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)
_____ and [ ]= New Language by the Senate

A BILL FOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. NEW SECTION. **453E.2 Administration — rules — intent.**

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

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

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

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

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

b. Authorization for the possession, marketing, offering

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. *Records and reports of device retailers.*

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

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

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

8. *Requirements for sale.*

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

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

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

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

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

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

five hundred dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

established by rule of the director.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. A third violation constitutes grounds for suspension or

revocation of the permit under this chapter.

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

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

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

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