

# Senate Study Bill 1205

## Bill Text

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1 1 DIVISION VI  
1 2 CIGARETTE RETAIL PERMITS VIOLATIONS  
1 3 Section 1. NEW SECTION. 123.190 DEFINITIONS.  
1 4 For the purpose of this division, unless the context  
1 5 otherwise requires:  
1 6 1. "Administrator" means the administrator of the  
1 7 division, appointed pursuant to this chapter, or the  
1 8 administrator's designee.  
1 9 2. "Application" means a formal written request for the  
1 10 issuance or a permit supported by a verified statement of  
1 11 fact.  
1 12 3. "Carton" means a box or container of any kind in which  
1 13 ten or more packages or packs of cigarettes or tobacco  
1 14 products are offered for sale, sold, or otherwise distributed  
1 15 to consumers.  
1 16 4. "Cigarette" means a roll for smoking made wholly or in  
1 17 part of tobacco, or any substitute for tobacco, irrespective  
1 18 of size or shape and irrespective of tobacco or any substitute  
1 19 for tobacco being flavored, adulterated, or mixed with any  
1 20 other ingredient, where such roll has a wrapper or cover made  
1 21 of paper or any other material. "Cigarette" does not include  
1 22 cigars.  
1 23 5. "Cigarette vending machine" means a self-service device  
1 24 offered for public use which, upon insertion of a coin, coins,  
1 25 paper currency, or by other means, dispenses cigarettes or  
1 26 tobacco products without the necessity or replenishing the  
1 27 device between each vending operation.  
1 28 6. "Cigarette vendor" means a person who by contract,  
1 29 agreement, or ownership takes responsibility for furnishing,  
1 30 installing, servicing, operating, or maintaining one or more  
1 31 cigarette vending machines for the purpose of selling  
1 32 cigarettes at retail.  
1 33 7. "City" means a municipal corporation but not including  
1 34 a county, township, school district, or any special purpose  
1 35 district or authority.  
2 1 8. "Commission" means the alcoholic beverages commission  
2 2 established in this chapter.  
2 3 9. "Distributing agent" means a person in this state who  
2 4 acts as an agent of a manufacturer outside of the state by  
2 5 storing cigarettes received in interstate commerce from the  
2 6 manufacturer subject to distribution or delivery to a  
2 7 distributor upon an order received by the manufacturer in  
2 8 interstate commerce and transmitted to the distributing agent  
2 9 for fulfillment from such place of storage.  
2 10 10. "Distributor" means a person in this state who  
2 11 manufactures or produces cigarettes or who ships, transports,  
2 12 or imports into this state or in any manner acquires or  
2 13 possesses cigarettes without stamps affixed for the purpose of  
2 14 making a first sale of the cigarettes within the state.  
2 15 11. "Division" means the alcoholic beverages division of  
2 16 the department of commerce established by this chapter.  
2 17 12. "First sale" means the first sale or distribution of  
2 18 cigarettes in intrastate commerce, or the first use or  
2 19 consumption of cigarettes within this state.  
2 20 13. "Individual package of cigarettes" means a package of  
2 21 cigarettes ordinarily sold at retail.

2 22 14. "Local authority" means the city council of a city in  
2 23 this state, or the county board of supervisors of a county in  
2 24 this state, which is empowered by this chapter to approve or  
2 25 deny applications for retail cigarette permits; empowered to  
2 26 recommend that such permits be granted and issued by the  
2 27 division; and empowered to take other actions reserved to the  
2 28 city council or county board by this division VI.

2 29 15. "Manufacturer" means a person who ships cigarettes  
2 30 into this state from outside the state.

2 31 16. "Package" or "pack" means a container of any kind in  
2 32 which cigarettes or tobacco products are offered for sale,  
2 33 sold, or otherwise distributed to consumers.

2 34 17. "Permit" means an express written authorization issued  
2 35 by the division for the retail sale of cigarettes.

3 1 18. "Permit holder", "holder of a permit", or "permittee"  
3 2 includes a person who holds a retail permit under this  
3 3 division VI or who holds a permit under chapter 453A, unless  
3 4 the context otherwise requires.

3 5 19. "Permitted premises" or "premises" means a room,  
3 6 enclosure, contiguous area, or place susceptible of precise  
3 7 description satisfactory to the administrator where cigarettes  
3 8 are sold under authority of a retail permit. A single  
3 9 premises may consist of multiple rooms, enclosures, areas, or  
3 10 places if they are wholly within the confines of a single  
3 11 building or contiguous grounds.

3 12 20. "Person" means an individual, firm, association, joint  
3 13 stock company, syndicate, copartnership, corporation, trustee,  
3 14 agency or receiver, or respective legal representative.

3 15 21. "Retailer" means a person in this state who sells,  
3 16 distributes, or offers for sale for consumption or possesses  
3 17 for the purpose of sale for consumption, cigarettes  
3 18 irrespective of quantity or amount or the number of sales.

3 19 22. "Retail permit" means a permit issued to a retailer.

3 20 23. "Self-service display" means any manner of product  
3 21 display, placement, or storage from which a person purchasing  
3 22 the product may take possession of the product, prior to  
3 23 purchase, without assistance from the retailer or employee of  
3 24 the retailer, in removing the product from a restricted access  
3 25 location.

3 26 24. "State permit" means a permit issued by the department  
3 27 of revenue and finance to a distributor, wholesaler,  
3 28 manufacturer, or cigarette vendor.

3 29 25. "Tobacco product" means a cigar; little cigar as  
3 30 defined in section 453A.42, subsection 5; cheroot; stogy;  
3 31 perique; granulated; plug cut, crimp cut, ready rubbed, and  
3 32 other smoking tobacco; snuff, snuff flour; cavendish; plug and  
3 33 twist tobacco; fine-cut and other chewing tobacco; short; or  
3 34 refuse scraps, clippings, cuttings and sweepings of tobacco,  
3 35 and other kinds and forms of tobacco, prepared in such manner  
4 1 as to be suitable for chewing or smoking in a pipe or  
4 2 otherwise, or both for chewing and smoking; but does not mean  
4 3 cigarettes.

4 4 26. "Unincorporated town" means a compactly populated area  
4 5 recognized as a distinct place with a distinct place-name  
4 6 which is not itself incorporated or within the corporate  
4 7 limits of a city.

4 8 27. "Wholesaler" means a person other than a distributor  
4 9 or distributing agent who engages in the business of selling  
4 10 or distributing cigarettes within the state, for the purpose  
4 11 of resale.

4 12 Sec. 2. NEW SECTION. 123.191 RETAIL PERMIT ENFORCEMENT  
4 13 POWERS OF ADMINISTRATOR.

4 14 1. The division is the primary retail permit enforcement  
4 15 authority for this state. The department of public safety,  
4 16 the county attorney, the county sheriff and the sheriff's  
4 17 deputies, and the police department of every city shall aid in  
4 18 the enforcement of this division VI. Persons authorized to

4 19 enforce this division VI shall have access to all records,  
4 20 reports, audits, tax reports, and all other documents and  
4 21 papers of the division pertaining to retail permits under this  
4 22 division VI.

4 23 2. In addition to the powers otherwise authorized under  
4 24 this chapter, the administrator shall have the following  
4 25 powers:

4 26 a. To grant and issue retail permits and to suspend or  
4 27 revoke retail permits as provided under this division VI.

4 28 b. To permit, inspect, and control retailers under this  
4 29 division VI.

4 30 c. To adopt rules pursuant to chapter 17A to implement and  
4 31 enforce this division VI.

4 32 3. The administrator shall have access to all records,  
4 33 reports, audits, tax reports, and all other documents and  
4 34 papers of the department of revenue and finance related to  
4 35 chapter 453A to ensure proper administration and enforcement  
5 1 of this division VI, chapter 421B, and chapter 453A.

5 2 Sec. 3. NEW SECTION. 123.192 RETAIL PERMITS ACTION BY  
5 3 LOCAL AUTHORITIES AND DIVISION ON APPLICATIONS.

5 4 1. RETAIL PERMITS.

5 5 a. PERMITS REQUIRED. A retailer, engaged or who desires  
5 6 to become engaged in the sale or use of cigarettes, upon which  
5 7 a tax is required to be paid pursuant to chapter 453A, shall  
5 8 obtain a retail cigarette permit as a retailer.

5 9 b. NO SALES WITHOUT PERMIT. A retailer shall not sell any  
5 10 cigarettes until an application has been filed and the fee  
5 11 prescribed paid for a permit and until such permit is obtained  
5 12 and only while the permit is unrevoked and unexpired.

5 13 c. NUMBER OF PERMITS. An application shall be filed and a  
5 14 permit obtained for each premises owned or operated by a  
5 15 retailer.

5 16 d. GROUP BUSINESSES. If a distributor or wholesaler sells  
5 17 cigarettes at both retail and wholesale, the distributor or  
5 18 wholesaler shall obtain a separate retail permit for retail  
5 19 sales.

5 20 2. APPLICATION. Except as otherwise provided in section  
5 21 123.195, a verified application for the original issuance or  
5 22 the renewal of a retail permit shall be filed at the time and  
5 23 in the number of copies as the administrator shall prescribe,  
5 24 on a form prescribed by the administrator, and shall set forth  
5 25 under oath the following information:

5 26 a. The name and address of the applicant.

5 27 b. The name of the owner of the premises, and if that  
5 28 owner is not the applicant, a statement that the applicant is  
5 29 the actual lessee of the premises.

5 30 c. The precise location of the premises for which a permit  
5 31 is sought.

5 32 d. The names and addresses of all persons, partners,  
5 33 officers, directors, shareholders, and all others having  
5 34 financial interest, by way of loan, ownership, or otherwise,  
5 35 in the business.

6 1 e. The manner under which the retailer transacts or  
6 2 intends to transact business.

6 3 f. When required by the administrator, a sketch or drawing  
6 4 of the premises proposed to be permitted, in such form and  
6 5 containing such information as the administrator may require.

6 6 g. A statement whether any person specified in paragraph  
6 7 "d" has ever been convicted of any offense against the laws of  
6 8 the United States, or any state or territory of the United  
6 9 States, of any political subdivision of any state or  
6 10 territory.

