

**CHAPTER 239****AUTHORITY OF ADVANCED NURSE PRACTITIONERS***S.F. 363*

**AN ACT** to permit advanced nurse practitioners to prescribe noncontrolled substances or devices under certain circumstances.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 147.107, Code 1991, is amended by adding the following new subsection:  
**NEW SUBSECTION. 6.** Notwithstanding subsection 1, but subject to the limitations contained in subsections 2 and 3, a registered nurse who is licensed and registered as an advanced registered nurse practitioner and who qualifies for and is registered in a recognized nursing specialty, other than the specialty of nurse anesthetist, may prescribe substances or devices that are not controlled substances or devices, if the nurse is engaged in the practice of a nursing specialty, other than that of nurse anesthetist, for which the use of prescription medications and devices is recognized by the board of medical examiners and the board of nursing and the use of the medications and devices is regulated under rules accepted by the board of medical examiners and adopted by the board of nursing in consultation with the board of pharmacy examiners.

Approved June 5, 1991

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**CHAPTER 240****SALE AND FURNISHING OF CIGARETTES AND TOBACCO PRODUCTS***H.F. 232*

**AN ACT** relating to the sale and furnishing of cigarettes and tobacco products to certain persons and providing penalties and an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 98.1, subsection 21, Code 1991, is amended to read as follows:

21. "Cigarette vending machine" means any self-service device offered for public use which, upon insertion of a coin, coins, paper currency, or by other means, dispenses cigarettes or tobacco products without the necessity of replenishing the device between each vending operation.

Sec. 2. Section 98.1, Code 1991, is amended by adding the following new subsection:

**NEW SUBSECTION. 24.** "Tobacco products" means cigars; little cigars as defined in section 98.42, subsection 16; cheroots; stogies; periques; granulated; plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; or 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 does not mean cigarettes.

Sec. 3. Section 98.2, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

**98.2 PERSONS UNDER LEGAL AGE.**

1. A person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age and a person under eighteen years of age shall not smoke, use, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes.

2. The Iowa department of public health, a county health department, a city health department, or a city may directly enforce this section in district court and initiate proceedings pursuant to section 98.22 before a permit-issuing authority against a permit holder violating this section.

3. Payment and distribution of court costs, fees, and fines in a prosecution initiated by a city or county shall be made as provided in chapter 602 for violation of a city or county ordinance.

Sec. 4. Section 98.3, Code 1991, is amended to read as follows:

98.3 VIOLATION.

~~Any A person who shall violate any of the provisions of violates section 98.2 shall for the first offense be or 98.39 is guilty of a simple misdemeanor. For a second or any subsequent violation such person shall be guilty of a serious misdemeanor.~~

Sec. 5. Section 98.22, subsection 2, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

2. If a retailer or employee of a retailer has violated section 98.2, 98.36, subsection 6, or 98.39, the department or local authority, in addition to the other penalties fixed for such violations in this section, shall assess a penalty upon the same hearing and notice as prescribed in subsection 1 as follows:

a. For a first violation, the violator shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of fourteen days.

b. For a second violation within a period of two years, the violator's permit shall be suspended for a period of thirty days.

c. For a third violation within a period of five years, the violator's permit shall be suspended for a period of sixty days.

d. For a fourth violation within a period of five years, the violator's permit shall be revoked.

Sec. 6. Section 98.36, subsection 6, Code 1991, is amended to read as follows:

