

House File 2633 - Introduced

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A BILL FOR

1 An Act relating to cigarettes, tobacco, tobacco products,
2 alternative nicotine products, and vapor products, and
3 including taxation of such products.

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

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

3 **321.216C Use of driver's license or nonoperator's**
4 **identification card by underage person to obtain tobacco, tobacco**
5 **products, ~~alternative nicotine products, vapor products,~~ or**
6 **cigarettes.**

7 A person who is under the age of eighteen, who alters
8 or displays or has in the person's possession a fictitious
9 or fraudulently altered driver's license or nonoperator's
10 identification card and who uses the license or card to violate
11 or attempt to violate [section 453A.2, subsection 2](#), commits a
12 simple misdemeanor punishable as a scheduled violation under
13 section 805.8A, subsection 4. The court shall forward a copy
14 of the conviction to the department.

15 Sec. 2. Section 423.3, subsection 57, paragraph h, Code
16 2020, is amended to read as follows:

17 *h.* *"Tobacco"* means ~~cigarettes, cigars, chewing or pipe~~
18 ~~tobacco, or any other item that contains~~ and tobacco products
19 as defined in section 453A.1.

20 Sec. 3. Section 453A.1, subsections 1, 23, and 28, Code
21 2020, are amended to read as follows:

22 1. *"Alternative nicotine product"* means a product, not
23 consisting of or containing tobacco, that provides for the
24 ingestion into the body of nicotine, whether by chewing,
25 absorbing, dissolving, inhaling, snorting, or sniffing, or
26 by any other means. *"Alternative nicotine product"* does not
27 include cigarettes, ~~tobacco products,~~ or vapor products, or a
28 product that is regulated as a drug or device by the United
29 States food and drug administration under chapter V of the
30 federal Food, Drug, and Cosmetic Act.

31 23. *"Retailer"* shall mean and include every person in
32 this state who shall sell, distribute, or offer for sale for
33 consumption or possess for the purpose of sale for consumption,
34 ~~cigarettes, alternative nicotine products, or vapor products~~
35 irrespective of quantity or amount or the number of sales; and

1 every person within or without the state that conducts delivery
2 sales.

3 28. "*Tobacco products*" means cigars; little cigars as
4 defined in [section 453A.42, subsection 6](#); alternative nicotine
5 products; vapor products; cheroots; stogies; periques;
6 granulated, plug cut, crimp cut, ready rubbed, and other
7 smoking tobacco; snuff, snuff flour; cavendish; plug and twist
8 tobacco; fine-cut and other chewing tobaccos; shorts; or refuse
9 scraps, clippings, cuttings and sweepings of tobacco, and other
10 kinds and forms of tobacco, prepared in such manner as to be
11 suitable for chewing or smoking in a pipe or otherwise, or both
12 for chewing and smoking; but does not mean cigarettes.

13 Sec. 4. Section 453A.2, subsections 1, 2, 3, and 8, Code
14 2020, are amended to read as follows:

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

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

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

33 8. a. A person shall not be guilty of a violation of this
34 section if conduct that would otherwise constitute a violation
35 is performed to assess compliance with tobacco, tobacco

1 products, ~~alternative nicotine products, vapor products,~~ or
2 cigarette laws if any of the following applies:

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

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

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

17 Sec. 5. Section 453A.4, subsection 1, Code 2020, is amended
18 to read as follows:

19 1. If a person holding a permit under [this chapter](#) or an
20 employee of such a permittee has a reasonable belief based on
21 factual evidence that a driver's license as defined in section
22 321.1, subsection 20A, or nonoperator's identification card
23 issued pursuant to [section 321.190](#) offered by a person who
24 wishes to purchase tobacco, tobacco products, ~~alternative~~
25 ~~nicotine products, vapor products,~~ or cigarettes is altered
26 or falsified or belongs to another person, the permittee or
27 employee may retain the driver's license or nonoperator's
28 identification card. Within twenty-four hours, the card shall
29 be delivered to the appropriate city or county law enforcement
30 agency of the jurisdiction in which the permittee's premises
31 are located, and the permittee shall file a written report of
32 the circumstances under which the card was retained. The local
33 law enforcement agency may investigate whether a violation
34 of [section 321.216](#), [321.216A](#), or [321.216C](#) has occurred. If
35 an investigation is not initiated or probable cause is not

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

12 Sec. 6. Section 453A.5, subsection 1, Code 2020, is amended
13 to read as follows:

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

26 Sec. 7. Section 453A.13, subsections 1, 6, 9, and 10, Code
27 2020, are amended to read as follows:

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

1 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 or sell, offer for sale, or distribute alternative nicotine
5 products, ~~or vapor products~~ through delivery sales, until such
6 application has been filed and the fee prescribed paid for a
7 permit and until such permit is obtained and only while such
8 permit is unrevoked and unexpired.

