

Senate File 2127 - Introduced

SENATE FILE 2127
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3007)

A BILL FOR

1 An Act relating to the regulation of certain tobacco and
2 hemp-related products, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

REGULATION OF DEVICE RETAILERS

Section 1. NEW SECTION. 453E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *“Business”* means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products and devices in this state.

2. *“Consumer”* means any person who has title to or possession of devices in storage, for use or other consumption in this state.

3. *“Controlled substance”* means controlled substance as defined in section 124.101.

4. *“Delivery sale”* means any sale of a device to a purchaser in this state where the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, mail or any other delivery service, or the internet or other online service and the device is delivered by use of mail or a delivery service. The sale of a device shall constitute a delivery sale regardless of whether the seller is located in this state. *“Delivery sale”* does not include a sale to a distributor or retailer of a device not for personal use.

5. *“Department”* means the department of revenue.

6. *“Device”* means an item that is a glass or metal pipe designed to ingest a substance through combustion that would otherwise be defined as drug paraphernalia pursuant to 21 U.S.C. §863(d) but is exempt under 21 U.S.C. §863(f)(2) because the item is intended for use with tobacco products.

7. *“Device retailer”* means a tobacco retailer who is also engaged in selling devices to the ultimate consumer.

8. *“Director”* means the director of revenue.

9. *“Place of business”* means any place where tobacco products and devices are sold, stored, or kept for the purpose of sale or consumption; or for a business within or without the state that conducts delivery sales, any place where tobacco

1 products and devices are sold or are kept for the purpose of
2 sale, including delivery sales.

3 10. *"Retail outlet"* means each place of business from which
4 tobacco products and devices are sold to consumers.

5 11. *"Sale"* means any transfer, exchange, or barter, in
6 any manner or by any means whatsoever, for consideration, and
7 includes and means all sales made by any person.

8 12. *"Tobacco products"* means cigars; little cigars;
9 cheroots; stogies; periques; granulated, plug cut, crimp cut,
10 ready rubbed, and other smoking tobacco; snuff; cavendish;
11 plug and twist tobacco; fine-cut and other chewing tobaccos;
12 shorts; refuse scraps, clippings, cuttings and sweepings of
13 tobacco, and other kinds and forms of tobacco, prepared in
14 such manner as to be suitable for chewing or smoking in a pipe
15 or otherwise, or both for chewing and smoking; but shall not
16 include cigarettes as defined in section 453A.1.

17 13. *"Tobacco retailer"* means a retailer as defined in
18 section 453A.42.

19 14. *"Use"* means the exercise of any right or power
20 incidental to the ownership of tobacco products or devices.

21 **Sec. 2. NEW SECTION. 453E.2 Administration — rules.**

22 1. The director shall administer this chapter. The director
23 shall collect, supervise, and enforce the collection of all
24 fees, taxes, and civil penalties imposed under this chapter and
25 deposit them in the specialty courts program fund created in
26 section 453E.6.

27 2. The director may adopt rules pursuant to chapter 17A that
28 are necessary to enforce this chapter.

29 3. The director may designate employees to administer
30 and enforce the provisions of this chapter, including the
31 collection of all taxes provided for in this chapter. In the
32 enforcement, the director may request aid from the attorney
33 general, the special agents of the state, any county attorney,
34 or any peace officer. The director may appoint clerks and
35 additional help as may be needed to administer this chapter.

1 Sec. 3. NEW SECTION. **453E.3 Device retailers — permits —**
2 **fees.**

3 1. *Permits required.* A person shall not engage in the
4 business of a device retailer at any place of business or
5 through delivery sales, unless the person complies with all of
6 the following:

7 a. The person has received and holds a permit as a tobacco
8 retailer pursuant to section 453A.47A that has not been
9 suspended or revoked and is not expired; complies with the
10 provisions of chapter 453A applicable to a tobacco retailer;
11 and sells tobacco products in addition to devices at the retail
12 outlet or through delivery sales.