6. Any sales of cigarettes or tobacco products made through a cigarette vending machine are subject to rules and penalties relative to retail sales of cigarettes and tobacco products provided for in this division chapter. No cigarettes shall be sold through any cigarette vending machine unless the cigarettes have been properly stamped or metered as provided by this division, and in case of violation of this provision, the permit of the dealer authorizing retail sales of cigarettes shall be canceled. Payment of the license fee as provided in section 98.13 authorizes a cigarette vendor to sell cigarettes or tobacco products through vending machines, provided that the following conditions are met: the machines are located in places where the machines are under the supervision of a person of legal age who is responsible for prevention of purchase by minors from the machines; the machines are equipped with a lock-out device under the control of a person of legal age who shall directly regulate the sale of items through the machines, and which shall include a mechanism to prevent the machines from functioning if the power source for the lock-out device fails or if the lock-out device is disabled, and a mechanism to ensure that only one pack of cigarettes or one tobacco product is dispensed at a time; and the location where the machines are placed is covered by a local retail permit. However, a lock-out device is not required for machines operated in the following locations, if the machines are not to be placed in a doorway or other area readily accessible to minors: a commercial establishment holding a class "C" liquor license or a class "B" beer permit under chapter 123, if the establishment is not also licensed as a food service establishment under chapter 137B; a private facility not open to the public; or a workplace not open to the public. This section does not require a retail licensee to buy a cigarette vendor's permit if the retail licensee is in fact the owner of the cigarette vending machines and the machines are operated in the location described in the retail permit.

Sec. 7. Section 98.39, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

98.39 TOBACCO PRODUCT AND CIGARETTE SAMPLES — RESTRICTIONS — ADMINISTRATION.

1. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away cigarettes or tobacco products at any time in connection with the manufacturer's, distributor's, wholesaler's, retailer's, or distributing agent's business or for promotion of the business or product, except as provided in subsection 2.

2. a. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away any cigarettes or tobacco products to any person under eighteen years of age, or within five hundred feet of any playground, school, high school, or other facility when such facility is being used primarily by persons under age eighteen for recreational, educational, or other purposes.

b. Proof of age shall be required if a reasonable person could conclude on the basis of outward appearance that a prospective recipient of a sample may be under eighteen years of age.

c. Persons engaged in sampling shall secure stocks of samples in safe locations in order to avoid inadvertent distribution of samples contrary to the provisions of this section.

d. Sampling shall cease at a particular location when circumstances arise that make it apparent that sampling cannot continue in a manner consistent with the provisions of this section; however, sampling may resume at that location when such circumstances abate.

e. All cigarette samples shall be shipped to a distributor that has a permit to stamp cigarettes or little cigars with Iowa tax. The manufacturer shipping samples under this section shall send an affidavit to the director stating the quantity and to whom the samples were shipped. The distributor receiving the shipment shall send an affidavit to the director stating the quantity and from whom the samples were shipped. These affidavits shall be duly notarized and submitted to the director at time of shipment and receipt of the samples. The distributor shall pay the tax on samples by separate remittance along with the affidavit.

DIVISION III

Sec. 8. NEW SECTION. 98.51 UNIFORM APPLICATION.

Enforcement of this chapter shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

Sec. 9. Section 232.8, subsection 1, unnumbered paragraph 2, Code 1991, is amended to read as follows:

Violations by a child of provisions of chapter 98, 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G which would be simple misdemeanors if committed by an adult, and violations by a child of county or municipal curfew or traffic ordinances, are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. A child convicted of a violation excluded from the jurisdiction of the juvenile court under this unnumbered paragraph shall be sentenced pursuant to section 805.8, where applicable, and pursuant to section 903.1, subsection 3, for all other violations.

Sec. 10. Section 903.1, subsection 3, Code 1991, is amended to read as follows:

3. A person under eighteen years of age convicted of a simple misdemeanor under chapter 98, 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G, or a violation of a county or municipal curfew or traffic ordinance, except for an offense subject to section 805.8, may be required to pay a fine, not to exceed one hundred dollars, as fixed by the court, or may be required to perform community service as ordered by the court.

The criminal penalty surcharge required by section 911.2 shall be added to a fine imposed on a misdemeanant, and is not a part of or subject to the maximums set in this section.

Sec. 11. EFFECTIVE DATE AND TRANSITION PROVISION. Section 6 of this Act takes effect upon enactment. However, section 6 of this Act shall not be enforced against persons in relationship to cigarette vending machines in operation on or before the enactment of this Act until July 1, 1994.