

Senate File 2402 - Introduced

SENATE FILE 2402

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SSB 3101)

A BILL FOR

1 An Act relating to the regulation of vapor products, and
2 providing penalties.

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

1 Section 1. Section 453A.19, Code 2024, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 5. For the purpose of enabling the
4 department to determine compliance with subchapter III, the
5 department shall have the right to inspect any premises of the
6 holder of an Iowa permit located within the state of Iowa where
7 vapor products are stored, transported, sold, or offered for
8 sale or exchanged, to examine all stocks of vapor products of
9 the permit holder, and to examine all of the records required
10 to be kept or any other records that may be kept incident to
11 the conduct of the vapor products business of the permit holder
12 or any other person dealing in vapor products. It shall be
13 unlawful for any such permit holder to fail to produce upon
14 demand of the department any records required to be kept, or to
15 hinder or prevent in any manner the inspection of the records
16 or the examination of the premises or stock as specified in
17 this subsection.

18 Sec. 2. Section 453A.35, subsection 1, paragraph b, Code
19 2024, is amended to read as follows:

20 b. The revenues generated from the tax on cigarettes
21 pursuant to [section 453A.6, subsection 1](#), and from the tax on
22 tobacco products as specified in section 453A.43, subsections
23 1, 2, 3, and 4, and from the fees and penalties specified in
24 subchapter III shall be credited to the health care trust fund
25 created in [section 453A.35A](#).

26 Sec. 3. Section 453A.35A, Code 2024, is amended to read as
27 follows:

28 **453A.35A Health care trust fund.**

29 1. A health care trust fund is created in the office of
30 the treasurer of state. The fund consists of the revenues
31 generated from the tax on cigarettes pursuant to section
32 453A.6, subsection 1, and from the tax on tobacco products
33 as specified in [section 453A.43, subsections 1, 2, 3, and 4](#),
34 and from the fees and penalties specified in subchapter III,
35 that are credited to the health care trust fund, annually,

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

14 2. Moneys in the fund shall be used only for purposes
15 related to health care, substance use disorder treatment and
16 prevention, and tobacco use prevention, cessation, and control,
17 including but not limited to the administration and enforcement
18 of subchapter III.

19 **Sec. 4. NEW SECTION. 453A.52 Vapor products directory —**
20 **established — requirements.**

21 1. By August 1, annually, following the date the director
22 first makes the vapor products directory available as specified
23 in [section 453A.52A](#), every vapor products manufacturer where
24 vapor products are sold in the state, whether directly or
25 through a distributor, wholesaler, retailer, or similar
26 intermediary or intermediaries, shall certify under penalty of
27 perjury on a form and in the manner prescribed by the director,
28 that the vapor products manufacturer agrees to comply with this
29 subchapter and to one of the following:

30 a. That the vapor products manufacturer has received a
31 marketing authorization or similar order for the vapor product
32 from the United States food and drug administration pursuant
33 to 21 U.S.C. §387j.

34 b. That the vapor product was marketed in the United
35 States as of August 8, 2016, the vapor products manufacturer

1 submitted a premarket tobacco product application for the vapor
2 product to the United States food and drug administration
3 pursuant to 21 U.S.C. §387j on or before September 9, 2020,
4 and the application either remains under review by the United
5 States food and drug administration or a final decision on the
6 application has not otherwise taken effect.

7 2. A vapor products manufacturer shall submit a
8 certification form that separately lists each of the vapor
9 products manufacturer's vapor products sold in this state.

10 3. Each initial and annual certification form required to
11 be submitted under this section shall be accompanied by both
12 of the following:

13 a. A copy of the marketing authorization or other order
14 for each vapor product issued by the United States food and
15 drug administration pursuant to 21 U.S.C. §387j, or evidence
16 that the premarket tobacco product application for each vapor
17 product was submitted to the United States food and drug
18 administration and a final authorization or order has not yet
19 taken effect.

20 b. A payment of one hundred dollars for each vapor product
21 listed in the certification.