13 b. The person has received and holds a permit as a device
14 retailer pursuant to this section that has not been suspended
15 or revoked and is not expired, and complies with the provisions
16 of this chapter.

17 2. *No sales without device retailer permit.* A device
18 retailer shall not sell devices until an application has been
19 filed and the fee prescribed paid for a permit and until such
20 permit is obtained and only while such permit is not suspended,
21 revoked, or expired.

22 3. *Number of device retailer permits.* An application shall
23 be filed and a permit obtained for each place of business owned
24 or operated by a device retailer located in the state. If an
25 out-of-state device retailer makes delivery sales of devices,
26 an application shall be filed with the department and a permit
27 shall be issued for the out-of-state retailer's principal place
28 of business.

29 4. *Issuance.* Cities may issue device retailer permits
30 to device retailers located within their respective limits.
31 County boards of supervisors may issue device retailer permits
32 to device retailers located in their respective counties,
33 outside of the corporate limits of cities. The city or county
34 shall submit a duplicate of any application for a device
35 retailer permit to the alcoholic beverages division of the

1 department of commerce within thirty days of issuance of a
2 device retailer permit. The alcoholic beverages division of
3 the department of commerce shall submit the current list of
4 all device retailer permits issued to the department of public
5 health by the last day of each quarter of a state fiscal year.

6 5. *Fees — expiration.* All device retailer permits provided
7 for in this section shall expire on June 30 of each year. A
8 device retailer permit shall not be granted or issued until the
9 applicant has paid the fees provided for in this section for
10 the period ending June 30 next, to the city or county granting
11 the device retailer permit. The fee for a device retailer
12 permit is one thousand dollars.

13 6. *Application.* Device retailer permits shall be issued
14 only upon application, accompanied by the one thousand dollar
15 fee, made upon forms furnished by the department upon written
16 request. The failure to furnish such forms shall be no excuse
17 for the failure to file the form unless absolute refusal is
18 shown. The forms shall specify all of the following:

19 a. The manner under which the device retailer transacts or
20 intends to transact business as a device retailer.

21 b. The principal office, residence, and place of business,
22 to which the device retailer permit is to apply.

23 c. If the applicant is not an individual, the principal
24 officers or members of the applicant, not to exceed three, and
25 their addresses.

26 d. Such other information as the director shall by rule
27 prescribe.

28 7. *Records and reports of device retailers.*

29 a. The director shall prescribe the forms necessary for
30 the efficient administration of this section and may require
31 uniform books and records to be used and kept by each device
32 retailer or other person as deemed necessary.

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

1 furnish full and complete information pertaining to any
2 transaction of the device retailer involving the purchase or
3 sale of devices, including the number of devices sold.

4 8. *Requirements for sale.*

5 a. A device retailer shall not sell, give, or otherwise
6 supply a device to any person under eighteen years of age and
7 must verify the age of all purchasers of devices. Valid proof
8 of the purchaser's identity and age shall be obtained at the
9 time the device is supplied to the purchaser.

10 b. A device retailer shall only display and sell devices in
11 a location where the device retailer ensures that the devices
12 are not visible to a person younger than eighteen years of
13 age and where no person younger than eighteen years of age is
14 present or permitted to enter at any time.

15 Sec. 4. NEW SECTION. 453E.4 **Delivery sale of devices —**
16 **permit — requirements.**

17 1. a. A person shall not mail, ship, or otherwise cause
18 to be delivered any device in connection with a delivery sale
19 to any other person within this state unless the person has
20 applied for and holds a device delivery sale permit as provided
21 in this section.

22 b. A person applying for a device delivery sale permit shall
23 submit an application for the permit electronically, or in a
24 manner prescribed by the director.

25 c. An application submitted pursuant to paragraph "b" shall
26 be accompanied by a permit fee in the amount of one thousand
27 dollars.

28 d. The director may in accordance with this section issue a
29 device delivery sale permit which shall be valid for one year
30 from the date of issuance unless it is sooner suspended or
31 revoked for a violation of this section.

