

Withdrawn 3/26/03  
SF 401 subst.

MAR 19 2003  
Place On Calendar

HOUSE FILE 637  
BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HSB 245)

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

**A BILL FOR**

1 An Act relating to tobacco retailers and providing penalties and  
2 providing applicability provisions and an effective date.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 637

1 Section 1. Section 453A.2, Code 2003, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 5A. If a county health department, a city  
4 health department, or a city has not assessed a penalty  
5 pursuant to section 453A.22, subsection 2, for a violation of  
6 subsection 1, within sixty days of the adjudication of the  
7 violation, the matter shall be transferred to and be the  
8 exclusive responsibility of the Iowa department of public  
9 health. Following transfer of the matter, if the violation is  
10 contested, the Iowa department of public health shall request  
11 an administrative hearing before an administrative law judge,  
12 assigned by the division of administrative hearings of the  
13 department of inspections and appeals in accordance with the  
14 provisions of section 10A.801, to adjudicate the matter  
15 pursuant to chapter 17A.

16 Sec. 2. NEW SECTION. 453A.2A TOBACCO COMPLIANCE EMPLOYEE  
17 TRAINING PROGRAM.

18 1. The alcoholic beverages division of the department of  
19 commerce shall develop a tobacco compliance employee training  
20 program not to exceed two hours in length for employees and  
21 prospective employees of tobacco retailers to inform the  
22 employees about state and federal laws and regulations  
23 regarding the sale of cigarettes and tobacco products to  
24 persons under eighteen years of age and compliance with and  
25 the importance of laws regarding the sale of cigarettes and  
26 tobacco products to persons under eighteen years of age.

27 2. The tobacco compliance employee training program shall  
28 be made available to employees and prospective employees of  
29 tobacco retailers at no cost to the employee, the prospective  
30 employee, or the retailer, and in a manner which is as  
31 convenient and accessible to the extent practicable throughout  
32 the state so as to encourage attendance. Contingent upon the  
33 availability of specified funds for provision of the program,  
34 the division shall schedule the program on at least a monthly  
35 basis and the program shall be available at a location in at

1 least a majority of counties.

2 3. Upon completion of the tobacco compliance employee  
3 training program, an employee or prospective employee shall  
4 receive a certificate of completion, which shall be valid for  
5 a period of two years, unless the employee or prospective  
6 employee is convicted of a violation of section 453A.2,  
7 subsection 1, in which case the certificate shall be void.

8 4. The tobacco compliance employee training program shall  
9 also offer periodic continuing employee training and  
10 recertification for employees who have completed initial  
11 training and received certificates of completion.

12 Sec. 3. Section 453A.22, subsection 2, Code 2003, is  
13 amended to read as follows:

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

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

26 b. For a second violation within a period of two years,  
27 the retailer shall be assessed a civil penalty in the amount  
28 of one thousand five hundred dollars or the retailer's permit  
29 shall be suspended for a period of thirty days. The retailer  
30 may select its preference in the penalty to be applied under  
31 this paragraph.

32 c. For a third violation within a period of three years,  
33 the retailer shall be assessed a civil penalty in the amount  
34 of one thousand five hundred dollars and the retailer's permit  
35 shall be suspended for a period of ~~sixty~~ thirty days.

1 d. For a fourth violation within a period of three years,  
2 the retailer shall be assessed a civil penalty in the amount  
3 of one thousand five hundred dollars and the retailer's permit  
4 shall be revoked suspended for a period of sixty days.

5 e. For a fifth violation within a period of four years,  
6 the retailer's permit shall be revoked.

