.2, subsection 2,  
45 and of their dispositions to the clerk of the district  
46 court. The clerk of the district court shall maintain  
47 records of citations issued and the dispositions of  
48 citations, and shall forward a copy of the records to  
49 the Iowa department of public health.

50 Sec. 9. Section 805.6, Code 1999, is amended by

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1 adding the following new subsection:

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

5 Sec. 10. Section 805.8, subsection 11, paragraph  
6 b, Code Supplement 1999, is amended to read as  
7 follows:

8 b. (1) For violations of section 453A.2,  
9 subsection 2, the scheduled fine is as follows and is  
10 a civil penalty, and the criminal penalty surcharge  
11 under section 911.2 shall not be added to the penalty,  
12 and the court costs pursuant to section 805.9,  
13 subsection 6, shall not be imposed:

14 (a) If the violation is a first offense, the  
15 scheduled fine is twenty-five fifty dollars.

16 (b) If the violation is a second offense, the  
17 scheduled fine is fifty one hundred dollars.

18 (c) If the violation is a third or subsequent  
19 offense, the scheduled fine is one two hundred fifty  
20 dollars.

21 However, the fine shall not be imposed for a first  
22 or second offense if the court determines that the  
23 violator shall instead perform unpaid community  
24 service or attend tobacco education classes pursuant  
25 to section 453A.3, subsection 2.

26 (2) For failing to pay the civil penalty under  
27 section 453A-2 453A.3, subsection 2, or to perform the  
28 unpaid community service or to attend tobacco  
29 education classes under section 453A.3, subsection 2,  
30 the scheduled criminal fine is twenty-five fifty  
31 dollars if the violation is a first offense, fifty one  
32 hundred dollars if the violation is a second offense,  
33 and one two hundred fifty dollars if the violation is  
34 a third or subsequent offense. Failure to pay the  
35 scheduled criminal fine shall not result in the person  
36 being detained in a secure facility. The complainant  
37 shall not be charged a filing fee."

By NANCY BOETTGER  
MICHAEL E. GRONSTAL

STEWART IVERSON, Jr.  
MATT McCOY

S-5114 FILED MARCH 9, 2000

ADOPTED

(P. 604)

## SENATE FILE 2366

S-5116

1 Amend the amendment, S-5114, to Senate File 2366 as  
2 follows:

3 1. Page 1, by striking lines 46 and 47, and  
4 inserting the following:

5 "Sec. \_\_\_\_ . Section 453A.3, Code 1999, is amended to  
6 read as follows:

7 453A.3 PENALTY.

8 1. a. A person, other than a retailer, who  
9 violates section 453A.2, subsection 1, or section  
10 453A.39 is guilty of a simple misdemeanor.

11 b. An employee of a retailer who violates section  
12 453A.2, subsection 1, commits a simple misdemeanor  
13 punishable as a scheduled violation under section  
14 805.8, subsection 11.

15 c. A person who violates section 453A.39, is  
16 guilty of a simple misdemeanor."

17 2. Page 4, by striking lines 17 through 23, and  
18 inserting the following:

19 "Sec. \_\_\_\_ . Section 453A.22, subsection 2, Code  
20 1999, is amended to read as follows:

21 2. If a retailer or employee of a retailer has  
22 violated section 453A.2, 453A.36, subsection 6, or  
23 453A.39, the department or local authority, in  
24 addition to the other penalties fixed for such  
25 violations in this section, shall assess a penalty  
26 upon the same hearing and notice as prescribed in  
27 subsection 1 as follows:

28 a. For a first violation, the violator retailer  
29 shall be assessed a civil penalty in the amount of  
30 three hundred dollars. Failure to pay the civil  
31 penalty as ordered under this subsection shall result  
32 in automatic suspension of the permit for a period of  
33 fourteen days.

34 b. For a second violation within a period of two  
35 years, the violator's retailer's permit shall be  
36 suspended for a period of thirty days.

37 c. For a third violation within a period of five  
38 three years, the violator's retailer's permit shall be  
39 suspended for a period of sixty days.

40 d. For a fourth violation within a period of five  
41 three years, the violator's retailer's permit shall be  
42 revoked."

43 3. Page 5, by inserting after line 4, the  
44 following:

45 "Sec. \_\_\_\_ . Section 805.8, subsection 11, Code  
46 Supplement 1999, is amended by adding the following  
47 new paragraph after paragraph a, and relettering the  
48 subsequent paragraph:

49 NEW PARAGRAPH. aa. For violations of section  
50 453A.2, subsection 1, by an employee of a retailer,

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1 the scheduled fine is as follows:

2 (1) If the violation is a first offense, the  
3 scheduled fine is one hundred dollars.

4 (2) If the violation is a second offense, the  
5 scheduled fine is two hundred fifty dollars.

6 (3) If the violation is a third or subsequent  
7 offense, the scheduled fine is five hundred dollars."

