

House File 2134 - Introduced

HOUSE FILE 2134

BY WINCKLER, WOLFE, and
MOMMSEN

A BILL FOR

1 An Act relating to tobacco, tobacco products, alternative
2 nicotine products, vapor products, and cigarettes, including
3 the regulation and taxation of such products, providing
4 penalties, and including effective date provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

LEGAL AGE RELATING TO TOBACCO, TOBACCO PRODUCTS, ALTERNATIVE
NICOTINE PRODUCTS, CIGARETTES, AND VAPING PRODUCTS

Section 1. Section 321.216C, Code 2020, is amended to read
as follows:

**321.216C Use of driver's license or nonoperator's
identification card by underage person to obtain tobacco, tobacco
products, alternative nicotine products, vapor products, or
cigarettes.**

A person who is under the legal age ~~of eighteen~~ as defined in
section 453A.1, who alters or displays or has in the person's
possession a fictitious or fraudulently altered driver's
license or nonoperator's identification card and who uses
the license or card to violate or attempt to violate section
453A.2, subsection 2, commits a simple misdemeanor punishable
as a scheduled violation under section 805.8A, subsection
4. The court shall forward a copy of the conviction to the
department.

Sec. 2. Section 453A.1, Code 2020, is amended by adding the
following new subsection:

NEW SUBSECTION. 16A. "*Legal age*" means twenty-one years of
age or older.

Sec. 3. Section 453A.2, subsections 1, 2, and 3, Code 2020,
are amended to read as follows:

1. A person shall not sell, give, or otherwise supply any
tobacco, tobacco products, alternative nicotine products, vapor
products, or cigarettes to any person ~~under eighteen years~~ who
is not of legal age.

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

3. Possession of tobacco, tobacco products, alternative
nicotine products, vapor products, or cigarettes by an
individual ~~under eighteen years of~~ legal age does not

1 constitute a violation under [this section](#) if the individual
2 under ~~eighteen years of~~ legal age possesses the tobacco,
3 tobacco products, alternative nicotine products, vapor
4 products, or cigarettes as part of the individual's employment
5 and the individual is employed by a person who holds a valid
6 permit under [this chapter](#) or who lawfully offers for sale or
7 sells cigarettes or tobacco products.

8 Sec. 4. Section 453A.2, subsection 8, paragraph a,
9 subparagraph (2), Code 2020, is amended to read as follows:

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

18 Sec. 5. Section 453A.5, subsection 1, Code 2020, is amended
19 to read as follows:

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

32 Sec. 6. Section 453A.36, subsection 6, Code 2020, is amended
33 to read as follows:

34 6. Any sales of tobacco, tobacco products, alternative
35 nicotine products, vapor products, or cigarettes made through a

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

27 Sec. 7. Section 453A.39, subsection 2, paragraphs b and c,
28 Code 2020, are amended to read as follows:

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

1 recreational, educational, or other purposes.

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

6 Sec. 8. Section 453A.47B, Code 2020, is amended to read as
7 follows:

8 **453A.47B Requirements for mailing or shipping — alternative**
9 **nicotine products or vapor products.**

10 A retailer shall not mail, ship, or otherwise cause to be
11 delivered any alternative nicotine product or vapor product in
12 connection with a delivery sale unless the retailer meets all
13 of the following apply conditions:

14 1. Prior to sale to the purchaser, the retailer verifies
15 that the purchaser is at least ~~eighteen years~~ of legal age
16 through or by one of the following:

17 *a.* A commercially available database, or aggregate of
18 databases, that is regularly used by government and businesses
19 for the purpose of age and identity verification.

20 *b.* Obtaining a copy of a valid government-issued document
21 that provides the name, address, and date of birth of the
22 purchaser.

23 2. The retailer uses a method of mailing, shipping, or
24 delivery that requires the signature of a person who is at
25 least ~~eighteen years~~ of legal age before the shipping package
26 is released to the purchaser.

27 Sec. 9. EFFECTIVE DATE. This division of this Act, being
28 deemed of immediate importance, takes effect upon enactment.

