

House File 2109 - Reprinted

HOUSE FILE 2109
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 566)

(As Amended and Passed by the House February 11, 2014)

A BILL FOR

1 An Act relating to vapor products and alternative nicotine
2 products, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 453A.1, subsection 21, Code 2014, is
2 amended to read as follows:

3 21. *“Retailer”* shall mean and include every person in
4 this state who shall sell, distribute, or offer for sale for
5 consumption or possess for the purpose of sale for consumption,
6 cigarettes, alternative nicotine products, or vapor products
7 irrespective of quantity or amount or the number of sales.

8 Sec. 2. Section 453A.1, Code 2014, is amended by adding the
9 following new subsections:

10 NEW SUBSECTION. 01. *“Alternative nicotine product”* means
11 a product, not consisting of or containing tobacco, that
12 provides for the ingestion into the body of nicotine, whether
13 by chewing, absorbing, dissolving, inhaling, snorting, or
14 sniffing, or by any other means. *“Alternative nicotine product”*
15 does not include cigarettes, tobacco products, or vapor
16 products, or a product that is regulated as a drug or device by
17 the United States food and drug administration under chapter V
18 of the federal Food, Drug, and Cosmetic Act.

19 NEW SUBSECTION. 26A. *“Vapor product”* means a noncombustible
20 product containing nicotine that employs a mechanical heating
21 element, battery, or circuit, regardless of shape or size, that
22 can be used to heat a nicotine solution, and includes but is
23 not limited to a cartridge or other container of such nicotine
24 solution, an electronic cigarette, an electronic cigar, an
25 electronic cigarillo, or an electronic pipe. *“Vapor product”*
26 does not include a product regulated as a drug or device by the
27 United States food and drug administration under chapter V of
28 the federal Food, Drug, and Cosmetic Act.

29 Sec. 3. Section 453A.2, subsections 1, 2, 3, and 8, Code
30 2014, are amended to read as follows:

31 1. A person shall not sell, give, or otherwise supply any
32 tobacco, tobacco products, alternative nicotine products, vapor
33 products, or cigarettes to any person under eighteen years of
34 age.

35 2. A person under eighteen years of age shall not smoke,

1 use, possess, purchase, or attempt to purchase any tobacco,
2 tobacco products, alternative nicotine products, vapor
3 products, or cigarettes.

4 3. Possession of ~~cigarettes or tobacco~~, tobacco products,
5 alternative nicotine products, vapor products, or cigarettes by
6 an individual under eighteen years of age does not constitute a
7 violation under this section if the individual under eighteen
8 years of age possesses the ~~cigarettes or tobacco~~, tobacco
9 products, alternative nicotine products, vapor products, or
10 cigarettes as part of the individual's employment and the
11 individual is employed by a person who holds a valid permit
12 under this chapter or who lawfully offers for sale or sells
13 cigarettes or tobacco products.

14 8. a. A person shall not be guilty of a violation of
15 this section if conduct that would otherwise constitute a
16 violation is performed to assess compliance with ~~cigarette and~~
17 tobacco, tobacco products, alternative nicotine products, vapor
18 products, or cigarette laws if any of the following applies:

19 (1) The compliance effort is conducted by or under the
20 supervision of law enforcement officers.

21 (2) The compliance effort is conducted with the advance
22 knowledge of law enforcement officers and reasonable measures
23 are adopted by those conducting the effort to ensure that
24 use of ~~cigarettes or tobacco~~, tobacco products, alternative
25 nicotine products, vapor products, or cigarettes by individuals
26 under eighteen years of age does not result from participation
27 by any individual under eighteen years of age in the compliance
28 effort.

29 b. For the purposes of this subsection, "law enforcement
30 officer" means a peace officer as defined in section 801.4 and
31 includes persons designated under subsection 4 to enforce this
32 section.

