

Senate File 363 - Reprinted

SENATE FILE 363

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 226)

(SUCCESSOR TO SF 43)

(As Amended and Passed by the Senate February 17, 2021)

A BILL FOR

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

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

1 Section 1. NEW SECTION. 453E.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Business*" means any trade, occupation, activity,
5 or enterprise engaged in for the purpose of selling or
6 distributing tobacco products and devices in this state.

7 2. "*Consumer*" means any person who has title to or
8 possession of devices in storage, for use or other consumption
9 in this state.

10 3. "*Controlled substance*" means controlled substance as
11 defined in section 124.101.

12 4. "*Delivery sale*" means any sale of a device to a purchaser
13 in this state where the purchaser submits the order for
14 such sale by means of a telephonic or other method of voice
15 transmission, mail or any other delivery service, or the
16 internet or other online service and the device is delivered by
17 use of mail or a delivery service. The sale of a device shall
18 constitute a delivery sale regardless of whether the seller is
19 located in this state. "*Delivery sale*" does not include a sale
20 to a distributor or retailer of a device not for personal use.

21 5. "*Department*" means the department of revenue.

22 6. a. "*Device*" means any equipment or product, made in
23 whole or in part of glass or metal, that is designed for use
24 in inhaling through combustion tobacco, hemp, other plant
25 materials, or a controlled substance. "*Device*" does not
26 include a vapor product or a tobacco smoking product made of
27 briar, meerschaum, clay, or corn cob and not having a surface,
28 aperture, or other feature consisting of metal or glass.

29 b. In determining whether any particular item constitutes a
30 "*device*", the following factors may be considered:

31 (1) The instructions, oral or written, provided with the
32 item concerning its use.

33 (2) Any descriptive materials accompanying the item which
34 explain or depict its use.

35 (3) National and local advertising concerning the item's

1 use.

2 (4) The manner in which the item is displayed for sale.

3 (5) Whether the owner of the place of business, or anyone in
4 control of the item at the place of business, is a legitimate
5 supplier of like or related items to the community, such as a
6 licensed distributor, manufacturer, or subjobber.

7 (6) Direct or circumstantial evidence of the ratio of sales
8 of the item to the total sales of the place of business.

9 (7) The existence and scope of legitimate uses of the item
10 in the community.

11 (8) Expert testimony concerning the item's use.

12 c. A particular item may constitute a device notwithstanding
13 any lawful use of the item.

14 7. "*Device retailer*" means a person engaged in the retail
15 sale of tangible personal property who is also engaged in
16 selling devices to the ultimate consumer.

17 8. "*Director*" means the director of revenue.

18 9. "*Distributor*" means the same as defined in section
19 453A.42.

20 10. "*Manufacturer*" means the same as defined in section
21 453A.42.

22 11. "*Place of business*" means any place where tobacco
23 products and devices are sold, stored, or kept for the purpose
24 of sale or consumption; or for a business within or without the
25 state that conducts delivery sales, any place where tobacco
26 products and devices are sold or are kept for the purpose of
27 sale, including delivery sales.

28 12. "*Retail outlet*" means each place of business from which
29 tobacco products and devices are sold to consumers.

30 13. "*Sale*" means any transfer, exchange, or barter, in
31 any manner or by any means whatsoever, for consideration, and
32 includes and means all sales made by any person.

33 14. "*Subjobber*" means the same as defined in section
34 453A.42.

35 15. "*Tobacco products*" means cigars; little cigars;

1 cheroots; stogies; periques; granulated, plug cut, crimp cut,
2 ready rubbed, and other smoking tobacco; snuff; cavendish;
3 plug and twist tobacco; fine-cut and other chewing tobaccos;
4 shorts; refuse scraps, clippings, cuttings and sweepings of
5 tobacco, and other kinds and forms of tobacco, prepared in
6 such manner as to be suitable for chewing or smoking in a pipe
7 or otherwise, or both for chewing and smoking; but shall not
8 include cigarettes as defined in section 453A.1.

9 16. "*Tobacco retailer*" means a retailer as defined in
10 section 453A.42.

11 17. "*Use*" means the exercise of any right or power
12 incidental to the ownership of tobacco products or devices.

13 18. "*Vapor product*" means the same as defined in section
14 453A.1.

15 Sec. 2. NEW SECTION. 453E.2 Administration — rules —
16 intent.

17 1. The director shall administer this chapter. The director
18 shall collect, supervise, and enforce the collection of all
19 fees, taxes, and civil penalties imposed under this chapter.