By JEFF LAMBERTI

S-5116 FILED MARCH 9, 2000

ADOPTED

H. 3/13/00 Local Gov  
H. 3/16/00 Do Pass -  
H. 3/23/00 Unfinished Business  
Calendar

SENATE FILE 2366  
BY COMMITTEE ON  
HUMAN RESOURCES

(SUCCESSOR TO SSB 3206)

(AS AMENDED AND PASSED BY THE SENATE MARCH 9, 2000)

ALL New Language by the Senate

Passed Senate, Date <sup>(P.1026)</sup> 4-5-00 Passed House, Date <sup>(P.1163)</sup> 3/30/00  
Vote: Ayes 48 Nays 0 Vote: Ayes 86 Nays 9  
Approved April 17, 2000

A BILL FOR

- 1 An Act relating to the purchase, possession, and sale of
- 2 cigarettes and tobacco products and providing penalties.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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S.F. 2366

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, Code 1999, is amended to read as  
6 follows:

7 453A.3 PENALTY.

8 1. a. A person, other than a retailer, who violates  
9 section 453A.2, subsection 1, or section 453A.39 is guilty of  
10 a simple misdemeanor.

11 b. An employee of a retailer who violates section 453A.2,  
12 subsection 1, commits a simple misdemeanor punishable as a  
13 scheduled violation under section 805.8, subsection 11.

14 c. A person who violates section 453A.39, is guilty of a  
15 simple misdemeanor.

16 2. A person who violates section 453A.2, subsection 2,  
17 shall pay a is subject to the following, as applicable:

18 a. A civil penalty pursuant to section 805.8, subsection  
19 11. Failure to pay the a civil penalty imposed for a  
20 violation of section 453A.2, subsection 2, is a simple  
21 misdemeanor punishable as a scheduled violation under section  
22 805.8, subsection 11. Notwithstanding section 602.8106 or any  
23 other provision to the contrary, any civil penalty or criminal  
24 fine paid under this subsection shall be retained by the city  
25 or county enforcing the violation to-be-used-for-enforcement  
26 of-section-453A-2.

27 b. For a first offense, performance of community service  
28 or attendance at tobacco education classes, if available.

29 c. For a second offense, performance of thirty hours of  
30 community service, and attendance at tobacco education  
31 classes, if available.

32 d. For a third or subsequent offense, performance of forty  
33 hours of community service and suspension of the person's  
34 driver's license for a period of thirty days. The clerk of  
35 the district court shall forward a copy of the order

1 suspending the motor vehicle license of the person to the  
2 state department of transportation. Upon receipt of the copy  
3 of the order from the clerk of the district court, the state  
4 department of transportation shall notify the person that the  
5 person's driver's license will be suspended effective ten days  
6 from the date of the notice. The state department of  
7 transportation shall establish procedures, by rule, to effect  
8 the suspension of a person's driver's license pursuant to this  
9 paragraph "d" including surrender of the person's driver's  
10 license to the department and including issuance to the person  
11 of a temporary restricted license under section 321.215, as if  
12 the suspension was ordered under chapter 321.

13 The state department of transportation shall, on  
14 application, issue a temporary restricted license to a person  
15 whose motor vehicle license is suspended under this paragraph  
16 "d", allowing the person to drive to and from the person's  
17 home and specified places at specified times which can be  
18 verified by the department and which are required by the  
19 person's full-time or part-time employment, continuing health  
20 care or the continuing health care of another who is dependent  
21 upon the person, continuing education while enrolled in an  
22 educational institution on a part-time or full-time basis and  
23 while pursuing a course of study leading to a diploma, degree,  
24 or other certification of successful educational completion,  
25 substance abuse treatment, or court-ordered community service  
26 responsibilities.

27 A person for whom a motor vehicle license is suspended  
28 under this paragraph "d" is not subject to chapter 321A and  
29 the suspension shall not be grounds for determination of risk,  
30 rates, or premiums in any policy of insurance issued to or for  
31 the person.

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

34 1. If a person holding a permit under this chapter or an  
35 employee of such a permittee has a reasonable belief based on



1 factual evidence that a driver's license as defined in section  
2 321.1, subsection 20A, or nonoperator's identification card  
3 issued pursuant to section 321.190 offered by a person who  
4 wishes to purchase cigarettes or tobacco products is altered  
5 or falsified or belongs to another person, the permittee or  
6 employee may retain the driver's license or nonoperator's  
7 identification card. Within twenty-four hours, the card shall  
8 be delivered to the appropriate city or county law enforcement  
9 agency of the jurisdiction in which the permittee's premises  
10 is located, and the permittee shall file a written report of  
11 the circumstances under which the card was retained. The  
12 local law enforcement agency may investigate whether a  
13 violation of section 321.216, 321.216A, or 321.216C has  
14 occurred. If an investigation is not initiated or probable  
15 cause is not established by the local law enforcement agency,  
16 the driver's license or nonoperator's identification card  
17 shall be delivered to the person to whom it was issued. The  
18 local law enforcement agency may forward the card with the  
19 report to the state department of transportation for  
20 investigation, in which case, the state department of  
21 transportation may investigate whether a violation of section  
22 321.216, 321.216A, or 321.216C has occurred. The state  
23 department of transportation shall return the card to the  
24 person to whom it was issued if an investigation is not  
25 initiated or probable cause is not established.