6 11 h. Such other information as the administrator shall  
6 12 prescribe by rule.

6 13 3. FILING OF APPLICATION.

6 14 a. An application for a retail permit, accompanied by the  
6 15 necessary fee, shall be filed with the appropriate city

6 16 council if the premises for which the permit is sought are  
6 17 located within the corporate limits of a city, or with the  
6 18 county board of supervisors if the premises for which the  
6 19 permit is sought are located outside the corporate limits of a  
6 20 city including if the premises are located in an  
6 21 unincorporated town.

6 22 b. A retail permit shall be issued only upon an  
6 23 application accompanied by the necessary fee as provided in  
6 24 subsection 1.

6 25 4. ACTION BY LOCAL AUTHORITIES. The local authority shall  
6 26 either approve or deny the issuance of a retail permit, shall  
6 27 endorse its approval or denial on the application, and shall  
6 28 forward the application with the necessary fee to the  
6 29 division. The number of retail permits which may be approved  
6 30 for issuance by local authorities is not limited.

6 31 5. ACTION BY ADMINISTRATOR.

6 32 a. Upon receipt of an application that has been  
6 33 disapproved by the local authority, the administrator shall  
6 34 notify the applicant that the applicant may appeal the  
6 35 disapproval of the application to the administrator. The  
7 1 applicant shall be notified by certified mail, and the  
7 2 application and the fee shall be returned to the applicant.

7 3 b. Upon receipt of an application that has been approved  
7 4 by the local authority, the division shall perform an  
7 5 investigation as the administrator deems necessary to  
7 6 determine that the applicant complies with all requirements  
7 7 for holding a permit, and may require the applicant to appear  
7 8 to be examined under oath to demonstrate that the applicant  
7 9 complies with all of the requirements to hold a permit. If  
7 10 the administrator requires the applicant to appear and to  
7 11 testify under oath, a record shall be made of all testimony or  
7 12 evidence and the record shall become a part of the  
7 13 application. The administrator may appoint a member of the  
7 14 division or may request an administrative law judge of the  
7 15 department of inspections and appeals to receive the testimony  
7 16 under oath and evidence, and to issue a proposed decision to  
7 17 approve or disapprove the application for a permit. The  
7 18 administrator may affirm, reverse, or modify the proposed  
7 19 decision to approve or disapprove the application for the  
7 20 permit. If the application is approved by the administrator,  
7 21 the permit shall be issued. If the application is disapproved  
7 22 by the administrator, the applicant and the appropriate local  
7 23 authority shall be so notified by certified mail.

7 24 6. APPEAL OF DISAPPROVAL TO ADMINISTRATOR. An applicant  
7 25 for a retail permit may appeal from the local authority's  
7 26 disapproval of an application for a retail permit to the  
7 27 administrator. In the appeal, the applicant shall be allowed  
7 28 the opportunity to demonstrate in an evidentiary hearing  
7 29 conducted pursuant to chapter 17A that the applicant complies  
7 30 with all of the requirements for holding the permit. The  
7 31 administrator may appoint a member of the division or may  
7 32 request an administrative law judge of the department of  
7 33 inspections and appeals to conduct the evidentiary hearing and  
7 34 to render a proposed decision to approve or deny the issuance  
7 35 of the permit. The administrator may affirm, reverse, or  
8 1 modify the proposed decision. If the administrator determines  
8 2 that the applicant complies with all of the requirements for  
8 3 holding a retail permit, the administrator shall order the  
8 4 issuance of the permit. If the administrator determines that  
8 5 the applicant does not comply with the requirements for  
8 6 holding a permit, the administrator shall deny the issuance of  
8 7 the permit.

8 8 7. JUDICIAL REVIEW OF ACTION OF ADMINISTRATOR. The  
8 9 applicant or the local authority may seek judicial review of  
8 10 the action of the administrator in accordance with the terms  
8 11 of chapter 17A. Notwithstanding the terms of chapter 17A,  
8 12 petitions for judicial review may be filed in the district

8 13 court of the county where the premises covered by the  
8 14 application are situated.

8 15 8. APPEAL OF LOCAL AUTHORITY ACTION TO ADMINISTRATOR. A  
8 16 retail permit holder whose permit has been suspended or  
8 17 revoked or upon whom a civil penalty has been imposed by a  
8 18 local authority for a violation of this division VI or whose  
8 19 permit has been suspended by a local authority for violation  
8 20 of a local ordinance may appeal the suspension, revocation, or  
8 21 civil penalty to the administrator. The administrator may  
8 22 appoint a member of the division or may request an  
8 23 administrative law judge of the department of inspections and  
8 24 appeals to hear the appeal which shall be conducted in  
8 25 accordance with chapter 17A and to issue a proposed decision.  
8 26 The administrator may review the proposed decision upon the  
8 27 motion of a party to the appeal or upon the administrator's  
8 28 own motion in accordance with chapter 17A. Upon review of the  
8 29 proposed decision, the administrator may affirm, reverse, or  
8 30 modify the proposed decision. A retail permit holder or a  
8 31 local authority aggrieved by a decision of the administrator  
8 32 may seek judicial review of the decision pursuant to chapter  
8 33 17A.

8 34 9. ISSUANCE OR DENIAL.

8 35 a. A local authority or the division may deny the issuance  
9 1 of a permit to a retailer who is substantially delinquent in  
9 2 the payment of a tax due, or the interest or penalty on the  
9 3 tax, administered by the department of revenue and finance  
9 4 pursuant to chapter 453A at the time of the application. If  
9 5 the applicant is a partnership, a permit may be denied if a  
9 6 partner is substantially delinquent on any delinquent tax,  
9 7 penalty, or interest. If the applicant is a corporation, a  
9 8 permit may be denied if any officer having a substantial legal  
9 9 or equitable interest in the ownership of the corporation owes  
9 10 any delinquent tax, interest, or penalty of the applicant  
9 11 corporation.

9 12 b. A retail permit shall not be issued for premises which  
9 13 do not conform to all applicable laws, ordinances,  
9 14 resolutions, and health and fire regulations.

9 15 10. PERMIT FORM AND CONTENTS. A permit shall describe  
9 16 clearly the premises for which the permit is issued, shall be  
9 17 nonassignable, shall designate the kind of permit, and shall  
9 18 authorize the sale of cigarettes in this state subject to the  
9 19 limitations and restrictions contained in this division VI. A  
9 20 retail permit shall be issued upon a form furnished by the  
9 21 division.

9 22 11. PERMIT DISPLAYED. The permit shall, at all times, be  
9 23 publicly displayed by the retailer, at the premises, so as to  
9 24 be easily seen by the public and the persons authorized to  
9 25 inspect the premises. The proprietor or keeper of any  
9 26 building or place where cigarettes are kept for sale, or with  
9 27 intent to sell, shall upon request of any agent of the  
9 28 division, the department of revenue and finance, or any peace  
9 29 officer exhibit the permit. A refusal or failure to exhibit  
9 30 the permit is prima facie evidence that the cigarettes are  
9 31 kept for sale or with intent to sell in violation of this  
9 32 division.

9 33 12. INFORMATION ACCESS. The division shall provide  
9 34 electronic access to all records regarding the application for  
9 35 and issuance of retail permits under this division VI to the  
10 1 Iowa department of public health.

10 2 Sec. 4. NEW SECTION. 123.193 RETAIL PERMIT FOR RAILWAY  
10 3 CAR WATERCRAFT EXCURSION GAMBLING BOATS.

10 4 Subject to this division VI, a retail permit may be issued  
10 5 by the division to any dining car company, sleeping car  
10 6 company, railroad, railway company, passenger-carrying train,  
10 7 or watercraft operating intrastate only. The permit shall  
10 8 authorize the holder of the permit to keep for sale, and sell,  
10 9 cigarettes at retail on any such dining car, sleeping car,

10 10 passenger car, or watercraft operated by the applicant in,  
10 11 through, or across the state of Iowa, subject to all of the  
10 12 restrictions imposed upon retailers under this division VI and  
10 13 chapter 453A. The application for the permit shall be in the  
10 14 form and contain the information required by the  
10 15 administrator. A permit is good throughout the state and only  
10 16 one permit is required by a permittee for all railway cars or  
10 17 watercraft described in this section. The division shall  
10 18 issue a duplicate permit for each such railway car or  
10 19 watercraft. If the boat is an excursion gambling boat  
10 20 licensed under chapter 99F, the owner shall obtain a separate  
10 21 permit for each excursion gambling boat operated by the owner  
10 22 in the state. If a permit is obtained in accordance with this  
10 23 section, a further permit shall not be required or tax levied  
10 24 for the privilege of selling cigarettes in the railway cars,  
10 25 watercraft, or gambling boat. Cigarettes shall not be sold in  
10 26 the railway cars, watercraft, or gambling boats without having  
10 27 stamps affixed evidencing the payment of the tax as provided  
10 28 in chapter 453A.

10 29 Sec. 5. NEW SECTION. 123.194 RECORDS INSPECTIONS.

10 30 1. Every holder of a retail permit shall keep a daily  
10 31 record of the gross receipts of the holder's business and  
10 32 shall maintain invoices to provide proof of purchase of  
10 33 cigarettes. The records and invoices required and the  
10 34 premises of the retail permit holder shall be open to  
10 35 inspection pursuant this section, during normal business hours  
11 1 of the retail permit holder, or at any time that the permittee  
11 2 or the permittee's agents or patrons are on the premises.  
11 3 Records shall be kept for a period of three years from the  
11 4 date of the transaction for the purpose of inspection.

11 5 2. A state permit holder who sells cigarettes at retail  
11 6 shall issue an invoice to the holder's retail department for  
11 7 cigarettes to be sold at retail and such cigarette invoices  
11 8 shall be kept separate and apart.

