

House File 306 - Introduced

HOUSE FILE 306

BY MASCHER

A BILL FOR

1 An Act relating to tobacco products, including taxation of such
2 products.

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

1 Section 1. Section 453A.1, subsections 1, 22, 27, and 28,
2 Code 2015, are amended to read as follows:

3 1. "*Alternative nicotine product*" means a product, not
4 consisting of or containing tobacco, that provides for the
5 ingestion into the body of nicotine, whether by chewing,
6 absorbing, dissolving, inhaling, snorting, or sniffing, or
7 by any other means. "*Alternative nicotine product*" does not
8 include cigarettes, ~~tobacco products~~, or vapor products, or a
9 product that is ~~regulated~~ approved as a drug or device by the
10 United States food and drug administration under chapter V of
11 the federal Food, Drug, and Cosmetic Act.

12 22. "*Retailer*" shall mean and include every person in
13 this state who shall sell, distribute, or offer for sale for
14 consumption or possess for the purpose of sale for consumption,
15 cigarettes, ~~alternative nicotine products~~, or ~~vapor products~~
16 irrespective of quantity or amount or the number of sales.

17 27. "*Tobacco products*" means any product, or component,
18 part, or accessory of such product, containing, made in
19 whole or in part from, ordinarily derived from, or designed
20 to deliver tobacco, a tobacco substitute, or nicotine, and
21 intended for human consumption whether by chewing, absorbing,
22 dissolving, inhaling, snorting, sniffing, ingesting, or
23 vaporizing or by any other means. "*Tobacco products*" includes
24 but is not limited to alternative nicotine products and vapor
25 products; cigars; little cigars as defined in section 453A.42,
26 subsection 5; cheroots; stogies; periques; granulated, ~~plug~~
27 cut, crimp cut, ready rubbed, and other smoking tobacco;
28 snuff, ~~snuff flour~~; cavendish; plug and twist tobacco;
29 fine-cut and other chewing tobaccos; shorts; ~~or~~ refuse scraps,
30 clippings, cuttings, and sweepings of tobacco, ~~and other kinds~~
31 and forms of tobacco, ~~prepared in such manner as to be suitable~~
32 for chewing or smoking in a pipe or otherwise, or both for
33 chewing and smoking; but does not mean include cigarettes.

34 28. "*Vapor product*" means any noncombustible product,
35 which may or may not contain nicotine, that employs a heating

1 element, power source, electronic circuit, or other electronic,
2 chemical, or mechanical means, regardless of shape or size,
3 that can be used to produce vapor from a solution or other
4 substance. "Vapor product" includes an electronic cigarette,
5 electronic cigar, electronic cigarillo, electronic pipe, or
6 similar product or device, and any cartridge or other container
7 of a solution or other substance, which may or may not contain
8 nicotine, that is intended to be used with or in an electronic
9 cigarette, electronic cigar, electronic cigarillo, electronic
10 pipe, or similar product or device. "Vapor product" does not
11 include a product ~~regulated~~ approved as a drug or device by the
12 United States food and drug administration under chapter V of
13 the federal Food, Drug, and Cosmetic Act.

14 Sec. 2. Section 453A.2, subsections 1, 2, 3, and 8, Code
15 2015, are amended to read as follows:

16 1. A person shall not sell, give, or otherwise supply any
17 tobacco, tobacco products, ~~alternative nicotine products, vapor~~
18 ~~products,~~ or cigarettes to any person under eighteen years of
19 age.

20 2. A person under eighteen years of age shall not smoke,
21 use, possess, purchase, or attempt to purchase any tobacco,
22 tobacco products, ~~alternative nicotine products, vapor~~
23 ~~products,~~ or cigarettes.

24 3. Possession of tobacco, tobacco products, ~~alternative~~
25 ~~nicotine products, vapor products,~~ or cigarettes by an
26 individual under eighteen years of age does not constitute
27 a violation under this section if the individual under
28 eighteen years of age possesses the tobacco, tobacco products,
29 ~~alternative nicotine products, vapor products,~~ or cigarettes
30 as part of the individual's employment and the individual
31 is employed by a person who holds a valid permit under this
32 chapter or who lawfully offers for sale or sells cigarettes or
33 tobacco products.

