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[SF 2402](#) – Sale and Regulation of Vapor Products (LSB5259SV)  
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Fiscal Note Version – New

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**Description**

[Senate File 2402](#) creates a new subchapter in Iowa Code chapter [453A](#), relating to the regulation of vapor products in the State, and does the following:

- Requires vapor product manufacturers to annually certify to the Department of Revenue (IDR) that each vapor product has either received a marketing authorization or similar order from the federal Food and Drug Administration (FDA); or that the vapor product was marketed in the United States as of August 8, 2016, the manufacturer submitted a premarket tobacco product application for the product to the FDA on or before September 9, 2020, and the application either remains under review by the FDA or a final decision on the application has not otherwise taken effect.
- Requires annual certifications to be accompanied by a payment of \$100 for each vapor product listed in the certification.
- Requires the IDR to 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.
- Establishes civil penalties and licensee discipline for a manufacturer, 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.
- Establishes that a vapor products manufacturer that knowingly makes a false representation in any of the information required in the new subchapter is guilty of a serious misdemeanor for each false representation.
- Establishes that knowingly shipping or receiving vapor products in violation of the new subchapter is an unfair practice and a violation of Code section [714.16](#).
- Provides that each distributor or retailer that distributes or sells vapor products in the State shall be subject to unannounced compliance checks conducted by the IDR or peace officers for the purpose of enforcing the new subchapter.
- Provides that the revenues generated from the payment of fees and penalties shall be credited to the Health Care Trust Fund and used for the administration and enforcement of the new subchapter.
- Requires the director of the IDR to annually submit a report to the General Assembly by January 15 regarding the status of the vapor products directory, vapor products manufacturers, the vapor products included in the directory, and revenue and expenditures related to administration and enforcement activities.

**Background**

Some states, including Louisiana and Alabama, have enacted legislation to create a vapor products directory. Louisiana currently has 469 vapor products listed in their [Vapor and Alternative Nicotine Products Certification & Directory](#). Alabama currently has 1,575 vapor products listed in their [Electronic Nicotine Delivery Systems Products Directory](#).

The Health Care Trust Fund consists of the revenues generated from the tax on cigarettes and tobacco products that are credited to the Fund annually. Moneys in the Fund are used only for purposes related to health care; substance use disorder treatment and prevention; and tobacco use prevention, cessation, and control.

A serious misdemeanor is punishable by confinement for no more than one year and a fine of at least \$430 but not more than \$2,560.

A violation of Iowa Code section 714.16 is subject to the Attorney General (AG) seeking and obtaining, in an action in a district court, a temporary restraining order, preliminary injunction, or permanent injunction. If requested by the AG, the court may impose a civil penalty not to exceed \$40,000 per violation and not more than \$5,000 for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction.

**Assumptions**

- Administrative duties related to SF 2402 will be conducted by current IDR staff.
- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner length of stay (LOS); revocation rates; plea bargaining; and other criminal justice system policies and practices.
- A delay of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.

**Correctional Impact**

Senate File 2402 creates new criminal offenses, and the correctional impact cannot be estimated due to a lack of existing conviction data. **Figure 1** shows estimates for sentencing to State prison, parole, probation, or community-based corrections (CBC) residential facilities; LOS in months under those supervisions; and supervision marginal costs per day for serious misdemeanors. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 16, 2024, for information related to the correctional system.

**Figure 1 — Sentencing Estimate and Length of Stay (LOS)**

Conviction Offense Class	Percent Ordered to State Prison	FY 2023 Avg LOS in Prison (All Releases)	Marginal Cost per Day Prison	Percent Ordered to Probation	FY23 Field Avg LOS on Probation	Avg Cost per Day on Probation	Percent sentenced to CBC Residential Facility	Marginal Cost per Day CBC	Percent Ordered to County Jail	Marginal Cost per Day Jail	FY23 Field Avg LOS on Parole	Marginal Cost per Day Parole
Serious Misdemeanor	1.7%	6.6	\$24.94	53.0%	19.2	\$7.67	1.2%	\$20.00	74.2%	\$50.00	N/A	\$7.67

**Minority Impact**

Senate File 2402 creates new criminal offenses. As a result, Criminal and Juvenile Justice Planning (CJJP) of the Department of Management (DOM) cannot use existing data to estimate the minority impact of the Bill. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 16, 2024, for information related to minorities in the criminal justice system.

**Fiscal Impact**

Senate File 2402 is estimated to increase revenues to the Health Care Trust Fund from the potential collection of fees and penalties. The revenue cannot be determined due to the number of vapor products that may be included in the vapor products directory being unknown.

Senate File 2402 creates new criminal offenses, and the fiscal impact to the correctional system cannot be estimated due to a lack of existing conviction data. The average State cost per offense for a serious misdemeanor ranges from \$400 to \$6,900.

**Sources**

Criminal and Juvenile Justice Planning, Department of Management  
Department of Corrections  
Department of Revenue  
Legislative Services Agency

/s/ Jennifer Acton

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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