29 DIVISION II

30 LIMITATIONS ON SALE AND DISTRIBUTION OF VAPOR PRODUCTS WITH
31 CHARACTERIZING FLAVOR

32 Sec. 10. NEW SECTION. **453A.47E Prohibition on sale or**
33 **distribution of vapor products with characterizing flavor —**
34 **penalties.**

35 1. A retailer shall not offer for sale or sell, give,

1 or otherwise supply in this state any vapor product with a
2 characterizing flavor. There shall be a rebuttable presumption
3 that a vapor product has a characterizing flavor if any
4 statement or claim made by the manufacturer or agent or
5 employee of the manufacturer, directed to consumers or to the
6 public, states or claims that the vapor product has or produces
7 a characterizing flavor. Such statements or claims include
8 but are not limited to those made through social media, the
9 product's labeling or packaging, or other advertising used to
10 explicitly or implicitly communicate that the vapor product has
11 a characterizing flavor.

12 2. For the purposes of this section:

13 a. "*Characterizing flavor*" means a distinguishable taste
14 or aroma or both, other than the taste or aroma of tobacco,
15 imparted by a vapor product or any byproduct produced by the
16 vapor product. Characterizing flavors include but are not
17 limited to tastes or aromas relating to any fruit, chocolate,
18 vanilla, honey, candy, cocoa, dessert, alcoholic beverage,
19 menthol, mint, wintergreen, herb, or spice.

20 b. "*Distinguishable*" means perceivable by either the sense
21 of smell or taste.

22 3. a. A retailer who violates this section is subject to
23 permit suspension or revocation.

24 b. A retailer who violates this section is guilty of a
25 fraudulent practice.

26 DIVISION III

27 TAX ON VAPOR PRODUCTS

28 Sec. 11. Section 331.303, subsection 3, Code 2020, is
29 amended to read as follows:

30 3. Act upon applications for cigarette, tobacco product,
31 and vapor product tax permits in accordance with [chapter 453A](#).

32 Sec. 12. Section 331.653, subsection 11, Code 2020, is
33 amended to read as follows:

34 11. Carry out duties relating to the seizure and forfeiture
35 of cigarettes, tobacco products, and vapor products, vehicles,

1 and other property used in violation of cigarette, tobacco
2 product, or vapor product tax laws as provided in section
3 453A.32.

4 Sec. 13. Section 331.756, subsection 19, Code 2020, is
5 amended to read as follows:

6 19. Assist, at the request of the director of revenue, in
7 the enforcement of ~~cigar and~~ cigarette, tobacco product, and
8 vapor product tax laws as provided in [sections 453A.32](#) and
9 453A.49.

10 Sec. 14. Section 453A.1, subsection 21, Code 2020, is
11 amended to read as follows:

12 21. "*Place of business*" is construed to mean and include any
13 place where cigarettes, alternative nicotine products, or vapor
14 products are sold or where cigarettes, alternative nicotine
15 products, or vapor products are stored within or without the
16 state of Iowa by the holder of an Iowa permit or kept for the
17 purpose of sale or consumption; or if sold from any vehicle
18 or train, the vehicle or train on which or from which such
19 cigarettes are sold shall constitute a place of business;
20 or for a business within or without the state that conducts
21 delivery sales, any place where alternative nicotine products
22 or vapor products are sold or where alternative nicotine
23 products or vapor products are kept for the purpose of sale.

24 Sec. 15. Section 453A.15, subsections 1, 2, and 4, Code
25 2020, are amended to read as follows:

26 1. The director may prescribe the forms necessary for the
27 efficient administration of [this subchapter](#) and may require
28 uniform books and records to be used and kept by each permit
29 holder or other person as deemed necessary. The director may
30 also require each permit holder or other person to keep and
31 retain in the director's possession evidence on prescribed
32 forms of all transactions involving the purchase and sale of
33 cigarettes, alternative nicotine products, or vapor products,
34 or the purchase and use of stamps. The evidence shall be kept
35 for a period of three years from the date of each transaction,

1 for the inspection at all times by the department.

2 2. Where a state permit holder sells cigarettes,
3 alternative nicotine products, or vapor products at retail, the
4 holder shall be required to maintain detailed records for sales
5 of cigarettes, alternative nicotine products, or vapor products
6 to be sold at retail and the cigarette, alternative nicotine
7 product, or vapor product sales records shall be kept separate
8 and apart.

9 4. Every permit holder or other person shall, when requested
10 by the department, make additional reports as the department
11 deems necessary and proper and shall at the request of the
12 department furnish full and complete information pertaining to
13 any transaction of the permit holder or other person involving
14 the purchase or sale or use of cigarettes, alternative nicotine
15 products, vapor products, or purchase of cigarette stamps.
16 The director shall specifically prescribe the forms necessary
17 and require each retailer to provide on the forms prescribed,
18 full and complete information pertaining to any cigarettes,
19 alternative nicotine products, or vapor products offered for
20 sale or sold by the retailer, including the type and brand of
21 the product.

