

FILED MAR 17 '03

SENATE FILE 401
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO SSB 1117)

Passed Senate, Date Passed 3/18/03 Passed House, 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:
4
5
6

SENATE FILE 401

S-3057

1 Amend Senate File 401 as follows:

2 1. Page 1, by striking line 31, and inserting the
3 following: "as convenient and accessible to the
4 extent practicable throughout the state".

5 2. Page 2, line 16, by inserting after the word
6 "authority" the following: ", or the Iowa department
7 of public health following transfer of the matter to
8 the Iowa department of public health pursuant to
9 section 453A.2, subsection 5A,".

10 3. Page 3, line 17, by inserting after the word
11 "under" the following: "either".

12 4. Page 3, line 31, by inserting after the word
13 "program" the following: "which is approximately one
14 hour in length as".

By BRYAN J. SIEVERS

S-3057 FILED MARCH 18, 2003

ADOPTED 3/18/03

SF 401

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
31 convenient, accessible, and practicable throughout the state
32 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 or local authority, in addition to the other
17 penalties fixed for such violations in this section, shall
18 assess a penalty upon the same hearing and notice as
19 prescribed in subsection 1 as follows:

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

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

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

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

1 the retailer shall be assessed a civil penalty in the amount
2 of one thousand five hundred dollars and the retailer's permit
3 shall be ~~revoked~~ suspended for a period of sixty days.

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

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

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

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

1 place of business location.

2 Sec. 5. APPLICABILITY PROVISIONS.

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

8 2. Notwithstanding section 453A.22, subsection 2, Code
9 2003, the section of this Act amending section 453A.22,
10 subsection 2, is applicable to each violation of section
11 453A.2, subsection 1, by a retailer or an employee of a
12 retailer which is pending on the effective date of this Act
13 and for which a penalty has not been assessed under section
14 453A.22, subsection 2, Code 2003.

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

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

19 EXPLANATION

20 This bill relates to tobacco products and cigarette
21 retailers.

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

34 The bill requires the alcoholic beverages division of the
35 department of commerce to develop a tobacco compliance

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

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

1 Under the bill, there is a new penalty for a fifth violation
2 in a period of four years, which is revocation of the permit.

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

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

28 The bill also provides applicability provisions. The bill
29 provides that the Code section relating to transfer of certain
30 matters to the Iowa department of public health regarding
31 violations of Code section 453A.2, subsection 1, applies to
32 violations pending on the effective date of the bill. The
33 bill also provides that notwithstanding Code section 453A.22,
34 subsection 2, as it appears in Code 2003, the Code section of
35 the bill amending that subsection applies to each violation of

1 Code section 453A.2, subsection 1, by a retailer or an
2 employee of a retailer which is pending on the effective date
3 of the bill and for which a penalty has not been assessed
4 under Code section 453A.22, subsection 2.

5 The bill provides that the bill takes effect upon
6 enactment.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SF 401 - Cigarette Retailer Compliance (LSB 2779 SV)

Analyst: Ron Robinson (Phone: (515) 281-6256) (ron.robinson@legis.state.ia.us)

Fiscal Note Version — New

Description

Senate File 401 requires the Alcoholic Beverages Division of the Department of Commerce to develop a tobacco compliance training program for tobacco retailer employees. The program is to be made convenient and accessible throughout the State. Contingent upon the availability of funds, the program is to be scheduled on at least a monthly basis and at locations in a majority of the counties. The program must also include periodic continuing employee training and recertification.

The Bill changes the penalties assessed against retailers for selling tobacco products to persons under the age of 18. Currently, for a second violation within a two-year period, the penalty is suspension of the retailers permit for 30 days. The Bill changes this to provide that the penalty is either a civil penalty of \$1,500 or suspension of the permit for 30 days. The retailer is allowed to select its preference in the penalty to be applied. Currently, for a third violation within a three-year period, the retailer's permit is suspended for 60 days. The Bill would change the penalty to a civil penalty of \$1,500 and suspension of the permit for 30 days. Currently, for a fourth violation in a period of three-years, the penalty is revocation of the permit. Under the Bill, the penalty is a civil penalty of \$1,500 and suspension of the permit for 60 days. Under the Bill, there is a new penalty for a fifth violation in a period of four-years, which is revocation of the permit.

Assumptions

1. The Alcoholic Beverages Division of the Department of Commerce will contract with local law enforcement agencies on behalf of the Iowa Department of Public Health to conduct monthly training in 92 counties.
2. The Alcoholic Beverages Division of the Department of Commerce will contract with local law enforcement agencies on behalf of the Iowa Department of Public Health to conduct weekly training in seven counties.
3. Local authorities will continue to prosecute and retain civil penalties from retailers who sell tobacco products to persons under the age of 18.

Fiscal Impact

The fiscal impact of SF 401 to the State General Fund will be an increase in expenditures of approximately \$225,000 annually to the Alcoholic Beverages Division of the Department of Commerce.

Source

Alcoholic Beverages Division of the Department of Commerce

/s/ Dennis C Prouty

March 18, 2003

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 or local authority, or the Iowa department of
17 public health following transfer of the matter to the Iowa
18 department of public health pursuant to section 453A.2,
19 subsection 5A, in addition to the other penalties fixed for
20 such violations in this section, shall assess a penalty upon
21 the same hearing and notice as prescribed in subsection 1 as
22 follows:

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

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

34 c. For a third violation within a period of three years,
35 the retailer shall be assessed a civil penalty in the amount

1 of one thousand five hundred dollars and the retailer's permit
2 shall be suspended for a period of ~~sixty~~ thirty days.

