

**House File 98 - Introduced**

HOUSE FILE 98

BY HOLT

**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 2021, 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 twenty-one, 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 2021, 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 2021, 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 2021, 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 twenty-one years  
18 of age.

19 2. A person under twenty-one years of age shall not  
20 smoke, use, possess, purchase, or attempt to purchase any  
21 tobacco, 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 twenty-one years of age does not constitute a  
26 violation under [this section](#) if the individual under twenty-one  
27 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 use  
8 of tobacco, tobacco products, ~~alternative nicotine products,~~  
9 ~~vapor products,~~ or cigarettes by individuals under twenty-one  
10 years of age does not result from participation by any  
11 individual under twenty-one 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 2021, 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 2021, 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 twenty-one 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 twenty-one years of age.

26 Sec. 7. Section 453A.13, subsections 1, 6, 9, and 10, Code  
27 2021, 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 2021, 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 twenty-one  
 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 2021, 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 2021, 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 2021, 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 twenty-one years  
34 of age, or within five hundred feet of any playground, school,  
35 high school, or other facility when such facility is being used



1 primarily by persons under age twenty-one 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 twenty-one years  
6 of age.

7 Sec. 12. Section 453A.42, subsection 3, Code 2021, 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 2021,  
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 2021, 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 2021, 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 2021, 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 2021, 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.