22 Sec. 16. Section 453A.24, Code 2020, is amended to read as
23 follows:

24 **453A.24 Carrier to permit access to records.**

25 1. Every common carrier or person in this state having
26 custody of books or records showing the transportation of
27 cigarettes, alternative nicotine products, or vapor products
28 both interstate and intrastate shall give and allow the
29 department free access to those books and records.

30 2. The director may require by rule that common carriers
31 or the appropriate persons provide monthly reports to the
32 department detailing all information the department deems
33 necessary on shipments into and out of Iowa of cigarettes,
34 and tobacco products, alternative nicotine products, or vapor
35 products, as set forth in this [subchapter I](#) and [subchapter II](#)

1 of this chapter. The director may require by rule that the
2 reports be filed by electronic transmission.

3 Sec. 17. Section 453A.32, subsection 6, Code 2020, is
4 amended to read as follows:

5 6. The provisions of this section applying to cigarettes
6 shall also apply to tobacco products and vapor products taxed
7 under subchapter II of this chapter.

8 Sec. 18. Section 453A.33, Code 2020, is amended to read as
9 follows:

10 **453A.33 Seizure not to affect criminal prosecution.**

11 The seizure, forfeiture, and sale of cigarettes, tobacco
12 products, vapor products, and other property under the terms
13 and conditions ~~hereinabove set out~~ pursuant to section 453A.32,
14 shall not constitute any defense to the person owning or having
15 control or possession of the property from criminal prosecution
16 for any act or omission made or offense committed under this
17 chapter or from liability to pay penalties provided by this
18 chapter.

19 Sec. 19. Section 453A.35, subsection 1, paragraph b, Code
20 2020, is amended to read as follows:

21 *b.* The revenues generated from the tax on cigarettes
22 pursuant to section 453A.6, subsection 1, and from the tax on
23 tobacco products as specified in section 453A.43, subsections
24 1, 2, 3, and 4, and from the tax on vapor products as specified
25 in section 453A.47D shall be credited to the health care trust
26 fund created in section 453A.35A.

27 Sec. 20. Section 453A.35A, subsection 1, Code 2020, is
28 amended to read as follows:

29 1. A health care trust fund is created in the office of
30 the treasurer of state. The fund consists of the revenues
31 generated from the tax on cigarettes pursuant to section
32 453A.6, subsection 1, and from the tax on tobacco products
33 as specified in section 453A.43, subsections 1, 2, 3, and 4,
34 and from the tax on vapor products as specified in section
35 453A.47D, that are credited to the health care trust fund,

1 annually, pursuant to [section 453A.35](#). Moneys in the fund
 2 shall be separate from the general fund of the state and shall
 3 not be considered part of the general fund of the state.
 4 However, the fund shall be considered a special account for
 5 the purposes of [section 8.53](#) relating to generally accepted
 6 accounting principles. Moneys in the fund shall be used only
 7 as specified in [this section](#) and shall be appropriated only
 8 for the uses specified. Moneys in the fund are not subject to
 9 [section 8.33](#) and shall not be transferred, used, obligated,
 10 appropriated, or otherwise encumbered, except as provided in
 11 [this section](#). Notwithstanding [section 12C.7, subsection 2](#),
 12 interest or earnings on moneys deposited in the fund shall be
 13 credited to the fund.

14 Sec. 21. [Section 453A.40](#), subsections 1 and 3, Code 2020,
 15 are amended to read as follows:

16 1. All persons required to obtain a permit or to be licensed
 17 under [section 453A.13](#) or [section 453A.44](#) having in their
 18 possession and held for resale on the effective date of an
 19 increase in the tax rate cigarettes, little cigars, ~~or~~ tobacco
 20 products, or vapor products upon which the tax under [section](#)
 21 [453A.6](#), ~~or~~ [453A.43](#), or [453A.47D](#) has been paid, unused cigarette
 22 tax stamps which have been paid for under [section 453A.8](#),
 23 unused metered imprints which have been paid for under [section](#)
 24 [453A.12](#), ~~or~~ tobacco products for which the tax has not been
 25 paid under [section 453A.46](#), or vapor products for which the tax
 26 has not been paid under [section 453A.47D](#), shall be subject to
 27 an inventory tax on the items as provided in [this section](#).