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

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

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

11 NEW SUBSECTION. 2A. If an employee of a retailer violates
12 section 453A.2, subsection 1, the retailer shall not be
13 assessed a penalty under subsection 2, and the violation shall
14 be deemed not to be a violation of section 453A.2, subsection
15 1, for the purpose of determining the number of violations for
16 which a penalty may be assessed pursuant to subsection 2, if
17 the employee holds a valid certificate of completion of the
18 tobacco compliance employee training program pursuant to
19 section 453A.2A at the time of the violation. A retailer may
20 assert only once in a four-year period the bar under either
21 this subsection or subsection 2B against assessment of a
22 penalty pursuant to subsection 2, for a violation of section
23 453A.2, that takes place at the same place of business
24 location.

25 NEW SUBSECTION. 2B. If an employee of a retailer violates
26 section 453A.2, subsection 1, the retailer shall not be
27 assessed a penalty under subsection 2, and the violation shall
28 be deemed not to be a violation of section 453A.2, subsection
29 1, for the purpose of determining the number of violations for
30 which a penalty may be assessed pursuant to subsection 2, if
31 the retailer provides written documentation that the employee
32 of the retailer has completed an in-house tobacco compliance
33 employee training program or a tobacco compliance employee
34 training program which is substantially similar to the I
35 Pledge program which is approximately one hour in length as

1 developed by the alcoholic beverages division of the
2 department of commerce. A retailer may assert only once in a
3 four-year period the bar under this subsection against
4 assessment of a penalty pursuant to subsection 2, for a
5 violation of section 453A.2, that takes place at the same
6 place of business location.

7 Sec. 5. APPLICABILITY PROVISIONS.

8 1. Notwithstanding any provision of law to the contrary,
9 the section of this Act creating section 453A.2, subsection
10 5A, is applicable to violations pending on the effective date
11 of this Act for which a penalty has not been assessed under
12 section 453A.22, subsection 2.

13 2. Notwithstanding section 453A.22, subsection 2, Code
14 2003, the section of this Act amending section 453A.22,
15 subsection 2, is applicable to each violation of section
16 453A.2, subsection 1, by a retailer or an employee of a
17 retailer which is pending on the effective date of this Act
18 and for which a penalty has not been assessed under section
19 453A.22, subsection 2, Code 2003.

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

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

24
25
26
27
28
29
30
31
32
33
34
35

Sievers
Shull
Kibbie

State Government

SSB 1117
Succeeded By
(SF) / HF 401

SENATE FILE _____
BY (PROPOSED COMMITTEE ON STATE
GOVERNMENT BILL BY
CHAIRPERSON ZIEMAN)

Passed Senate, Date _____ Passed House, 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:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

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.

32
33
34
35

SENATE FILE 401

AN ACT
RELATING TO TOBACCO RETAILERS AND PROVIDING PENALTIES AND
PROVIDING APPLICABILITY PROVISIONS AND AN EFFECTIVE DATE.

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

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

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

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

1. The alcoholic beverages division of the department of commerce shall develop a tobacco compliance employee training program not to exceed two hours in length for employees and prospective employees of tobacco retailers to inform the employees about state and federal laws and regulations

regarding the sale of cigarettes and tobacco products to persons under eighteen years of age and compliance with and the importance of laws regarding the sale of cigarettes and tobacco products to persons under eighteen years of age.

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

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

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

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

2. If a retailer or employee of a retailer has violated section 453A.2 or section 453A.36, subsection 6, the department or local authority, or the Iowa department of public health following transfer of the matter to the Iowa department of public health pursuant to section 453A.2, subsection 5A, in addition to the other penalties fixed for such violations in this section, shall assess a penalty upon the same hearing and notice as prescribed in subsection 1 as follows:

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

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

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

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

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

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

NEW SUBSECTION. 2A. If an employee of a retailer violates section 453A.2, subsection 1, the retailer shall not be assessed a penalty under subsection 2, and the violation shall be deemed not to be a violation of section 453A.2, subsection 1, for the purpose of determining the number of violations for which a penalty may be assessed pursuant to subsection 2, if the employee holds a valid certificate of completion of the tobacco compliance employee training program pursuant to section 453A.2A at the time of the violation. A retailer may assert only once in a four-year period the bar under either this subsection or subsection 2B against assessment of a penalty pursuant to subsection 2, for a violation of section

453A.2, that takes place at the same place of business location.

NEW SUBSECTION. 2B. If an employee of a retailer violates section 453A.2, subsection 1, the retailer shall not be assessed a penalty under subsection 2, and the violation shall be deemed not to be a violation of section 453A.2, subsection 1, for the purpose of determining the number of violations for which a penalty may be assessed pursuant to subsection 2, if the retailer provides written documentation that the employee of the retailer has completed an in-house tobacco compliance employee training program or a tobacco compliance employee training program which is substantially similar to the I Pledge program which is approximately one hour in length as developed by the alcoholic beverages division of the department of commerce. A retailer may assert only once in a four-year period the bar under this subsection against assessment of a penalty pursuant to subsection 2, for a violation of section 453A.2, that takes place at the same place of business location.

Sec. 5. APPLICABILITY PROVISIONS.

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

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

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

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

MARY E. KRAMER
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 401, Eightieth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2003

THOMAS J. VILSACK
Governor