

Senate Study Bill 3184

Bill Text

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1 1 Section 1. Section [453A.22](#), subsection 1, Code 2001, is
1 2 amended to read as follows:
1 3 1. If a person holding a permit issued by the department
1 4 under this division, including a retailer permit for railway
1 5 car, has willfully violated section 453A.2 or 453A.58, the
1 6 department shall revoke the permit upon notice and hearing.
1 7 If the person violates any other provision of this division,
1 8 or a rule adopted under this division, or is substantially
1 9 delinquent in the payment of a tax administered by the
1 10 department or the interest or penalty on the tax, or if the
1 11 person is a corporation and if any officer having a
1 12 substantial legal or equitable interest in the ownership of
1 13 the corporation owes any delinquent tax of the permit-holding
1 14 corporation, or interest or penalty on the tax, administered
1 15 by the department, the department may revoke the permit issued
1 16 to the person, after giving the permit holder an opportunity
1 17 to be heard upon ten days' written notice stating the reason
1 18 for the contemplated revocation and the time and place at
1 19 which the person may appear and be heard. The hearing before
1 20 the department may be held at a site in the state as the
1 21 department may direct. The notice shall be given by mailing a
1 22 copy to the permit holder's place of business as it appears on
1 23 the application for a permit. If, upon hearing, the
1 24 department finds that the violation has occurred, the
1 25 department may revoke the permit.
1 26 Sec. 2. Section [453A.44](#), subsection 10, Code 2001, is
1 27 amended to read as follows:
1 28 10. The director may revoke, cancel, or suspend the
1 29 license or licenses of any distributor or subjobber for
1 30 violation of any of the provisions of this division, for
1 31 violation of section 453A.58, or for violation of any other
1 32 act applicable to the sale of tobacco products, or any rule or
1 33 regulations promulgated by the director in furtherance of this
1 34 division. No license shall be revoked, canceled, or suspended
1 35 except after notice and a hearing by the director as provided
2 1 in section 453A.48.
2 2
2 3 DIVISION IV
2 4 MANUFACTURERS' COMPLIANCE
2 5 Sec. 3. NEW SECTION. 453A.57 DEFINITIONS.
2 6 For the purposes of this division, unless the context
2 7 otherwise requires:
2 8 1. "Cigarette" means the same as defined in section
2 9 453C.1.
2 10 2. "Distributor" means the same as defined in sections
2 11 453A.1 and 453A.42.
2 12 3. "Tobacco product manufacturer" means the same as
2 13 defined in section 453C.1.
2 14 Sec. 4. NEW SECTION. 453A.58 DISTRIBUTORS
2 15 DETERMINATION OF TOBACCO PRODUCT MANUFACTURER COMPLIANCE.
2 16 1. A distributor shall not affix stamps or cause stamps to
2 17 be affixed to individual packages of any brand of cigarettes
2 18 sold or distributed by the distributor in this state and shall
2 19 not act as a distributor for any roll-your-own-tobacco unless
2 20 either of the following conditions applies:
2 21 a. The tobacco product manufacturer of the brand, or any
2 22 predecessor tobacco product manufacturer of the brand, is a

2 22 participating manufacturer in compliance with section 453C.2,
2 23 subsection 1.

2 24 b. The tobacco product manufacturer of the brand, or any
2 25 predecessor tobacco product manufacturer of the brand, has
2 26 provided the distributor with a current certification that
2 27 such tobacco product manufacturer and all predecessor tobacco
2 28 product manufacturers of the brand are in full compliance with
2 29 section 453C.2, subsection 2.

2 30 2. A distributor shall not affix stamps or cause stamps to
2 31 be affixed to individual packages of any brand of cigarettes,
2 32 subsequent to notice to the distributor by the tobacco product
2 33 manufacturer or a predecessor tobacco product manufacturer
2 34 that the tobacco product manufacturer is in violation of
2 35 chapter 453C with reference to that brand.

3 1 Sec. 5. NEW SECTION. 453A.59 TOBACCO PRODUCT
3 2 MANUFACTURER CERTIFICATION.