28 3. The rate of the inventory tax on each item subject to
 29 the tax as specified in [subsection 1](#) is equal to the difference
 30 between the amount paid on each item under [section 453A.6](#),
 31 [453A.8](#), [453A.12](#), ~~or~~ [453A.43](#), or [453A.47D](#) prior to the tax
 32 increase and the amount that is to be paid on each similar item
 33 under [section 453A.6](#), [453A.8](#), [453A.12](#), ~~or~~ [453A.43](#), or [453A.47D](#)
 34 after the tax increase except that in computing the rate of the
 35 inventory tax any discount allowed or allowable under [section](#)

1 453A.8 shall not be considered.

2 Sec. 22. Section 453A.42, subsections 1, 2, 8, 9, 10, 12,
3 14, and 17, Code 2020, are amended to read as follows:

4 1. "*Business*" means any trade, occupation, activity,
5 or enterprise engaged in for the purpose of selling or
6 distributing tobacco products alternative nicotine products, or
7 vapor products in this state.

8 2. "*Consumer*" means any person who has title to or
9 possession of tobacco products, alternative nicotine products,
10 or vapor products in storage, for use or other consumption in
11 this state.

12 8. "*Person*" means any individual, firm, association,
13 partnership, joint stock company, joint ~~adventure~~ venture,
14 corporation, trustee, agency, or receiver, or any legal
15 representative of any ~~of the foregoing~~ individual, firm,
16 association, partnership, joint stock company, joint venture,
17 corporation, trustee, agency, or receiver.

18 9. "*Place of business*" means any place where tobacco
19 products, alternative nicotine products, or vapor products are
20 sold or where tobacco products, alternative nicotine products,
21 or vapor products are manufactured, stored, or kept for the
22 purpose of sale or consumption, including any vessel, vehicle,
23 airplane, train, or vending machine; or for a business within
24 or without the state that conducts delivery sales, any place
25 where alternative nicotine products or vapor products are sold
26 or where alternative nicotine products or vapor products are
27 kept for the purpose of sale, including delivery sales.

28 10. "*Retail outlet*" means each place of business from which
29 tobacco products, alternative nicotine products, or vapor
30 products are sold to consumers.

31 12. "*Sale*" means any transfer, exchange, or barter, in any
32 manner or by any means whatsoever, for a consideration, and
33 includes and means all sales made by any person. It includes
34 a gift by a person engaged in the business of selling tobacco
35 products, alternative nicotine products, or vapor products,

1 for advertising, as a means of evading the provisions of this
2 subchapter, or for any other purposes ~~whatsoever~~.

3 14. "*Storage*" means any keeping or retention of tobacco
4 products, alternative nicotine products, or vapor products for
5 use or consumption in this state.

6 17. "*Use*" means the exercise of any right or power
7 incidental to the ownership of tobacco products, alternative
8 nicotine products, or vapor products.

9 Sec. 23. Section 453A.45, subsection 3, Code 2020, is
10 amended to read as follows:

11 3. Every retailer and subjobber shall procure itemized
12 invoices of all tobacco products, alternative nicotine
13 products, and vapor products purchased. The invoices shall
14 show the name and address of the seller and the date of
15 purchase. The retailer and subjobber shall preserve a legible
16 copy of each invoice for three years from the date of purchase.
17 Invoices shall be available for inspection by the director or
18 the director's authorized agents or employees at the retailer's
19 or subjobber's place of business.

20 Sec. 24. Section 453A.47A, subsection 10, paragraph b, Code
21 2020, 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
25 full and complete information pertaining to any transaction
26 of the retailer involving the purchase or sale or use of
27 tobacco, tobacco products, alternative nicotine products, or
28 vapor products. The director shall specifically prescribe the
29 forms necessary and require each retailer to provide on the
30 forms prescribed full and complete information pertaining to
31 any tobacco, tobacco products, alternative nicotine products,
32 or vapor products offered for sale or sold by the retailer,
33 including the type and brand of the product.

34 Sec. 25. NEW SECTION. 453A.47D Tax on vapor products.

35 1. A tax is imposed upon all vapor products in this state

1 at the rate of fifty percent of the wholesale sales price of
2 the vapor product. The tax shall be imposed on any component
3 part or accessory of a vapor product, whether or not sold
4 separately, that is necessary to and used during the operation
5 of a vapor product, including but not limited to any cartridge
6 or other container of a solution or other substance, which may
7 or may not contain nicotine, that is intended to be used with
8 or in an electronic cigarette, electronic cigar, electronic
9 cigarillo, electronic pipe, or similar product or device.