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

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

29 4. This chapter or the holding of a device retailer permit
30 or a device delivery sale permit under this chapter shall not
31 be construed to provide for any of the following:

32 a. Immunity from prosecution or the limitation of the
33 application of other state law and regulations governing
34 tobacco products, drug paraphernalia, or controlled substances.

35 b. Authorization for the possession, marketing, offering

1 for sale, or selling of a device, the possession, marketing,
2 offering for sale, or selling of which is otherwise prohibited
3 by state or federal law.

4 Sec. 3. NEW SECTION. 453E.3 Device retailers — permits —
5 fees.

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

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

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

20 2. *No sales without device retailer permit.* A device
21 retailer shall not sell devices until an application has been
22 filed and the fee prescribed paid for a permit and until such
23 permit is obtained and only while such permit is not suspended,
24 revoked, or expired.

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

32 4. *Issuance.* Cities may issue device retailer permits
33 to device retailers located within their respective limits.
34 County boards of supervisors may issue device retailer permits
35 to device retailers located in their respective counties,

1 outside of the corporate limits of cities. The city or county
2 shall submit a duplicate of any application for a device
3 retailer permit to the alcoholic beverages division of the
4 department of commerce within thirty days of issuance of a
5 device retailer permit. The alcoholic beverages division of
6 the department of commerce shall submit the current list of
7 all device retailer permits issued to the department of public
8 health by the last day of each quarter of a state fiscal year.

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

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

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

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

27 c. If the applicant is not an individual, the names of the
28 partners if the applicant is a partnership or the names of
29 the principal officers or members if the applicant is a legal
30 entity, and their addresses.

31 d. Such other information as the director shall by rule
32 prescribe.

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

34 a. The director shall prescribe the forms necessary for
35 the efficient administration of this section and may require

1 uniform books and records to be used and kept by each device
2 retailer or other person as deemed necessary.

3 *b.* Every device retailer shall, when requested by the
4 department, make additional reports as the department deems
5 necessary and proper and shall at the request of the department
6 furnish full and complete information pertaining to any
7 transaction of the device retailer involving the purchase or
8 sale of devices, including the number of devices sold.

9 8. *Requirements for sale.*

10 *a.* A device retailer shall not sell, give, or otherwise
11 supply a device to any person under twenty-one years of age and
12 must verify the age of all purchasers of devices. If a device
13 is purchased at a retail outlet, valid proof of the purchaser's
14 identity and age shall be obtained at the time the device is
15 supplied to the purchaser. If a device is purchased through a
16 delivery sale, valid proof of the purchaser's identity and age
17 shall be obtained in accordance with section 453E.4.

18 *b.* A device retailer shall only display and sell devices
19 in a location of a retail outlet where the device retailer
20 ensures that the devices are not visible to a person younger
21 than twenty-one years of age and where no person younger than
22 twenty-one years of age is present or permitted to enter at any
23 time.

24 Sec. 4. NEW SECTION. 453E.4 **Delivery sale of devices —**
25 **permit — requirements.**

26 1. *a.* A person shall not mail, ship, or otherwise cause
27 to be delivered any device in connection with a delivery sale
28 to any other person within this state unless the person has
29 applied for and holds a device delivery sale permit as provided
30 in this section.

31 *b.* A person applying for a device delivery sale permit shall
32 submit an application for the permit electronically, or in a
33 manner prescribed by the director.

34 *c.* An application submitted pursuant to paragraph "b" shall
35 be accompanied by a permit fee in the amount of one thousand

1 five hundred dollars.

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

6 *e.* A permit issued pursuant to this section may be renewed
7 annually by submitting a renewal application in a manner
8 prescribed by the director, accompanied by the one thousand
9 five hundred dollar permit fee.

10 2. The delivery sale of devices pursuant to this
11 section shall be subject to the following requirements and
12 restrictions:

13 *a.* All devices delivered by delivery sale directly to a
14 resident of this state shall be sold only by a device delivery
15 sale permit holder.

16 *b.* A device delivery sale permit holder shall only deliver
17 devices by delivery sale to a resident of this state who is at
18 least twenty-one years of age for the resident's personal use
19 and not for resale.

