HOUSE FILE 2677
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 682)

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

[= New Language by the House

* = Language Stricken by the House

A BILL FOR

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

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

Section 1. Section 453A.19, Code 2024, is amended by adding the following new subsection:

NEW SUBSECTION. 5. For the purpose of enabling the department to determine compliance with subchapter III, the department shall have the right to inspect any premises of the holder of an Iowa permit located within the state of Iowa where vapor products are stored, transported, sold, or offered for sale or exchanged, to examine all stocks of vapor products of the permit holder, 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 vapor products business of the permit holder or any other person dealing in vapor products. It shall be unlawful for any such 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 or stock as specified in this subsection.

Sec. 2. Section 453A.35, subsection 1, paragraph b, Code 2024, is amended to read as follows:

b. The revenues generated from the tax on cigarettes pursuant to section 453A.6, subsection 1, ~~and~~ from the tax on tobacco products as specified in section 453A.43, subsections 1, 2, 3, and 4, and from the fees and penalties specified in subchapter III shall be credited to the health care trust fund created in section 453A.35A.

Sec. 3. Section 453A.35A, Code 2024, is amended to read as follows:

453A.35A Health care trust fund.

1. A health care trust fund is created in the office of the treasurer of state. The fund consists of the revenues generated from the tax on cigarettes pursuant to section 453A.6, subsection 1, ~~and~~ from the tax on tobacco products as specified in section 453A.43, subsections 1, 2, 3, and 4, and from the fees and penalties specified in subchapter III, that are credited to the health care trust fund, annually,

pursuant to section 453A.35. Moneys in 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. However, the fund shall be considered a special account for the purposes of section 8.53 relating to generally accepted accounting principles. Moneys in the fund shall be used only as specified in this section and shall be appropriated only for the uses specified. Moneys in the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2. Moneys in the fund shall be used only for purposes related to health care, substance use disorder treatment and prevention, and tobacco use prevention, cessation, and control, including but not limited to the administration and enforcement of subchapter III.

Sec. 4. NEW SECTION. **453A.52 Vapor products directory — established — requirements.**

1. By August 1, annually, following the date the director first makes the vapor products directory available as specified in section 453A.52A, every vapor products manufacturer where vapor products are sold in the state, whether directly or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries, shall certify under penalty of perjury on a form and in the manner prescribed by the director, that the vapor products manufacturer agrees to comply with this subchapter and to one of the following:

a. That the vapor products manufacturer has received a marketing authorization or similar order for the vapor product from the United States food and drug administration pursuant to 21 U.S.C. §387j.

b. That the vapor product was marketed in the United States as of August 8, 2016, the vapor products manufacturer

submitted a premarket tobacco product application for the vapor product to the United States food and drug administration pursuant to 21 U.S.C. §387j on or before September 9, 2020, and the application either remains under review by the United States food and drug administration or a final decision on the application has not otherwise taken effect.

2. A vapor products manufacturer shall submit a certification form that separately lists each of the vapor products manufacturer's vapor products sold in this state.

3. Each initial and annual certification form required to be submitted under this section shall be accompanied by both of the following:

a. A copy of the marketing authorization or other order for each vapor product issued by the United States food and drug administration pursuant to 21 U.S.C. §387j, or evidence that the premarket tobacco product application for each vapor product was submitted to the United States food and drug administration and a final authorization or order has not yet taken effect.

b. A payment of one hundred dollars for each vapor product listed in the certification.

4. A vapor products manufacturer required to submit a certification form under this section shall notify the director within thirty business days of any material change to the certification form, including the issuance or denial of a marketing authorization or other order by the United States food and drug administration pursuant to 21 U.S.C. §387j, or any other order or action by the United States food and drug administration that affects the authorization of the vapor product to be introduced or delivered into interstate commerce for commercial distribution in the United States.

5. *a.* The director shall maintain and make publicly available a vapor products directory that lists all vapor products manufacturers and vapor products for which certification forms have been submitted.

b. The director shall make the directory available on the department's internet site.

c. The director shall update the directory as necessary in order to correct mistakes, ensure accuracy, and add or remove vapor products on at least a monthly basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Knowingly shipping or receiving vapor products in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 12. CODE EDITOR DIRECTIVES.

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

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

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

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