11 9 3. As a condition for issuance of a retail permit, the  
11 10 applicant shall provide consent to members of the fire,  
11 11 police, and health departments and the building inspector of  
11 12 cities, the county sheriff, deputy sheriff, members of the  
11 13 department of public safety, representatives of the division,  
11 14 representatives of the department of inspections and appeals  
11 15 and representatives of the department of revenue and finance,  
11 16 certified police officers, and any official county health  
11 17 officer to enter upon areas of the premises where cigarettes  
11 18 are stored or sold without warrant during business hours of  
11 19 the retail permit holder or at any time the permittee or the  
11 20 permittee's agents or patrons are on the premises to inspect  
11 21 for violations of this division VI, chapter 453A, or  
11 22 ordinances and regulations that cities and county boards of  
11 23 supervisors may adopt. However, a subpoena issued under  
11 24 section 421.17 or a warrant is required for inspection of  
11 25 private records, a private business office, or attached living  
11 26 quarters. Persons who are not certified peace officers shall  
11 27 limit the scope of their inspections of permitted premises to  
11 28 the regulatory authority under which the inspection is  
11 29 conducted. All persons who enter upon permitted premises to  
11 30 conduct an inspection shall present appropriate identification  
11 31 to the owner of the establishment or the person who appears to  
11 32 be in charge of the establishment prior to commencing an  
11 33 inspection; however, this provision does not apply to  
11 34 undercover criminal investigations conducted by peace  
11 35 officers.

12 1 Sec. 6. NEW SECTION. 123.195 SIMPLIFIED RENEWAL  
12 2 PROCEDURE.

12 3 The administrator shall prescribe simplified application  
12 4 forms for the renewal of retail permits which may be filed by  
12 5 permittees in lieu of a detailed renewal application form when  
12 6 qualifications and qualification information have not changed

12 7 since the original issuance of the permit. The simplified  
12 8 form shall require the permittee to verify under oath that the  
12 9 information contained in the original application remains  
12 10 current, and that no reason exists for the division's refusal  
12 11 to renew the permit as originally issued.

12 12 Sec. 7. NEW SECTION. 123.196 PERMITS FEES  
12 13 EXPIRATION.

12 14 1. The annual fee for retail permits is as follows:

12 15 a. In places outside any city, fifty dollars.

12 16 b. In cities of less than fifteen thousand population,  
12 17 seventy-five dollars.

12 18 c. In cities of fifteen thousand or more population, one  
12 19 hundred dollars.

12 20 d. For railway cars, watercraft, and excursion gambling  
12 21 boats, twenty-five dollars. A duplicate permit for railway  
12 22 cars, watercraft, and excursion gambling boats is two dollars.

12 23 2. Refunds shall not be issued if an unrevoked permit for  
12 24 which the holder has paid the full annual fee is surrendered  
12 25 at any time during the twelve-month period following issuance  
12 26 of the permit.

12 27 3. Retail permits, unless sooner suspended or revoked,  
12 28 expire one year from the date of issuance. The administrator  
12 29 shall provide sixty days' written notice of the expiration to  
12 30 each permittee.

12 31 4. The division may establish a per diem permit fee for  
12 32 persons who apply for a retail permit under this division VI  
12 33 and a permit or license held under any other provision of this  
12 34 chapter in order to coordinate the period during which the  
12 35 permits apply.

13 1 Sec. 8. NEW SECTION. 123.197 REVENUES REMITTED  
13 2 DEPOSITED.

13 3 1. The division shall remit to the appropriate local  
13 4 authority the following amounts based on fees collected for  
13 5 retail permits pursuant to section 123.196 covering premises  
13 6 located within the local authority's jurisdiction.

13 7 a. Sixty-five percent of the first fifty dollars of the  
13 8 retail permit fee for places outside any city.

13 9 b. Sixty-five percent of the first seventy-five dollars of  
13 10 the retail permit fee for cities of less than fifteen thousand  
13 11 population.

13 12 c. Sixty-five percent of the first one hundred dollars of  
13 13 the retail permit fee for cities of fifteen thousand or more  
13 14 population.

13 15 2. The remaining fees collected are to be retained by the  
13 16 division and are appropriated for use by the division to  
13 17 perform retail permit activities and enforcement.

13 18 Notwithstanding section 8.33, the remainder of the fees  
13 19 collected shall not revert to the general fund of the state.

13 20 Sec. 9. NEW SECTION. 123.198 CIGARETTES RETAILER MAY NOT  
13 21 SELL.

13 22 It is unlawful for a retailer to sell or have in the  
13 23 retailer's possession cigarettes upon which the stamp tax  
13 24 required pursuant to chapter 453A has not been affixed.

13 25 Sec. 10. NEW SECTION. 123.199 SELF-SERVICE SALES  
13 26 PROHIBITED.

13 27 1. Except as provided in section 123.203, subsection 2, a  
13 28 retailer shall not sell or offer for sale cigarettes or  
13 29 tobacco products, in a quantity of less than a carton, through  
13 30 the use of a self-service display.

13 31 2. Violation of this section by a holder of a retail  
13 32 permit is grounds for revocation of such permit.

13 33 Sec. 11. NEW SECTION. 123.200 VIOLATION AS A FRAUDULENT  
13 34 PRACTICE.

13 35 A person who violates a provision of this division VI is  
14 1 guilty of a fraudulent practice unless otherwise provided in  
14 2 this division VI.

14 3 Sec. 12. NEW SECTION. 123.201 PERSONS UNDER AGE

14 4 EIGHTEEN.

14 5 1. A person shall not sell, give, or otherwise supply any  
14 6 tobacco, tobacco products, or cigarettes to any person under  
14 7 eighteen years of age.

14 8 2. A person under eighteen years of age shall not smoke,  
14 9 use, possess, purchase, or attempt to purchase any tobacco,  
14 10 tobacco products, or cigarettes.

14 11 3. Possession of cigarettes or tobacco products by an  
14 12 individual under eighteen years of age does not constitute a  
14 13 violation under this section if the individual under eighteen  
14 14 years of age possesses the cigarettes or tobacco products as  
14 15 part of the individual's employment and the individual is  
14 16 employed by a person who holds a valid permit under this  
14 17 division or chapter 453A or who lawfully offers for sale or  
14 18 sells cigarettes or tobacco products.

14 19 4. The Iowa department of public health, a county health  
14 20 department, a city health department, or a city may directly  
14 21 enforce this section in district court and initiate  
14 22 proceedings pursuant to section 123.204 before a permit-  
14 23 issuing authority against a permit holder violating this  
14 24 section.

14 25 5. Payment and distribution of court costs, fees, and  
14 26 fines in a prosecution initiated by a city or county shall be  
14 27 made as provided in chapter 602 for violation of a city or  
14 28 county ordinance.

14 29 6. A person shall not be guilty of a violation of this  
14 30 section if conduct that would otherwise constitute a violation  
14 31 is performed to assess compliance with cigarette and tobacco  
14 32 products laws if any of the following applies:

14 33 a. The compliance effort is conducted by or under the  
14 34 supervision of law enforcement officers.

14 35 b. The compliance effort is conducted with the advance  
15 1 knowledge of law enforcement officers and reasonable measures  
15 2 are adopted by those conducting the effort to ensure that use  
15 3 of cigarettes or tobacco products by individuals under  
15 4 eighteen years of age does not result from participation by  
15 5 any individual under eighteen years of age in the compliance  
15 6 effort.

15 7 For the purposes of this subsection, "law enforcement  
15 8 officer" means a peace officer as defined in section 801.4 and  
15 9 includes persons designated under subsection 4 to enforce this  
15 10 section.

15 11 Sec. 13. NEW SECTION. 123.202 SEIZURE OF FALSE OR  
15 12 ALTERED DRIVER'S LICENSE OR NONOPERATOR'S IDENTIFICATION CARD.

15 13 1. If a person holding a permit under this division VI or  
15 14 chapter 453A or an employee of such a permittee has a  
15 15 reasonable belief based on factual evidence that a driver's  
15 16 license as defined in section 321.1, subsection 20A, or  
15 17 nonoperator's identification card issued pursuant to section  
15 18 321.190 offered by a person who wishes to purchase cigarettes  
15 19 or tobacco products is altered or falsified or belongs to  
15 20 another person, the permittee or employee may retain the  
15 21 driver's license or nonoperator's identification card. Within  
15 22 twenty-four hours, the card shall be delivered to the  
15 23 appropriate city or county law enforcement agency of the  
15 24 jurisdiction in which the permittee's premises are located,  
15 25 and the permittee shall file a written report of the  
15 26 circumstances under which the card was retained. The local  
15 27 law enforcement agency may investigate whether a violation of  
15 28 section 321.216, 321.216A, or 321.216C has occurred. If an  
15 29 investigation is not initiated or probable cause is not  
15 30 established by the local law enforcement agency, the driver's  
15 31 license or nonoperator's identification card shall be  
15 32 delivered to the person to whom it was issued. The local law  
15 33 enforcement agency may forward the card with the report to the  
15 34 state department of transportation for investigation, in which  
15 35 case, the state department of transportation may investigate



16 1 whether a violation of section 321.216, 321.216A, or 321.216C  
16 2 has occurred. The state department of transportation shall  
16 3 return the card to the person to whom it was issued if an  
16 4 investigation is not initiated or probable cause is not  
16 5 established.

16 6 2. Upon taking possession of an identification card as  
16 7 provided in subsection 1, a receipt for the card with the date  
16 8 and hour of seizure noted shall be provided to the person from  
16 9 whom the card is seized.

16 10 3. A person holding a permit under this division VI or  
16 11 chapter 453A or an employee of such a permittee is not subject  
16 12 to criminal prosecution for, or to civil liability for damages  
16 13 alleged to have resulted from, the retention and delivery of a  
16 14 driver's license or a nonoperator's identification card which  
16 15 is taken pursuant to subsections 1 and 2. This section shall  
16 16 not be construed to relieve a permittee or an employee of such  
16 17 a permittee from civil liability for damages resulting from  
16 18 the use of unreasonable force in obtaining the alleged altered  
16 19 or falsified driver's license or identification card or the  
16 20 driver's license or identification card believed to belong to  
16 21 another person.

16 22 Sec. 14. NEW SECTION. 123.203 UNLAWFUL ACTS.

16 23 1. A person, unless the person is the holder of a retail  
16 24 permit or the holder's representative, shall not solicit the  
16 25 sale of cigarettes, provided that this section shall not  
16 26 prevent solicitation by a nonpermit holder for the sale of  
16 27 cigarettes to any state permit holder.