33 Sec. 4. Section 453A.4, subsection 1, Code 2014, is amended
34 to read as follows:

35 1. If a person holding a permit under this chapter or an

1 employee of such a permittee has a reasonable belief based on
2 factual evidence that a driver's license as defined in section
3 321.1, subsection 20A, or nonoperator's identification card
4 issued pursuant to section 321.190 offered by a person who
5 wishes to purchase ~~cigarettes or tobacco~~, tobacco products,
6 alternative nicotine products, vapor products, or cigarettes
7 is altered or falsified or belongs to another person, the
8 permittee or employee may retain the driver's license or
9 nonoperator's identification card. Within twenty-four hours,
10 the card shall be delivered to the appropriate city or county
11 law enforcement agency of the jurisdiction in which the
12 permittee's premises are located, and the permittee shall file
13 a written report of the circumstances under which the card was
14 retained. The local law enforcement agency may investigate
15 whether a violation of section 321.216, 321.216A, or 321.216C
16 has occurred. If an investigation is not initiated or probable
17 cause is not established by the local law enforcement agency,
18 the driver's license or nonoperator's identification card shall
19 be delivered to the person to whom it was issued. The local law
20 enforcement agency may forward the card with the report to the
21 state department of transportation for investigation, in which
22 case, the state department of transportation may investigate
23 whether a violation of section 321.216, 321.216A, or 321.216C
24 has occurred. The state department of transportation shall
25 return the card to the person to whom it was issued if an
26 investigation is not initiated or probable cause is not
27 established.

28 Sec. 5. Section 453A.5, subsection 1, Code 2014, is amended
29 to read as follows:

30 1. The alcoholic beverages division of the department of
31 commerce shall develop a tobacco compliance employee training
32 program not to exceed two hours in length for employees and
33 prospective employees of retailers, as defined in sections
34 453A.1 and 453A.42, to inform the employees about state and
35 federal laws and regulations regarding the sale of ~~cigarettes~~

1 ~~and tobacco, tobacco products, alternative nicotine products,~~
2 vapor products, and cigarettes to persons under eighteen
3 years of age and compliance with and the importance of laws
4 regarding the sale of ~~cigarettes and tobacco, tobacco products,~~
5 alternative nicotine products, vapor products, and cigarettes
6 to persons under eighteen years of age.

7 Sec. 6. Section 453A.13, subsection 1, Code 2014, is amended
8 to read as follows:

9 1. *Permits required.* Every distributor, wholesaler,
10 cigarette vendor, and retailer, now engaged or who desires to
11 become engaged in the sale or use of cigarettes, upon which
12 a tax is required to be paid, and every retailer now engaged
13 or who desires to become engaged in selling, offering for
14 sale, or distributing alternative nicotine products or vapor
15 products shall obtain a state or retail ~~cigarette~~ permit as a
16 distributor, wholesaler, cigarette vendor, or retailer, as the
17 case may be.

18 Sec. 7. Section 453A.13, subsections 6, 9, and 10, Code
19 2014, are amended to read as follows:

20 6. *No sales without permit.* ~~No~~ A distributor, wholesaler,
21 cigarette vendor, or retailer shall not sell any cigarettes,
22 alternative nicotine products, or vapor products until such
23 application has been filed and the fee prescribed paid for a
24 permit and until such permit is obtained and only while such
25 permit is unrevoked and unexpired.

26 9. *Permit — form and contents.* Each permit issued shall
27 describe clearly the place of business for which it is issued,
28 shall be nonassignable, consecutively numbered, designating the
29 kind of permit, and shall authorize the sale of cigarettes,
30 alternative nicotine products, or vapor products in this
31 state subject to the limitations and restrictions herein
32 contained. The retail permits shall be upon forms furnished by
33 the department or on forms made available or approved by the
34 department.

35 10. *Permit displayed.* The permit shall, at all times, be

1 publicly displayed by the distributor, wholesaler, or retailer
2 at the place of business so as to be easily seen by the public
3 and the persons authorized to inspect the place of business.
4 The proprietor or keeper of any building or place where
5 ~~cigarettes and other~~, alternative nicotine products, vapor
6 products, or tobacco products are kept for sale, or with intent
7 to sell, shall upon request of any agent of the department or
8 any peace officer exhibit the permit. A refusal or failure to
9 exhibit the permit is prima facie evidence that the cigarettes,
10 alternative nicotine products, vapor products, tobacco, or
11 ~~other~~ tobacco products are kept for sale or with intent to sell
12 in violation of this division.