32 e. A permit issued pursuant to this section may be renewed
33 annually by submitting a renewal application in a manner
34 prescribed by the director, accompanied by the one thousand
35 dollar permit fee.

1 2. The delivery sale of devices pursuant to this
2 section shall be subject to the following requirements and
3 restrictions:

4 a. All devices delivered by delivery sale directly to a
5 resident of this state shall be delivered only by a device
6 delivery sale permit holder.

7 b. A device delivery sale permit holder shall only deliver
8 devices by delivery sale to a resident of this state who is at
9 least eighteen years of age for the resident's personal use and
10 not for resale.

11 c. All devices delivered by delivery sale directly to a
12 resident of this state shall be conspicuously labeled with the
13 words "CONTAINS DEVICE: SIGNATURE OF PERSON AGE 18 OR OLDER
14 REQUIRED FOR DELIVERY" or shall be conspicuously labeled with
15 alternative wording preapproved by the director.

16 d. A device delivery sale permit holder shall obtain valid
17 proof of identity and age prior to delivery, and shall obtain
18 the signature of an adult as a condition of delivery.

19 e. A device delivery sale permit holder shall maintain
20 records of devices delivered which include the name of the
21 device manufacturer, quantity of devices delivered, recipient's
22 name and address and verification of age on an electronic or
23 paper form of signature from the recipient of the device, and
24 sales and excise taxes paid. Records shall be submitted to
25 the director on a monthly basis in a form and manner to be
26 determined by the director. Records shall be maintained for at
27 least five years.

28 3. A device delivery sale permit holder shall remit to the
29 director an amount equivalent to the applicable sales tax and
30 excise tax on devices subject to delivery sale at the rates
31 specified in section 423.2 and section 453E.5, as applicable,
32 for deposit as provided in section 453E.6. The amount shall
33 be remitted at the time and in the manner provided in section
34 453E.5.

35 4. A device delivery sale permit holder shall be deemed to

1 have consented to the jurisdiction of the director or any other
2 agency or court in this state concerning enforcement of this
3 section and any related laws, rules, or regulations. A device
4 delivery sale permit holder shall allow the director to perform
5 an audit of records of devices upon request.

6 Sec. 5. NEW SECTION. 453E.5 Sales and use tax on sales and
7 delivery sales of devices — examination of records and premises
8 — subpoena for witnesses and papers.

9 1. A sale or delivery sale of a device within this state
10 shall be subject to the sales tax provided in chapter 423,
11 subchapter II. All the provisions for the lien of the tax, its
12 collection, and all actions as provided in the uniform sales
13 and use tax administration Act, chapter 423, shall apply to the
14 tax imposed in this chapter.

15 2. There is levied and imposed an excise tax on a device
16 purchased for use in this state through a sale or delivery sale
17 in this state as follows:

18 a. If the purchase price of the device is twenty dollars or
19 less, an excise tax of ten dollars.

20 b. If the purchase price of the device is more than twenty
21 dollars, an excise tax of twenty dollars.

22 3. A device delivery sale permit holder shall be deemed to
23 have waived all claims that such permit holder lacks physical
24 presence within this state for purposes of collecting and
25 remitting the sales and excise taxes.

26 4. A device delivery sale permit holder making taxable
27 delivery sales of devices within this state and a device
28 retailer shall remit to the department all sales and excise
29 taxes due on such sales at the times and in the manner as
30 established by rule of the director.

31 5. The director shall adopt rules pursuant to chapter 17A to
32 administer this section.

33 6. Moneys collected under this section shall be deposited in
34 the specialty courts program fund created in section 453E.6.

35 7. a. For the purpose of enabling the department to

1 determine the tax liability of device delivery sale permit
2 holders, device retailers, or any other person dealing in
3 devices or to determine whether a tax liability has been
4 incurred, the department shall have the right to inspect any
5 premises of the device delivery sale permit holder, device
6 retailer, or other person dealing in devices located within
7 or without the state of Iowa where devices are manufactured,
8 produced, made, stored, transported, sold, or offered for sale
9 or exchange, and to examine all of the records required to be
10 kept or any other records that may be kept incident to the
11 conduct of the business of said device delivery sale permit
12 holder, retailer, or any other person dealing in devices.