10 2. The tax on vapor products shall be imposed at the point
11 of retail sale to consumers in this state. The amount of the
12 tax shall be added to the selling price of each vapor product
13 sold in this state and shall be collected from the purchaser so
14 that the ultimate consumer bears the burden of the tax.

15 3. For the purposes of this section, "*wholesale sales price*"
16 means the price charged to a wholesaler or distributor by
17 the manufacturer of a vapor product, the price charged to a
18 retailer by a wholesaler or distributor of the vapor product,
19 or, if the retailer is the manufacturer of the vapor product,
20 the retail sales price of the vapor product, whichever of the
21 applicable prices is highest.

22 Sec. 26. Section 453A.48, subsection 3, Code 2020, is
23 amended to read as follows:

24 3. The director may exchange information with the officers
25 and agencies of other states administering laws relating to the
26 taxation of tobacco products and vapor products.

27 Sec. 27. Section 453A.51, Code 2020, is amended to read as
28 follows:

29 **453A.51 Assessment of cost of audit.**

30 The department may employ auditors or other persons to
31 audit and examine the books and records of a permit holder or
32 other person dealing in tobacco products or vapor products
33 to ascertain whether the permit holder or other person has
34 paid the amount of the taxes required to be paid by the permit
35 holder or other person under the provisions of [this chapter](#).

1 If the taxes have not been paid, as required, the department
2 shall assess against the permit holder or other person, as
3 additional penalty, the reasonable expenses and costs of the
4 investigation and audit.

5

DIVISION IV

6 ONLINE MARKETING OF VAPOR PRODUCTS TO CHILDREN — RESTRICTIONS

7 Sec. 28. NEW SECTION. 453A.39A Vapor products — marketing
8 and advertising restrictions — penalties.

9 1. *a.* A retailer shall not advertise vapor products in
10 a place of business unless the advertisement is placed in a
11 location where the retailer ensures the advertisement is not
12 visible to any person under legal age.

13 *b.* A retailer who violates this subsection is subject
14 to permit suspension or revocation and the following civil
15 penalties:

16 (1) A two hundred dollar penalty for the first violation.

17 (2) A five hundred dollar penalty for a second violation
18 within three years of the first violation.

19 (3) A one thousand dollar penalty for a third or subsequent
20 violation within three years of the first violation.

21 *c.* The penalty imposed in this subsection is in addition
22 to the tax, penalty, and interest imposed in other sections
23 of this chapter. Each day a violation occurs counts as a new
24 violation for purposes of this subsection.

25 2. *a.* An operator of an internet site, online or cloud
26 computing service, online application, or mobile application
27 directed to persons under legal age, shall not market or
28 advertise a vapor product on that internet site, online
29 or cloud computing service, online application, or mobile
30 application.

31 *b.* An operator of an internet site, online or cloud
32 computing service, online application, or mobile application
33 who has actual knowledge that a person under legal age is using
34 its internet site, online or cloud computing service, online
35 application, or mobile application, and which user is a person

1 under legal age, shall not market or advertise a vapor product
2 to a person under legal age, if the marketing or advertising is
3 directed to the person under legal age, based upon information
4 specific to that person, including the person's profile,
5 activity, address, or location sufficient to establish contact
6 with the person and excluding internet protocol address and
7 product identification numbers for the operation of a service.
8 The operator shall be deemed to be in compliance with this
9 subsection if the operator takes reasonable actions in good
10 faith designed to avoid marketing or advertising a vapor
11 product to persons under legal age.

12 c. An operator of an internet site, online or cloud
13 computing service, online application, or mobile application
14 directed to persons under legal age or an operator of an
15 internet site, online or cloud computing service, online
16 application, or mobile application who has actual knowledge
17 that a person under legal age is using its internet site,
18 online or cloud computing service, online application, or
19 mobile application shall not knowingly use, disclose, or
20 compile, or allow another person to use, disclose, or compile,
21 the personal information of the person under legal age if that
22 operator has actual knowledge that the person's personally
23 identifiable information will be used for the purpose of
24 marketing or advertising to the person a vapor product.

25 d. An operator of an internet site, online or cloud
26 computing service, online application, or mobile application
27 directed to persons under legal age, in which marketing or
28 advertising is provided by an advertising service, in lieu
29 of compliance with paragraph "a" shall instead notify the
30 advertising service, in a manner directed by the advertising
31 service, that the internet site, online or cloud computing
32 service, online application, or mobile application is directed
33 to persons under legal age.