13 Sec. 8. Section 453A.36, subsections 6, 7, and 11, Code
14 2014, are amended to read as follows:

15 6. Any sales of ~~cigarettes or tobacco~~, tobacco products,
16 alternative nicotine products, vapor products or cigarettes
17 made through a cigarette vending machine are subject to rules
18 and penalties relative to retail sales of ~~cigarettes and~~
19 ~~tobacco~~, tobacco products, alternative nicotine products,
20 vapor products and cigarettes provided for in this chapter.
21 Cigarettes shall not be sold through any cigarette vending
22 machine unless the cigarettes have been properly stamped or
23 metered as provided by this division, and in case of violation
24 of this provision, the permit of the dealer authorizing retail
25 sales of cigarettes shall be revoked. Payment of the permit
26 fee as provided in section 453A.13 authorizes a cigarette
27 vendor to sell ~~cigarettes or tobacco~~, tobacco products,
28 alternative nicotine products, vapor products and cigarettes
29 through vending machines. However, ~~cigarettes or tobacco,~~
30 tobacco products, alternative nicotine products, vapor products
31 and cigarettes shall not be sold through a vending machine
32 unless the vending machine is located in a place where the
33 retailer ensures that no person younger than eighteen years of
34 age is present or permitted to enter at any time. ~~Cigarettes~~
35 ~~or Tobacco~~, tobacco products, alternative nicotine products,

1 vapor products and cigarettes shall not be sold through any
2 cigarette vending machine if such products are placed together
3 with any nontobacco product, other than matches, in the
4 cigarette vending machine. This section does not require a
5 retail permit holder to buy a cigarette vendor's permit if the
6 retail permit holder is in fact the owner of the cigarette
7 vending machines and the machines are operated in the location
8 described in the retail permit.

9 7. a. It shall be unlawful for a person other than a holder
10 ~~of a~~ retailer as defined in section 453A.1 or 453A.42 who holds
11 a valid retail permit, as applicable, to sell tobacco, tobacco
12 products, alternative nicotine products, vapor products, or
13 cigarettes at retail.

14 b. ~~No~~ A state permit holder shall not sell or distribute
15 cigarettes at wholesale to any person in the state of Iowa
16 who does not hold a permit authorizing the retail sale
17 of cigarettes or who does not hold a state permit as a
18 manufacturer, distributing agent, wholesaler, or distributor.

19 11. Violation of this section by the holder of a retailer's,
20 distributor's, wholesaler's or manufacturer's permit shall be
21 grounds for the revocation of such permit.

22 Sec. 9. Section 453A.36A, subsection 1, Code 2014, is
23 amended to read as follows:

24 1. ~~Beginning January 1, 1999, except~~ Except as provided in
25 section 453A.36, subsection 6, a retailer shall not sell or
26 offer for sale ~~cigarettes or tobacco,~~ tobacco products, in a
27 quantity of less than a carton, alternative nicotine products,
28 vapor products, or cigarettes through the use of a self-service
29 display.

30 Sec. 10. Section 453A.39, Code 2014, is amended to read as
31 follows:

32 **453A.39 Tobacco ~~product,~~ tobacco products, alternative**
33 **nicotine products, vapor products, and cigarette samples —**
34 **restrictions — administration.**

35 1. A manufacturer, distributor, wholesaler, retailer, or

1 distributing agent, or agent thereof, shall not give away
2 cigarettes or tobacco products at any time in connection with
3 the manufacturer's, distributor's, wholesaler's, retailer's, or
4 distributing agent's business or for promotion of the business
5 or product, except as provided in subsection 2.

6 2. a. All cigarette samples shall be shipped only to a
7 distributor that has a permit to stamp cigarettes or little
8 cigars with Iowa tax. All cigarette samples must have a
9 cigarette stamp. The manufacturer shipping samples under this
10 section shall send an affidavit to the director stating the
11 shipment information, including the date shipped, quantity, and
12 to whom the samples were shipped. The distributor receiving
13 the shipment shall send an affidavit to the director stating
14 the shipment information, including the date shipped, quantity,
15 and from whom the samples were shipped. These affidavits shall
16 be duly notarized and submitted to the director at the time of
17 shipment and receipt of the samples. The distributor shall
18 pay the tax on samples by separate remittance along with the
19 affidavit.

20 b. A manufacturer, distributor, wholesaler, retailer, or
21 distributing agent or agent thereof shall not give away any
22 ~~cigarettes or tobacco~~, tobacco products, alternative nicotine
23 products, vapor products, or cigarettes to any person under
24 eighteen years of age, or within five hundred feet of any
25 playground, school, high school, or other facility when such
26 facility is being used primarily by persons under age eighteen
27 for recreational, educational, or other purposes.

28 c. Proof of age shall be required if a reasonable person
29 could conclude on the basis of outward appearance that a
30 prospective recipient of a sample may be under eighteen years
31 of age.