3 3 1. A tobacco product manufacturer whose cigarettes are
3 4 sold for consumption in this state shall quarterly certify,
3 5 under penalty of perjury, that as of the date of
3 6 certification, the tobacco product manufacturer and any
3 7 predecessor of the tobacco product manufacturer are either of
3 8 the following:

3 9 a. A participating manufacturer pursuant to section
3 10 453C.2, subsection 1.

3 11 b. In full compliance with section 453C.2, subsection 2.

3 12 2. A certification under subsection 1 shall also state,
3 13 under penalty of perjury, that the tobacco product
3 14 manufacturer is in compliance with section 453A.62, and shall
3 15 be accompanied by a list of cigarette brands sold by the
3 16 tobacco product manufacturer in this state.

3 17 3. If certification is made pursuant to subsection 1,
3 18 paragraph "b", the certification shall also state, under
3 19 penalty of perjury, that the per unit price to the distributor
3 20 includes an amount equal to the amount required to be placed
3 21 into escrow under section 453C.2, subsection 2.

3 22 4. A copy of the certification shall be delivered to the
3 23 director, the attorney general, and any distributor of the
3 24 tobacco product manufacturer. A distributor shall retain a
3 25 copy of the certificate for five years from the date of
3 26 receipt.

3 27 5. The director shall prescribe the form of the
3 28 certificate required and the specific dates on which the
3 29 certificate must be filed.

3 30 Sec. 6. NEW SECTION. 453A.60 PERMIT REVOCATION.

3 31 A distributor that violates this division is subject to
3 32 revocation of the distributor's permit pursuant to section
3 33 453A.22 or 453A.44, as applicable.

3 34 Sec. 7. NEW SECTION. 453A.61 INFORMATION EXCHANGE.

3 35 For the purposes of enforcement of chapter 453C and this
4 1 division, the department and the attorney general may share
4 2 all information collected under chapter 453C and this division
4 3 with each other, with the national association of attorneys
4 4 general, and with agencies of other states responsible for
4 5 enforcement of cigarette and tobacco laws.

4 6 Sec. 8. NEW SECTION. 453A.62 REGISTERED AGENT.

4 7 1. A tobacco product manufacturer whose cigarettes are
4 8 sold for consumption in this state shall, prior to any such
4 9 sale, maintain in this state both a registered office and a
4 10 registered agent that meet the criteria prescribed in section
4 11 490.501.

4 12 2. A registered agent is the tobacco product
4 13 manufacturer's agent for service of process, notice, or demand
4 14 required or permitted by law to be served on the tobacco
4 15 product manufacturer.

4 16 3. If a tobacco product manufacturer does not have a
4 17 registered agent, or the agent cannot be served with
4 18 reasonable diligence, the tobacco product manufacturer may be

4 19 served by any means provided in section 490.504.

4 20 4. Registration and changes of a registered office or
4 21 registered agent or resignation of a registered agent shall be
4 22 filed with the department in accordance with rules adopted by
4 23 the department.

4 24 Sec. 9. TOBACCO SETTLEMENT FUND APPROPRIATION

4 25 LITIGATION COSTS. There is appropriated from the tax-exempt
4 26 bond proceeds restricted capital funds account of the tobacco
4 27 settlement trust fund established in section 12E.12, to the
4 28 treasurer of state for the fiscal year beginning July 1, 2001,
4 29 and ending June 30, 2002, the following amount, or so much
4 30 thereof as is necessary, to supplement the appropriation made
4 31 in 2001 Iowa Acts, chapter 176, section 25, to be used for the
4 32 purpose designated:

4 33 For payment of litigation fees incurred pursuant to the
4 34 tobacco master settlement agreement:
4 35 \$ 944,880

5 1 Sec. 10. EFFECTIVE DATE. Section 9 of this Act relating
5 2 to an appropriation from the tax-exempt bond proceeds
5 3 restricted capital funds account of the tobacco settlement
5 4 trust fund for payment of litigation fees, being deemed of
5 5 immediate importance, takes effect upon enactment.

5 6 EXPLANATION

5 7 This bill relates to cigarettes and tobacco products
5 8 including provisions relating to distributors of cigarettes
5 9 and tobacco products relative to tobacco product
5 10 manufacturers, and to tobacco master settlement agreement
5 11 litigation fees.