16 28 2. Sales of cigarettes or tobacco products made through a  
16 29 cigarette vending machine are subject to rules and penalties  
16 30 relative to retail sales of cigarettes and tobacco products  
16 31 provided for in this division VI and chapter 453A. Cigarettes  
16 32 shall not be sold through any cigarette vending machine unless  
16 33 the cigarettes have been properly stamped or metered as  
16 34 provided by chapter 453A, and in case of violation of this  
16 35 provision, the permit of the dealer authorizing retail sales  
17 1 of cigarettes shall be revoked. Payment of the permit fee as  
17 2 provided in section 453A.13 authorizes a cigarette vendor to  
17 3 sell cigarettes or tobacco products through vending machines.  
17 4 However, cigarettes or tobacco products shall not be sold  
17 5 through a vending machine unless the vending machine is  
17 6 located in a place where the retailer ensures that no person  
17 7 younger than eighteen years of age is present or permitted to  
17 8 enter at any time. This section does not require a retail  
17 9 permit holder to buy a cigarette vendor's permit if the retail  
17 10 permit holder is in fact the owner of the cigarette vending  
17 11 machines and the machines are operated in the location  
17 12 described in the retail permit.

17 13 3. It shall be unlawful for a person other than a holder  
17 14 of a retail permit to sell cigarettes at retail. A state  
17 15 permit holder shall not sell or distribute cigarettes at  
17 16 wholesale to any person in the state of Iowa who does not hold  
17 17 a permit authorizing the retail sale of cigarettes or who does  
17 18 not hold a state permit as a manufacturer, distributing agent,  
17 19 wholesaler, or distributor.

17 20 Sec. 15. NEW SECTION. 123.204 REVOCATION SUSPENSION  
17 21 CIVIL PENALTY.

17 22 1. If a retail permit holder has willfully violated  
17 23 section 123.201, the division shall revoke the permit upon  
17 24 notice and hearing. If a retail permit holder violates any  
17 25 other provision of this division VI, the division may revoke  
17 26 the permit issued to the person, after giving the permit  
17 27 holder an opportunity to be heard upon ten days' written  
17 28 notice stating the reason for the contemplated revocation and  
17 29 the time and place at which the person may appear and be  
17 30 heard. The hearing before the division may be held at a site  
17 31 in the state as the division may direct. The notice shall be  
17 32 given by mailing a copy to the permit holder's premises as it

17 33 appears on the application for the permit. If, upon hearing,  
17 34 the division finds that the violation has occurred, the  
17 35 division may revoke the permit.

18 1 2. If a retailer or employee of a retailer is convicted of  
18 2 or found in violation of section 123.201, subsection 1,  
18 3 section 142A.6, subsection 6, or section 123.203, subsection  
18 4 2, the division or local authority, in addition to other  
18 5 penalties fixed for such violations in this section, shall  
18 6 assess a penalty upon the same notice and hearing as  
18 7 prescribed in subsection 1 as follows:

18 8 a. For a first violation, the retailer shall be assessed a  
18 9 civil penalty in the amount of three hundred dollars. Failure  
18 10 to pay the civil penalty as ordered under this subsection  
18 11 shall result in automatic suspension of the permit for a  
18 12 period of fourteen days.

18 13 b. For a second violation within a period of two years,  
18 14 the retailer's permit shall be suspended for a period of  
18 15 thirty days.

18 16 c. For a third violation within a period of three years,  
18 17 the retailer's permit shall be suspended for a period of sixty  
18 18 days.

18 19 d. For a fourth violation within a period of three years,  
18 20 the retailer's permit shall be revoked.

18 21 3. If a permit is revoked, a new permit shall not be  
18 22 issued to the permit holder for any premises, or to any other  
18 23 person for the premises at which the violation occurred, until  
18 24 one year has expired from the date of revocation, unless good  
18 25 cause to the contrary is shown to the issuing authority.

18 26 4. Notwithstanding subsection 3, if a retail permit is  
18 27 suspended or revoked under this section, the suspension or  
18 28 revocation shall only apply to the premises at which the  
18 29 violation occurred and shall not apply to any other premises  
18 30 of the holder of the retail permit.

18 31 5. If a permit holder fails to keep any of the records  
18 32 required to be kept by the provisions of this division VI or  
18 33 chapter 453A, or sells cigarettes upon which a tax is required  
18 34 to be paid pursuant to chapter 453A without at the time having  
18 35 a valid permit, or purchases or is in possession of unstamped  
19 1 cigarettes, or fails or refuses to abide by any of the  
19 2 provisions of this division VI or chapter 453A or the rules  
19 3 adopted pursuant to this division VI or chapter 453A, or  
19 4 violates chapter 421B, the person is civilly liable to the  
19 5 state for a penalty as follows:

19 6 a. For possession of unstamped cigarettes:

19 7 (1) A two hundred dollar penalty for the first violation  
19 8 if a person is in possession of more than forty but not more  
19 9 than four hundred unstamped cigarettes.

19 10 (2) A five hundred dollar penalty for the first violation  
19 11 if a person is in possession of more than four hundred but not  
19 12 more than two thousand unstamped cigarettes.

19 13 (3) A one thousand dollar penalty for the first violation  
19 14 if a person is in possession of more than two thousand  
19 15 unstamped cigarettes.

19 16 (4) For a second violation within three years of the first  
19 17 violation, the penalty is four hundred dollars if a person is  
19 18 in possession of more than forty but not more than four  
19 19 hundred unstamped cigarettes; one thousand dollars if a person  
19 20 is in possession of more than four hundred but not more than  
19 21 two thousand unstamped cigarettes; and two thousand dollars if  
19 22 a person is in possession of more than two thousand unstamped  
19 23 cigarettes.

19 24 (5) For a third or subsequent violation within three years  
19 25 of the first violation, the penalty is six hundred dollars if  
19 26 a person is in possession of more than forty but not more than  
19 27 four hundred unstamped cigarettes; one thousand five hundred  
19 28 dollars if a person is in possession of more than four hundred  
19 29 but not more than two thousand unstamped cigarettes; and three

19 30 thousand dollars if a person is in possession of more than two  
19 31 thousand unstamped cigarettes.

19 32 b. For all other violations of this subsection:

19 33 (1) A two hundred dollar penalty for the first violation.

19 34 (2) A five hundred dollar penalty for a second violation  
19 35 within three years of the first violation.

20 1 (3) A thousand dollar penalty for a third or subsequent  
20 2 violation within three years of the first violation.

20 3 The penalty imposed under this subsection shall be assessed  
20 4 and collected pursuant to section 453A.28 and is in addition  
20 5 to the tax, penalty, and interest imposed in that section.

20 6 6. A permit issued under this division VI may be suspended  
20 7 or revoked, or a civil penalty may be imposed on the permit  
20 8 holder by the local authority or the administrator for any of  
20 9 the following causes:

20 10 a. Misrepresentation of any material fact in the  
20 11 application for the permit.

20 12 b. Violation of any of the provisions of this division or  
20 13 the rules adopted pursuant to this division.

20 14 c. Any change in the ownership or interest in the business  
20 15 operated under the permit, which change was not previously  
20 16 reported to and approved by the division or the local  
20 17 authority.

20 18 d. An event which would have resulted in disqualification  
20 19 from receiving the permit when originally issued.

20 20 e. Any sale, hypothecation, or transfer of the permit.

20 21 f. The failure or refusal on the part of the permit holder  
20 22 to render any report or remit any taxes under this division VI  
20 23 or chapter 453A when due.

20 24 8. A criminal conviction is not a prerequisite to  
20 25 suspension, revocation, or imposition of a civil penalty  
20 26 pursuant to this section. A local authority which acts  
20 27 pursuant to this section shall notify the division in writing  
20 28 of the action taken, and shall notify the permit holder of the  
20 29 right to appeal a suspension, revocation, or imposition of a  
20 30 civil penalty to the division.

20 31 a. A local authority may suspend a retail permit for  
20 32 violation of any ordinance or regulation adopted by the local  
20 33 authority.

20 34 b. A local authority shall retain civil penalties  
20 35 collected under this section if the proceeding to impose the  
21 1 penalty is conducted by the local authority. The division  
21 2 shall retain civil penalties collected under this section if  
21 3 the proceeding to impose the penalty is conducted by the  
21 4 administrator of the division.

21 5 Sec. 16. NEW SECTION. 123.205 PENALTY.

21 6 1. PROVISION TO PERSON UNDER AGE EIGHTEEN.

21 7 a. A person, other than a retailer, who violates section  
21 8 123.201, subsection 1, is guilty of a simple misdemeanor.

21 9 b. An employee of a retailer who violates section 123.201,  
21 10 subsection 1, commits a simple misdemeanor punishable as a  
21 11 scheduled violation under section 805.8, subsection 11.

21 12 2. POSSESSION OR PURCHASE BY PERSON UNDER AGE EIGHTEEN. A  
21 13 person who violates section 123.201, subsection 2, is subject  
21 14 to the following, as applicable:

21 15 a. A civil penalty pursuant to section 805.8, subsection  
21 16 11. Notwithstanding section 602.8106 or any other provision  
21 17 to the contrary, any civil penalty paid under this subsection  
21 18 shall be retained by the city or county enforcing the  
21 19 violation.

21 20 b. For a first offense, performance of eight hours of  
21 21 community work requirements, unless waived by the court.

21 22 c. For a second offense, performance of twelve hours of  
21 23 community work requirements.

21 24 d. For a third or subsequent offense, performance of  
21 25 sixteen hours of community work requirements.

21 26 Sec. 17. NEW SECTION. 123.206 SUBPOENA FOR WITNESSES AND

21 27 PAPERS.

21 28 For the purpose of enforcing the provisions of this  
21 29 division VI and of detecting violations of this division VI,  
21 30 the administrator shall have the power to administer oaths and  
21 31 to require by subpoena the attendance and testimony of  
21 32 witnesses and the production of all relevant books, papers,  
21 33 and records. Such attendance and production may be required  
21 34 at any place convenient for the investigation. If a person  
21 35 fails or refuses to obey a subpoena issued under this section,  
22 1 the administrator may procure an order from the district court  
22 2 in the county where the person resides, or where the person is  
22 3 found, requiring the person to appear for examination or  
22 4 requiring the person to produce the books, papers, and records  
22 5 as required in the subpoena. Failure to obey the order shall  
22 6 be punished as contempt of court.