34 8. a. A person shall not be guilty of a violation of this
35 section if conduct that would otherwise constitute a violation

1 is performed to assess compliance with tobacco, tobacco
2 products, ~~alternative nicotine products, vapor products,~~ or
3 cigarette laws if any of the following applies:

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

6 (2) The compliance effort is conducted with the advance
7 knowledge of law enforcement officers and reasonable measures
8 are adopted by those conducting the effort to ensure that
9 use of tobacco, tobacco products, ~~alternative nicotine~~
10 ~~products, vapor products,~~ or cigarettes by individuals under
11 eighteen years of age does not result from participation by
12 any individual under eighteen years of age in the compliance
13 effort.

14 *b.* For the purposes of this subsection, "*law enforcement*
15 *officer*" means a peace officer as defined in section 801.4 and
16 includes persons designated under subsection 4 to enforce this
17 section.

18 Sec. 3. Section 453A.4, subsection 1, Code 2015, is amended
19 to read as follows:

20 1. If a person holding a permit under this chapter or an
21 employee of such a permittee has a reasonable belief based on
22 factual evidence that a driver's license as defined in section
23 321.1, subsection 20A, or nonoperator's identification card
24 issued pursuant to section 321.190 offered by a person who
25 wishes to purchase tobacco, tobacco products, ~~alternative~~
26 ~~nicotine products, vapor products,~~ or cigarettes is altered
27 or falsified or belongs to another person, the permittee or
28 employee may retain the driver's license or nonoperator's
29 identification card. Within twenty-four hours, the card shall
30 be delivered to the appropriate city or county law enforcement
31 agency of the jurisdiction in which the permittee's premises
32 are located, and the permittee shall file a written report of
33 the circumstances under which the card was retained. The local
34 law enforcement agency may investigate whether a violation
35 of section 321.216, 321.216A, or 321.216C has occurred. If

1 an investigation is not initiated or probable cause is not
2 established by the local law enforcement agency, the driver's
3 license or nonoperator's identification card shall be delivered
4 to the person to whom it was issued. The local law enforcement
5 agency may forward the card with the report to the state
6 department of transportation for investigation, in which
7 case, the state department of transportation may investigate
8 whether a violation of section 321.216, 321.216A, or 321.216C
9 has occurred. The state department of transportation shall
10 return the card to the person to whom it was issued if an
11 investigation is not initiated or probable cause is not
12 established.

13 Sec. 4. Section 453A.5, subsection 1, Code 2015, is amended
14 to read as follows:

15 1. The alcoholic beverages division of the department of
16 commerce shall develop a tobacco compliance employee training
17 program not to exceed two hours in length for employees and
18 prospective employees of retailers, as defined in sections
19 453A.1 and 453A.42, to inform the employees about state and
20 federal laws and regulations regarding the sale of tobacco,
21 tobacco products, ~~alternative nicotine products, vapor~~
22 ~~products,~~ and cigarettes to persons under eighteen years of
23 age and compliance with and the importance of laws regarding
24 the sale of tobacco, tobacco products, ~~alternative nicotine~~
25 ~~products, vapor products,~~ and cigarettes to persons under
26 eighteen years of age.

27 Sec. 5. Section 453A.13, subsections 1, 6, 9, and 10, Code
28 2015, are amended to read as follows:

29 1. *Permits required.* Every distributor, wholesaler,
30 cigarette vendor, and retailer, now engaged or who desires to
31 become engaged in the sale or use of cigarettes, upon which a
32 tax is required to be paid, ~~and every retailer now engaged or~~
33 ~~who desires to become engaged in selling, offering for sale, or~~
34 ~~distributing alternative nicotine products or vapor products~~
35 shall obtain a state or retail permit as a distributor,

1 wholesaler, cigarette vendor, or retailer, as the case may be.

2 6. *No sales without permit.* A distributor, wholesaler,
3 cigarette vendor, or retailer shall not sell any cigarettes,
4 ~~alternative nicotine products, or vapor products~~ until such
5 application has been filed and the fee prescribed paid for a
6 permit and until such permit is obtained and only while such
7 permit is unrevoked and unexpired.

8 9. *Permit — form and contents.* Each permit issued shall
9 describe clearly the place of business for which it is issued,
10 shall be nonassignable, consecutively numbered, designating the
11 kind of permit, and shall authorize the sale of cigarettes,
12 ~~alternative nicotine products, or vapor products~~ in this
13 state subject to the limitations and restrictions herein
14 contained. The retail permits shall be upon forms furnished by
15 the department or on forms made available or approved by the
16 department.