22 4. A vapor products manufacturer required to submit a
23 certification form under this section shall notify the director
24 within thirty business days of any material change to the
25 certification form, including the issuance or denial of a
26 marketing authorization or other order by the United States
27 food and drug administration pursuant to 21 U.S.C. §387j, or
28 any other order or action by the United States food and drug
29 administration that affects the authorization of the vapor
30 product to be introduced or delivered into interstate commerce
31 for commercial distribution in the United States.

32 5. a. The director shall maintain and make publicly
33 available a vapor products directory that lists all
34 vapor products manufacturers and vapor products for which
35 certification forms have been submitted.

1 *b.* The director shall make the directory available on the
2 department's internet site.

3 *c.* The director shall update the directory as necessary in
4 order to correct mistakes, ensure accuracy, and add or remove
5 vapor products on at least a monthly basis.

6 6. *a.* The director shall provide a vapor products
7 manufacturer with notice and an opportunity to cure
8 deficiencies before removing the vapor products manufacturer or
9 a vapor product from the directory.

10 *b.* The director shall not remove a vapor products
11 manufacturer or the vapor products manufacturer's vapor product
12 from the directory until at least fifteen business days after
13 the vapor products manufacturer has been given notice of an
14 intended action. Notice shall be sufficient and be deemed
15 immediately received by a vapor products manufacturer if the
16 notice is sent either electronically or by facsimile to an
17 electronic mail address or facsimile number, as applicable,
18 provided by the vapor products manufacturer in the vapor
19 products manufacturer's most recent certification filed under
20 this section.

21 *c.* The vapor products manufacturer shall have fifteen
22 business days from the date of service of the notice of
23 intended action to establish that the vapor products
24 manufacturer or the vapor product should be included in the
25 directory.

26 *d.* A determination by the director to not include or to
27 remove a vapor products manufacturer or a vapor product from
28 the directory shall be subject to review by the filing of a
29 civil action for prospective declaratory or injunctive relief.

30 7. If a vapor product is removed from the directory, each
31 retailer, distributor, and wholesaler shall have twenty-one
32 business days from the day such vapor product is removed from
33 the directory to remove the vapor product from its inventory
34 and return the vapor product to the vapor products manufacturer
35 for disposal. After twenty-one business days following removal

1 from the directory, the vapor products of a vapor products
2 manufacturer identified in the notice of removal are contraband
3 and are subject to seizure, forfeiture, and destruction, and
4 shall not be purchased or sold in the state. The cost of such
5 seizure, forfeiture, and destruction shall be borne by the
6 person from whom the vapor products are confiscated.

7 Sec. 5. NEW SECTION. **453A.52A Vapor products —**
8 **requirements.**

9 Beginning October 1, 2024, or on the date the director
10 first makes the vapor products directory available for public
11 inspection on the department's internet site, whichever is
12 later, all of the following shall apply to vapor products in
13 this state:

14 1. A person shall not sell or offer for sale a vapor product
15 in this state that is not included in the vapor products
16 directory, and a vapor products manufacturer shall not sell,
17 either directly or through a distributor, wholesaler, retailer,
18 or similar intermediary or intermediaries, a vapor product
19 in this state that is not included in the vapor products
20 directory.

21 2. A retailer shall purchase vapor products for resale to
22 consumers only from a distributor or subjobber with a valid
23 license issued pursuant to this chapter.

24 Sec. 6. NEW SECTION. **453A.52B Penalties.**

25 1. A retailer, distributor, or wholesaler who sells or
26 offers for sale a vapor product in this state that is not
27 included in the vapor products directory established in
28 this subchapter shall be subject to all of the following, as
29 applicable:

30 a. A civil penalty of three hundred dollars per day for each
31 vapor product offered for sale in violation of this subsection
32 until the offending vapor product is removed from the market
33 or until the offending vapor product is properly listed on the
34 directory.

35 b. For a second violation within a period of two years, a

1 retailer shall be assessed a civil penalty of one thousand five
2 hundred dollars or the retailer's permit shall be suspended for
3 a period of thirty days.

4 c. For a third violation within a period of three years, a
5 retailer shall be assessed a civil penalty of one thousand five
6 hundred dollars and the retailer's permit shall be suspended
7 for a period of thirty days.

8 d. For a fourth violation within a period of three years, a
9 retailer shall be assessed a civil penalty of one thousand five
10 hundred dollars and the retailer's permit shall be suspended
11 for a period of sixty days.