5 12 The bill prohibits a distributor from affixing stamps or
5 13 causing stamps to be affixed to individual packages of any
5 14 brand of cigarettes sold or distributed by the distributor in
5 15 the state and from acting as a distributor for any roll-your-
5 16 own-tobacco unless either of the following conditions applies:
5 17 (1) the tobacco product manufacturer of the brand, or any
5 18 predecessor tobacco product manufacturer of the brand, is a
5 19 participating manufacturer under the master settlement
5 20 agreement; or (2) the tobacco product manufacturer of the
5 21 brand, or any predecessor tobacco product manufacturer of the
5 22 brand, has provided the distributor with a current
5 23 certification that the tobacco product manufacturer and all
5 24 predecessor tobacco product manufacturers of the brand are in
5 25 full compliance with the escrow requirements of the master
5 26 settlement agreement. The bill additionally prohibits a
5 27 distributor from affixing or causing to be affixed stamps to
5 28 individual packages of any brand of cigarettes, subsequent to
5 29 notice to the distributor by the tobacco product manufacturer
5 30 or a predecessor tobacco product manufacturer that the tobacco
5 31 product manufacturer is in violation of Code chapter 453C with
5 32 reference to that brand.

5 33 The bill also requires a tobacco product manufacturer whose
5 34 cigarettes are sold for consumption in the state to quarterly
5 35 certify, under penalty of perjury, that as of the date of
6 1 certification, the tobacco product manufacturer and any
6 2 predecessor of the tobacco product manufacturer are either a
6 3 participating manufacturer under the master settlement
6 4 agreement or in full compliance with the escrow requirements
6 5 under the master settlement agreement. The certification is
6 6 to state, under penalty of perjury, that the tobacco product
6 7 manufacturer is in compliance with requirements relating to
6 8 maintaining a registered office and registered agent in the
6 9 state. If certification is made on the basis that the tobacco
6 10 product manufacturer is in full compliance with the escrow
6 11 requirements under the master settlement agreement, the
6 12 certification must also state, under penalty of perjury, that
6 13 the per unit price to the distributor includes an amount equal
6 14 to the amount required to be placed into escrow under Code
6 15 section 453C.2. Each certificate must be accompanied by a

6 16 list of cigarette brands sold by the tobacco product
6 17 manufacturer in the state.

6 18 The bill requires that a copy of the certification be
6 19 delivered to the director of revenue and finance, the attorney
6 20 general, and any distributor of the tobacco product
6 21 manufacturer. The bill requires distributors to retain a copy
6 22 of the certificate for five years from the date of receipt.

6 23 The bill directs the director of revenue and finance to
6 24 prescribe the form of the certificate required and the
6 25 specific dates on which the certificate must be filed.

6 26 Under the bill, a distributor that violates the provisions
6 27 of the bill is subject to revocation of the distributor's
6 28 permit or license.

6 29 The bill authorizes that, for the purposes of enforcement
6 30 of Code chapter 453C (tobacco product manufacturers
6 31 financial obligations) and the new provisions of the bill, the
6 32 department of revenue and finance and the attorney general may
6 33 share all information collected under Code chapter 453C and
6 34 the provisions of the bill with each other, with the national
6 35 association of attorneys general, and with agencies of other
7 1 states responsible for enforcement of cigarette and tobacco
7 2 laws.

7 3 The bill requires tobacco product manufacturers whose
7 4 cigarettes are sold for consumption in the state, prior to any
7 5 such sale, to maintain both a registered office and a
7 6 registered agent in the state.

7 7 The bill also makes an appropriation for the fiscal year
7 8 beginning July 1, 2001, and ending June 30, 2002, from the
7 9 tax-exempt bond proceeds restricted capital funds account of
7 10 the tobacco settlement trust fund, to the treasurer of state,
7 11 to supplement the appropriation made pursuant to 2001 Iowa
7 12 Acts, chapter 176, section 25, for payment of litigation fees
7 13 incurred pursuant to the tobacco master settlement agreement.
7 14 This section of the bill takes effect upon enactment.

7 15 LSB 7091XC 79

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