32 Sec. 11. Section 453A.42, subsection 10, Code 2014, is
33 amended to read as follows:

34 10. "Retailer" means any person engaged in the business
35 of selling tobacco, tobacco products, alternative nicotine

1 products, or vapor products to ultimate consumers.

2 Sec. 12. Section 453A.47A, subsections 1, 2, 4, 5, and 10,
3 Code 2014, are amended to read as follows:

4 1. *Permits required.* A person shall not engage in
5 the business of a retailer of tobacco, tobacco products,
6 alternative nicotine products, or vapor products at any place
7 of business without first having received a permit as a ~~tobacco~~
8 ~~products~~ retailer.

9 2. *No sales without permit.* A retailer shall not sell any
10 tobacco, tobacco products, alternative nicotine products, or
11 vapor products, until an application has been filed and the fee
12 prescribed paid for a permit and until such permit is obtained
13 and only while such permit is not suspended, unrevoked, or
14 unexpired.

15 4. *Retailer — cigarettes and tobacco, tobacco products,*
16 *alternative nicotine products, and vapor products.* A retailer,
17 as defined in section 453A.1, who holds a permit under division
18 I of this chapter is not required to also obtain a retail
19 permit under this division. However, if a retailer, as defined
20 in section 453A.1, only holds a permit under division I of this
21 chapter and that permit is suspended, revoked, or expired, the
22 retailer shall not sell any ~~cigarettes or tobacco, tobacco~~
23 products, alternative nicotine products, or vapor products,
24 during the time which the permit is suspended, revoked, or
25 expired.

26 5. *Separate permit.* A separate retail permit shall be
27 required of a distributor or subjobber if the distributor or
28 subjobber sells tobacco, tobacco products, alternative nicotine
29 products, or vapor products at retail.

30 10. *Records and reports of retailers.*

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

35 b. Every retailer shall, when requested by the department,

1 make additional reports as the department deems necessary and
2 proper and shall at the request of the department furnish full
3 and complete information pertaining to any transaction of the
4 retailer involving the purchase or sale or use of tobacco,
5 tobacco products, alternative nicotine products, or vapor
6 products.

7 Sec. 13. Section 805.8C, subsection 3, Code 2014, is amended
8 to read as follows:

9 3. ~~Smoking violations~~ Violations related to smoking, tobacco,
10 tobacco products, alternative nicotine products, vapor products,
11 and cigarettes.

12 a. For violations described in section 142D.9, subsection 1,
13 the scheduled fine is fifty dollars, and is a civil penalty,
14 and the criminal penalty surcharge under section 911.1 shall
15 not be added to the penalty, and the court costs pursuant
16 to section 805.9, subsection 6, shall not be imposed. If
17 the civil penalty assessed for a violation described in
18 section 142D.9, subsection 1, is not paid in a timely manner,
19 a citation shall be issued for the violation in the manner
20 provided in section 804.1. However, a person under age
21 eighteen shall not be detained in a secure facility for failure
22 to pay the civil penalty. The complainant shall not be charged
23 a filing fee.

24 b. For violations of section 453A.2, subsection 1, by an
25 employee of a retailer, the scheduled fine is as follows:

26 (1) If the violation is a first offense, the scheduled fine
27 is one hundred dollars.

28 (2) If the violation is a second offense, the scheduled fine
29 is two hundred fifty dollars.

30 (3) If the violation is a third or subsequent offense, the
31 scheduled fine is five hundred dollars.

32 c. For violations of section 453A.2, subsection 2, the
33 scheduled fine is as follows and is a civil penalty, and the
34 criminal penalty surcharge under section 911.1 shall not be
35 added to the penalty, and the court costs pursuant to section

1 805.9, subsection 6, shall not be imposed:

2 (1) If the violation is a first offense, the scheduled fine
3 is fifty dollars.

4 (2) If the violation is a second offense, the scheduled fine
5 is one hundred dollars.

6 (3) If the violation is a third or subsequent offense, the
7 scheduled fine is two hundred fifty dollars.

8 Sec. 14. APPLICATION TO EXISTING PRODUCTS. Nothing in this
9 Act shall be construed to prohibit the department of revenue
10 from collecting taxes imposed on cigarettes or tobacco products
11 subject to taxation under chapter 453A prior to July 1, 2014.

12 Sec. 15. CODE EDITOR DIRECTIVE. The Code editor shall
13 modify the title of chapter 453A to read "Cigarette and Tobacco
14 Taxes and Regulation of Alternative Nicotine Products and Vapor
15 Products".