

# Senate Study Bill 3206

## Bill Text

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

1 4 A person who is under the age of eighteen, who alters or  
1 5 displays or has in the person's possession a fictitious or  
1 6 fraudulently altered driver's license or nonoperator's  
1 7 identification card and who uses the license or card to  
1 8 violate or attempt to violate section 453A.2, subsection 2,  
1 9 commits a simple misdemeanor punishable by a fine of one  
1 10 hundred dollars. The court shall forward a copy of the  
1 11 conviction to the department.

1 12 Sec. 2. Section 453A.2, Code 1999, is amended by adding  
1 13 the following new subsections:

1 14 NEW SUBSECTION. 2A. Possession of cigarettes or tobacco  
1 15 products by an individual under eighteen years of age does not  
1 16 constitute a violation under this section if the individual  
1 17 under eighteen years of age possesses the cigarettes or  
1 18 tobacco products as part of the individual's employment and  
1 19 the individual is employed by a person who holds a valid  
1 20 permit under this chapter or who lawfully offers for sale or  
1 21 sells cigarettes or tobacco products.

1 22 NEW SUBSECTION. 5. A person shall not be guilty of a  
1 23 violation of this section if conduct that would otherwise  
1 24 constitute a violation is performed to assess compliance with  
1 25 cigarette and tobacco products laws if any of the following  
1 26 applies:

1 27 a. The compliance effort is conducted by or under the  
1 28 supervision of law enforcement officers.

1 29 b. The compliance effort is conducted with the advance  
1 30 knowledge of law enforcement officers and reasonable measures  
1 31 are adopted by those conducting the effort to ensure that use  
1 32 of cigarettes or tobacco products by individuals under  
1 33 eighteen years of age does not result from participation by  
1 34 any individual under eighteen years of age in the compliance  
1 35 effort.

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

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

2 7 2. A person who violates section 453A.2, subsection 2,  
2 8

~~shall pay a~~

~~is subject to one of the following, as applicable:~~

2 9 a. A civil penalty pursuant to section 805.8, subsection  
2 10 11. Failure to pay

~~the~~

~~a civil penalty imposed for a~~

2 11 violation of section 453A.2, subsection 2, is a simple  
2 12 misdemeanor punishable as a scheduled violation under section  
2 13 805.8, subsection 11. Notwithstanding section 602.8106 or any  
2 14 other provision to the contrary, any civil penalty or criminal  
2 15 fine paid under this subsection shall be retained by the city

2 16 or county enforcing the violation

~~to be used for enforcement~~

2 17

~~of section 453A.2~~

2 18 b. For a first or second offense, performance of community  
2 19 service or attendance at tobacco education classes, if  
2 20 available.

2 21 Sec. 4. NEW SECTION. 453A.4 SEIZURE OF FALSE OR ALTERED  
2 22 DRIVER'S LICENSE OR NONOPERATOR'S IDENTIFICATION CARD.

2 23 1. If a person holding a permit under this chapter or an  
2 24 employee of such a permittee has a reasonable belief based on  
2 25 factual evidence that a driver's license as defined in section  
2 26 321.1, subsection 20A, or nonoperator's identification card  
2 27 issued pursuant to section 321.190 offered by a person who  
2 28 wishes to purchase cigarettes or tobacco products is altered  
2 29 or falsified or belongs to another person, the permittee or  
2 30 employee may retain the driver's license or nonoperator's  
2 31 identification card. Within twenty-four hours, the card shall  
2 32 be delivered to the appropriate city or county law enforcement  
2 33 agency of the jurisdiction in which the permittee's premises  
2 34 is located, and the permittee shall file a written report of  
2 35 the circumstances under which the card was retained. The

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

3 15 2. Upon taking possession of an identification card as  
3 16 provided in subsection 1, a receipt for the card with the date  
3 17 and hour of seizure noted shall be provided to the person from  
3 18 whom the card is seized.

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

3 31 Sec. 5. Section [453A.13](#), subsection 2, Code 1999, is  
3 32 amended by adding the following new paragraph:

3 33 NEW PARAGRAPH. c. The department, or a city or county,  
3 34 shall submit a duplicate of any application for a retail  
3 35 permit and any retail permit issued by the entity under this  
4 1 subsection to the Iowa department of public health within  
4 2 thirty days of the issuance.

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

4 5 NEW SUBSECTION. 4. Notwithstanding subsection 3, if a  
4 6 retail permit is suspended or revoked under this section, the

4 7 suspension or revocation shall only apply to the place of  
4 8 business at which the violation occurred and shall not apply  
4 9 to any other place of business to which the retail permit  
4 10 applies but at which the violation did not occur.

4 11 NEW SUBSECTION. 5. The department or local authority  
4 12 shall report the suspension or revocation of a retail permit  
4 13 under this section to the Iowa department of public health  
4 14 within thirty days of the suspension or revocation of the  
4 15 retail permit.

4 16 Sec. 7. Section 602.6405, Code 1999, is amended by adding  
4 17 the following new subsection:

4 18 NEW SUBSECTION. 1A. Magistrates shall hear and determine  
4 19 violations of and penalties for violations of section 453A.2,  
4 20 subsection 2.

4 21 Sec. 8. Section 805.6, Code 1999, is amended by adding the  
4 22 following new subsection:

4 23 NEW SUBSECTION. 2A. The uniform citation and complaint  
4 24 shall contain a place for citing a person in violation of  
4 25 section 453A.2, subsection 2.

