

House File 2109 - Introduced

HOUSE FILE 2109
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 566)

A BILL FOR

1 An Act relating to vapor products and alternative nicotine
2 products, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 453A.1, subsection 21, Code 2014, is
2 amended to read as follows:

3 21. "Retailer" shall mean and include every person in
4 this state who shall sell, distribute, or offer for sale for
5 consumption or possess for the purpose of sale for consumption,
6 cigarettes, alternative nicotine products, or vapor products
7 irrespective of quantity or amount or the number of sales.

8 Sec. 2. Section 453A.1, Code 2014, is amended by adding the
9 following new subsections:

10 NEW SUBSECTION. 01. "Alternative nicotine product" means
11 a product, not consisting of or containing tobacco, that
12 provides for the ingestion into the body of nicotine, whether
13 by chewing, absorbing, dissolving, inhaling, snorting, or
14 sniffing, or by any other means. "Alternative nicotine product"
15 does not include cigarettes, tobacco products, or vapor
16 products, or a product that is regulated as a drug or device by
17 the United States food and drug administration under chapter V
18 of the federal Food, Drug, and Cosmetic Act.

19 NEW SUBSECTION. 26A. "Vapor product" means a noncombustible
20 product containing nicotine that employs a mechanical heating
21 element, battery, or circuit, regardless of shape or size, that
22 can be used to heat a nicotine solution, and includes but is
23 not limited to a cartridge or other container of such nicotine
24 solution, an electronic cigarette, an electronic cigar, an
25 electronic cigarillo, or an electronic pipe. "Vapor product"
26 does not include a product regulated as a drug or device by the
27 United States food and drug administration under chapter V of
28 the federal Food, Drug, and Cosmetic Act.

29 Sec. 3. Section 453A.2, subsections 1, 2, 3, and 8, Code
30 2014, are amended to read as follows:

31 1. A person shall not sell, give, or otherwise supply any
32 tobacco, tobacco products, alternative nicotine products, vapor
33 products, or cigarettes to any person under eighteen years of
34 age.

35 2. A person under eighteen years of age shall not smoke,

1 use, possess, purchase, or attempt to purchase any tobacco,
2 tobacco products, alternative nicotine products, vapor
3 products, or cigarettes.

4 3. Possession of ~~cigarettes or tobacco~~, tobacco products,
5 alternative nicotine products, vapor products, or cigarettes by
6 an individual under eighteen years of age does not constitute a
7 violation under this section if the individual under eighteen
8 years of age possesses the ~~cigarettes or tobacco~~, tobacco
9 products, alternative nicotine products, vapor products, or
10 cigarettes as part of the individual's employment and the
11 individual is employed by a person who holds a valid permit
12 under this chapter or who lawfully offers for sale or sells
13 cigarettes or tobacco products.

14 8. a. A person shall not be guilty of a violation of
15 this section if conduct that would otherwise constitute a
16 violation is performed to assess compliance with ~~cigarette and~~
17 tobacco, tobacco products, alternative nicotine products, vapor
18 products, or cigarette laws if any of the following applies:

19 (1) The compliance effort is conducted by or under the
20 supervision of law enforcement officers.

21 (2) The compliance effort is conducted with the advance
22 knowledge of law enforcement officers and reasonable measures
23 are adopted by those conducting the effort to ensure that
24 use of ~~cigarettes or tobacco~~, tobacco products, alternative
25 nicotine products, vapor products, or cigarettes by individuals
26 under eighteen years of age does not result from participation
27 by any individual under eighteen years of age in the compliance
28 effort.

29 b. For the purposes of this subsection, "law enforcement
30 officer" means a peace officer as defined in section 801.4 and
31 includes persons designated under subsection 4 to enforce this
32 section.

33 Sec. 4. Section 453A.4, subsection 1, Code 2014, is amended
34 to read as follows:

35 1. If a person holding a permit under this chapter or an

1 employee of such a permittee has a reasonable belief based on
2 factual evidence that a driver's license as defined in section
3 321.1, subsection 20A, or nonoperator's identification card
4 issued pursuant to section 321.190 offered by a person who
5 wishes to purchase ~~cigarettes or tobacco~~, tobacco products,
6 alternative nicotine products, vapor products, or cigarettes
7 is altered or falsified or belongs to another person, the
8 permittee or employee may retain the driver's license or
9 nonoperator's identification card. Within twenty-four hours,
10 the card shall be delivered to the appropriate city or county
11 law enforcement agency of the jurisdiction in which the
12 permittee's premises are located, and the permittee shall file
13 a written report of the circumstances under which the card was
14 retained. The local law enforcement agency may investigate
15 whether a violation of section 321.216, 321.216A, or 321.216C
16 has occurred. If an investigation is not initiated or probable
17 cause is not established by the local law enforcement agency,
18 the driver's license or nonoperator's identification card shall
19 be delivered to the person to whom it was issued. The local law
20 enforcement agency may forward the card with the report to the
21 state department of transportation for investigation, in which
22 case, the state department of transportation may investigate
23 whether a violation of section 321.216, 321.216A, or 321.216C
24 has occurred. The state department of transportation shall
25 return the card to the person to whom it was issued if an
26 investigation is not initiated or probable cause is not
27 established.