12 e. For a fifth violation within a period of four years, the
13 retailer's permit shall be revoked.

14 2. A vapor products manufacturer whose vapor products are
15 not listed in the vapor products directory and are sold in this
16 state, whether directly or through a distributor, wholesaler,
17 retailer, or similar intermediary or intermediaries, is subject
18 to a civil penalty of one thousand dollars per day for each
19 vapor product offered for sale in violation of this subsection
20 until the offending vapor product is removed from the market
21 or until the offending vapor product is properly listed on the
22 directory.

23 3. Any vapor products manufacturer that knowingly makes a
24 false representation in any of the information required by this
25 subchapter is guilty of a serious misdemeanor for each false
26 representation.

27 4. Knowingly shipping or receiving vapor products in
28 violation of this subchapter is an unfair practice and a
29 violation of section 714.16.

30 5. In any action brought by the state to enforce this
31 subchapter, the state shall be entitled to recover the costs
32 of investigation and prosecution, expert witness fees, court
33 costs, and reasonable attorney fees.

34 **Sec. 7. NEW SECTION. 453A.52C Compliance checks.**

35 1. Each distributor or retailer that distributes or sells

1 vapor products in this state shall be subject to unannounced
2 compliance checks conducted by the department or peace officers
3 as defined in section 801.4 for purposes of enforcing this
4 subchapter. Peace officers who conduct compliance checks
5 pursuant to this section shall forward the results of any
6 compliance check to the department in a manner prescribed by
7 the department within thirty business days after the compliance
8 check is conducted.

9 2. Any unannounced follow-up compliance checks of a
10 noncompliant retailer or distributor shall be conducted within
11 thirty business days after any violation of this subchapter.

12 3. The director shall publish the results of all compliance
13 checks performed under this section at least annually and shall
14 make the results available to the public upon request.

15 Sec. 8. NEW SECTION. **453A.52D Agent for service of process.**

16 1. A nonresident vapor products manufacturer that has not
17 registered to do business in the state as a foreign corporation
18 or business entity shall, as a condition precedent to being
19 included or retained in the vapor products directory, appoint
20 and continually engage without interruption the services of
21 an agent in this state to act as agent for service of process
22 on whom all process, and any action or proceeding against the
23 vapor products manufacturer concerning or arising out of the
24 enforcement of this subchapter, may be served in any manner
25 authorized by law. Such service shall constitute legal and
26 valid service of process on the vapor products manufacturer.
27 The vapor products manufacturer shall provide the name,
28 address, telephone number, and proof of the appointment and
29 availability of such agent to the director.

30 2. The vapor products manufacturer shall provide notice
31 to the director thirty calendar days prior to termination of
32 the authority of an agent and shall further provide proof to
33 the satisfaction of the director of the appointment of a new
34 agent no less than five calendar days prior to the termination
35 of an existing agent appointment. In the event an agent

1 terminates an agency appointment, the manufacturer shall notify
2 the director of the termination within five calendar days and
3 shall include proof to the satisfaction of the director of the
4 appointment of a new agent.

5 3. A vapor products manufacturer whose vapor products
6 are sold in this state, who has not appointed and engaged
7 the services of an agent as required by this section, shall
8 be deemed to have appointed the secretary of state as its
9 agent for service of process. However, the appointment of the
10 secretary of state as agent shall not satisfy the condition
11 precedent for the vapor products manufacturer to be included or
12 retained in the vapor products directory.

13 Sec. 9. NEW SECTION. 453A.52E Proceeds paid to health care
14 trust fund.

15 The revenues generated from the payment of fees and
16 penalties provided for under this subchapter shall be credited
17 to the health care trust fund created in section 453A.35A and
18 used for the administration and enforcement of this subchapter.

19 Sec. 10. NEW SECTION. 453A.52F Annual reports.

20 By January 15, annually, following the date the director
21 first makes the vapor products directory available as specified
22 in section 453A.52A, the director shall submit a report to the
23 general assembly regarding the status of the vapor products
24 directory, vapor products manufacturers, the vapor products
25 included in the directory, revenue and expenditures related to
26 administration of this subchapter, and enforcement activities
27 undertaken pursuant to this subchapter.