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

30 3. A person holding a permit under this chapter or an  
31 employee of such a permittee is not subject to criminal  
32 prosecution for, or to civil liability for damages alleged to  
33 have resulted from, the retention and delivery of a driver's  
34 license or a nonoperator's identification card which is taken  
35 pursuant to subsections 1 and 2. This section shall not be

1 construed to relieve a permittee or an employee of such a  
2 permittee from civil liability for damages resulting from the  
3 use of unreasonable force in obtaining the alleged altered or  
4 falsified driver's license or identification card or the  
5 driver's license or identification card believed to belong to  
6 another person.

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

9 NEW PARAGRAPH. c. The department, or a city or county,  
10 shall submit a duplicate of any application for a retail  
11 permit and any retail permit issued by the entity under this  
12 subsection to the Iowa department of public health within  
13 thirty days of the issuance.

14 Sec. 6. Section 453A.22, subsection 2, Code 1999, is  
15 amended to read as follows:

16 2. If a retailer or employee of a retailer has violated  
17 section 453A.2, 453A.36, subsection 6, or 453A.39, the  
18 department or local authority, in addition to the other  
19 penalties fixed for such violations in this section, shall  
20 assess a penalty upon the same hearing and notice as  
21 prescribed in subsection 1 as follows:

22 a. For a first violation, the ~~violator~~ retailer shall be  
23 assessed a civil penalty in the amount of three hundred  
24 dollars. Failure to pay the civil penalty as ordered under  
25 this subsection shall result in automatic suspension of the  
26 permit for a period of fourteen days.

27 b. For a second violation within a period of two years,  
28 the ~~violator's~~ retailer's permit shall be suspended for a  
29 period of thirty days.

30 c. For a third violation within a period of ~~five~~ three  
31 years, the ~~violator's~~ retailer's permit shall be suspended for  
32 a period of sixty days.

33 d. For a fourth violation within a period of ~~five~~ three  
34 years, the ~~violator's~~ retailer's permit shall be revoked.

35 Sec. 7. Section 453A.22, Code 1999, is amended by adding

1 the following new subsections:

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

8 NEW SUBSECTION. 5. The department or local authority  
9 shall report the suspension or revocation of a retail permit  
10 under this section to the Iowa department of public health  
11 within thirty days of the suspension or revocation of the  
12 retail permit.

13 Sec. 8. Section 602.6405, Code 1999, is amended by adding  
14 the following new subsection:

15 NEW SUBSECTION. 1A. a. Magistrates shall hear and  
16 determine violations of and penalties for violations of  
17 section 453A.2, subsection 2.

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

24 Sec. 9. Section 805.6, Code 1999, is amended by adding the  
25 following new subsection:

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

29 Sec. 10. Section 805.8, subsection 11, Code Supplement  
30 1999, is amended by adding the following new paragraph after  
31 paragraph a, and relettering the subsequent paragraph:

32 NEW PARAGRAPH. aa. For violations of section 453A.2,  
33 subsection 1, by an employee of a retailer, the scheduled fine  
34 is as follows:

35 (1) If the violation is a first offense, the scheduled

1 fine is one hundred dollars.

2 (2) If the violation is a second offense, the scheduled  
3 fine is two hundred fifty dollars.

4 (3) If the violation is a third or subsequent offense, the  
5 scheduled fine is five hundred dollars.

6 Sec. 11. Section 805.8, subsection 11, paragraph b, Code  
7 Supplement 1999, is amended to read as follows:

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

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

15 (b) If the violation is a second offense, the scheduled  
16 fine is ~~fifty~~ one hundred dollars.

17 (c) If the violation is a third or subsequent offense, the  
18 scheduled fine is ~~one~~ two hundred fifty dollars.

19 However, the fine shall not be imposed for a first or  
20 second offense if the court determines that the violator shall  
21 instead perform unpaid community service or attend tobacco  
22 education classes pursuant to section 453A.3, subsection 2.

23 (2) For failing to pay the civil penalty under section  
24 ~~453A-2~~ 453A.3, subsection 2, or to perform the unpaid  
25 community service or to attend tobacco education classes under  
26 section 453A.3, subsection 2, the scheduled criminal fine is  
27 ~~twenty-five~~ fifty dollars if the violation is a first offense,  
28 ~~fifty~~ one hundred dollars if the violation is a second  
29 offense, and ~~one~~ two hundred fifty dollars if the violation is  
30 a third or subsequent offense. Failure to pay the scheduled  
31 criminal fine shall not result in the person being detained in  
32 a secure facility. The complainant shall not be charged a  
33 filing fee.