22 7 Sec. 18. NEW SECTION. 123.207 VENUE OF ACTIONS TO  
22 8 COLLECT.

22 9 Venue of any civil proceedings filed under the provision of  
22 10 this division VI to collect fees and penalties levied shall be  
22 11 in a court of competent jurisdiction in Polk county, or in any  
22 12 court having jurisdiction.

22 13 Sec. 19. Section [232.8](#), subsection 1, paragraph b, Code  
22 14 2001, is amended to read as follows:

22 15 b. Violations by a child of provisions of chapter 321,  
22 16 321G,

~~453A,~~

- 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B,  
22 17 or of chapter 123, division VI, which would be simple  
22 18 misdemeanors if committed by an adult, and violations by a  
22 19 child of county or municipal curfew or traffic ordinances, are  
22 20 excluded from the jurisdiction of the juvenile court and shall  
22 21 be prosecuted as simple misdemeanors as provided by law. A  
22 22 child convicted of a violation excluded from the jurisdiction  
22 23 of the juvenile court under this paragraph shall be sentenced  
22 24 pursuant to section 805.8, where applicable, and pursuant to  
22 25 section 903.1, subsection 3, for all other violations.

22 26 Sec. 20. Section [321.216C](#), Code 2001, is amended to read  
22 27 as follows:

22 28 321.216C USE OF DRIVER'S LICENSE OR NONOPERATOR'S  
22 29 IDENTIFICATION CARD BY

~~UNDERAGE~~

- PERSON UNDER AGE EIGHTEEN TO  
22 30 OBTAIN CIGARETTES OR TOBACCO PRODUCTS.

22 31 A person who is under the age of eighteen, who alters or  
22 32 displays or has in the person's possession a fictitious or  
22 33 fraudulently altered driver's license or nonoperator's  
22 34 identification card and who uses the license or card to  
22 35 violate or attempt to violate section

~~453A.2~~

- 123.201,

23 1 subsection 2, commits a simple misdemeanor punishable by a  
23 2 fine of one hundred dollars. The court shall forward a copy  
23 3 of the conviction to the department.

23 4 Sec. 21. Section [421B.3](#), subsection 1, Code 2001, is  
23 5 amended to read as follows:

23 6 1. It shall be unlawful for any wholesaler or retailer to  
23 7 offer to sell, or sell, at wholesale or retail, cigarettes at  
23 8 less than cost to such wholesaler or retailer, as the case may  
23 9 be, as defined in this chapter. Any wholesaler or retailer  
23 10 who violates the provisions of this section shall be guilty of  
23 11 a simple misdemeanor and is also subject to the penalties  
23 12 described in section 123.204, subsection 5, paragraph "b".

23 13 Sec. 22. Section [421B.10](#), Code 2001, is amended to read as  
23 14 follows:

23 15 421B.10 INJUNCTION.  
23 16 The

~~director~~  
~~administrator~~ of

~~revenue and finance~~  
~~the~~

23 17 alcoholic beverages division of the department of commerce, or  
23 18 any person or persons injured by any violation, or who would  
23 19 suffer injury from any threatened violation of this chapter,  
23 20 may maintain an action in any equity court to enjoin

~~such~~  
~~the~~  
23 21 actual or threatened violation. If a violation or threatened  
23 22 violation of this chapter

~~shall be~~  
~~is~~ established, the court  
23 23 shall enjoin

~~such~~  
~~the~~ violation or threatened violation, and,  
23 24 in addition

~~thereto~~  
-, the court shall assess in favor of the  
23 25 plaintiff and against the defendant the costs of suit  
23 26 including reasonable attorney's fees. Where alleged and  
23 27 proved, the plaintiff, in addition to such injunctive relief  
23 28 and costs of suit, including reasonable attorney's fees, shall  
23 29 be entitled to recover from the defendant the actual damages  
23 30 sustained by the plaintiff.  
23 31 Sec. 23. Section [421B.11](#), Code 2001, is amended to read as  
23 32 follows:  
23 33 421B.11

~~DIRECTOR~~  
~~ADMINISTRATOR~~ OF

~~REVENUE AND FINANCE~~  
~~THE~~

23 34 ALCOHOLIC BEVERAGES DIVISION POWERS AND DUTIES.  
23 35 The

~~director~~  
~~administrator~~ of

~~revenue and finance~~  
~~the~~

24 1 alcoholic beverages division of the department of commerce may  
24 2 adopt rules for the enforcement of this chapter and the  
24 3

~~director is empowered to and~~  
~~administrator~~ may from time to  
24 4 time undertake and make or cause to be made such cost surveys  
24 5 for the state or such trading area or areas as the

~~director~~  
-  
24 6 administrator shall deem necessary and it shall be permissible  
24 7 to use such cost survey as provided in section 421B.7,  
24 8 subsection 2 and section 421B.8, subsection 2.  
24 9 The director of revenue and finance or the administrator  
24 10 may, upon notice and after hearing, suspend or revoke any

24 11 permit issued under the provisions of

~~the cigarette tax~~

24 12 chapter 453A or chapter 123, division VI, and the rules of the  
24 13 director

~~promulgated thereunder~~

~~or administrator adopted~~

24 14 pursuant to those chapters, as applicable to the permit

24 15 holder, for failure of the permit holder to comply with any

24 16 provision of this

~~unfair cigarette sales~~

~~chapter or any rule~~

24 17 adopted

~~thereunder~~

~~pursuant to this chapter~~. The suspension

24 18 or revocation of a permit shall be for a period of not less

24 19 than six months from the date of suspension or revocation, and

24 20

~~no~~

~~a~~ permit shall not be issued for the location designated in

24 21 the suspended or revoked permit, during the period of

24 22 suspension or revocation.

24 23 Judicial review of the actions of the director or

24 24 administrator may be sought in accordance with the terms of

24 25 the Iowa administrative procedure Act, and section 422.55.

24 26 Sec. 24. Section 453A.1, subsection 25, Code 2001, is

24 27 amended to read as follows:

24 28 25. "State permit" shall mean and include permits issued

24 29 by the department to distributors, wholesalers, manufacturers,

24 30 and

~~retailers~~

~~cigarette vendors~~.

24 31 Sec. 25. Section 453A.1, Code 2001, is amended by adding

24 32 the following new subsection:

24 33 NEW SUBSECTION. 17A. "Permit holder", "holder of a

24 34 permit", or "permittee" includes a person who holds a permit

24 35 under this chapter or a person who holds a retail permit under

25 1 chapter 123, division VI, unless the context otherwise

25 2 requires.

25 3 Sec. 26. Section 453A.13, Code 2001, is amended to read as

25 4 follows:

25 5 453A.13 DISTRIBUTOR'S

~~AND WHOLESALER'S~~

~~, AND RETAILER'S~~

25 6 PERMITS.

25 7 1. PERMITS REQUIRED. Every distributor, wholesaler, and

25 8 cigarette vendor

~~, and retailer,~~

~~now engaged or who desires to~~

25 9 become engaged in the sale or use of cigarettes, upon which a

25 10 tax is required to be paid, shall obtain a state

~~or retail~~

25 11 cigarette permit as a distributor, wholesaler, or cigarette

25 12 vendor,

~~or retailer,~~

- as the case may be.

25 13 2. ISSUANCE OR DENIAL.

25 14 a. The department shall issue state permits to  
25 15 distributors, wholesalers, and cigarette vendors subject to  
25 16 the conditions provided in this division.

~~Cities may issue~~

25 17

~~retail permits to dealers within their respective limits.~~

25 18

~~County boards of supervisors may issue retail permits to~~

25 19

~~dealers in their respective counties, outside of the corporate~~

25 20

~~limits of cities.~~

25 21 b. The department may deny the issuance of a permit to a  
25 22 distributor, wholesaler, or vendor

~~or retailer~~

- who is

25 23 substantially delinquent in the payment of a tax due, or the  
25 24 interest or penalty on the tax, administered by the department  
25 25 at the time of application. If the applicant is a  
25 26 partnership, a permit may be denied if a partner is  
25 27 substantially delinquent on any delinquent tax, penalty or  
25 28 interest. If the applicant is a corporation, a permit may be  
25 29 denied if any officer having a substantial legal or equitable  
25 30 interest in the ownership of the corporation owes any  
25 31 delinquent tax, interest or penalty of the applicant  
25 32 corporation.  
25 33

~~c. The department, or a city or county, shall submit a~~

25 34

~~duplicate of any application for a retail permit and any~~

25 35

~~retail permit issued by the entity under this subsection to~~

26 1

~~the Iowa department of public health within thirty days of the~~

26 2

~~issuance.~~

26 3 c. As a condition for issuance of a permit under this  
26 4 division, the applicant shall provide consent to members of  
26 5 the fire, police, and health departments and the building  
26 6 inspector of cities, the county sheriff, deputy sheriff,  
26 7 members of the department of public safety, representatives of  
26 8 the alcoholic beverages division, representatives of the

26 9 department of inspections and appeals, and representatives of  
26 10 the department of revenue and finance, certified police  
26 11 officers, and any official county health officer to enter upon  
26 12 areas of the premises where cigarettes are stored or sold  
26 13 without warrant during business hours of the permit holder or  
26 14 at any time the permittee or the permittee's agents or patrons  
26 15 are on the premises to inspect for violations of this division  
26 16 or ordinances and regulations that cities and county boards of  
26 17 supervisors may adopt. However, a subpoena issued under  
26 18 section 421.17 or a warrant is required for inspection of  
26 19 private records, a private business office, or attached living  
26 20 quarters. Persons who are not certified peace officers shall  
26 21 limit the scope of their inspections of permitted premises to  
26 22 the regulatory authority under which the inspection is  
26 23 conducted. All persons who enter upon permitted premises to  
26 24 conduct an inspection shall present appropriate identification  
26 25 to the owner of the establishment or the person who appears to  
26 26 be in charge of the establishment prior to commencing an  
26 27 inspection; however, this provision does not apply to  
26 28 undercover criminal investigations conducted by peace  
26 29 officers.