17 10. *Permit displayed.* The permit shall, at all times,
18 be publicly displayed by the distributor, wholesaler, or
19 retailer at the place of business so as to be easily seen by
20 the public and the persons authorized to inspect the place
21 of business. The proprietor or keeper of any building or
22 place where cigarettes, ~~alternative nicotine products, vapor~~
23 ~~products,~~ or tobacco products are kept for sale, or with intent
24 to sell, shall upon request of any agent of the department or
25 any peace officer exhibit the permit. A refusal or failure to
26 exhibit the permit is prima facie evidence that the cigarettes,
27 ~~alternative nicotine products,~~ vapor products, tobacco, or
28 tobacco products are kept for sale or with intent to sell in
29 violation of this division.

30 Sec. 6. Section 453A.36, subsection 6, Code 2015, is amended
31 to read as follows:

32 6. Any sales of tobacco, tobacco products, ~~alternative~~
33 ~~nicotine products, vapor products,~~ or cigarettes made through a
34 cigarette vending machine are subject to rules and penalties
35 relative to retail sales of tobacco, tobacco products,

1 ~~alternative nicotine products, vapor products,~~ and cigarettes
2 provided for in this chapter. Cigarettes shall not be sold
3 through any cigarette vending machine unless the cigarettes
4 have been properly stamped or metered as provided by this
5 division, and in case of violation of this provision, the
6 permit of the dealer authorizing retail sales of cigarettes
7 shall be revoked. Payment of the permit fee as provided
8 in section 453A.13 authorizes a cigarette vendor to sell
9 tobacco, tobacco products, ~~alternative nicotine products, vapor~~
10 ~~products,~~ and cigarettes through vending machines. However,
11 tobacco, tobacco products, ~~alternative nicotine products, vapor~~
12 ~~products,~~ and cigarettes shall not be sold through a vending
13 machine unless the vending machine is located in a place where
14 the retailer ensures that no person younger than eighteen
15 years of age is present or permitted to enter at any time.
16 Tobacco, tobacco products, ~~alternative nicotine products,~~
17 ~~vapor products,~~ and cigarettes shall not be sold through
18 any cigarette vending machine if such products are placed
19 together with any nontobacco product, other than matches, in
20 the cigarette vending machine. This section does not require
21 a retail permit holder to buy a cigarette vendor's permit if
22 the retail permit holder is in fact the owner of the cigarette
23 vending machines and the machines are operated in the location
24 described in the retail permit.

25 Sec. 7. Section 453A.36, subsection 7, paragraph a, Code
26 2015, is amended to read as follows:

27 a. It shall be unlawful for a person other than a retailer
28 as defined in section 453A.1 or 453A.42 who holds a valid
29 retail permit, as applicable, to sell tobacco, tobacco
30 products, ~~alternative nicotine products, vapor products,~~ or
31 cigarettes at retail.

32 Sec. 8. Section 453A.36A, subsection 1, Code 2015, is
33 amended to read as follows:

34 1. Except as provided in section 453A.36, subsection 6,
35 a retailer shall not sell or offer for sale tobacco, tobacco

1 products, ~~alternative nicotine products, vapor products,~~ or
2 cigarettes through the use of a self-service display.

3 Sec. 9. Section 453A.39, Code 2015, is amended to read as
4 follows:

5 **453A.39 Tobacco, tobacco products, ~~alternative nicotine~~**
6 **~~products, vapor products,~~ and cigarette samples — restrictions**
7 **— administration.**

8 1. A manufacturer, distributor, wholesaler, retailer, or
9 distributing agent, or agent thereof, shall not give away
10 cigarettes or tobacco products at any time in connection with
11 the manufacturer's, distributor's, wholesaler's, retailer's, or
12 distributing agent's business or for promotion of the business
13 or product, except as provided in subsection 2.

14 2. *a.* All cigarette samples shall be shipped only to a
15 distributor that has a permit to stamp cigarettes or little
16 cigars with Iowa tax. All cigarette samples must have a
17 cigarette stamp. The manufacturer shipping samples under this
18 section shall send an affidavit to the director stating the
19 shipment information, including the date shipped, quantity, and
20 to whom the samples were shipped. The distributor receiving
21 the shipment shall send an affidavit to the director stating
22 the shipment information, including the date shipped, quantity,
23 and from whom the samples were shipped. These affidavits shall
24 be duly notarized and submitted to the director at the time of
25 shipment and receipt of the samples. The distributor shall
26 pay the tax on samples by separate remittance along with the
27 affidavit.

28 *b.* A manufacturer, distributor, wholesaler, retailer, or
29 distributing agent or agent thereof shall not give away any
30 tobacco, tobacco products, ~~alternative nicotine products, vapor~~
31 ~~products,~~ or cigarettes to any person under eighteen years of
32 age, or within five hundred feet of any playground, school,
33 high school, or other facility when such facility is being
34 used primarily by persons under age eighteen for recreational,
35 educational, or other purposes.