13 *b.* The department shall also have the right as an incident
14 to determining the tax liability, or whether a tax liability
15 has been incurred, to examine all stocks of devices and to
16 remain upon the premises for such length of time as may be
17 necessary to fully determine the tax liability, or whether a
18 tax liability has been incurred.

19 *c.* It shall be unlawful for a permit holder to fail to
20 produce upon demand of the department any records required to
21 be kept or to hinder or prevent in any manner the inspection of
22 the records or the examination of the premises.

23 *d.* In the case of any departmental inspection conducted
24 under this section requiring department personnel to travel
25 outside the state of Iowa, any additional costs incurred by
26 the department for out-of-state travel expenses shall be borne
27 by the device delivery sale permit holder, retailer, or other
28 person dealing in devices. These additional costs shall be
29 those costs in excess of the costs of a similar inspection
30 conducted at the geographical point located within the state
31 of Iowa nearest to the out-of-state inspection point. In
32 lieu of conducting an on-premises out-of-state inspection,
33 the department shall have the authority to direct the device
34 delivery sale permit holder, retailer, or other person dealing
35 in devices to assemble and transport all records described

1 in this subsection to the nearest practical and convenient
2 geographical location in Iowa for inspection by the department.

3 Sec. 6. NEW SECTION. **453E.6 Specialty courts program fund.**

4 1. A specialty courts program fund is created in the state
5 treasury under the control of the director of the department
6 of corrections. Moneys from permit fees, with the exception
7 of permit fees collected by cities or counties in the issuance
8 of permits, penalties, sales and use taxes, and other amounts
9 collected under this chapter shall be deposited in the fund.
10 Permit fees collected by cities or counties under this chapter
11 shall be paid to the treasurer of the city where the permit is
12 effective, or to another city officer as designated by the city
13 council, and credited to the general fund of the city. Permit
14 fees collected by counties under this chapter shall be paid to
15 the county treasurer and credited to the general fund of the
16 county.

17 2. Moneys in the fund shall be used only as provided
18 in appropriations from the fund for the purpose of the
19 support of specialty courts to address underlying substance
20 use disorder-related and mental health-related issues that
21 contribute to the contact of individuals with the justice
22 system.

23 3. The fund shall be separate from the general fund of the
24 state and shall not be considered part of the general fund of
25 the state. The moneys in the fund shall not be considered
26 revenue of the state, but rather shall be moneys of the fund.
27 The moneys in the fund are not subject to reversion to the
28 general fund of the state under section 8.33 and shall not
29 be transferred, used, obligated, appropriated, or otherwise
30 encumbered, except to provide for the purposes of this section.
31 Notwithstanding section 12C.7, subsection 2, interest or
32 earnings on moneys deposited in the fund shall be credited to
33 the fund.

34 4. The treasurer of state shall provide a quarterly
35 report of fund activities and balances to the director of the

1 department of corrections.

2 Sec. 7. NEW SECTION. 453E.7 Permits — suspension —
3 revocation — penalties.

4 1. The provisions of chapter 453A including the permit
5 suspension and revocation provisions and the civil penalties
6 established in section 453A.22 shall apply to tobacco retailers
7 who are also device retailer permit holders or device delivery
8 sale permit holders under this chapter. The provisions of
9 chapter 453A applicable to persons other than tobacco retailers
10 who violate chapter 453A shall also apply to persons who
11 violate this chapter.

12 2. A person holding a device retailer permit or a
13 device delivery sale permit under this chapter who violates
14 this chapter by marketing or selling a device to be used
15 or attempted to be used in combination with a controlled
16 substance to knowingly or intentionally and primarily inject,
17 ingest, inhale, or otherwise introduce into the human body a
18 controlled substance, resulting in the device constituting drug
19 paraphernalia pursuant to section 124.414, commits a simple
20 misdemeanor in violation of section 124.414 and is also subject
21 to permit revocation.