26 30 3. FEES EXPIRATION.

26 31 a. All permits provided for in this division shall expire  
26 32 on June 30 of each year. A permit shall not be

~~granted or~~

26 33 issued until the applicant has paid

~~for the period ending June~~

26 34

~~30 next,~~

~~to the department~~

~~or the city or county granting the~~

26 35

~~permit,~~

~~the fees provided for in this division through the~~

27 1 period ending the next June 30.

27 2 b. The annual state permit fee for a distributor,

27 3 cigarette vendor, and wholesaler is one hundred dollars

~~when~~

27 4

~~the permit is granted during the months of July, August, or~~

27 5

~~September~~

~~However, whenever a state permit holder operates~~

27 6 more than one place of business, a duplicate state permit

27 7 shall be issued for each additional place of business on

27 8 payment of five dollars for each duplicate state permit

~~, but~~

27 9

~~refunds as provided in this division do not apply to any~~

27 10



~~duplicate permit issued~~

~~27 11~~

~~The fee for retail permits is as follows when the permit is~~

~~27 12~~

~~granted during the months of July, August, or September:~~

~~27 13~~

~~a. In places outside any city, fifty dollars.~~

~~27 14~~

~~b. In cities of less than fifteen thousand population,~~

~~27 15~~

~~seventy five dollars.~~

~~27 16~~

~~c. In cities of fifteen thousand or more population, one~~

~~27 17~~

~~hundred dollars.~~

~~27 18~~

~~If any permit is granted during the months of October,~~

~~27 19~~

~~November, or December, the fee shall be three fourths of the~~

~~27 20~~

~~above maximum schedule; if granted during the months of~~

~~27 21~~

~~January, February, or March, one half of the maximum schedule,~~

~~27 22~~

~~and if granted during the months of April, May, or June, one~~

~~27 23~~

~~fourth of the maximum schedule.~~

~~27 24 4. REFUNDS.~~

~~27 25~~

~~a. An unrevoked permit for which the holder has paid the~~

~~27 26~~

~~full annual fee may be surrendered during the first nine~~

~~27 27~~

~~months of said year to the officer issuing it, and the~~

~~-~~  
27 28

~~department, or the city or county granting the permit shall~~

~~-~~  
27 29

~~make refunds to the said holder as follows:~~

~~- Refunds shall not~~

27 30 be issued if an unrevoked permit for which the holder has paid

27 31 the full annual fee is surrendered at any time during the

27 32 twelve-month period following issuance of the permit.

27 33

~~Three fourths of the annual fee if the surrender is made~~

~~-~~  
27 34

~~during July, August, or September.~~

~~-~~  
27 35

~~One half of the annual fee if the surrender is made during~~

~~-~~  
28 1

~~October, November, or December.~~

~~-~~  
28 2

~~One fourth of the annual fee if the surrender is made~~

~~-~~  
28 3

~~during January, February, or March.~~

~~-~~  
28 4

~~b. An unrevoked permit for which the holder has paid~~

~~-~~  
28 5

~~three fourths of a full annual fee may be so surrendered~~

~~-~~  
28 6

~~during the first six months of the period covered by said~~

~~-~~  
28 7

~~payment and the said department, city or county shall make~~

~~-~~  
28 8

~~refunds to the holder as follows:~~

~~-~~  
28 9

~~A sum equal to one half of an annual fee if the surrender~~

~~-~~  
28 10

~~is made during October, November or December.~~

~~-~~  
28 11

~~A sum equal to one fourth of an annual fee if the surrender~~

28 12

~~is made during January, February or March.~~

28 13

~~c. An unrevoked permit for which the holder has paid one~~

28 14

~~half of a full annual fee may be so surrendered during the~~

28 15

~~first three months of the period covered by said payment, and~~

28 16

~~the department, city or county, shall refund to the holder a~~

28 17

~~sum equal to one fourth of an annual fee.~~

28 18 5. APPLICATION BOND.

~~Said permits~~

- Permits shall be

28 19 issued only upon applications accompanied by the fee indicated

28 20 above, and by an adequate bond as provided in section 453A.14,

28 21 and upon forms furnished by the department upon written

28 22 request. The failure to furnish

~~such~~

- ~~the~~ forms shall be no

28 23 excuse for the failure to file the

~~same~~

- form unless absolute

28 24 refusal is shown.

~~Said~~

- The forms shall set forth:

28 25 a. The manner under which such distributor

~~,~~  
- or wholesaler

28 26

~~or retailer,~~

- transacts or intends to transact

~~such~~

- business as

28 27 a distributor

~~,~~  
- or wholesaler

~~, or retailer~~

28 28 b. The principal office, residence, and place of business,

28 29 for which the permit is to apply.

28 30 c. If the applicant is not an individual, the principal  
28 31 officers or members

~~thereof, not to exceed three,  
of the~~

28 32 entity and their addresses.

28 33 d. Such other information as the director shall by rules  
28 34 prescribe.

28 35 6. NO SALES WITHOUT PERMIT.

~~No~~

- A distributor, wholesaler,  
29 1 or cigarette vendor

~~, or retailer~~

- shall not sell any cigarettes  
29 2 until

~~such~~

- an application has been filed and the fee  
29 3 prescribed paid for a permit and until

~~such~~

- a permit is  
29 4 obtained and only while

~~such~~

- the permit is unrevoked and  
29 5 unexpired.

29 6 7. NUMBER OF PERMITS TRUCKS. An application shall be  
29 7 filed and a permit obtained for each place of business owned  
29 8 or operated by a distributor, wholesaler, or

~~retailer,~~

-  
29 9

~~excepting that no~~

- vendor. However, a permit need not be  
29 10 obtained for a delivery or sales truck of a distributor.

~~or~~

-  
29 11 wholesaler, or vendor holding a permit, provided that the  
29 12 director may by

~~regulation~~

- rule require that

~~said~~

- the truck  
29 13 bear the distributor's

~~or~~

- wholesaler's, or vendor's name, and  
29 14 that the permit number of the place of business for and from  
29 15 which

~~it~~

- the truck operates be conspicuously displayed on the  
29 16 outside of the body of the truck, immediately under the name.  
29 17 8. GROUP BUSINESS.

~~Any~~

- A person who operates both as a  
29 18 distributor and wholesaler in the same place of business shall  
29 19 only be required to obtain a state permit for the particular

29 20 place of business where

~~such~~

- ~~the~~ operation of

~~said~~

- ~~the~~

29 21 business is conducted. A separate retail permit issued under  
29 22 chapter 123, division VI, however, shall be required if any  
29 23 distributor or wholesaler sells cigarettes at both retail and  
29 24 wholesale.

29 25 9. PERMIT FORM AND CONTENTS.

~~Each~~

- ~~A~~ permit

~~issued~~

29 26 shall describe clearly the place of business for which

~~it~~

- ~~the~~

29 27 permit is issued, shall be nonassignable,

~~consecutively~~

29 28

~~numbered, designating~~

- ~~shall designate~~ the kind of permit, and

29 29 shall authorize the sale of cigarettes in this state subject  
29 30 to the limitations and restrictions

~~herein~~

- contained in this

29 31 chapter and chapter 123, division VI, as applicable.

~~The~~

29 32

~~retail permits shall be upon forms furnished by the~~

29 33

~~department.~~

29 34 Sec. 27. Section [453A.15](#), subsection 1, Code 2001, is  
29 35 amended to read as follows:

30 1 1. The director may prescribe the forms necessary for the  
30 2 efficient administration of this division and may require  
30 3 uniform books and records to be used and kept by each permit  
30 4 holder or other person as deemed necessary. The director may  
30 5 also require each permit holder or other person to keep and  
30 6 retain in the director's possession evidence on prescribed  
30 7 forms of all transactions involving the purchase and sale of  
30 8 cigarettes or the purchase and use of stamps. The evidence  
30 9 shall be kept for a period of

~~two~~

- ~~three~~ years from the date of

30 10 each transaction, for the inspection at all times by the  
30 11 department.

30 12 Sec. 28. Section [453A.21](#), Code 2001, is amended to read as  
30 13 follows:

30 14 453A.21 CIGARETTES RETAILER MAY NOT SELL.

30 15

~~Unless a retail permit holder shall also hold a state~~

30 16

~~permit, it~~

- It shall be unlawful for a retailer to sell or have  
30 17 in the retailer's possession cigarettes upon which the stamp  
30 18 tax has not been affixed.

30 19 Sec. 29. Section [453A.22](#), Code 2001, is amended to read as  
30 20 follows:

30 21 453A.22 REVOCATION SUSPENSION CIVIL PENALTY.

30 22 1. If a person holding a permit issued by the department  
30 23 under this division

~~, including a retailer permit for railway~~

30 24

~~car,~~

- has willfully violated section

~~453A.2~~

- [123.201](#), the

30 25 department shall revoke the permit upon

~~notice and hearing~~

30 26 notification by the administrator of the alcoholic beverages  
30 27 division pursuant to chapter 123, division VI. If the person  
30 28 violates any

~~other~~

- provision of this division, or a rule  
30 29 adopted under this division, or is substantially delinquent in  
30 30 the payment of a tax administered by the department or the  
30 31 interest or penalty on the tax, or if the person is a  
30 32 corporation and if any officer having a substantial legal or  
30 33 equitable interest in the ownership of the corporation owes  
30 34 any delinquent tax of the permit-holding corporation, or  
30 35 interest or penalty on the tax, administered by the  
31 1 department, the department may revoke the permit issued to the  
31 2 person, after giving the permit holder an opportunity to be  
31 3 heard upon ten days' written notice stating the reason for the  
31 4 contemplated revocation and the time and place at which the  
31 5 person may appear and be heard. The hearing before the  
31 6 department may be held at a site in the state as the  
31 7 department may direct. The notice shall be given by mailing a  
31 8 copy to the permit holder's place of business as it appears on  
31 9 the application for a permit. If, upon hearing, the  
31 10 department finds that the violation has occurred, the  
31 11 department may revoke the permit.