28 Sec. 5. Section 453A.5, subsection 1, Code 2014, is amended
29 to read as follows:

30 1. The alcoholic beverages division of the department of
31 commerce shall develop a tobacco compliance employee training
32 program not to exceed two hours in length for employees and
33 prospective employees of retailers, as defined in sections
34 453A.1 and 453A.42, to inform the employees about state and
35 federal laws and regulations regarding the sale of ~~cigarettes~~

1 ~~and tobacco,~~ tobacco products, alternative nicotine products,
2 vapor products, and cigarettes to persons under eighteen
3 years of age and compliance with and the importance of laws
4 regarding the sale of ~~cigarettes and tobacco,~~ tobacco products,
5 alternative nicotine products, vapor products, and cigarettes
6 to persons under eighteen years of age.

7 Sec. 6. Section 453A.36, subsection 7, Code 2014, is amended
8 to read as follows:

9 7. a. It shall be unlawful for a person other than a holder
10 ~~of a~~ retailer as defined in section 453A.1 or 453A.42 who holds
11 a valid retail permit, as applicable, to sell tobacco, tobacco
12 products, alternative nicotine products, vapor products, or
13 cigarettes at retail.

14 b. ~~No~~ A state permit holder shall not sell or distribute
15 cigarettes at wholesale to any person in the state of Iowa
16 who does not hold a permit authorizing the retail sale
17 of cigarettes or who does not hold a state permit as a
18 manufacturer, distributing agent, wholesaler, or distributor.

19 Sec. 7. Section 453A.36A, subsection 1, Code 2014, is
20 amended to read as follows:

21 1. ~~Beginning January 1, 1999, except~~ Except as provided in
22 section 453A.36, subsection 6, a retailer shall not sell or
23 offer for sale ~~cigarettes or tobacco,~~ tobacco products, in a
24 ~~quantity of less than a carton,~~ alternative nicotine products,
25 vapor products, or cigarettes through the use of a self-service
26 display.

27 Sec. 8. Section 453A.39, Code 2014, is amended to read as
28 follows:

29 **453A.39 Tobacco ~~product,~~ tobacco products, alternative**
30 **nicotine products, vapor products, and cigarette samples —**
31 **restrictions — administration.**

32 1. A manufacturer, distributor, wholesaler, retailer, or
33 distributing agent, or agent thereof, shall not give away
34 cigarettes or tobacco products at any time in connection with
35 the manufacturer's, distributor's, wholesaler's, retailer's, or

1 distributing agent's business or for promotion of the business
2 or product, except as provided in subsection 2.

3 2. a. All cigarette samples shall be shipped only to a
4 distributor that has a permit to stamp cigarettes or little
5 cigars with Iowa tax. All cigarette samples must have a
6 cigarette stamp. The manufacturer shipping samples under this
7 section shall send an affidavit to the director stating the
8 shipment information, including the date shipped, quantity, and
9 to whom the samples were shipped. The distributor receiving
10 the shipment shall send an affidavit to the director stating
11 the shipment information, including the date shipped, quantity,
12 and from whom the samples were shipped. These affidavits shall
13 be duly notarized and submitted to the director at the time of
14 shipment and receipt of the samples. The distributor shall
15 pay the tax on samples by separate remittance along with the
16 affidavit.

17 b. A manufacturer, distributor, wholesaler, retailer, or
18 distributing agent or agent thereof shall not give away any
19 ~~cigarettes or tobacco~~, tobacco products, alternative nicotine
20 products, vapor products, or cigarettes to any person under
21 eighteen years of age, or within five hundred feet of any
22 playground, school, high school, or other facility when such
23 facility is being used primarily by persons under age eighteen
24 for recreational, educational, or other purposes.

25 c. Proof of age shall be required if a reasonable person
26 could conclude on the basis of outward appearance that a
27 prospective recipient of a sample may be under eighteen years
28 of age.

29 Sec. 9. Section 453A.42, subsection 10, Code 2014, is
30 amended to read as follows:

31 10. "Retailer" means any person engaged in the business
32 of selling tobacco, tobacco products, alternative nicotine
33 products, or vapor products to ultimate consumers.

34 Sec. 10. Section 805.8C, subsection 3, Code 2014, is amended
35 to read as follows:

1 3. ~~Smoking violations~~ Violations related to smoking, tobacco,
2 tobacco products, alternative nicotine products, vapor products,
3 and cigarettes.