22 3. a. If a person holding a device retailer permit or a
23 device delivery sale permit issued by the department under this
24 chapter has willfully violated this chapter, the department
25 shall revoke the permit upon notice and hearing. The hearing
26 before the department may be held at a site in the state as the
27 department may direct. The notice shall be given by mailing a
28 copy to the permit holder's place of business as it appears on
29 the application for a permit. If, upon hearing, the department
30 finds that the violation has occurred, the department may
31 revoke the permit.

32 b. If a device retailer permit or a device delivery
33 sale permit is suspended or revoked under this section, the
34 suspension or revocation shall only apply to the place of
35 business at which the violation occurred and shall not apply to

1 any other place of business to which the permit applies but at
2 which the violation did not occur.

3 *c.* The department or local authority shall report the
4 suspension or revocation of a device retailer permit or a
5 device delivery sale permit under this section to the alcoholic
6 beverages division of the department of commerce within thirty
7 days of the suspension or revocation of the permit.

8 4. In addition to any other applicable penalties, a device
9 retailer permit holder or a device delivery sale permit holder
10 who violates this chapter shall be subject to the following:

11 *a.* For a first violation, a civil penalty of five hundred
12 dollars.

13 *b.* For a second violation, a civil penalty of one thousand
14 dollars.

15 *c.* A third violation constitutes grounds for suspension or
16 revocation of the permit under this chapter.

17 5. A person other than a device retailer permit holder or a
18 device delivery sale permit holder who violates this chapter
19 shall be subject to the following penalties:

20 *a.* For a first violation, a civil penalty of one thousand
21 dollars.

22 *b.* For a second violation, a civil penalty of two thousand
23 dollars.

24 *c.* For a third or subsequent violation, a civil penalty of
25 five thousand dollars.

26 DIVISION II

27 HEMP PRODUCTS — RETAIL SALES

28 Sec. 8. NEW SECTION. **126.24 Hemp products — retail sales**
29 **— claims.**

30 Unless a state or federal agency has substantiated and
31 approved the efficacy and safety claims of a product based
32 on competent and reliable scientific evidence, a person
33 engaging in the retail sale in this state of a hemp product
34 that contains hemp-derived cannabidiol, or in the retail sale
35 of a cosmetic, personal care product, or product intended for

1 human or animal consumption to which hemp-derived cannabidiol
2 has been added in compliance with section 204.7, subsection
3 9, shall include on the product's principal display panel,
4 a statement that the product may or may not contain the
5 ingredients stated on the label, that the efficacy and safety
6 of the product have not been substantiated or approved by
7 a state or federal agency based on competent and reliable
8 scientific evidence, and that the consumer should use the
9 product at the consumer's own risk.

10 EXPLANATION

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

13 This bill relates to the regulation of certain tobacco and
14 hemp-related products.

15 Division I of the bill requires a person who engages in
16 the business of a device retailer through a retail outlet
17 or delivery sales to receive and hold a permit as a tobacco
18 retailer, comply with provisions applicable to a tobacco
19 retailer, sell tobacco products in addition to devices at the
20 retail outlet or through delivery sales, and hold a permit
21 as a device retailer. The bill provides for the application
22 for and issuance of device retailer permits by cities and
23 counties depending upon the location of the retailer; requires
24 the payment of a \$1,000 fee for each permit; and provides for
25 annual expiration of the permits. The bill also requires
26 device retailer permit holders to keep certain records and
27 submit reports to the department of revenue; establishes
28 requirements for the sale of devices including that a device
29 retailer shall not sell, give, or otherwise supply a device to
30 any person under 18 years of age and must verify the age of
31 all purchasers of devices; and provides that a device retailer
32 shall only display and sell devices in a location where the
33 device retailer ensures that the devices are not visible to a
34 person younger than 18 years of age and where no person younger
35 than 18 years of age is present or permitted to enter at any

1 time.