7 Sec. 4. Section 453A.22, Code 2003, is amended by adding  
8 the following new subsections:

9 NEW SUBSECTION. 2A. If an employee of a retailer violates  
10 section 453A.2, subsection 1, the retailer shall not be  
11 assessed a penalty under subsection 2, and the violation shall  
12 be deemed not to be a violation of section 453A.2, subsection  
13 1, for the purpose of determining the number of violations for  
14 which a penalty may be assessed pursuant to subsection 2, if  
15 the employee holds a valid certificate of completion of the  
16 tobacco compliance employee training program pursuant to  
17 section 453A.2A at the time of the violation. A retailer may  
18 assert only once in a four-year period the bar under either  
19 this subsection or subsection 2B against assessment of a  
20 penalty pursuant to subsection 2, for a violation of section  
21 453A.2, that takes place at the same place of business  
22 location.

23 NEW SUBSECTION. 2B. If an employee of a retailer violates  
24 section 453A.2, subsection 1, the retailer shall not be  
25 assessed a penalty under subsection 2, and the violation shall  
26 be deemed not to be a violation of section 453A.2, subsection  
27 1, for the purpose of determining the number of violations for  
28 which a penalty may be assessed pursuant to subsection 2, if  
29 the retailer provides written documentation that the employee  
30 of the retailer has completed an in-house tobacco compliance  
31 employee training program or a tobacco compliance employee  
32 training program which is substantially similar to the "I  
33 Pledge" program developed by the alcoholic beverages division  
34 of the department of commerce. A retailer may assert only  
35 once in a four-year period the bar under this subsection

1 against assessment of a penalty pursuant to subsection 2, for  
2 a violation of section 453A.2, that takes place at the same  
3 place of business location.

4 Sec. 5. APPLICABILITY PROVISIONS.

5 1. Notwithstanding any provision of law to the contrary,  
6 the section of this Act creating section 453A.2, subsection  
7 5A, is applicable to violations pending on the effective date  
8 of this Act for which a penalty has not been assessed under  
9 section 453A.22, subsection 2.

10 2. Notwithstanding section 453A.22, subsection 2, Code  
11 2003, the section of this Act amending section 453A.22,  
12 subsection 2, is applicable to each violation of section  
13 453A.2, subsection 1, by a retailer or an employee of a  
14 retailer which is pending on the effective date of this Act  
15 and for which a penalty has not been assessed under section  
16 453A.22, subsection 2, Code 2003.

17 Sec. 6. Section 453A.22, subsection 2B, as enacted by this  
18 Act, is repealed one year from the effective date of this Act.

19 Sec. 7. EFFECTIVE DATE. This Act, being deemed of  
20 immediate importance, takes effect upon enactment.

21 EXPLANATION

22 This bill relates to tobacco products and cigarette  
23 retailers.

24 The bill provides that if a county health department, city  
25 health department, or a city has not assessed a penalty for a  
26 violation of Code section 453A.2, subsection 1, relating to  
27 selling, giving, or otherwise supplying any tobacco, tobacco  
28 products, or cigarettes to any person under 18 years of age,  
29 within 60 days of the adjudication of the violation, the  
30 matter is transferred to the Iowa department of public health  
31 (IDPH) and is the exclusive responsibility of IDPH. If the  
32 violation is then contested, IDPH is to request a hearing  
33 before an administrative law judge provided by the department  
34 of inspections and appeals to adjudicate the matter pursuant  
35 to Code chapter 17A.

1 The bill requires the alcoholic beverages division of the  
2 department of commerce to develop a tobacco compliance  
3 employee training program, not to exceed two hours in length,  
4 to be provided to employees and prospective employees of  
5 tobacco retailers to inform the employees about state and  
6 federal laws and regulations regarding the sale of cigarettes  
7 and tobacco products to persons under 18 and compliance with  
8 and the importance of laws regarding the sale of cigarettes  
9 and tobacco products to persons under 18. The program is to  
10 be provided at no cost to the employee, prospective employee,  
11 or retailer and in a manner that is convenient and accessible  
12 to the extent practicable throughout the state in order to  
13 encourage attendance. Contingent on availability of funds,  
14 the program is to be scheduled on at least a monthly basis and  
15 at locations in at least a majority of the counties. The  
16 employee or prospective employee is to receive a certificate  
17 of completion, valid for two years, unless the employee or  
18 prospective employee is convicted of a violation of section  
19 453A.2, subsection 1. In that case, the certificate is void.  
20 The program is also to offer periodic continuing employee  
21 training and recertification.