20 *c.* All devices delivered by delivery sale directly to a
21 resident of this state shall be conspicuously labeled with the
22 words "CONTAINS DEVICE: SIGNATURE OF PERSON AGE 21 OR OLDER
23 REQUIRED FOR DELIVERY" or shall be conspicuously labeled with
24 alternative wording preapproved by the director.

25 *d.* A device delivery sale permit holder shall obtain
26 valid proof of identity and age prior to delivery, and shall
27 obtain the signature of a person age twenty-one or older as a
28 condition of delivery.

29 *e.* A device delivery sale permit holder shall maintain
30 records of devices delivered which include the name of the
31 device manufacturer, quantity of devices delivered, recipient's
32 name and address and verification of age on an electronic or
33 paper form of signature from the recipient of the device, and
34 sales and excise taxes paid. Records shall be submitted to
35 the director on a monthly basis in a form and manner to be

1 determined by the director. Records shall be maintained for at
2 least five years.

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

9 4. A device delivery sale permit holder shall be deemed to
10 have consented to the jurisdiction of the director or any other
11 agency or court in this state concerning enforcement of this
12 section and any related laws, rules, or regulations. A device
13 delivery sale permit holder shall allow the director to perform
14 an audit of records of devices upon request.

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

18 1. A sale or delivery sale of a device within this state
19 shall be subject to the sales tax provided in chapter 423,
20 subchapter II. All the provisions for the lien of the tax, its
21 collection, and all actions as provided in the uniform sales
22 and use tax administration Act, chapter 423, shall apply to the
23 tax imposed in this chapter.

24 2. There is levied and imposed an excise tax on a device
25 purchased in this state through a sale or purchased for use
26 in this state through a delivery sale of forty percent of the
27 purchase price of the device.

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

32 4. A device delivery sale permit holder making taxable
33 delivery sales of devices within this state and a device
34 retailer shall remit to the department all sales and excise
35 taxes due on such sales at the times and in the manner as

1 established by rule of the director.

2 5. The director may adopt rules pursuant to chapter 17A to
3 administer this section.

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

7 7. *a.* For the purpose of enabling the department to
8 determine the tax liability of device delivery sale permit
9 holders, device retailers, or any other person dealing in
10 devices or to determine whether a tax liability has been
11 incurred, the department shall have the right to inspect any
12 premises of the device delivery sale permit holder, device
13 retailer, or other person dealing in devices located within
14 or without the state of Iowa where devices are manufactured,
15 produced, made, stored, transported, sold, or offered for
16 sale or exchange, and to examine all of the records required
17 to be kept or any other records that may be kept incident
18 to the conduct of the business of said device delivery sale
19 permit holder, device retailer, or any other person dealing in
20 devices.

21 *b.* The department shall also have the right as an incident
22 to determining the tax liability, or whether a tax liability
23 has been incurred, to examine all stocks of devices and to
24 remain upon the premises for such length of time as may be
25 necessary to fully determine the tax liability, or whether a
26 tax liability has been incurred.

27 *c.* It shall be unlawful for a permit holder to fail to
28 produce upon demand of the department any records required to
29 be kept or to hinder or prevent in any manner the inspection of
30 the records or the examination of the premises.

31 *d.* In the case of any departmental inspection conducted
32 under this section requiring department personnel to travel
33 outside the state of Iowa, any additional costs incurred by
34 the department for out-of-state travel expenses shall be borne
35 by the device delivery sale permit holder, device retailer, or

1 other person dealing in devices. These additional costs shall
 2 be those costs in excess of the costs of a similar inspection
 3 conducted at the geographical point located within the state
 4 of Iowa nearest to the out-of-state inspection point. In
 5 lieu of conducting an on-premises out-of-state inspection,
 6 the department shall have the authority to direct the device
 7 delivery sale permit holder, device retailer, or other person
 8 dealing in devices to assemble and transport all records
 9 described in this subsection to the nearest practical and
 10 convenient geographical location in Iowa for inspection by the
 11 department.

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

13 1. A specialty courts program fund is created in the state
 14 treasury under the control of the governor's office of drug
 15 control policy. Moneys from permit fees, with the exception
 16 of permit fees collected by cities or counties in the issuance
 17 of permits, and excise taxes imposed and collected pursuant
 18 to section 453E.5, shall be deposited in the fund. Permit
 19 fees collected by cities or counties under this chapter shall
 20 be paid to the treasurer of the city where the permit is
 21 effective, or to another city officer as designated by the city
 22 council, and credited to the general fund of the city. Permit
 23 fees collected by counties under this chapter shall be paid to
 24 the county treasurer and credited to the general fund of the
 25 county.