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

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

32 Sec. 8. 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
17 years of 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. 9. Section 453A.36, subsection 7, paragraph a, Code
28 2020, is amended to read as follows:

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

34 Sec. 10. Section 453A.36A, subsection 1, Code 2020, is
35 amended to read as follows:

1 1. Except as provided in [section 453A.36, subsection 6](#),
2 a retailer shall not sell or offer for sale tobacco, tobacco
3 products, ~~alternative nicotine products, vapor products,~~ or
4 cigarettes through the use of a self-service display.

5 Sec. 11. Section 453A.39, Code 2020, is amended to read as
6 follows:

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

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

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

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

1 used primarily by persons under age eighteen for recreational,
2 educational, or other purposes.

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

7 Sec. 12. Section 453A.42, subsection 3, Code 2020, is
8 amended by striking the subsection and inserting in lieu
9 thereof the following:

10 3. "*Delivery sale*" means the same as defined in section
11 453A.1.

12 Sec. 13. Section 453A.42, subsections 9 and 11, Code 2020,
13 are amended to read as follows:

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

23 11. "*Retailer*" means any person engaged in the business
24 of selling tobacco, or tobacco products, alternative nicotine
25 products, or vapor products to ultimate consumers; and every
26 person within or without the state that conducts delivery
27 sales.

28 Sec. 14. Section 453A.42, subsection 16, Code 2020, is
29 amended by striking the subsection and inserting in lieu
30 thereof the following:

31 16. "*Tobacco products*" means the same as defined in section
32 453A.1.

33 Sec. 15. Section 453A.42, Code 2020, is amended by adding
34 the following new subsections:

35 NEW SUBSECTION. 01. "*Alternative nicotine product*" means

1 the same as defined in section 453A.1.

2 NEW SUBSECTION. 17A. "Vapor product" means the same as
3 defined in section 453A.1.

4 Sec. 16. Section 453A.47A, subsections 1, 2, 4, and 5, Code
5 2020, are amended to read as follows:

6 1. *Permits required.* A person shall not engage in the
7 business of a retailer of tobacco, or tobacco products,
8 ~~alternative nicotine products, or vapor products~~ at any place
9 of business, or through delivery sales, without first having
10 received a permit as a retailer.

11 2. *No sales without permit.* A retailer shall not sell any
12 tobacco, or tobacco products, ~~alternative nicotine products, or~~
13 ~~vapor products~~ until an application has been filed and the fee
14 prescribed paid for a permit and until such permit is obtained
15 and only while such permit is not suspended, unrevoked, or
16 unexpired.

17 4. *Retailer — multiple permits not required — effect of*
18 *suspension.* A retailer, as defined in [section 453A.1](#), who holds
19 a permit under [subchapter I of this chapter](#) is not required to
20 also obtain a retail permit under [this subchapter](#). However,
21 if a retailer, as defined in [section 453A.1](#), only holds a
22 permit under [subchapter I of this chapter](#) and that permit is
23 suspended, revoked, or expired, the retailer shall not sell any
24 tobacco, or tobacco products, ~~alternative nicotine products, or~~
25 ~~vapor products~~ during the time which the permit is suspended,
26 revoked, or expired.

27 5. *Separate permit.* A separate retail permit shall be
28 required of a distributor or subjobber if the distributor or
29 subjobber sells tobacco, or tobacco products, ~~alternative~~
30 ~~nicotine products, or vapor products~~ at retail.

31 Sec. 17. Section 453A.47A, subsection 10, paragraph b, Code
32 2020, is amended to read as follows:

33 b. Every retailer shall, when requested by the department,
34 make additional reports as the department deems necessary and
35 proper and shall at the request of the department furnish full

1 and complete information pertaining to any transaction of the
2 retailer involving the purchase or sale or use of tobacco,
3 or tobacco products, ~~alternative nicotine products, or vapor~~
4 ~~products.~~

5 Sec. 18. CODE EDITOR DIRECTIVE. The Code editor shall do
6 all of the following:

7 1. Modify the title of chapter 453A to read "Cigarettes and
8 Tobacco Taxes and Regulation".

9 2. Modify the subheading of subchapter I of chapter 453A to
10 read "Cigarettes and Tobacco Products".

11 3. Modify the subheading of subchapter II of chapter 453A to
12 read "Cigars, Tobacco, and Tobacco Products".

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

16 EXPLANATION

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

19 This bill redefines alternative nicotine and vapor products
20 as tobacco products, thereby making applicable to alternative
21 nicotine and vapor products all provisions applicable to
22 tobacco products including taxation of such products. The bill
23 makes conforming changes throughout the Code to redefine these
24 products.