34 e. An advertising service which provides marketing or
35 advertising for an internet site, online or cloud computing

1 service, online application, or mobile application directed
2 to persons under legal age, and which has received the notice
3 required by paragraph "d", shall not market or advertise on
4 the internet site, online or cloud computing service, online
5 application, or mobile application a vapor product.

6 f. This subsection shall not be construed to require
7 an operator of an internet site, online or cloud computing
8 service, online application, or mobile application to collect
9 age information about users.

10 g. The marketing and advertising restrictions described in
11 this subsection shall not apply to the incidental placement
12 of vapor products embedded in content if the content is not
13 distributed by or at the direction of the operator primarily
14 for the purposes of marketing and advertising a vapor product.

15 h. As used in this subsection:

16 (1) "*Advertising service*" means a person who provides,
17 creates, plans, or handles marketing or advertising for another
18 person.

19 (2) "*Content*" means information of any kind, including but
20 not limited to text, images, audio, and video.

21 (3) "*Internet site, online or cloud computing service, online*
22 *application, or mobile application directed to persons under*
23 *legal age*" means any internet site, online or cloud computing
24 service, online application, or mobile application that is
25 targeted or intended to reach an audience that is composed
26 predominantly of persons under legal age. An internet site,
27 online or cloud computing service, online application, or
28 mobile application shall not be deemed directed to persons
29 under legal age solely because it refers or links to another
30 internet site, online or cloud computing service, online
31 application, or mobile application directed to persons under
32 legal age by using information location tools, including a
33 directory, index, reference, pointer, or hypertext link.

34 (4) "*Market or advertise*" or "*marketing or advertising*" means
35 making a communication or arranging for a communication to be

1 made, in exchange for compensation, about a product or service
2 the primary purpose of which is to encourage recipients of the
3 communication to purchase or use the product or service.

4 (5) "*Operator*" means a person who owns an internet site,
5 online or cloud computing service, online application, or
6 mobile application. "*Operator*" does not include any third party
7 that operates, hosts, or manages, but does not own, an internet
8 site, online or cloud computing service, online application,
9 or mobile application on the owner's behalf or processes
10 information on the owner's behalf.

11 (6) "*Person under legal age*" means a person who is under the
12 legal age as defined in section 453A.1.

13 (7) "*Personally identifiable information*" means any
14 personally identifiable information about a user of a
15 commercial internet site, online or cloud computing service,
16 online application, or mobile application that is collected
17 online by the operator of that commercial internet site,
18 online service, online application, or mobile application from
19 that user and maintained by the operator in an accessible
20 form, including a first and last name, a physical address, an
21 electronic mail address, a telephone number, a social security
22 number, or any other identifier that permits the physical
23 or online contacting of the user, and any other information
24 concerning the user collected by the operator of the commercial
25 internet site, online service, online application, or mobile
26 application from the user and maintained in personally
27 identifiable form in combination with any identifier described
28 in this subparagraph.

29 (8) "*User*" means an individual that uses an internet site,
30 online or cloud computing service, online application, or
31 mobile application.

32 *i.* (1) The following civil penalties shall be imposed for a
33 violation of this subsection:

34 (a) A two hundred dollar penalty for the first violation.

35 (b) A five hundred dollar penalty for a second violation

1 within three years of the first violation.

2 (c) A one thousand dollar penalty for a third or subsequent
3 violation within three years of the first violation.

4 (2) Each day a violation occurs counts as a new violation
5 for purposes of this subsection.

6 DIVISION V

7 SMOKE-FREE AIR ACT — VAPING PRODUCTS

8 Sec. 29. Section 142D.1, subsections 2 and 3, Code 2020, are
9 amended to read as follows:

10 2. The general assembly finds that environmental tobacco
11 ~~smoke causes and exacerbates~~ and vapor products cause and
12 exacerbate disease in nonsmoking adults and children. These
13 findings are sufficient to warrant measures that regulate
14 smoking in public places, places of employment, and outdoor
15 areas in order to protect the public health and the health of
16 employees.

17 3. The purpose of this chapter is to reduce the level of
18 exposure by the general public and employees to environmental
19 tobacco smoke and vapor products in order to improve the public
20 health of Iowans.