22 The bill changes the penalties assessed against retailers  
23 for a violation of Code section 453A.2 or section 453A.36,  
24 subsection 6, by a retailer or employee of a retailer.  
25 Currently, for a second violation within a two-year period,  
26 the penalty is suspension of the retailer's permit for 30  
27 days. The bill changes this to provide that the penalty is  
28 either a civil penalty of \$1,500 or suspension of the permit  
29 for 30 days. The retailer is allowed to select its preference  
30 of the penalty to be applied. Currently, for a third  
31 violation within a three-year period, the retailer's permit is  
32 suspended for 60 days. The bill would provide that the  
33 penalty instead is a civil penalty of \$1,500 and suspension of  
34 the permit for 30 days. Currently, for a fourth violation in  
35 a period of three years, the penalty is revocation of the

1 permit. Under the bill, the penalty instead is a civil  
2 penalty of \$1,500 and suspension of the permit for 60 days.  
3 Under the bill, a new penalty is created for a fifth violation  
4 in a period of four years, which is revocation of the permit.

5 The bill provides that if an employee of a retailer  
6 violates Code section 453A.2, subsection 1, the retailer is  
7 not to be assessed a penalty under Code section 453A.22,  
8 subsection 2, and the violation is not to be deemed a  
9 violation for the purposes of determining the number of  
10 violations for which a penalty may be assessed against the  
11 retailer under that subsection, if the employee holds a  
12 certificate of completion of the compliance training program  
13 at the time of the violation. The retailer is allowed to  
14 assert either this bar or the bar under a subsequent new  
15 subsection only once in a four-year period that takes place at  
16 the same place of business location.

17 The bill also provides in a new subsection that if an  
18 employee of a retailer violates Code section 453A.2,  
19 subsection 1, the retailer is not to be assessed a penalty  
20 under Code section 453A.22, subsection 2, and the violation is  
21 not to be deemed a violation for the purposes of determining  
22 the number of violations for which a penalty may be assessed  
23 against the retailer under that subsection, if the employer  
24 provides written documentation that the employee has completed  
25 an in-house compliance training program or a compliance  
26 training program that is substantially similar to the "I  
27 Pledge" program of the alcohol and beverages division. The  
28 employer is allowed to assert this bar only once in a four-  
29 year period for a violation that takes place at the same place  
30 of the business location. This subsection is repealed one  
31 year from the effective date of the bill.

32 The bill also provides applicability provisions. The bill  
33 provides that the section relating to transfer of certain  
34 matters to the Iowa department of public health applies  
35 regarding violations of Code section 453A.2, subsection 1,

1 applies to violations pending on the effective date of the  
2 bill. The Code section also provides that notwithstanding  
3 Code section 453A.22, subsection 2, as it appears in Code  
4 2003, the Code section of the Act amending that Code  
5 subsection applies to each violation of Code section 453A.2,  
6 subsection 1, by a retailer or an employee of a retailer,  
7 which is pending on the effective date of the bill and for  
8 which a penalty has not been assessed under Code section  
9 453A.22, subsection 2.

10 The bill takes effect upon enactment.

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13 **HOUSE FILE 637**

14 **H-1153**

15 1 Amend House File 637 as follows:

16 2 1. Page 2, by striking lines 16 and 17, and  
17 3 inserting the following: "department or local  
18 4 authority, or the Iowa department of public health  
19 5 following transfer of the matter to the Iowa  
20 6 department of public health pursuant to section  
21 7 453A.2, subsection 5A, in addition to the other  
22 8 penalties fixed for such".

