

**Senate File 345 - Reprinted**

SENATE FILE 345  
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SSB 1128)

(As Amended and Passed by the Senate March 6, 2023)

**A BILL FOR**

1 An Act relating to the regulation of certain tobacco products,  
2 providing penalties, and including effective date  
3 provisions.

4 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 health  
8 and human services by the last day of each quarter of a state  
9 fiscal year.

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

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

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

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

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

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

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

35 a. The director shall prescribe the forms necessary for

1 the efficient administration of this section and may require  
2 uniform books and records to be used and kept by each device  
3 retailer or other person as deemed necessary.

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

10 **8. Requirements for sale.**

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

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

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

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

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

35 *c.* An application submitted pursuant to paragraph "b" shall

1 be accompanied by a permit fee in the amount of one thousand  
2 five hundred dollars.

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

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

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

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

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

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

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

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



1 the director on a monthly basis in a form and manner to be  
2 determined by the director. Records shall be maintained for at  
3 least five years.

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

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

16 **Sec. 5. NEW SECTION. 453E.5 Sales and excise taxes on**  
17 **sales and delivery sales of devices — examination of records and**  
18 **premises — subpoena for witnesses and papers.**

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

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

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

33 4. A device delivery sale permit holder making taxable  
34 delivery sales of devices within this state and a device  
35 retailer shall remit to the department all sales and excise

1 taxes due on such sales at the times and in the manner as  
2 established by rule of the director.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1     *c.* A third violation constitutes grounds for suspension or  
2 revocation of the permit under this chapter.

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

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

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

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

16    Sec. 8. EFFECTIVE DATE. This Act takes effect January 1,  
17 2024.