31 12

~~2. If a retailer or employee of a retailer has violated~~

31 13

~~section [453A.2](#) or section [453A.36](#), subsection 6, the~~

31 14

~~department or local authority, in addition to the other~~

31 15

~~penalties fixed for such violations in this section, shall~~

~~31 16~~

~~assess a penalty upon the same hearing and notice as~~

~~31 17~~

~~prescribed in subsection 1 as follows:~~

~~31 18~~

~~a. For a first violation, the retailer shall be assessed a~~

~~31 19~~

~~civil penalty in the amount of three hundred dollars. Failure~~

~~31 20~~

~~to pay the civil penalty as ordered under this subsection~~

~~31 21~~

~~shall result in automatic suspension of the permit for a~~

~~31 22~~

~~period of fourteen days.~~

~~31 23~~

~~b. For a second violation within a period of two years,~~

~~31 24~~

~~the retailer's permit shall be suspended for a period of~~

~~31 25~~

~~thirty days.~~

~~31 26~~

~~c. For a third violation within a period of three years,~~

~~31 27~~

~~the retailer's permit shall be suspended for a period of sixty~~

~~31 28~~

~~days.~~

~~31 29~~

~~d. For a fourth violation within a period of three years,~~

~~31 30~~

~~the retailer's permit shall be revoked.~~

31 31 2. A permit issued under this division may be suspended or

31 32 revoked, or a civil penalty may be imposed on the permit

31 33 holder by the director for any of the following causes:

31 34 a. Misrepresentation of any material fact in the

31 35 application for the permit.

32 1 b. Violation of any of the provisions of this division or

32 2 the rules adopted pursuant to this division.  
32 3 c. Any change in the ownership or interest in the business  
32 4 operated under the permit, which change was not previously  
32 5 reported to and approved by the department.  
32 6 d. An event which would have resulted in disqualification  
32 7 from receiving the permit when originally issued.  
32 8 e. Any sale, hypothecation, or transfer of the permit.  
32 9 f. The failure or refusal on the part of the permit holder  
32 10 to render any report or remit any taxes under this chapter or  
32 11 chapter 123, division VI, when due.  
32 12 3. If a permit is revoked a new permit shall not be issued  
32 13 to the permit holder for any place of business, or to any  
32 14 other person for the place of business at which the violation  
32 15 occurred, until one year has expired from the date of  
32 16 revocation, unless good cause to the contrary is shown to the  
32 17 issuing authority.  
32 18

~~4. Notwithstanding subsection 3, if a retail permit is~~  
32 19  
~~suspended or revoked under this section, the suspension or~~  
32 20  
~~revocation shall only apply to the place of business at which~~  
32 21  
~~the violation occurred and shall not apply to any other place~~  
32 22  
~~of business to which the retail permit applies but at which~~  
32 23  
~~the violation did not occur.~~

~~5. The department or local authority shall report the~~  
32 24  
~~suspension or revocation of a retail permit under this section~~  
32 25  
~~to the Iowa department of public health within thirty days of~~  
32 26  
~~the suspension or revocation of the retail permit.~~

32 28 Sec. 30. Section [453A.25](#), Code 2001, is amended by adding  
32 29 the following new subsection:  
32 30 NEW SUBSECTION. 4. The director shall have access to all  
32 31 records, reports, audits, tax reports, and all other documents  
32 32 and papers of the alcoholic beverages division related to  
32 33 chapter 123, division VI, to ensure proper administration of  
32 34 this chapter, chapter 123, division VI, and chapter 421B.  
32 35 Sec. 31. Section [453A.28](#), Code 2001, is amended to read as  
33 1 follows:  
33 2 453A.28 ASSESSMENT OF TAX BY DEPARTMENT INTEREST  
33 3 PENALTY.



33 4 If after any audit, examination of records, or other  
33 5 investigation the department finds that any person has sold  
33 6 cigarettes without stamps affixed or that any person  
33 7 responsible for paying the tax has not done so as required by  
33 8 this division, the department shall fix and determine the  
33 9 amount of tax due, and shall assess the tax against the  
33 10 person, together with a penalty as provided in section 421.27.  
33 11 The taxpayer shall pay interest on the tax or additional tax  
33 12 at the rate determined under section 421.7 counting each  
33 13 fraction of a month as an entire month, computed from the date  
33 14 the tax was due. If any person fails to furnish evidence  
33 15 satisfactory to the director showing purchases of sufficient  
33 16 stamps to stamp unstamped cigarettes purchased by the person,  
33 17 the presumption shall be that the cigarettes were sold without  
33 18 the proper stamps affixed. Within

~~two~~

- three years after the  
33 19 report is filed or within

~~two~~

- three years after the report  
33 20 became due, whichever is later, the department shall examine  
33 21 the report and determine the correct amount of tax. The  
33 22 period for examination and determination of the correct amount  
33 23 of tax is unlimited in the case of a false or fraudulent  
33 24 report made with the intent to evade tax, or in the case of a  
33 25 failure to file a report, or if a person purchases or is in  
33 26 possession of unstamped cigarettes.  
33 27 The

~~two-year~~

- three-year period of limitation may be  
33 28 extended by a taxpayer by signing a waiver agreement form to  
33 29 be provided by the department. The agreement must stipulate  
33 30 the period of extension and the tax period to which the  
33 31 extension applies. The agreement must also provide that a  
33 32 claim for refund may be filed by the taxpayer at any time  
33 33 during the period of extension.  
33 34 Sec. 32. Section [453A.31](#), subsection 1, paragraphs d and  
33 35 e, Code 2001, are amended to read as follows:  
34 1 d. For a second violation within

~~two~~

- three years of the  
34 2 first violation, the penalty is four hundred dollars if a  
34 3 person is in possession of more than forty but not more than  
34 4 four hundred unstamped cigarettes; one thousand dollars if a  
34 5 person is in possession of more than four hundred but not more  
34 6 than two thousand unstamped cigarettes; and two thousand  
34 7 dollars if a person is in possession of more than two thousand  
34 8 unstamped cigarettes.  
34 9 e. For a third or subsequent violation within

~~two~~

- three  
34 10 years of the first violation, the penalty is six hundred  
34 11 dollars if a person is in possession of more than forty but  
34 12 not more than four hundred unstamped cigarettes; one thousand  
34 13 five hundred dollars if a person is in possession of more than  
34 14 four hundred but not more than two thousand unstamped  
34 15 cigarettes; and three thousand dollars if a person is in  
34 16 possession of more than two thousand unstamped cigarettes.  
34 17 Sec. 33. Section [453A.31](#), subsection 2, paragraphs b and  
34 18 c, Code 2001, are amended to read as follows:  
34 19 b. A five hundred dollar penalty for a second violation  
34 20 within

~~two~~

- three years of the first violation.

34 21 c. A thousand dollar penalty for a third or subsequent  
34 22 violation within

~~two~~

- three years of the first violation.

34 23 Sec. 34. Section 453A.32, subsection 5, Code 2001, is  
34 24 amended to read as follows:

34 25 5. In the event the cigarettes seized hereunder and sought  
34 26 to be sold upon forfeiture shall be unstamped, the cigarettes  
34 27 shall be sold by the director or the director's designee to  
34 28 the highest bidder among the

~~licensed~~

- permitted distributors

34 29 in this state after written notice has been mailed to all such  
34 30 distributors. If there is no bidder or in the opinion of the  
34 31 director the quantity of cigarettes to be sold is insufficient  
34 32 or for any other reason such disposition of the cigarettes is  
34 33 impractical, the cigarettes shall be destroyed or disposed of  
34 34 in a manner as determined by the director. The proceeds of  
34 35 such sales shall be paid into the state treasury.

35 1 Sec. 35. Section 453A.33, Code 2001, is amended to read as  
35 2 follows:

35 3 453A.33 SEIZURE NOT TO AFFECT CRIMINAL PROSECUTION.

35 4 The seizure, forfeiture, and sale of cigarettes, tobacco  
35 5 products, and other property under the terms and conditions  
35 6 hereinabove set out, shall not constitute any defense to the  
35 7 person owning or having control or possession of the property  
35 8 from criminal prosecution for any act or omission made or  
35 9 offense committed under this chapter or chapter 123, division  
35 10 VI, or from liability to pay penalties provided by this  
35 11 chapter or chapter 123, division VI.

35 12 Sec. 36. Section 453A.35, Code 2001, is amended to read as  
35 13 follows:

35 14 453A.35 TAX AND FEES PAID TO GENERAL FUND.

35 15 The proceeds derived from the sale of stamps and the  
35 16 payment of taxes, fees and penalties provided for under this  
35 17 chapter, and the permit fees received from all permits issued  
35 18 by the department, shall be credited to the general fund of  
35 19 the state.

~~All permit fees provided for in this chapter and~~

~~35 20~~

~~collected by cities in the issuance of permits granted by the~~

~~35 21~~

~~cities shall be paid to the treasurer of the city where the~~

~~35 22~~

~~permit is effective, or to another city officer as designated~~

~~35 23~~

~~by the council, and credited to the general fund of the city.~~

~~35 24~~

~~Permit fees so collected by counties shall be paid to the~~

~~35 25~~

~~county treasurer.~~

35 26 Sec. 37. Section 453A.36, subsections 5, 6, and 7, Code  
35 27 2001, are amended to read as follows:  
35 28 5. No person, unless the person be the holder of a permit  
35 29 under this chapter or chapter 123, division VI, or the  
35 30 holder's representative, shall solicit the sale of cigarettes,  
35 31 provided that this section shall not prevent solicitation by a  
35 32 nonpermitholder for the sale of cigarettes to any state  
35 33 permitholder.  
35 34 6. Any sales of cigarettes or tobacco products made  
35 35 through a cigarette vending machine are subject to rules and  
36 1 penalties relative to retail sales of cigarettes and tobacco  
36 2 products provided for in this chapter and chapter 123,  
36 3 division VI. No cigarettes shall be sold through any  
36 4 cigarette vending machine unless the cigarettes have been  
36 5 properly stamped or metered as provided by this division, and  
36 6 in case of violation of this provision, the permit of the  
36 7 dealer authorizing retail sales of cigarettes shall be  
36 8

~~—canceled~~

~~—revoked.~~ Payment of the

~~—license~~

~~—permit fee as~~

36 9 provided in section 453A.13 authorizes a cigarette vendor to  
36 10 sell cigarettes or tobacco products through vending machines.  
36 11 However, cigarettes or tobacco products shall not be sold  
36 12 through a vending machine unless the vending machine is  
36 13 located in a place where the retailer ensures that no person  
36 14 younger than eighteen years of age is present or permitted to  
36 15 enter at any time. This section does not require a retail  
36 16

~~—licensee~~

~~—permittee~~ to buy a cigarette vendor's permit if the  
36 17 retail

~~—licensee~~

~~—permittee~~ is in fact the owner of the cigarette  
36 18 vending machines and the machines are operated in the location  
36 19 described in the retail permit issued pursuant to chapter 123,  
36 20 division VI.  
36 21 7. It shall be unlawful for a person other than a holder  
36 22 of a retail permit issued pursuant to chapter 123, division  
36 23 VI, to sell cigarettes at retail.