21 Sec. 30. Section 142D.2, subsection 21, Code 2020, is
22 amended to read as follows:

23 21. "*Smoking*" means inhaling, exhaling, burning, or carrying
24 any lighted or heated cigar, cigarette, pipe, or any other
25 tobacco product or plant product, whether natural or synthetic,
26 in any manner or in any form. "Smoking" includes the use of
27 a vapor product, in any manner or in any form, and the use
28 of any device or delivery system that contains or delivers
29 nicotine or any other substance intended for human consumption
30 through inhalation of vapor or aerosol. "*Smoking*" does not
31 include smoking that is associated with a recognized religious
32 ceremony, ritual, or activity, including but not limited to
33 burning of incense.

34 Sec. 31. Section 142D.2, Code 2020, is amended by adding the
35 following new subsection:

1 NEW SUBSECTION. 23. "*Vapor product*" means the same as
2 defined in section 453A.1.

3

DIVISION VI

4

VAPING POLICIES FOR SCHOOLS

5 Sec. 32. Section 256.7, Code 2020, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 34. Adopt by rule evidence-informed
8 guidelines applicable to all students in kindergarten through
9 grade twelve in every school district and accredited nonpublic
10 school to increase student knowledge of the facts about and to
11 prevent the use of vapor products as defined in section 453A.1.

12

EXPLANATION

13

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

15 This bill relates to the regulation and taxation of tobacco,
16 tobacco products, alternative nicotine products, vapor
17 products, and cigarettes.

18 Division I of the bill provides that the legal age relative
19 to tobacco, tobacco products, alternative nicotine products,
20 vapor products, and cigarettes is 21 years of age. The bill
21 provides that a person shall not sell, give, or otherwise
22 supply any tobacco, tobacco products, alternative nicotine
23 products, vapor products, or cigarettes to any person under
24 legal age; that a person under legal age shall not smoke, use,
25 possess, purchase, or attempt to purchase any tobacco, tobacco
26 products, alternative nicotine products, vapor products, or
27 cigarettes. The bill makes conforming changes in the Code
28 for exceptions to possession of tobacco, tobacco products,
29 alternative nicotine products, vapor products, or cigarettes
30 by an individual under legal age if the individual possesses
31 the product as part of the individual's employment and if the
32 individual is involved in a compliance effort. The bill also
33 provides that relative to vending machines, tobacco, tobacco
34 products, alternative nicotine products, vapor products, and
35 cigarettes shall not be sold through a vending machine unless

1 the vending machine is located in a place where the retailer
2 ensures that no person younger than legal age is present or
3 permitted to enter at any time. The bill provides that for the
4 purposes of giving away these products or providing samples,
5 the recipient must be of legal age. The bill also provides
6 that for delivery sales, the retailer must verify that the
7 purchaser is at least of legal age and must use a method of
8 mailing, shipping, or delivery that requires the signature of a
9 person who is at least of legal age before the shipping package
10 is released to the purchaser.

11 The division takes effect upon enactment.

12 Division II of the bill relates to limitations on the sale
13 or distribution of vapor products with characterizing flavor.
14 The bill prohibits a retailer (any person engaged in the
15 business of selling tobacco, tobacco products, alternative
16 nicotine products, or vapor products to ultimate consumers)
17 from offering for sale, giving, or otherwise supplying in this
18 state any vapor product with a characterizing flavor. There
19 shall be a rebuttable presumption that a vapor product has a
20 characterizing flavor if any statement or claim made by the
21 manufacturer or agent or employee of the manufacturer, directed
22 to consumers or to the public, states or claims that the
23 vapor product has or produces a characterizing flavor. Such
24 statements or claims include but are not limited to those made
25 through social media, the product's labeling or packaging, or
26 other advertising used to explicitly or implicitly communicate
27 that the vapor product has a characterizing flavor. The bill
28 defines "characterizing flavor" as a distinguishable taste
29 or aroma or both, other than the taste or aroma of tobacco,
30 imparted by a vapor product or any byproduct produced by the
31 vapor product. Characterizing flavors include but are not
32 limited to tastes or aromas relating to any fruit, chocolate,
33 vanilla, honey, candy, cocoa, dessert, alcoholic beverage,
34 menthol, mint, wintergreen, herb, or spice. A retailer
35 who violates this provision is subject to permit suspension

1 or revocation. Additionally, a retailer who violates this
2 provision is guilty of a fraudulent practice. The penalties
3 applicable to a fraudulent practice are based on the amount of
4 money or value of the property or services involved and range
5 from a simple misdemeanor when the amount does not exceed \$300,
6 to a class "C" felony, punishable by confinement for no more
7 than 10 years and a fine of at least \$1,000 but not more than
8 \$10,000, when the amount involved exceeds \$10,000.