28 Sec. 11. NEW SECTION. 453A.52G Adoption of rules.

29 The director shall adopt rules pursuant to chapter 17A to
30 administer this subchapter.

31 Sec. 12. CODE EDITOR DIRECTIVES.

32 1. The Code editor is directed to create a new subchapter IV
33 in chapter 453A as follows: Subchapter IV shall be entitled
34 "Uniform Application of Chapter".

35 2. The Code editor shall transfer section 453A.56 to the new

1 subchapter IV.

2 3. The Code editor is directed to create a new subchapter
3 III in chapter 453A as follows: Subchapter III shall be
4 entitled "Vapor Products Directory and Regulation" and include
5 sections 453A.52A through 453A.52G.

6 4. The Code editor may modify subchapter titles if necessary
7 and is directed to correct internal references in the Code as
8 necessary due to enactment of this section.

9

EXPLANATION

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

12 This bill relates to the regulation of vapor products in
13 the state. The bill directs the Code editor to create a
14 new subchapter in Code chapter 453A (cigarette and tobacco
15 taxes and regulation of alternative nicotine products and
16 vapor products) to be entitled "Vapor Products Directory and
17 Regulation".

18 The bill requires that by August 1, annually, following the
19 date the director first makes the vapor products directory
20 publicly available, every vapor products manufacturer whose
21 vapor products are sold in the state, whether directly or
22 through an intermediary, shall certify under penalty of
23 perjury on a form and in the manner prescribed by the director
24 (director) of the department of revenue (DOR), that the vapor
25 products manufacturer agrees to comply with the new Code
26 subchapter and has either received a marketing authorization
27 or similar order for the vapor product from the federal food
28 and drug administration (FDA); or that the vapor product was
29 marketed in the United States as of August 8, 2016, the vapor
30 products manufacturer submitted a premarket tobacco product
31 application for the vapor product to the FDA on or before
32 September 9, 2020, and the application either remains under
33 review by the FDA or a final decision on the application has
34 not otherwise taken effect.

35 The certification must separately list each of the vapor

1 products manufacturer's vapor products sold in the state.
2 Each initial and annual certification form required to
3 be submitted shall be accompanied by a copy of either the
4 FDA marketing authorization or other order for each vapor
5 product; or evidence that the premarket tobacco product
6 application for each vapor product was submitted to the FDA
7 and a final authorization or order has not yet taken effect.
8 The certification must also be accompanied by a payment of
9 \$100 for each vapor product listed in the certification. A
10 vapor products manufacturer required to submit a certification
11 form shall notify the director within 30 business days of
12 any material change to the certification form, including any
13 change in the federal authorization for the vapor product. The
14 director shall maintain and make publicly available a vapor
15 products directory that lists all vapor products manufacturers
16 and vapor products for which certification forms have been
17 submitted. The directory shall be available on DOR's internet
18 site, and the director shall update the directory on at least a
19 monthly basis.

20 The director shall provide a vapor products manufacturer
21 with notice and an opportunity to cure deficiencies before
22 removing the vapor products manufacturer or a vapor product
23 from the directory. The bill provides the process and time
24 frames for removing a vapor products manufacturer or vapor
25 product from the directory. A determination by the director
26 to not include or to remove a vapor products manufacturer or
27 a vapor product from the directory shall be subject to review
28 by the filing of a civil action for prospective declaratory
29 or injunctive relief. If a vapor product is removed from the
30 directory, the bill provides the process and time frames by
31 which a retailer, distributor, or wholesaler must remove the
32 vapor product from inventory and return the vapor product to
33 the vapor products manufacturer for disposal. After the time
34 frame specified, the vapor products in the notice of removal
35 are contraband and are subject to seizure, forfeiture, and

1 destruction, and shall not be purchased or sold in the state.

2 The bill provides that beginning October 1, 2024, or on the
3 date the director first makes the vapor products directory
4 available for public inspection on DOR's internet site,
5 whichever is later, a person shall not sell or offer for sale
6 a vapor product in this state that is not included in the
7 vapor products directory and a vapor products manufacturer
8 shall not sell, either directly or through an intermediary,
9 a vapor product in this state that is not included in the
10 vapor products directory; and a retailer shall purchase vapor
11 products for resale to consumers only from a distributor or
12 subjobber with a valid license issued pursuant to Code chapter
13 453A.