4 26 Sec. 9. Section 805.8, subsection 11, paragraph b, Code  
4 27 Supplement 1999, is amended to read as follows:

4 28 b. (1) For violations of section 453A.2, subsection 2,  
4 29 the scheduled fine is as follows and is a civil penalty, and  
4 30 the criminal penalty surcharge under section 911.2 shall not  
4 31 be added to the penalty, and the court costs pursuant to  
4 32 section 805.9, subsection 6, shall not be imposed:

4 33 (a) If the violation is a first offense, the scheduled  
4 34 fine is

~~twenty five~~  
- fifty dollars.

4 35 (b) If the violation is a second offense, the scheduled  
5 1 fine is

~~fifty~~  
- one hundred dollars.

5 2 (c) If the violation is a third or subsequent offense, the  
5 3 scheduled fine is

~~one~~  
- two hundred fifty dollars.

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

5 8 (2) For failing to pay the civil penalty under section  
5 9 453A.2, subsection 2, or to perform the unpaid community  
5 10 service or to attend tobacco education classes under section  
5 11 453A.3, subsection 2, the scheduled criminal fine is

~~twenty~~

5 12

~~five~~  
- fifty dollars if the violation is a first offense,

~~fifty~~

5 13 one hundred dollars if the violation is a second offense, and  
5 14

~~one~~

- two hundred fifty dollars if the violation is a third or  
5 15 subsequent offense. Failure to pay the scheduled criminal  
5 16 fine shall not result in the person being detained in a secure  
5 17 facility. The complainant shall not be charged a filing fee.

EXPLANATION

5 18

5 19 This bill makes changes in the laws relating to cigarettes  
5 20 and tobacco products.

5 21 The bill creates new Code section 321.216C, which makes the  
5 22 use of a driver's license or nonoperator's identification card  
5 23 by a person under the age of 18 to obtain cigarettes or  
5 24 tobacco products a simple misdemeanor. This provision is  
5 25 similar to the use of the same documents in obtaining alcohol.  
5 26 The procedure for seizing such documents is established in the  
5 27 bill under new Code section 453A.3A.

5 28 The bill amends Code section 453A.2 to provide that  
5 29 possession of cigarettes or tobacco products by an individual  
5 30 under the age of 18 as part of the individual's employment, if  
5 31 the individual is employed by a holder of a valid permit under  
5 32 the cigarette and tobacco products chapter or by a person who  
5 33 lawfully offers for sale or sells cigarettes or tobacco  
5 34 products, does not constitute a violation of the prohibition  
5 35 against a minor possessing cigarettes or tobacco products.  
6 1 Additionally, the bill provides that a person does not violate  
6 2 Code section 453A.2 if conduct that would otherwise constitute  
6 3 a violation is performed to assess compliance with the law and  
6 4 if either the compliance effort is conducted by or under the  
6 5 supervision of law enforcement officers or the compliance  
6 6 effort is conducted with the advance knowledge of law  
6 7 enforcement officers and reasonable measures are adopted to  
6 8 ensure that minors do not use these products as a result of  
6 9 the compliance efforts.

6 10 The bill amends Code section 453A.3, subsection 2, to  
6 11 provide that a person who violates the prohibition against a  
6 12 minor smoking, using, possessing, purchasing, or attempting to  
6 13 purchase tobacco, tobacco products, or cigarettes, is subject  
6 14 to either a civil penalty (the current penalty) or a new  
6 15 alternative penalty of performance of community service or  
6 16 attendance at tobacco education classes, if available and if  
6 17 the violation is a first or second offense. The bill adds a  
6 18 provision to Code section 805.6, to require that the current  
6 19 uniform judicial citation and complaint form include a place  
6 20 for citing a person for a violation of Code section 453A.2,  
6 21 subsection 2. The bill amends Code section 602.6405 to  
6 22 require judicial magistrates to hear and determine violations  
6 23 of and penalties for violations of Code section 453A.2,  
6 24 subsection 2.

6 25 The bill creates a new Code section 453A.4, which provides  
6 26 a procedure for seizure of a false or altered driver's license  
6 27 or nonoperator's identification offered by a person who wishes  
6 28 to purchase cigarettes or tobacco products. The provision is  
6 29 similar to that used in the context of the purchase of  
6 30 alcohol.

6 31 The amendment to Code section 453A.13 requires the  
6 32 department of revenue and finance and cities and counties  
6 33 issuing permits for the retail sales of cigarettes to submit a  
6 34 copy of any application submitted to and of any permit issued  
6 35 by the entity to the Iowa department of public health.

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

7 10 Additionally, the amendment to Code section 805.8 is a  
7 11 conforming amendment to reflect the option of requiring  
7 12 performance of unpaid community service or attendance at  
7 13 tobacco education classes as an alternative to payment of a  
7 14 scheduled fine for violations of Code section 453A.2,

7 15 subsection 2, for a first or second offense relating to a  
7 16 minor's use, possession, or purchase of cigarettes or tobacco  
7 17 products.

7 18 The amendment to Code section 805.8, increases the  
7 19 scheduled fines and scheduled criminal fines for failure to  
7 20 comply with the initial penalty. The scheduled fine for a  
7 21 first offense is increased from \$25 to \$50, for a second  
7 22 offense from \$50 to \$100, and for a third or subsequent  
7 23 offense, from \$100 to \$250. Additionally, the penalty for  
7 24 failure to pay the civil penalty or for failure to perform the  
7 25 unpaid community service or to attend the tobacco education  
7 26 classes is increased from \$25 to \$50 for a first offense, from  
7 27 \$50 to \$100 for a second offense, and from \$100 to \$250 for a  
7 28 third or subsequent offense.

7 29 LSB 6916SC 78

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