1 c. Proof of age shall be required if a reasonable person
2 could conclude on the basis of outward appearance that a
3 prospective recipient of a sample may be under eighteen years
4 of age.

5 Sec. 10. Section 453A.42, subsections 10 and 15, Code 2015,
6 are amended to read as follows:

7 10. "Retailer" means any person engaged in the business
8 of selling tobacco, or tobacco products, ~~alternative nicotine~~
9 ~~products, or vapor products~~ to ultimate consumers.

10 15. "Tobacco products" means any product, or component,
11 part, or accessory of such product, containing, made in
12 whole or in part from, ordinarily derived from, or designed
13 to deliver tobacco, a tobacco substitute, or nicotine, and
14 intended for human consumption whether by chewing, absorbing,
15 dissolving, inhaling, snorting, sniffing, ingesting, or
16 vaporizing or by any other means. "Tobacco products" includes
17 but is not limited to alternative nicotine products and
18 vapor products; cigars; little cigars as defined herein;
19 cheroots; stogies; periques; granulated, plug cut, crimp
20 cut, ready rubbed, and other smoking tobacco; snuff; snuff
21 flour; cavendish; plug and twist tobacco; fine-cut and other
22 chewing tobaccos; shorts; refuse scraps, clippings, cuttings,
23 and sweepings of tobacco; and other kinds and forms of
24 tobacco, ~~prepared in such manner as to be suitable for chewing~~
25 ~~or smoking in a pipe or otherwise, or both for chewing and~~
26 ~~smoking~~; but shall not include cigarettes as defined in section
27 453A.1, subsection 4.

28 Sec. 11. Section 453A.47A, subsections 1, 2, 4, and 5, Code
29 2015, are amended to read as follows:

30 1. *Permits required.* A person shall not engage in the
31 business of a retailer of tobacco, or tobacco products,
32 ~~alternative nicotine products, or vapor products~~ at any
33 place of business without first having received a permit as a
34 retailer.

35 2. *No sales without permit.* A retailer shall not sell any

1 tobacco, or tobacco products, ~~alternative nicotine products, or~~
2 ~~vapor products~~ until an application has been filed and the fee
3 prescribed paid for a permit and until such permit is obtained
4 and only while such permit is not suspended, unrevoked, or
5 unexpired.

6 4. *Retailer — multiple permits not required — effect of*
7 *suspension.* A retailer, as defined in section 453A.1, who holds
8 a permit under division I of this chapter is not required to
9 also obtain a retail permit under this division. However,
10 if a retailer, as defined in section 453A.1, only holds a
11 permit under division I of this chapter and that permit is
12 suspended, revoked, or expired, the retailer shall not sell any
13 tobacco, or tobacco products, ~~alternative nicotine products, or~~
14 ~~vapor products~~ during the time which the permit is suspended,
15 revoked, or expired.

16 5. *Separate permit.* A separate retail permit shall be
17 required of a distributor or subjobber if the distributor or
18 subjobber sells tobacco, or tobacco products, ~~alternative~~
19 ~~nicotine products, or vapor products~~ at retail.

20 Sec. 12. Section 453A.47A, subsection 10, paragraph b, Code
21 2015, is amended to read as follows:

22 b. Every retailer shall, when requested by the department,
23 make additional reports as the department deems necessary and
24 proper and shall at the request of the department furnish full
25 and complete information pertaining to any transaction of the
26 retailer involving the purchase or sale or use of tobacco,
27 or tobacco products, ~~alternative nicotine products, or vapor~~
28 ~~products~~.

29 Sec. 13. CODE EDITOR DIRECTIVE. The Code editor shall do
30 all of the following:

31 1. Modify the title of chapter 453A to read "Cigarette and
32 Tobacco Taxes and Regulation".

33 2. Modify the subheading of division I of chapter 453A to
34 read "Cigarettes".

35 3. Modify the subheading of division II of chapter 453A to

1 read "Cigars, Tobacco, and Tobacco Products".

2 4. Modify the heading of section 805.8C, subsection 3, to
3 read "Violations related to smoking, tobacco products, and
4 cigarettes".

5

EXPLANATION

6

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

7

8 This bill redefines alternative nicotine and vapor products
9 as tobacco products, thereby making applicable to alternative
10 nicotine products and vapor products all provisions applicable
11 to tobacco products including taxation of such products. The
12 bill makes conforming changes throughout the Code to redefine
13 these products.