34

35

## SENATE FILE 2366

H-8521

1 Amend Senate File 2366, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 6, by inserting after line 12 the  
4 following:

5 "Sec. \_\_\_\_\_. Section 453A.39, Code 1999, is amended  
6 by striking the section and inserting in lieu thereof  
7 the following:

8 453A.39 TOBACCO PRODUCTS, CIGARETTES, GIFTS, AND  
9 PAYMENTS FOR DISPLAYING CIGARETTES -- PROHIBITIONS.

10 1. Unless authorized under subsection 3, a  
11 manufacturer, distributor, wholesaler, retailer, or  
12 distributing agent or agent thereof shall not give  
13 away cigarettes or tobacco products at any time in  
14 connection with the manufacturer's, distributor's,  
15 wholesaler's, retailer's, or distributing agent's  
16 business or for promotion of the business or product.

17 2. Unless authorized by subsection 3, a  
18 manufacturer, distributor, wholesaler, retailer, or  
19 distributing agent shall not provide free articles,  
20 products, commodities, gifts, or concessions in an  
21 offer for sale or sale involving cigarettes or tobacco  
22 products.

23 3. The prohibitions in this section do not apply  
24 to transactions between manufacturers, distributors,  
25 or wholesalers."

26 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8521 FILED MARCH 22, 2000

*W/RO*

*3/30/00*

*(P.1143)*

SENATE FILE 2366

H-8520

1 Amend Senate File 2366, as amended, passed, and  
 2 reprinted by the Senate, as follows:  
 3 1. Page 2, by striking lines 19 through 26, and  
 4 inserting the following:  
 5 "~~11. Failure-to-pay-the-civil-penalty-imposed-for~~  
 6 ~~a-violation-of-section-453A-2, subsection-2, is a~~  
 7 ~~simple-misdemeanor-punishable-as-a-scheduled-violation~~  
 8 ~~under-section-805-8, subsection-11.~~ Notwithstanding  
 9 section 602.8106 or any other provision to the  
 10 contrary, any civil penalty ~~or-criminal-fine~~ paid  
 11 under this subsection shall be retained by the city or  
 12 county enforcing the violation ~~to-be-used-for~~  
 13 ~~enforcement-of-section-453A-2.~~"  
 14 2. Page 7, line 8, by striking the figure "(1)"  
 15 and inserting the following: "{1}".  
 16 3. Page 7, line 13, by striking the letter "(a)"  
 17 and inserting the following: "(1)".  
 18 4. Page 7, line 15, by striking the letter "(b)"  
 19 and inserting the following: "(2)".  
 20 5. Page 7, line 17, by striking the letter "(c)"  
 21 and inserting the following: "(3)".  
 22 6. Page 7, by striking lines 23 through 33, and  
 23 inserting the following:  
 24 "~~{2}--For-failing-to-pay-the-civil-penalty-under~~  
 25 ~~section-453A-2, subsection-2, the-scheduled-criminal~~  
 26 ~~fine-is-twenty-five-dollars-if-the-violation-is-a~~  
 27 ~~first-offense, fifty-dollars-if-the-violation-is-a~~  
 28 ~~second-offense, and one-hundred-dollars-if-the~~  
 29 ~~violation-is-a-third-or-subsequent-offense.--Failure~~  
 30 ~~to-pay-the-scheduled-criminal-fine-shall-not-result-in~~  
 31 ~~the-person-being-detained-in-a-secure-facility.--The~~  
 32 ~~complainant-shall-not-be-charged-a-filing-fee."~~  
 33 7. By renumbering as necessary.

By PARMENTER of Story

H-8520 FILED MARCH 22, 2000

*W/D*  
3/30/00 (p. 1161) SENATE FILE 2366

H-8516

1 Amend Senate File 2366, as amended, passed, and  
 2 reprinted by the Senate, as follows:  
 3 1. By striking page 2, line 33, through page 3,  
 4 line 31, and inserting the following: "hours of  
 5 community service."

By WEIGEL of Chickasaw  
PARMENTER of Story

H-8516 FILED MARCH 22, 2000

*W/D*  
3/30/00  
(p. 1162)

## SENATE FILE 2366

H-8524

1 Amend Senate File 2366, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. By striking everything after the enacting  
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 453D.1 CIGARETTES AND  
6 TOBACCO PRODUCTS -- PROHIBITED.

7 1. It is unlawful for any person to ship or import  
8 into this state, or to manufacture, offer for sale,  
9 sell, distribute, transport, or possess within this  
10 state, cigarettes or tobacco products.

11 2. As used in this section, unless the context  
12 otherwise requires:

13 a. "Cigarette" means any roll for smoking made  
14 wholly or in part of tobacco, or any substitute for  
15 tobacco, irrespective of size or shape and  
16 irrespective of tobacco or any substitute for tobacco  
17 being flavored, adulterated, or mixed with any other  
18 ingredient, where such roll has a wrapper or cover  
19 made of paper or any other material; but does not mean  
20 cigars.