~~—No~~

~~—A~~ state permit holder

36 24 shall not sell or distribute cigarettes at wholesale to any  
36 25 person in the state of Iowa who does not hold a permit  
36 26 authorizing the retail sale of cigarettes or who does not hold  
36 27 a state permit as a manufacturer, distributing agent,  
36 28 wholesaler, or distributor.

36 29 Sec. 38. Section 453A.40, subsection 1, Code 2001, is  
36 30 amended to read as follows:

36 31 1. All persons required to be

~~—licensed~~

~~—permitted~~ under

36 32 section 453A.13 as distributors having in their possession and  
36 33 held for resale on the effective date of an increase in the  
36 34 tax rate cigarettes or little cigars upon which the tax under  
36 35 section 453A.6 or 453A.43 has been paid, unused cigarette tax  
37 1 stamps which have been paid for under section 453A.8, or

37 2 unused metered imprints which have been paid for under section  
37 3 453A.12 shall be subject to an inventory tax on the items as  
37 4 provided in this section.  
37 5 Sec. 39. Section [602.6405](#), subsection 2, Code 2001, is  
37 6 amended to read as follows:  
37 7 2. a. Magistrates shall hear and determine violations of  
37 8 and penalties for violations of section

~~453A.2~~

~~123.201,~~

37 9 subsection 2.  
37 10 b. Magistrates shall forward copies of citations issued  
37 11 for violations of section

~~453A.2~~

~~123.201~~, subsection 2, and of  
37 12 their dispositions to the clerk of the district court. The  
37 13 clerk of the district court shall maintain records of  
37 14 citations issued and the dispositions of citations, and shall  
37 15 forward a copy of the records to the Iowa department of public  
37 16 health.  
37 17 Sec. 40. Section [805.6](#), subsection 3, Code 2001, is  
37 18 amended to read as follows:  
37 19 3. The uniform citation and complaint shall contain a  
37 20 place for citing a person in violation of section

~~453A.2~~

~~123.201~~, subsection 2.  
37 21 ~~123.201~~, subsection 2.  
37 22 Sec. 41. Section [805.8](#), subsection 11, paragraphs b and c,  
37 23 Code 2001, are amended to read as follows:  
37 24 b. For violations of section

~~453A.2~~

~~123.201~~, subsection 1,  
37 25 by an employee of a retailer, the scheduled fine is as  
37 26 follows:  
37 27 (1) If the violation is a first offense, the scheduled  
37 28 fine is one hundred dollars.  
37 29 (2) If the violation is a second offense, the scheduled  
37 30 fine is two hundred fifty dollars.  
37 31 (3) If the violation is a third or subsequent offense, the  
37 32 scheduled fine is five hundred dollars.  
37 33 c. For violations of section

~~453A.2~~

~~123.201~~, subsection 2,  
37 34 the scheduled fine is as follows and is a civil penalty, and  
37 35 the criminal penalty surcharge under section 911.2 shall not  
38 1 be added to the penalty, and the court costs pursuant to  
38 2 section 805.9, subsection 6, shall not be imposed:  
38 3 (1) If the violation is a first offense, the scheduled  
38 4 fine is fifty dollars.  
38 5 (2) If the violation is a second offense, the scheduled  
38 6 fine is one hundred dollars.  
38 7 (3) If the violation is a third or subsequent offense, the  
38 8 scheduled fine is two hundred fifty dollars.  
38 9 Sec. 42. Section [805.10](#), subsection 1, Code 2001, is  
38 10 amended by adding the following new paragraph:  
38 11 NEW PARAGRAPH. e. When the violation charged is a  
38 12 violation of section 123.201, subsection 2.  
38 13 Sec. 43. Section [903.1](#), subsection 3, Code 2001, is  
38 14 amended to read as follows:  
38 15 3. A person under eighteen years of age convicted of a  
38 16 simple misdemeanor under chapter 321, 321G,

~~453A,~~

- 461A, 461B,

38 17 462A, 481A, 481B, 483A, 484A, or 484B, or chapter 123.

38 18 division VI. or a violation of a county or municipal curfew or  
38 19 traffic ordinance, except for an offense subject to section  
38 20 805.8, may be required to pay a fine, not to exceed one  
38 21 hundred dollars, as fixed by the court, or may be required to  
38 22 perform community service as ordered by the court.

38 23 Sec. 44. EFFECTIVE DATE.

38 24 1. Sections 1 through 43 and sections 46 and 47 of this  
38 25 Act take effect January 1, 2002.

38 26 2. This section and section 45 of this Act take effect  
38 27 July 1, 2001.

38 28 Sec. 45. NOTIFICATION OF LOCAL AUTHORITIES EXPIRATION  
38 29 OF PERMITS JUNE 30, 2002, STAGGERED RENEWAL PRORATED FEES  
38 30 EFFECTIVE DATE.

38 31 1. The administrator of the alcoholic beverages division  
38 32 of the department of commerce shall notify local authorities  
38 33 as defined under this Act of the provisions of this Act by  
38 34 October 1, 2001, and shall include projections of revenue  
38 35 generated under the provisions of this Act to assist the local  
39 1 authorities in certifying local budgets pursuant to chapter  
39 2 24.

39 3 2. a. Notwithstanding any provision of this Act to the  
39 4 contrary, beginning January 1, 2002, the administrator of the  
39 5 alcoholic beverages division of the department of commerce may  
39 6 provide for staggered renewal, prior to June 30, 2002, of  
39 7 retail permits that were issued prior to January 1, 2002, and  
39 8 that expire on June 30, 2002. The administrator shall provide  
39 9 sixty days' written notice of the date by which a retail  
39 10 permit holder shall renew the expired permit. However, all  
39 11 permits that expire June 30, 2002, shall be renewed no later  
39 12 than July 1, 2002.

39 13 b. The administrator of the alcoholic beverages division  
39 14 of the department of commerce shall honor retail permits  
39 15 issued prior to January 1, 2002, until such time as a permit  
39 16 is renewed under the provisions of this Act. The  
39 17 administrator shall provide a process for pro rating permit  
39 18 fees for permits renewed under the staggered renewal process  
39 19 to provide credit for the portion of the annual permit fee  
39 20 submitted with the prior permit application.

39 21 3. The administrator of the alcoholic beverages division  
39 22 of the department of commerce may adopt rules to implement  
39 23 this section.

39 24 Sec. 46. DIRECTIONS TO CODE EDITOR. The Code editor is  
39 25 directed to create a new "DIVISION VI CIGARETTE RETAIL  
39 26 PERMITS VIOLATIONS PENALTIES" of chapter 123.

39 27 Sec. 47. Sections 453A.2, 453A.3, 453A.4, 453A.23, and  
39 28 453.36A, Code 2001, are repealed.

39 29 EXPLANATION

39 30 This bill transfers the authority of the department of  
39 31 revenue and finance to issue permits to retailers of  
39 32 cigarettes from the department of revenue and finance to the  
39 33 alcoholic beverages division of the department of commerce  
39 34 (division) and establishes a new division under the alcoholic  
39 35 beverage control chapter (Code chapter 123), division VI,  
40 1 cigarette retail permits violations penalties. The bill  
40 2 provides the process for retail permits to be issued by local  
40 3 authorities in a manner similar to that of the issuance of  
40 4 alcoholic beverage permits. Following collection of fees for  
40 5 retail permits, the division is to remit a sum equal to 65  
40 6 percent of the fees collected to the local authority under  
40 7 whose jurisdiction the permit was issued. Any remaining fees  
40 8 collected do not revert to the general fund but are  
40 9 appropriated to the division for the purposes of retail permit  
40 10 activities and enforcement.

40 11 The bill also relocates a number of violations relating to  
40 12 cigarettes from Code chapter 453A (cigarette and tobacco

40 13 taxes) to the new division in Code chapter 123. These include  
40 14 violations relating to self-service sales, violations relating  
40 15 to persons under age 18, seizure of false or altered driver's  
40 16 licenses or nonoperator's identification cards, and other  
40 17 unlawful acts all of which are not changed in the transfer.  
40 18 The bill also relocates violations related to suspension and  
40 19 revocation of a retail permit and the penalties related to  
40 20 such suspension or revocation, all of which are not changed in  
40 21 the transfer.

40 22 The bill also provides that a minor who is issued a  
40 23 citation for smoking, using, possessing, purchasing, or  
40 24 attempting to purchase tobacco, tobacco products, or  
40 25 cigarettes is not allowed to utilize the admission of  
40 26 scheduled violation process, but must appear in court and the  
40 27 citation is to include a notation that a court appearance is  
40 28 required.

40 29 The bill includes the administrator of the alcoholic  
40 30 beverages division in enforcement of Code chapter 421B  
40 31 regarding cigarette sales at less than cost.

40 32 The bill also makes conforming changes throughout the Code  
40 33 necessitated by the transfer of authority and other changes  
40 34 under the bill. The bill provides for staggered renewal of  
40 35 retail permits that expire June 30, 2002. The bill directs  
41 1 the Code editor to create the new division VI in Code chapter  
41 2 123. The bill takes effect January 1, 2002, with the  
41 3 exception of provisions relating to notifying local  
41 4 authorities of the provisions of the bill and staggered  
41 5 renewal provisions of the bill, which take effect upon  
41 6 enactment.

41 7 LSB 1232DP 79

41 8 pf/cls/14.2