9 2. Page 3, line 33, by inserting after the word  
10 "program" the following: "which is approximately one  
11 hour in length as".

By McCARTHY of Polk

23 **H-1153 FILED MARCH 25, 2003**

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Baudler, Chair

McCarthy  
Sands

Succeeded By  
S 0637

HSB 245  
PUBLIC SAFETY

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON PUBLIC  
SAFETY BILL BY  
CHAIRPERSON BAUDLER)

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

**A BILL FOR**

1 An Act relating to tobacco retailers and providing penalties and  
2 providing an effective date.

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

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1 Section 1. NEW SECTION. 453A.2A TOBACCO COMPLIANCE  
2 EMPLOYEE TRAINING PROGRAM.

3 The alcoholic beverages division of the department of  
4 commerce shall develop minimum training criteria for tobacco  
5 compliance employee training programs provided by retailers to  
6 inform employees about state and federal laws and regulations  
7 regarding tobacco sales to minors. The criteria shall provide  
8 that the training program not exceed one hour in length.

9 Sec. 2. Section 453A.22, Code 2003, is amended by adding  
10 the following new subsection:

11 NEW SUBSECTION. 2A. If an employee of a retailer violates  
12 section 453A.2, subsection 1, unless the retailer directs or  
13 knowingly permits the employee to violate section 453A.2,  
14 subsection 1, the retailer shall not be assessed a penalty  
15 under subsection 2 for a first or second such violation of  
16 section 453A.2, subsection 1, that takes place at the same  
17 place of business of the retailer within a one-year period,  
18 and the underlying violations shall be deemed not to be  
19 violations of section 453A.2, subsection 1, for the purpose of  
20 determining the number of violations for which a penalty may  
21 be assessed pursuant to subsection 2, if the retailer provides  
22 written documentation of all of the following:

23 a. That the retailer has in place a tobacco compliance  
24 employee training program that meets the minimum training  
25 criteria established by the alcoholic beverages division of  
26 the department of commerce pursuant to section 453A.2A, to  
27 provide employees with information on state and federal laws  
28 and regulations regarding tobacco sales to minors.

29 b. That the employee has acknowledged, in writing, that  
30 the employee has completed the tobacco compliance employee  
31 training program and understands state and federal laws and  
32 regulations regarding tobacco sales to minors.

33 Sec. 3. Section 805.3, Code 2003, is amended to read as  
34 follows:

35 805.3 PROCEDURE.

1     1. Before the cited person is released, the person shall  
2 sign the citation, either in a paper or electronic format,  
3 under penalty of providing false information under section  
4 719.3, properly identifying the person cited. The person's  
5 signature shall also serve as a written promise to appear in  
6 court at the time and place specified. A copy of the citation  
7 shall be given to the person.

8     2. If the citation is issued for a violation of section  
9 453A.2, subsection 1, by an employee of a retailer in the  
10 course of the employee's employment, a copy of the citation  
11 shall be sent by certified mail, within twenty days of the  
12 date of issuance of the citation, to the holder of the retail  
13 permit pursuant to section 453A.13 for the place of business  
14 where the offense occurred. If a copy of the citation is not  
15 mailed by certified mail to the holder of the permit within  
16 twenty days of the date of issuance of the citation, the  
17 underlying violation shall be deemed not to be a violation of  
18 section 453A.2, subsection 1, for the purposes of determining  
19 the number of violations for which a penalty may be assessed  
20 pursuant to section 453A.22, subsection 2, paragraph "b", "c",  
21 or "d".