4 a. For violations described in section 142D.9, subsection 1,
5 the scheduled fine is fifty dollars, and is a civil penalty,
6 and the criminal penalty surcharge under section 911.1 shall
7 not be added to the penalty, and the court costs pursuant
8 to section 805.9, subsection 6, shall not be imposed. If
9 the civil penalty assessed for a violation described in
10 section 142D.9, subsection 1, is not paid in a timely manner,
11 a citation shall be issued for the violation in the manner
12 provided in section 804.1. However, a person under age
13 eighteen shall not be detained in a secure facility for failure
14 to pay the civil penalty. The complainant shall not be charged
15 a filing fee.

16 b. For violations of section 453A.2, subsection 1, by an
17 employee of a retailer, the scheduled fine is as follows:

18 (1) If the violation is a first offense, the scheduled fine
19 is one hundred dollars.

20 (2) If the violation is a second offense, the scheduled fine
21 is two hundred fifty dollars.

22 (3) If the violation is a third or subsequent offense, the
23 scheduled fine is five hundred dollars.

24 c. For violations of section 453A.2, subsection 2, the
25 scheduled fine is as follows and is a civil penalty, and the
26 criminal penalty surcharge under section 911.1 shall not be
27 added to the penalty, and the court costs pursuant to section
28 805.9, subsection 6, shall not be imposed:

29 (1) If the violation is a first offense, the scheduled fine
30 is fifty dollars.

31 (2) If the violation is a second offense, the scheduled fine
32 is one hundred dollars.

33 (3) If the violation is a third or subsequent offense, the
34 scheduled fine is two hundred fifty dollars.

35 Sec. 11. CODE EDITOR DIRECTIVE. The Code editor shall

1 modify the title of chapter 453A to read "Cigarette and Tobacco
2 Taxes and Regulation of Alternative Nicotine Products and Vapor
3 Products".

4 EXPLANATION

5 The inclusion of this explanation does not constitute agreement with
6 the explanation's substance by the members of the general assembly.

7 This bill relates to the regulation of alternative nicotine
8 products and vapor products. The bill defines "alternative
9 nicotine products" and "vapor products" separately from
10 cigarettes and tobacco products under Code chapter 453A
11 (cigarette and tobacco taxes).

12 The bill includes alternative nicotine products and
13 vapor products under the prohibitions relating to persons
14 under legal age. Under the bill, a person shall not sell,
15 give, or otherwise supply any tobacco, tobacco products,
16 alternative nicotine products, vapor products, or cigarettes
17 to any person under 18 years of age; and a person under 18
18 years of age is prohibited from smoking, using, possessing,
19 purchasing, or attempting to purchase any tobacco, tobacco
20 products, alternative nicotine products, vapor products,
21 or cigarettes. However, possession of tobacco, tobacco
22 products, alternative nicotine products, vapor products, or
23 cigarettes by an individual under 18 years of age does not
24 constitute a violation if the individual under 18 possesses
25 the tobacco, tobacco products, alternative nicotine products,
26 vapor products, or cigarettes as part of the individual's
27 employment and the individual is employed by a person who
28 holds a valid permit or who lawfully offers for sale or sells
29 cigarettes or tobacco products. Additionally, a person is
30 not guilty of a violation if conduct that would otherwise
31 constitute a violation is performed to assess compliance with
32 tobacco, tobacco products, alternative nicotine products, vapor
33 products, or cigarette laws under specified conditions.

34 The bill amends provisions relating to the suspected use of
35 a falsified driver's license or nonoperator's identification

1 card to purchase cigarettes and tobacco products, to also apply
2 to the purchase of tobacco, alternative nicotine products and
3 vapor products; and amends provisions relating to the tobacco
4 compliance employee training program developed by the alcoholic
5 beverages division of the department of commerce to address,
6 in addition to cigarettes and tobacco products, tobacco,
7 alternative nicotine products, and vapor products.

8 The bill provides that it is unlawful for a person other
9 than a retailer who holds a valid retail permit to sell
10 tobacco, tobacco products, alternative nicotine products,
11 vapor products, or cigarettes at retail. The bill redefines
12 "retailer" to include those who sell, in addition to cigarettes
13 or tobacco products, tobacco, alternative nicotine products,
14 or vapor products. The bill makes applicable to tobacco,
15 alternative nicotine products, and vapor products, in addition
16 to tobacco products and cigarettes, the prohibition against a
17 retailer selling or offering for sale these products through
18 the use of a self-service display. The bill includes tobacco,
19 alternative nicotine products, and vapor products in the
20 prohibition against giving away samples of these products to
21 any person under 18 years of age, or within 500 hundred feet
22 of any playground, school, high school, or other facility when
23 such facility is being used primarily by persons under age 18
24 for recreational, educational, or other purposes.

25 The bill amends the headnote of the scheduled violations
26 provision relating to smoking to include violations relating
27 to smoking, tobacco, tobacco products, alternative nicotine
28 products, vapor products, and cigarettes.

29 The bill directs the Code editor to modify the title
30 of Code chapter 453A to read "Cigarette and Tobacco Taxes
31 and Regulation of Alternative Nicotine Products and Vapor
32 Products".