21 b. "Tobacco products" means cigars; little cigars  
22 as defined in section 453A.42, subsection 5; cheroots;  
23 stogies; periques; granulated; plug cut, crimp cut,  
24 ready rubbed, and other smoking tobacco; snuff, snuff  
25 flour; cavendish; plug and twist tobacco; fine-cut and  
26 other chewing tobaccos; shorts; or refuse scraps,  
27 clippings, cuttings and sweepings of tobacco, and  
28 other kinds and forms of tobacco, prepared in such  
29 manner as to be suitable for chewing or smoking in a  
30 pipe or otherwise, or both for chewing and smoking;  
31 but does not mean cigarettes.

32 Sec. 2. Section 135.1, unnumbered paragraph 1,  
33 Code 1999, is amended to read as follows:

34 For the purposes of chapter 155 and Title IV,  
35 subtitle 2, excluding chapters ~~142B~~ 145B and 146,  
36 unless otherwise defined:

37 Sec. 3. Section 135.11, subsection 13, Code  
38 Supplement 1999, is amended to read as follows:

39 13. Establish, publish, and enforce rules not  
40 inconsistent with law for the enforcement of the  
41 provisions of chapters 125 and 155, and Title IV,  
42 subtitle 2, excluding chapters ~~142B~~ 145B and 146 and  
43 for the enforcement of the various laws, the  
44 administration and supervision of which are imposed  
45 upon the department.

46 Sec. 4. Section 232.8, subsection 1, paragraph b,  
47 Code 1999, is amended to read as follows:

48 b. Violations by a child of provisions of chapter  
49 321, 321G, ~~453A~~ 461A, 461B, 462A, 481A, 481B, 483A,  
50 484A, or 484B, which would be simple misdemeanors if

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Page 2

1 committed by an adult, and violations by a child of  
2 county or municipal curfew or traffic ordinances, are  
3 excluded from the jurisdiction of the juvenile court  
4 and shall be prosecuted as simple misdemeanors as  
5 provided by law. A child convicted of a violation  
6 excluded from the jurisdiction of the juvenile court  
7 under this paragraph shall be sentenced pursuant to  
8 section 805.8, where applicable, and pursuant to  
9 section 903.1, subsection 3, for all other violations.

10 Sec. 5. Section 331.303, subsection 3, Code  
11 Supplement 1999, is amended by striking the  
12 subsection.

13 Sec. 6. Section 331.427, subsection 1, unnumbered  
14 paragraph 1, Code 1999, is amended to read as follows:

15 Except as otherwise provided by state law, county  
16 revenues from taxes and other sources for general  
17 county services shall be credited to the general fund  
18 of the county, including revenues received under  
19 sections 101A.3, 101A.7, 123.36, 123.143, ~~142B.6~~  
20 176A.8, 321.105, 321.152, 321G.7, section 331.554,  
21 subsection 6, sections 341A.20, 364.3, 368.21, 422A.2,  
22 428A.8, 430A.3, 433.15, 434.19, 445.57, ~~453A.35~~  
23 458A.21, 483A.12, 533.24, 556B.1, 567.10, 583.6,  
24 602.8108, 904.908, and 906.17, and chapter 405A, and  
25 the following:

26 Sec. 7. Section 331.653, subsection 11, Code 1999,  
27 is amended by striking the subsection.

28 Sec. 8. Section 331.756, subsection 20, Code 1999,  
29 is amended by striking the subsection.

30 Sec. 9. Section 421.10, Code 1999, is amended to  
31 read as follows:

32 421.10 APPEAL PERIOD -- APPLICABILITY.

33 The appeal period for revision of assessment of  
34 tax, interest, and penalties set out under section  
35 422.28, 422.54, or 452A.64, ~~453A.29, or 453A.46~~  
36 applies to appeals to notices from the department  
37 denying changes in filing methods, denying refund  
38 claims, and denying portions of refund claims for the  
39 tax covered by that section, and notices of any  
40 department action directed to a specific taxpayer,  
41 other than licensing, which involves a calculation.

42 Sec. 10. Section 669.14, subsection 11, unnumbered  
43 paragraph 1, Code Supplement 1999, is amended to read  
44 as follows:

45 Any claim for financial loss based upon an act or  
46 omission in financial regulation, including but not  
47 limited to examinations, inspections, audits, or other  
48 financial oversight responsibilities, pursuant to  
49 chapters 87, 203, 203A, 203C, 203D, ~~421B~~ 486, 487,  
50 and 490 through 553, excluding chapters 540A, 542B,

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- 1 542C, 543B, 543C, 543D, 544A, and 544B.
- 2 Sec. 11. Section 805.8, subsection 11, Code
- 3 Supplement 1999, is amended by striking the
- 4 subsection.
- 5 Sec. 12. Section 903.1, subsection 3, Code
- 6 Supplement 1999, is amended to read as follows:
- 7 3. A person under eighteen years of age convicted
- 8 of a simple misdemeanor under chapter 321, 321G, 453A,
- 9 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, or
- 10 a violation of a county or municipal curfew or traffic
- 11 ordinance, except for an offense subject to section
- 12 805.8, may be required to pay a fine, not to exceed
- 13 one hundred dollars, as fixed by the court, or may be
- 14 required to perform community service as ordered by
- 15 the court.
- 16 Sec. 13. Chapters 142B, 421B, and 453A, Code 1999
- 17 and Code Supplement 1999, are repealed."
- 18 2. Title page, by striking lines 1 and 2 and
- 19 inserting the following: "An Act prohibiting the
- 20 shipping or importing into the state, or the
- 21 manufacturing, offering for sale, selling,
- 22 distributing, transporting, or possessing within the
- 23 state of cigarettes or tobacco products."