22     Sec. 4. CIGARETTE RETAILER CIVIL PENALTIES ASSESSED PRIOR  
23 TO EFFECTIVE DATE. Notwithstanding section 453A.22,  
24 subsection 2, a retailer shall be assessed and shall pay a  
25 civil penalty of six hundred dollars in lieu of the penalty  
26 that would be assessed under section 453A.22, subsection 2,  
27 for each violation of section 453A.2, subsection 1, by the  
28 retailer or an employee of the retailer which is pending on  
29 the effective date of this section and for which a penalty has  
30 not been assessed under section 453A.22, subsection 2. If the  
31 retailer pays the civil penalty assessed under this section,  
32 the underlying violation shall be deemed not to be a violation  
33 of section 453A.2, subsection 1, for the purpose of  
34 determining the number of violations for which a penalty may  
35 be assessed pursuant to section 453A.22, subsection 2. The

1 proceeds derived from the collection of the civil penalties  
2 under this section shall be credited to the general fund of  
3 the state. The office of the attorney general shall enforce  
4 this section and shall assess and collect the penalties under  
5 this section.

6 Sec. 5. EFFECTIVE DATE. Section 4 of this Act, relating  
7 to cigarette retailer civil penalties assessed prior to the  
8 effective date of this Act, being deemed of immediate  
9 importance, takes effect upon enactment.

10 EXPLANATION

11 This bill relates to cigarette retailers and the civil  
12 penalties assessed against retailers for certain violations.

13 The bill instructs the alcoholic beverages division of the  
14 department of commerce to develop minimum training criteria  
15 for tobacco compliance employee training programs provided by  
16 retailers to inform employees about state and federal laws and  
17 regulations regarding tobacco sales to minors. The training  
18 program is not to exceed one hour in length. The bill  
19 provides that if an employee of a retailer sells, gives, or  
20 otherwise supplies any tobacco, tobacco products, or  
21 cigarettes to any person under the age of 18 (violates Code  
22 section 453A.2, subsection 1), unless the retailer directs or  
23 knowingly permits the employee to violate this provision, the  
24 retailer is not to be assessed a penalty, in addition to other  
25 penalties fixed for a first or second violation of this  
26 provision that takes place at the same place of business of  
27 the retailer within a one-year period, and the underlying  
28 violations are to be deemed not to be violations for  
29 determining the number of the retailer violations if the  
30 retailer provides certain written documentation. The written  
31 documentation provided is to include that the retailer has in  
32 place a tobacco compliance employee training program that  
33 meets the minimum training criteria established by the  
34 alcoholic beverages division and that the employee has  
35 acknowledged, in writing, that the employee has completed the

1 tobacco compliance employee training program and understands  
2 state and federal laws and regulations regarding tobacco sales  
3 to minors.

4 The bill also provides that if a citation is issued for a  
5 violation of Code section 453A.2, subsection 1, by an employee  
6 of a retailer, a copy of the citation is to be sent by  
7 certified mail, within 20 days of the date of issuance of the  
8 citation, to the holder of the retail permit for the place of  
9 business where the offense occurred. If a copy of the  
10 citation is not mailed as specified, the underlying violation  
11 is to be deemed not to be a violation of Code section 453A.2,  
12 subsection 1, for the purposes of determining the number of  
13 violations, above a first violation, for which a penalty may  
14 be assessed in addition to other penalties fixed for such  
15 violation.

16 The bill also requires that a retailer be assessed and pay  
17 a civil penalty of \$600, in lieu of the existing civil penalty  
18 amount for each violation of Code section 453A.2, subsection  
19 1, by the retailer or an employee of the retailer which is  
20 pending on the effective date of this provision of the bill  
21 and for which a penalty has not been assessed. If the  
22 retailer pays the civil penalty assessed under this provision  
23 of the bill, the underlying violation is to be deemed not to  
24 be a violation of Code section 453A.2, subsection 1, for the  
25 purpose of determining the number of violations for which a  
26 penalty may be assessed. The proceeds derived from the  
27 collection of the civil penalties under this provision are to  
28 be credited to the general fund of the state. The office of  
29 the attorney general is directed to assess and collect the  
30 civil penalties under this provision of the bill. This  
31 provision takes effect upon enactment.

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