14 The bill provides for civil penalties and licensee
15 discipline for a retailer, distributor, or wholesaler who sells
16 or offers for sale a vapor product in this state that is not
17 included in the vapor products directory, based on the number
18 of violations in a period of years.

19 A vapor products manufacturer whose vapor products are not
20 listed in the vapor products directory and are sold in this
21 state, whether directly or through an intermediary, is subject
22 to a civil penalty of \$1,000 per day for each vapor product
23 offered for sale in violation of the bill. A vapor products
24 manufacturer that knowingly makes a false representation in
25 any of the information required by the new Code subchapter is
26 guilty of a serious misdemeanor for each false representation.
27 A serious misdemeanor is punishable by confinement for no more
28 than one year and a fine of at least \$430 but not more than
29 \$2,560.

30 Under the bill, knowingly shipping or receiving vapor
31 products in violation of the new Code subchapter is an unfair
32 practice and a violation of Code section 714.16 (consumer
33 frauds).

34 The bill provides that each distributor or retailer that
35 distributes or sells vapor products in the state shall be

1 subject to unannounced compliance checks conducted by DOR
2 or peace officers for purposes of enforcing the new Code
3 subchapter. Peace officers who conduct compliance checks
4 shall forward the results to DOR as prescribed by DOR within
5 30 business days. Any unannounced follow-up compliance checks
6 of a noncompliant retailer or distributor shall be conducted
7 within 30 business days after any violation of the new Code
8 subchapter. The director shall publish the results of all
9 compliance checks performed at least annually and shall make
10 the results available to the public upon request.

11 The bill requires a nonresident vapor products manufacturer
12 that has not registered to do business in the state as a
13 foreign corporation or business entity to, as a condition
14 precedent to being included or retained in the vapor products
15 directory, appoint and continually engage without interruption
16 the services of an agent in this state to act as agent for the
17 service of process. The bill provides the requirements for
18 instances in which a vapor products manufacturer terminates
19 the authority of an agent or an agent terminates an agency
20 appointment. If a vapor products manufacturer whose vapor
21 products are sold in the state has not appointed and engaged
22 the services of an agent as required, the vapor products
23 manufacturer is deemed to have appointed the secretary of state
24 as its agent for service of process. However, the appointment
25 of the secretary of state as agent shall not satisfy the
26 condition precedent for the vapor products manufacturer to be
27 included or retained in the vapor products directory.

28 The bill provides that the revenues generated from the
29 payment of fees and penalties provided for under the new Code
30 subchapter shall be credited to the health care trust fund and
31 used for the administration and enforcement of the new Code
32 subchapter. The bill makes conforming changes in Code section
33 453A.35 (proceeds made to general fund — health care trust
34 fund) and Code section 453A.35A (health care trust fund) to
35 reflect this provision.

1 The bill also makes a conforming change in Code section
2 453A.19 (examination of records and premises) to authorize
3 DOR, in determining compliance with the new Code subchapter,
4 to have the right to inspect any premises of the holder of
5 an Iowa permit located within the state of Iowa where vapor
6 products are stored, transported, sold, or offered for sale
7 or exchanged, to examine all stocks of vapor products of the
8 permit holder, and to examine all of the records required to
9 be kept or any other records that may be kept incident to the
10 conduct of the vapor products business of the permit holder or
11 any other person dealing in vapor products.

12 The bill requires that by January 15, annually, following
13 the director first makes the vapor products directory
14 publicly available, the director shall submit a report to the
15 general assembly regarding the status of the vapor products
16 directory, vapor products manufacturers, the vapor products
17 included in the directory, revenue and expenditures related
18 to administration of the new Code subchapter, and enforcement
19 activities undertaken pursuant to the new Code subchapter.

20 The bill directs the director to adopt administrative rules
21 to administer the new Code subchapter, and provides Code editor
22 directives to provide for creation of the new Code subchapter,
23 a conforming transfer, and other modifications necessitated by
24 the bill.