By CONNORS of Polk

H-8524 FILED MARCH 22, 2000

*Lost  
3/29/00 (p.1131)*

## SENATE FILE 2366

H-8530

- 1 Amend Senate File 2366, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. By striking page 1, line 1, through page 2,
- 4 line 4.
- 5 2. Page 2, line 5, by inserting after the figure
- 6 "453A.3," the following: "subsection 1,".
- 7 3. Page 2, by striking line 7.
- 8 4. By striking page 2, line 16, through page 5,
- 9 line 6.
- 10 5. Page 6, by striking lines 13 through 28.
- 11 6. Page 7, by striking lines 6 through 33.
- 12 7. Title page, by striking line 1, and inserting
- 13 the following: "An Act relating to".

By SUKUP of Franklin

H-8530 FILED MARCH 22, 2000

*AW/O  
3/29/00*

## SENATE FILE 2366

H-8656

1 Amend Senate File 2366, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 6, by inserting after line 12 the  
4 following:

5 "NEW SUBSECTION. 6. Any civil penalty collected  
6 by a local authority under this section shall be  
7 retained by the local authority."

By PARMENTER of Story

H-8656 FILED MARCH 29, 2000

*W/D*  
*3/30/00 (p. 1163)*

## SENATE FILE 2366

H-8657

1 Amend the amendment, H-8530, to Senate File 2366,  
2 as amended, passed, and reprinted by the Senate, as  
3 follows:

4 1. Page 1, by inserting after line 9, the  
5 following:

6 "    . Page 6, by inserting after line 12, the  
7 following:

8 "NEW SUBSECTION. 6. Any civil penalty collected  
9 by a local authority under this section shall be  
10 retained by the local authority."

By PARMENTER of Story

H-8657 FILED MARCH 29, 2000

*0/0*  
*3/29/00*  
*(p. 1131)*

SENATE FILE 2366

H-8660

1 Amend Senate File 2366, as amended, passed, and  
 2 reprinted by the Senate, as follows:  
 3 1. Page 5, by inserting after line 13, the  
 4 following:  
 5 "Sec. \_\_\_\_ . Section 453A.13, subsection 3, Code  
 6 1999, is amended to read as follows:  
 7 3. a. FEES -- EXPIRATION. All permits provided  
 8 for in this division shall expire on June 30 of each  
 9 year. A permit shall not be granted or issued until  
 10 the applicant has paid for the period ending June 30  
 11 next, to the department or the city or county granting  
 12 the permit, the fees provided for in this division.  
 13 The annual state permit fee for a distributor,  
 14 cigarette vendor, and wholesaler is one hundred  
 15 dollars when the permit is granted during the months  
 16 of July, August, or September. However, whenever a  
 17 state permit holder operates more than one place of  
 18 business, a duplicate state permit shall be issued for  
 19 each additional place of business on payment of five  
 20 dollars for each duplicate state permit, but refunds  
 21 as provided in this division do not apply to any  
 22 duplicate permit issued.  
 23 b. The fee for retail permits is as follows when  
 24 the permit is granted during the months of July,  
 25 August, or September:  
 26 a- (1) In places outside any city, a minimum fee  
 27 of fifty dollars.  
 28 b- (2) In cities of less than fifteen thousand  
 29 population, a minimum fee of seventy-five dollars.  
 30 c- (3) In cities of fifteen thousand or more  
 31 population, a minimum fee of one hundred dollars.  
 32 c. If any permit is granted during the months of  
 33 October, November, or December, the fee shall be  
 34 three-fourths of the ~~above-maximum~~ schedule; if  
 35 granted during the months of January, February, or  
 36 March, one-half of the ~~maximum~~ schedule, and if  
 37 granted during the months of April, May, or June, one-  
 38 fourth of the ~~maximum~~ schedule.  
 39 d. If a city or county assesses a retail permit  
 40 fee that is greater than the minimum fee specified in  
 41 paragraph "b", the city or county shall retain the fee  
 42 amounts above the minimum to be used for enforcement  
 43 of section 453A.2."

44 2. By renumbering as necessary.  
 By PARMENTER of Story

H-8660 FILED MARCH 29, 2000

*W/P  
 3/30/00  
 (p. 1163)*

## SENATE FILE 2366

H-8670

1 Amend Senate File 2366, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 2, by striking lines 19 through 26, and  
4 inserting the following:

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

14 2. Page 2, by striking lines 27 through 31, and  
15 inserting the following:

16 "b. For a first offense, performance of eight  
17 hours of community work requirements, unless waived by  
18 the court.