9 Division III of the bill relates to taxes on vapor products.

10 The bill imposes a tax on vapor products in the state at the
11 rate of 50 percent of the wholesale sales price of the vapor
12 product. The tax shall be imposed on any component part or
13 accessory of a vapor product, whether or not sold separately,
14 that is necessary to and used during the operation of a vapor
15 product, including but not limited to any cartridge or other
16 container of a solution or other substance, which may or may
17 not contain nicotine, that is intended to be used with or in an
18 electronic cigarette, electronic cigar, electronic cigarillo,
19 electronic pipe, or similar product or device. The tax is
20 imposed at the point of retail sale to consumers in this
21 state. The amount of the tax shall be added to the selling
22 price of each vapor product sold in this state and shall be
23 collected from the purchaser so that the ultimate consumer
24 bears the burden of the tax. The bill defines "wholesale sales
25 price" as the price charged to a wholesaler or distributor by
26 the manufacturer of a vapor product, the price charged to a
27 retailer by a wholesaler or distributor of a vapor product, or,
28 if the retailer is the manufacturer of the vapor product, the
29 retail sales price of a vapor product, whichever applicable
30 price is highest.

31 The bill makes other conforming changes. Existing
32 penalties for violations of the provisions of Code chapter 453A
33 (cigarette and tobacco taxes and regulation of alternative
34 nicotine products and vapor products), including permit
35 revocation or suspension and civil penalties, are applicable to

1 violations of the bill.

2 Division IV of the bill relates to the marketing and
3 advertising of vapor products. The bill prohibits a retailer
4 from advertising vapor products in a place of business unless
5 the advertisement is placed in a location where the retailer
6 ensures the advertisement is not visible to any person under
7 legal age. The bill also prohibits an operator of an internet
8 site, online or cloud computing service, online application,
9 or mobile application directed to persons under legal age,
10 from marketing or advertising a vapor product on that internet
11 site, online or cloud computing service, online application,
12 or mobile application. If such person has actual knowledge
13 that a person under legal age is using its internet website,
14 online or cloud computing service, online application, or
15 mobile application, and which user is that person under legal
16 age, the person is prohibited from marketing or advertising a
17 vapor product to that person under legal age, if the marketing
18 or advertising is directed to the person under legal age, based
19 upon information specific to that person. If such person
20 has actual knowledge that a person under legal age is using
21 its internet site, online or cloud computing service, online
22 application, or mobile application, the person is prohibited
23 from knowingly using, disclosing, or compiling, or allowing
24 another person to use, disclose, or compile, the personal
25 information of the person under legal age if that operator has
26 actual knowledge that the person's personally identifiable
27 information will be used for the purpose of marketing or
28 advertising to the person a vapor product. If marketing or
29 advertising is provided by an advertising service, the internet
30 site, online or cloud computing service, or online application,
31 or mobile application shall notify the advertising service, in
32 a manner directed by the advertising service, that the internet
33 site, online or cloud computing service, online application, or
34 mobile application is directed to persons under legal age and
35 the advertising service which provides marketing or advertising

1 for an internet site, online or cloud computing service, online
2 application, or mobile application directed to persons under
3 legal age, and which has received the notice required shall
4 not market or advertise on the internet site, online or cloud
5 computing service, online application, or mobile application a
6 vapor product. The provision is not to be construed to require
7 an operator of an internet site, online or cloud computing
8 service, online application, or mobile application to collect
9 age information about users and the marketing and advertising
10 restrictions shall not apply to the incidental placement of
11 vapor products embedded in content if the content is not
12 distributed by or at the direction of the operator primarily
13 for the purposes of marketing and advertising a vapor product.
14 A person who violates a provision of the division is subject
15 to applicable permit suspension and revocation and civil
16 penalties.

17 Division V relates to the smoke-free air Act (Code chapter
18 142D). The bill amends the definition of "smoking" to include
19 reference to vapor products and other devices or delivery
20 systems that contain or deliver nicotine or other substances
21 through inhalation of vapor or aerosol.

22 Division VI requires the state board of education to adopt by
23 rule evidence-informed guidelines applicable to all students
24 in kindergarten through grade 12 in every school district and
25 accredited nonpublic school to increase student knowledge of
26 the facts about and prevent the use of vapor products.