26 2. Moneys in the fund are appropriated to the governor's
 27 office of drug control policy to be used for the purpose of the
 28 support of specialty courts to address underlying substance
 29 use disorder-related and mental health-related issues that
 30 contribute to the contact of individuals with the justice
 31 system.

32 3. The drug policy coordinator of the governor's office of
 33 drug control policy shall develop criteria for approval of a
 34 request for specialty courts program funding. Annually, by
 35 May 1, the state court administrator shall submit a specialty

1 courts funding request for the upcoming fiscal year to the drug
2 policy coordinator of the governor's office of drug control
3 policy for approval, and the drug policy coordinator shall
4 approve or reject any such request no later than June 1. The
5 state court administrator may submit a subsequent request
6 within fifteen days of notification of the rejection of an
7 initial request. The state court administrator shall consult
8 with the director of the department of corrections prior to
9 submitting any funding request that involves the department of
10 corrections.

11 4. The fund shall be separate from the general fund of the
12 state and shall not be considered part of the general fund of
13 the state. The moneys in the fund shall not be considered
14 revenue of the state, but rather shall be moneys of the fund.
15 The moneys in the fund are not subject to reversion to the
16 general fund of the state under section 8.33 and shall not
17 be transferred, used, obligated, appropriated, or otherwise
18 encumbered, except to provide for the purposes of this section.
19 Notwithstanding section 12C.7, subsection 2, interest or
20 earnings on moneys deposited in the fund shall be credited to
21 the fund.

22 5. The treasurer of state shall provide a quarterly report
23 of fund activities and balances to the drug policy coordinator
24 of the governor's office of drug control policy.

25 **Sec. 7. NEW SECTION. 453E.7 Permits — suspension —**
26 **revocation — penalties.**

27 1. The provisions of chapter 453A including the permit
28 suspension and revocation provisions and the civil penalties
29 established in section 453A.22 shall apply to tobacco retailers
30 who are also device retailer permit holders or device delivery
31 sale permit holders under this chapter. The provisions of
32 chapter 453A applicable to persons other than tobacco retailers
33 who violate chapter 453A shall also apply to persons who
34 violate this chapter.

35 2. A person holding a device retailer permit or a device

1 delivery sale permit under this chapter who violates this
2 chapter by marketing or selling a device to be used or
3 attempted to be used or that is capable of use in combination
4 with tobacco, hemp, other plant materials, or a controlled
5 substance, to knowingly or intentionally and primarily inhale
6 the material or substance through combustion commits a serious
7 misdemeanor and is also subject to permit revocation.

8 3. *a.* If a person holding a device retailer permit or a
9 device delivery sale permit under this chapter has willfully
10 violated this chapter, the department shall revoke the permit
11 upon notice and hearing. The hearing before the department may
12 be held at a site in the state as the department may direct.
13 The notice shall be given by mailing a copy to the permit
14 holder's place of business as it appears on the application
15 for a permit. If, upon hearing, the department finds that the
16 violation has occurred, the department may revoke the permit.

17 *b.* If a device retailer permit or a device delivery
18 sale permit is suspended or revoked under this section, the
19 suspension or revocation shall only apply to the place of
20 business at which the violation occurred and shall not apply to
21 any other place of business to which the permit applies but at
22 which the violation did not occur.

23 *c.* The department or local authority shall report the
24 suspension or revocation of a device retailer permit or a
25 device delivery sale permit under this section to the alcoholic
26 beverages division of the department of commerce within thirty
27 days of the suspension or revocation of the permit.

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

31 *a.* For a first violation, a civil penalty of five hundred
32 dollars.

33 *b.* For a second violation, a civil penalty of one thousand
34 dollars.

35 *c.* A third violation constitutes grounds for suspension or

1 revocation of the permit under this chapter.

2 5. A person other than a device retailer permit holder or a
3 device delivery sale permit holder who violates this chapter,
4 including a person who engages in the business of a device
5 retailer at any place of business or through delivery sales
6 without holding an applicable, valid permit under this chapter,
7 commits a serious misdemeanor and shall also be subject to the
8 following civil penalties:

9 a. For a first violation, a civil penalty of one thousand
10 dollars.

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

13 c. For a third or subsequent violation, a civil penalty of
14 five thousand dollars.