19 c. For a second offense, performance of twelve  
20 hours of community work requirements."

21 3. Page 2, line 32 by striking the word "forty"  
22 and inserting the following: "sixteen".

23 4. Page 2, line 33, by striking the word  
24 "service" and inserting the following: "work  
25 requirements."

26 5. Page 2, line 33, by striking the words "and  
27 suspension of the person's".

28 6. By striking page 2, line 34, through page 3,  
29 line 31.

30 7. Page 7, line 8, by striking the figure "(1)"  
31 and inserting the following: "{1}".

32 8. Page 7, line 13, by striking the letter "(a)"  
33 and inserting the following: "(1)".

34 9. Page 7, line 15, by striking the letter "(b)"  
35 and inserting the following: "(2)".

36 10. Page 7, line 17, by striking the letter "(c)"  
37 and inserting the following: "(3)".

38 11. Page 7, by striking lines 19 through 22.

39 12. Page 7, by striking lines 23 through 33, and  
40 inserting the following:

41 ~~"(2)--For-failing-to-pay-the-civil-penalty-under~~  
42 ~~section-453A.2, subsection-2, the-scheduled-criminal~~  
43 ~~fine-is-twenty-five-dollars-if-the-violation-is-a~~  
44 ~~first-offense, fifty-dollars-if-the-violation-is-a~~  
45 ~~second-offense, and-one-hundred-dollars-if-the~~  
46 ~~violation-is-a-third-or-subsequent-offense.--Failure~~  
47 ~~to-pay-the-scheduled-criminal-fine-shall-not-result-in~~  
48 ~~the-person-being-detained-in-a-secure-facility.--The~~  
49 ~~complainant-shall-not-be-charged-a-filing-fee."~~

50 13. By renumbering as necessary.

By SUKUP of Franklin

WEIGEL of Chickasaw

KREIMAN of Davis

MYERS of Johnson

H-8670 FILED MARCH 30, 2000

3/20/00

adopted

(p. 1162)

HOUSE AMENDMENT TO  
SENATE FILE 2366

S-5314

- 1 Amend Senate File 2366, as amended, passed, and  
2 reprinted by the Senate, as follows:
- 3 1. Page 2, by striking lines 19 through 26, and  
4 inserting the following:
- 5 ~~"11. Failure to pay the civil penalty imposed for~~  
6 ~~a violation of section 453A.2, subsection 2, is a~~  
7 ~~simple misdemeanor punishable as a scheduled violation~~  
8 ~~under section 805.8, subsection 11. Notwithstanding~~  
9 section 602.8106 or any other provision to the  
10 contrary, any civil penalty or criminal fine paid  
11 under this subsection shall be retained by the city or  
12 county enforcing the violation to be used for  
13 enforcement of section 453A.2."
- 14 2. Page 2, by striking lines 27 through 31, and  
15 inserting the following:
- 16 "b. For a first offense, performance of eight  
17 hours of community work requirements, unless waived by  
18 the court.
- 19 c. For a second offense, performance of twelve  
20 hours of community work requirements."
- 21 3. Page 2, line 32 by striking the word "forty"  
22 and inserting the following: "sixteen".
- 23 4. Page 2, line 33, by striking the word  
24 "service" and inserting the following: "work  
25 requirements."
- 26 5. Page 2, line 33, by striking the words "and  
27 suspension of the person's".
- 28 6. By striking page 2, line 34, through page 3,  
29 line 31.
- 30 7. Page 7, line 8, by striking the figure "(1)"  
31 and inserting the following: "{1}".
- 32 8. Page 7, line 13, by striking the letter "(a)"  
33 and inserting the following: "(1)".
- 34 9. Page 7, line 15, by striking the letter "(b)"  
35 and inserting the following: "(2)".
- 36 10. Page 7, line 17, by striking the letter "(c)"  
37 and inserting the following: "(3)".
- 38 11. Page 7, by striking lines 19 through 22.
- 39 12. Page 7, by striking lines 23 through 33, and  
40 inserting the following:
- 41 ~~"{2}--For failing to pay the civil penalty under~~  
42 ~~section 453A.2, subsection 2, the scheduled criminal~~  
43 ~~fine is twenty-five dollars if the violation is a~~  
44 ~~first offense, fifty dollars if the violation is a~~  
45 ~~second offense, and one hundred dollars if the~~  
46 ~~violation is a third or subsequent offense.--Failure~~  
47 ~~to pay the scheduled criminal fine shall not result in~~  
48 ~~the person being detained in a secure facility.--The~~  
49 ~~complainant shall not be charged a filing fee."~~
- 50 13. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5314 FILED APRIL 3, 2000

*Senate Concurred*  
4-5-00 (p. 1025)

SENATE FILE 2366

AN ACT

RELATING TO THE PURCHASE, POSSESSION, AND SALE OF CIGARETTES AND TOBACCO PRODUCTS AND PROVIDING PENALTIES.

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

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

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

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

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

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

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

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

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

453A.3 PENALTY.

