

**House File 2677 - Reprinted**

HOUSE FILE 2677

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 682)

(As Amended and Passed by the House April 3, 2024)

**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     *d.* The director shall notify each retailer, distributor, and  
7 wholesaler of any change to the directory on at least a monthly  
8 basis via electronic communication.

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

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

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

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

33     7. If a vapor product is removed from the directory,  
34 the director shall notify each retailer, distributor,  
35 and wholesaler of the removal of the vapor product and

1 the effective date of such removal from the directory via  
2 electronic communication.

3 8. If a vapor product is removed from the directory, each  
4 retailer, distributor, and wholesaler shall have twenty-one  
5 business days from the day such vapor product is removed from  
6 the directory to remove the vapor product from its inventory  
7 and return the vapor product to the vapor products manufacturer  
8 for disposal. After twenty-one business days following removal  
9 from the directory, the vapor products of a vapor products  
10 manufacturer identified in the notice of removal are contraband  
11 and are subject to seizure, forfeiture, and destruction, and  
12 shall not be purchased or sold in the state. The cost of such  
13 seizure, forfeiture, and destruction shall be borne by the  
14 person from whom the vapor products are confiscated.

15 Sec. 5. NEW SECTION. 453A.52A Vapor products —  
16 requirements.

17 Beginning October 1, 2024, or on the date the director  
18 first makes the vapor products directory available for public  
19 inspection on the department's internet site, whichever is  
20 later, all of the following shall apply to vapor products in  
21 this state:

22 1. A person shall not sell or offer for sale a vapor product  
23 in this state that is not included in the vapor products  
24 directory, and a vapor products manufacturer shall not sell,  
25 either directly or through a distributor, wholesaler, retailer,  
26 or similar intermediary or intermediaries, a vapor product  
27 in this state that is not included in the vapor products  
28 directory.

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

32 Sec. 6. NEW SECTION. 453A.52B Penalties.

33 1. A retailer, distributor, or wholesaler who sells or  
34 offers for sale a vapor product in this state that is not  
35 included in the vapor products directory established in

1 this subchapter shall be subject to all of the following, as  
2 applicable:

3     *a.* A civil penalty of three hundred dollars per day for each  
4 vapor product offered for sale in violation of this subsection  
5 until the offending vapor product is removed from the market  
6 or until the offending vapor product is properly listed on the  
7 directory.

8     *b.* For a second violation within a period of two years, a  
9 retailer shall be assessed a civil penalty of one thousand five  
10 hundred dollars or the retailer's permit shall be suspended for  
11 a period of thirty days.

12     *c.* For a third violation within a period of three years, a  
13 retailer shall be assessed a civil penalty of one thousand five  
14 hundred dollars and the retailer's permit shall be suspended  
15 for a period of thirty days.

16     *d.* For a fourth violation within a period of three years, a  
17 retailer shall be assessed a civil penalty of one thousand five  
18 hundred dollars and the retailer's permit shall be suspended  
19 for a period of sixty days.

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

22     2. A vapor products manufacturer whose vapor products are  
23 not listed in the vapor products directory and are sold in this  
24 state, whether directly or through a distributor, wholesaler,  
25 retailer, or similar intermediary or intermediaries, is subject  
26 to a civil penalty of one thousand dollars per day for each  
27 vapor product offered for sale in violation of this subsection  
28 until the offending vapor product is removed from the market  
29 or until the offending vapor product is properly listed on the  
30 directory.

31     3. Any vapor products manufacturer that knowingly makes a  
32 false representation in any of the information required by this  
33 subchapter is guilty of a serious misdemeanor for each false  
34 representation.

35     4. Knowingly shipping or receiving vapor products in

1 violation of this subchapter is an unfair practice and a  
2 violation of section 714.16.

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

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

8 1. Each distributor or retailer that distributes or sells  
9 vapor products in this state shall be subject to unannounced  
10 compliance checks conducted by the department or peace officers  
11 as defined in section 801.4 for purposes of enforcing this  
12 subchapter. Peace officers who conduct compliance checks  
13 pursuant to this section shall forward the results of any  
14 compliance check to the department in a manner prescribed by  
15 the department within thirty business days after the compliance  
16 check is conducted.

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

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

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

24 1. A nonresident vapor products manufacturer that has not  
25 registered to do business in the state as a foreign corporation  
26 or business entity shall, as a condition precedent to being  
27 included or retained in the vapor products directory, appoint  
28 and continually engage without interruption the services of  
29 an agent in this state to act as agent for service of process  
30 on whom all process, and any action or proceeding against the  
31 vapor products manufacturer concerning or arising out of the  
32 enforcement of this subchapter, may be served in any manner  
33 authorized by law. Such service shall constitute legal and  
34 valid service of process on the vapor products manufacturer.  
35 The vapor products manufacturer shall provide the name,



1 address, telephone number, and proof of the appointment and  
2 availability of such agent to the director.

3 2. The vapor products manufacturer shall provide notice  
4 to the director thirty calendar days prior to termination of  
5 the authority of an agent and shall further provide proof to  
6 the satisfaction of the director of the appointment of a new  
7 agent no less than five calendar days prior to the termination  
8 of an existing agent appointment. In the event an agent  
9 terminates an agency appointment, the manufacturer shall notify  
10 the director of the termination within five calendar days and  
11 shall include proof to the satisfaction of the director of the  
12 appointment of a new agent.

13 3. A vapor products manufacturer whose vapor products  
14 are sold in this state, who has not appointed and engaged  
15 the services of an agent as required by this section, shall  
16 be deemed to have appointed the secretary of state as its  
17 agent for service of process. However, the appointment of the  
18 secretary of state as agent shall not satisfy the condition  
19 precedent for the vapor products manufacturer to be included or  
20 retained in the vapor products directory.

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

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

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

28 By January 15, annually, following the date the director  
29 first makes the vapor products directory available as specified  
30 in section 453A.52A, the director shall submit a report to the  
31 general assembly regarding the status of the vapor products  
32 directory, vapor products manufacturers, the vapor products  
33 included in the directory, revenue and expenditures related to  
34 administration of this subchapter, and enforcement activities  
35 undertaken pursuant to this subchapter.

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

2     The director shall adopt rules pursuant to chapter 17A to  
3 administer this subchapter.

4     Sec. 12.   CODE EDITOR DIRECTIVES.

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

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

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

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