

Senate File 2402 - Introduced

SENATE FILE 2402

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 2127)

(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.

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

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

34 **Sec. 3. NEW SECTION. 453E.3 Device retailers — permits —**
35 **fees.**

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

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

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

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

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

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

1 the department of commerce shall submit the current list of
2 all device retailer permits issued to the department of public
3 health by the last day of each quarter of a state fiscal year.

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

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

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

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

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

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

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

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

32 b. Every device retailer shall, when requested by the
33 department, make additional reports as the department deems
34 necessary and proper and shall at the request of the department
35 furnish full and complete information pertaining to any

1 transaction of the device retailer involving the purchase or
2 sale of devices, including the number of devices sold.

3 8. *Requirements for sale.*

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

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

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

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

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

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

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

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

35 2. The delivery sale of devices pursuant to this

1 section shall be subject to the following requirements and
2 restrictions:

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

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

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

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

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

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

33 4. A device delivery sale permit holder shall be deemed to
34 have consented to the jurisdiction of the director or any other
35 agency or court in this state concerning enforcement of this

1 section and any related laws, rules, or regulations. A device
2 delivery sale permit holder shall allow the director to perform
3 an audit of records of devices upon request.

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

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

13 2. There is levied and imposed an excise tax on a device
14 purchased in this state through a sale or purchased for use
15 in this state through a delivery sale of forty percent of the
16 purchase price of the device.

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

21 4. A device delivery sale permit holder making taxable
22 delivery sales of devices within this state and a device
23 retailer shall remit to the department all sales and excise
24 taxes due on such sales at the times and in the manner as
25 established by rule of the director.

26 5. The director shall adopt rules pursuant to chapter 17A to
27 administer this section.

28 6. Excise taxes collected under this section shall be
29 deposited in the specialty courts program fund created in
30 section 453E.6.

31 7. a. For the purpose of enabling the department to
32 determine the tax liability of device delivery sale permit
33 holders, device retailers, or any other person dealing in
34 devices or to determine whether a tax liability has been
35 incurred, the department shall have the right to inspect any

1 premises of the device delivery sale permit holder, device
2 retailer, or other person dealing in devices located within
3 or without the state of Iowa where devices are manufactured,
4 produced, made, stored, transported, sold, or offered for
5 sale or exchange, and to examine all of the records required
6 to be kept or any other records that may be kept incident
7 to the conduct of the business of said device delivery sale
8 permit holder, device retailer, or any other person dealing in
9 devices.

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

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

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

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

2 1. A specialty courts program fund is created in the state
3 treasury under the control of the director of the department
4 of corrections. Moneys from permit fees, with the exception
5 of permit fees collected by cities or counties in the issuance
6 of permits, and excise taxes imposed and collected pursuant
7 to section 453E.5, shall be deposited in the fund. Permit
8 fees collected by cities or counties under this chapter shall
9 be paid to the treasurer of the city where the permit is
10 effective, or to another city officer as designated by the city
11 council, and credited to the general fund of the city. Permit
12 fees collected by counties under this chapter shall be paid to
13 the county treasurer and credited to the general fund of the
14 county.

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

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

32 4. The treasurer of state shall provide a quarterly
33 report of fund activities and balances to the director of the
34 department of corrections.

35 Sec. 7. NEW SECTION. **453E.7 Permits — suspension —**

1 **revocation — penalties.**

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

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

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

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

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

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

9 a. For a first violation, a civil penalty of five hundred
10 dollars.

11 b. For a second violation, a civil penalty of one thousand
12 dollars.

13 c. A third violation constitutes grounds for suspension or
14 revocation of the permit under this chapter.

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

18 a. For a first violation, a civil penalty of one thousand
19 dollars.

20 b. For a second violation, a civil penalty of two thousand
21 dollars.

22 c. For a third or subsequent violation, a civil penalty of
23 five thousand dollars.

24 DIVISION II

25 HEMP PRODUCTS — RETAIL SALES

26 Sec. 8. NEW SECTION. 126.24 Hemp products — retail sales
27 — claims.

28 Unless a state or federal agency has substantiated and
29 approved the efficacy and safety claims of a product based
30 on competent and reliable scientific evidence, a person
31 engaging in the retail sale in this state of a hemp product
32 that contains hemp-derived cannabidiol, or in the retail sale
33 of a cosmetic, personal care product, or product intended for
34 human or animal consumption to which hemp-derived cannabidiol
35 has been added in compliance with section 204.7, subsection

1 9, shall include on the product's principal display panel,
2 a statement that the product may or may not contain the
3 ingredients stated on the label, that the efficacy and safety
4 of the product have not been substantiated or approved by
5 a state or federal agency based on competent and reliable
6 scientific evidence, and that the consumer should use the
7 product at the consumer's own risk. This section shall not
8 apply to a medical cannabidiol manufacturer licensed pursuant
9 to chapter 124E.

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EXPLANATION

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The inclusion of this explanation does not constitute agreement with
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 \$1,500 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 from permit fees, with the
23 exception of city and county permit fees, and excise taxes
24 imposed and collected under the bill, are to be deposited in
25 the specialty courts program fund created in the bill to be
26 used for the purpose of the support of specialty courts to
27 address underlying substance use disorder-related and mental
28 health-related issues that contribute to the contact of
29 individuals with the justice system.

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

1 also device retailer permit holders or device delivery sale
2 permit holders as well as to those who are not permit holders.

3 Additionally, a person holding a device retailer permit
4 or a device delivery sale permit who violates the bill by
5 marketing or selling a device to be used or attempted to be
6 used in combination with a controlled substance to knowingly
7 or intentionally and primarily inject, ingest, inhale, or
8 otherwise introduce into the human body a controlled substance,
9 resulting in the device constituting drug paraphernalia,
10 commits a simple misdemeanor in violation of Code section
11 124.414 and is also subject to permit revocation.

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

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

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

1 principal display panel a statement that the product may or
2 may not contain the ingredients stated on the label, that the
3 efficacy and safety of the product have not been substantiated
4 or approved by a state or federal agency based on competent and
5 reliable scientific evidence, and that the consumer should use
6 the product at the consumer's own risk. This provision does
7 not apply to a licensed cannabidiol manufacturer.

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