- 1. a. A person, other than a retailer, who violates section 453A.2, subsection 1, or section 453A.39 is guilty of a simple misdemeanor.
- b. An employee of a retailer who violates section 453A.2, subsection 1, commits a simple misdemeanor punishable as a scheduled violation under section 805.8, subsection 11.
- c. A person who violates section 453A.39, is guilty of a simple misdemeanor.
- 2. A person who violates section 453A.2, subsection 2, shall pay a is subject to the following, as applicable:
  - a. A civil penalty pursuant to section 805.8, subsection 11. Failure to pay the civil penalty imposed for a violation of section 453A.2, subsection 2, is a simple misdemeanor punishable as a scheduled violation under section 805.87

SI-2006

~~subsection 11.~~ Notwithstanding section 602.8106 or any other provision to the contrary, any civil penalty or ~~criminal fine~~ paid under this subsection shall be retained by the city or county enforcing the violation ~~to be used for enforcement of section 453A.2.~~

b. For a first offense, performance of eight hours of community work requirements, unless waived by the court.

c. For a second offense, performance of twelve hours of community work requirements.

d. For a third or subsequent offense, performance of sixteen hours of community work requirements.

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

1. If a person holding a permit under this chapter or an employee of such a permittee has a reasonable belief based on factual evidence that a driver's license as defined in section 321.1, subsection 20A, or nonoperator's identification card issued pursuant to section 321.190 offered by a person who wishes to purchase cigarettes or tobacco products is altered or falsified or belongs to another person, the permittee or employee may retain the driver's license or nonoperator's identification card. Within twenty-four hours, the card shall be delivered to the appropriate city or county law enforcement agency of the jurisdiction in which the permittee's premises is located, and the permittee shall file a written report of the circumstances under which the card was retained. The local law enforcement agency may investigate whether a violation of section 321.216, 321.216A, or 321.216C has occurred. If an investigation is not initiated or probable cause is not established by the local law enforcement agency, the driver's license or nonoperator's identification card shall be delivered to the person to whom it was issued. The local law enforcement agency may forward the card with the report to the state department of transportation for investigation, in which case, the state department of

transportation may investigate whether a violation of section 321.216, 321.216A, or 321.216C has occurred. The state department of transportation shall return the card to the person to whom it was issued if an investigation is not initiated or probable cause is not established.

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

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

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

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

Sec. 6. Section 453A.22, subsection 2, Code 1999, is amended to read as follows:

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

a. For a first violation, the violator retailer shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of fourteen days.

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

c. For a third violation within a period of five three years, the violator's retailer's permit shall be suspended for a period of sixty days.

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

Sec. 7. Section 453A.22, Code 1999, is amended by adding the following new subsections:

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

NEW SUBSECTION. 5. The department or local authority shall report the suspension or revocation of a retail permit under this section to the Iowa department of public health within thirty days of the suspension or revocation of the retail permit.

Sec. 8. Section 602.6405, Code 1999, is amended by adding the following new subsection:

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

b. Magistrates shall forward copies of citations issued for violations of section 453A.2, subsection 2, and of their dispositions to the clerk of the district court. The clerk of the district court shall maintain records of citations issued

and the dispositions of citations, and shall forward a copy of the records to the Iowa department of public health.

Sec. 9. Section 805.6, Code 1999, is amended by adding the following new subsection:

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

Sec. 10. Section 805.8, subsection 11, Code Supplement 1999, is amended by adding the following new paragraph after paragraph a, and relettering the subsequent paragraph:

NEW PARAGRAPH. aa. For violations of section 453A.2, subsection 1, by an employee of a retailer, the scheduled fine is as follows:

(1) If the violation is a first offense, the scheduled fine is one hundred dollars.

(2) If the violation is a second offense, the scheduled fine is two hundred fifty dollars.

(3) If the violation is a third or subsequent offense, the scheduled fine is five hundred dollars.

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

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

(a) (1) If the violation is a first offense, the scheduled fine is twenty-five fifty dollars.

(b) (2) If the violation is a second offense, the scheduled fine is fifty one hundred dollars.

(c) (3) If the violation is a third or subsequent offense, the scheduled fine is one two hundred fifty dollars.

~~(2) -- For failing to pay the civil penalty under section 453A.2, subsection 2, the scheduled criminal fine is twenty-five dollars if the violation is a first offense, fifty~~



Senate File 2366, p. 7

~~dollars-if-the-violation-is-a-second-offense, and one hundred  
dollars-if-the-violation-is-a-third-or-subsequent-offense.  
Failure-to-pay-the-scheduled-criminal-fine-shall-not-result-in  
the-person-being-detained-in-a-secure-facility. The  
complainant-shall-not-be-charged-a-filing-fee.~~

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MARY E. KRAMER  
President of the Senate

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BRENT SIEGRIST  
Speaker of the House

I hereby certify that this bill originated in the Senate and  
is known as Senate File 2366, Seventy-eighth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved *April 17*, 2000

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THOMAS J. VILSACK  
Governor