

**Senate Study Bill 3101 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
WAYS AND MEANS BILL BY  
CHAIRPERSON DAWSON)

**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. 453.52A 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. 453.52B 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 at least  
2 two unannounced compliance checks annually for purposes of  
3 enforcing this subchapter.

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

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

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

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

25 2. The vapor products manufacturer shall provide notice  
26 to the director thirty calendar days prior to termination of  
27 the authority of an agent and shall further provide proof to  
28 the satisfaction of the director of the appointment of a new  
29 agent no less than five calendar days prior to the termination  
30 of an existing agent appointment. In the event an agent  
31 terminates an agency appointment, the manufacturer shall notify  
32 the director of the termination within five calendar days and  
33 shall include proof to the satisfaction of the director of the  
34 appointment of a new agent.

35 3. A vapor products manufacturer whose vapor products



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

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

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

14 Sec. 10. NEW SECTION. **453A.52F Annual reports.**

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

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

24 The director may adopt rules pursuant to chapter 17A to  
25 administer this subchapter.

26 Sec. 12. **CODE EDITOR DIRECTIVES.**

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

30 2. The Code editor shall transfer section 453A.56 to the new  
31 subchapter IV.

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

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

4 EXPLANATION

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

7 This bill relates to the regulation of vapor products in  
8 the state. The bill directs the Code editor to create a  
9 new subchapter in Code chapter 453A (cigarette and tobacco  
10 taxes and regulation of alternative nicotine products and  
11 vapor products) to be entitled "Vapor Products Directory and  
12 Regulation".

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

30 The certification must separately list each of the vapor  
31 products manufacturer's vapor products sold in the state.  
32 Each initial and annual certification form required to  
33 be submitted shall be accompanied by a copy of either the  
34 FDA marketing authorization or other order for each vapor  
35 product; or evidence that the premarket tobacco product

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

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

32 The bill provides that beginning October 1, 2024, or on the  
33 date the director first makes the vapor products directory  
34 available for public inspection on DOR's internet site,  
35 whichever is later, a person shall not sell or offer for sale

1 a vapor product in this state that is not included in the  
2 vapor products directory and a vapor products manufacturer  
3 shall not sell, either directly or through an intermediary,  
4 a vapor product in this state that is not included in the  
5 vapor products directory; and a retailer shall purchase vapor  
6 products for resale to consumers only from a distributor or  
7 subjobber with a valid license issued pursuant to Code chapter  
8 453A.

9 The bill provides for civil penalties and licensee  
10 discipline for a retailer, distributor, or wholesaler who sells  
11 or offers for sale a vapor product in this state that is not  
12 included in the vapor products directory, based on the number  
13 of violations in a period of years.

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

25 Under the bill, knowingly shipping or receiving vapor  
26 products in violation of the new Code subchapter is an unfair  
27 practice and a violation of Code section 714.16 (consumer  
28 frauds).

29 The bill provides that each distributor or retailer that  
30 distributes or sells vapor products in the state shall be  
31 subject to at least two unannounced compliance checks annually  
32 for purposes of enforcing the new Code subchapter, and that  
33 any unannounced follow-up compliance checks of a noncompliant  
34 retailer or distributor shall be conducted within 30 business  
35 days after any violation of the new Code subchapter. The

1 director shall publish the results of all compliance checks  
2 performed at least annually and shall make the results  
3 available to the public upon request.

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

21 The bill provides that the revenues generated from the  
22 payment of fees and penalties provided for under the new Code  
23 subchapter shall be credited to the health care trust fund and  
24 used for the administration and enforcement of the new Code  
25 subchapter. The bill makes conforming changes in Code section  
26 453A.35 (proceeds made to general fund — health care trust  
27 fund) and Code section 453A.35A (health care trust fund) to  
28 reflect this provision.

29 The bill also makes a conforming change in Code section  
30 453A.19 (examination of records and premises) to authorize  
31 DOR, in determining compliance with the new Code subchapter,  
32 to have the right to inspect any premises of the holder of  
33 an Iowa permit located within the state of Iowa where vapor  
34 products are stored, transported, sold, or offered for sale  
35 or exchanged, to examine all stocks of vapor products of the

1 permit holder, and to examine all of the records required to  
2 be kept or any other records that may be kept incident to the  
3 conduct of the vapor products business of the permit holder or  
4 any other person dealing in vapor products.

5 The bill requires that by January 15, annually, following  
6 the director first makes the vapor products directory  
7 publicly available, the director shall submit a report to the  
8 general assembly regarding the status of the vapor products  
9 directory, vapor products manufacturers, the vapor products  
10 included in the directory, revenue and expenditures related  
11 to administration of the new Code subchapter, and enforcement  
12 activities undertaken pursuant to the new Code subchapter.

13 The bill authorizes the director to adopt administrative  
14 rules to administer the new Code subchapter, and provides Code  
15 editor directives to provide for creation of the new Code  
16 subchapter, a conforming transfer, and other modifications  
17 necessitated by the bill.