2 The bill establishes requirements for the delivery sale
3 of devices including permit requirements and restrictions
4 including all devices delivered by delivery sale directly to
5 a resident of this state shall be delivered by a holder of
6 a device delivery sale permit; that a device delivery sale
7 permit holder shall only deliver devices by delivery sale to
8 a resident of this state who is at least 18 years of age, for
9 the resident's personal use and consumption and not for resale;
10 all devices delivered by delivery sale directly to a resident
11 of this state shall be conspicuously labeled with the words
12 "CONTAINS DEVICE: SIGNATURE OF PERSON AGE 18 OR OLDER REQUIRED
13 FOR DELIVERY" or with an alternative wording preapproved by
14 the director of revenue; a device delivery sale permit holder
15 shall obtain valid proof of identity and age prior to delivery,
16 and shall obtain the signature of an adult as a condition of
17 delivery; and that a device delivery sale permit holder shall
18 maintain records of devices delivered which include certain
19 information that must be maintained for five years.

20 The bill provides for the imposition, collection, and
21 payment of sales and excise taxes on the retail sale, including
22 delivery sales, of devices. Moneys collected, with the
23 exception of city and county permit fees, are to be deposited
24 in the specialty courts program fund created in the bill to
25 be used for the purpose of the support of specialty courts
26 to address underlying substance use disorder-related and
27 mental health-related issues that contribute to the contact of
28 individuals with the justice system.

29 The bill provides penalties for violations of the bill.
30 The applicable provisions of Code chapter 453A (cigarette and
31 tobacco taxes and regulation of alternative nicotine products
32 and vapor products) including penalties and license suspension
33 and revocation provisions and penalties applicable to those
34 other than permit holders apply to tobacco retailers who are
35 also device retailer permit holders or device delivery sale

1 permit holders as well as to those who are not permit holders.

2 Additionally, a person holding a device retailer permit
3 or a device delivery sale permit who violates the bill by
4 marketing or selling a device to be used or attempted to be
5 used in combination with a controlled substance to knowingly
6 or intentionally and primarily inject, ingest, inhale, or
7 otherwise introduce into the human body a controlled substance,
8 resulting in the device constituting drug paraphernalia,
9 commits a simple misdemeanor in violation of Code section
10 124.414 and is also subject to permit revocation.

11 If a person holding a device retailer permit or a device
12 delivery sale permit willfully violates the bill, the
13 department shall revoke the permit upon notice and hearing.

14 In addition to any other applicable penalties, a device
15 retailer permit holder or a device delivery sale permit holder
16 who violates the Code chapter is subject to a civil penalty
17 of \$500 for a first violation, a civil penalty of \$1,000 for
18 a second violation, and a third violation constitutes grounds
19 for suspension or revocation of the permit. A person other
20 than a device retailer permit holder or a device delivery sale
21 permit holder who violates the Code chapter is subject to a
22 civil penalty of \$1,000 for a first violation, a civil penalty
23 of \$2,000 for a second violation, and a civil penalty of \$5,000
24 for a third or subsequent violation.

25 Division II of the bill relates to claims made regarding
26 hemp products sold at retail. The bill provides that unless
27 a state or federal agency has substantiated and approved the
28 efficacy and safety claims of a product based on competent and
29 reliable scientific evidence, a person engaging in the retail
30 sale in this state of a hemp product that contains hemp-derived
31 cannabidiol, or in the retail sale of a cosmetic, personal care
32 product, or product intended for human or animal consumption
33 to which hemp-derived cannabidiol has been added in compliance
34 with Code section 204.7(9), shall include on the product's
35 principal display panel a statement that the product may or

1 may not contain the ingredients stated on the label, that the
2 efficacy and safety of the product have not been substantiated
3 or approved by a state or federal agency based on competent and
4 reliable scientific evidence, and that the consumer should use
5 the product at the consumer's own risk.

6 The violation of this provision is a serious misdemeanor as
7 well as an unfair practice under Code section 714.16.