

Hammond  
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SSB-1208  
Human Resources

Succeeded By  
SENATE/HOUSE FILE SF/HF 457  
BY (PROPOSED DEPARTMENT OF  
PUBLIC HEALTH BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to cigarettes and tobacco products, including  
2 permits for retailers of cigarettes, appropriating fees,  
3 providing penalties, and providing effective dates.

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

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DIVISION VI

CIGARETTE RETAIL PERMITS -- VIOLATIONS

Section 1. NEW SECTION. 123.190 DEFINITIONS.

For the purpose of this division, unless the context otherwise requires:

1. "Administrator" means the administrator of the division, appointed pursuant to this chapter, or the administrator's designee.

2. "Application" means a formal written request for the issuance of a permit supported by a verified statement of fact.

3. "Carton" means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

4. "Cigarette" means a roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. "Cigarette" does not include cigars.

5. "Cigarette vending machine" means a 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.

6. "Cigarette vendor" means a person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more cigarette vending machines for the purpose of selling cigarettes at retail.

7. "City" means a municipal corporation but not including a county, township, school district, or any special purpose district or authority.

1 8. "Commission" means the alcoholic beverages commission  
2 established in this chapter.

3 9. "Distributing agent" means a person in this state who  
4 acts as an agent of a manufacturer outside of the state by  
5 storing cigarettes received in interstate commerce from the  
6 manufacturer subject to distribution or delivery to a  
7 distributor upon an order received by the manufacturer in  
8 interstate commerce and transmitted to the distributing agent  
9 for fulfillment from such place of storage.

10 10. "Distributor" means a person in this state who  
11 manufactures or produces cigarettes or who ships, transports,  
12 or imports into this state or in any manner acquires or  
13 possesses cigarettes without stamps affixed for the purpose of  
14 making a first sale of the cigarettes within the state.

15 11. "Division" means the alcoholic beverages division of  
16 the department of commerce established by this chapter.

17 12. "First sale" means the first sale or distribution of  
18 cigarettes in intrastate commerce, or the first use or  
19 consumption of cigarettes within this state.

20 13. "Individual package of cigarettes" means a package of  
21 cigarettes ordinarily sold at retail.

22 14. "Local authority" means the city council of a city in  
23 this state, or the county board of supervisors of a county in  
24 this state, which is empowered by this chapter to approve or  
25 deny applications for retail cigarette permits; empowered to  
26 recommend that such permits be granted and issued by the  
27 division; and empowered to take other actions reserved to the  
28 city council or county board by this division VI.

29 15. "Manufacturer" means a person who ships cigarettes  
30 into this state from outside the state.

31 16. "Package" or "pack" means a container of any kind in  
32 which cigarettes or tobacco products are offered for sale,  
33 sold, or otherwise distributed to consumers.

34 17. "Permit" means an express written authorization issued  
35 by the division for the retail sale of cigarettes.

1 18. "Permit holder", "holder of a permit", or "permittee"  
2 includes a person who holds a retail permit under this  
3 division VI or who holds a permit under chapter 453A, unless  
4 the context otherwise requires.

5 19. "Permitted premises" or "premises" means a room,  
6 enclosure, contiguous area, or place susceptible of precise  
7 description satisfactory to the administrator where cigarettes  
8 are sold under authority of a retail permit. A single  
9 premises may consist of multiple rooms, enclosures, areas, or  
10 places if they are wholly within the confines of a single  
11 building or contiguous grounds.

12 20. "Person" means an individual, firm, association, joint  
13 stock company, syndicate, copartnership, corporation, trustee,  
14 agency or receiver, or respective legal representative.

15 21. "Retailer" means a person in this state who sells,  
16 distributes, or offers for sale for consumption or possesses  
17 for the purpose of sale for consumption, cigarettes  
18 irrespective of quantity or amount or the number of sales.

19 22. "Retail permit" means a permit issued to a retailer.

20 23. "Self-service display" means any manner of product  
21 display, placement, or storage from which a person purchasing  
22 the product may take possession of the product, prior to  
23 purchase, without assistance from the retailer or employee of  
24 the retailer, in removing the product from a restricted access  
25 location.

26 24. "State permit" means a permit issued by the department  
27 of revenue and finance to a distributor, wholesaler,  
28 manufacturer, or cigarette vendor.

29 25. "Tobacco product" means a cigar; little cigar as  
30 defined in section 453A.42, subsection 5; cheroot; stogy;  
31 perique; granulated; plug cut, crimp cut, ready rubbed, and  
32 other smoking tobacco; snuff, snuff flour; cavendish; plug and  
33 twist tobacco; fine-cut and other chewing tobacco; short; or  
34 refuse scraps, clippings, cuttings and sweepings of tobacco,  
35 and other kinds and forms of tobacco, prepared in such manner

1 as to be suitable for chewing or smoking in a pipe or  
2 otherwise, or both for chewing and smoking; but does not mean  
3 cigarettes.

4 26. "Unincorporated town" means a compactly populated area  
5 recognized as a distinct place with a distinct place-name  
6 which is not itself incorporated or within the corporate  
7 limits of a city.

8 27. "Wholesaler" means a person other than a distributor  
9 or distributing agent who engages in the business of selling  
10 or distributing cigarettes within the state, for the purpose  
11 of resale.

12 Sec. 2. NEW SECTION. 123.191 RETAIL PERMIT ENFORCEMENT  
13 -- POWERS OF ADMINISTRATOR.

14 1. The division is the primary retail permit enforcement  
15 authority for this state. The department of public safety,  
16 the county attorney, the county sheriff and the sheriff's  
17 deputies, and the police department of every city shall aid in  
18 the enforcement of this division VI. Persons authorized to  
19 enforce this division VI shall have access to all records,  
20 reports, audits, tax reports, and all other documents and  
21 papers of the division pertaining to retail permits under this  
22 division VI.

23 2. In addition to the powers otherwise authorized under  
24 this chapter, the administrator shall have the following  
25 powers:

26 a. To grant and issue retail permits and to suspend or  
27 revoke retail permits as provided under this division VI.

28 b. To permit, inspect, and control retailers under this  
29 division VI.

30 c. To adopt rules pursuant to chapter 17A to implement and  
31 enforce this division VI.

32 3. The administrator shall have access to all records,  
33 reports, audits, tax reports, and all other documents and  
34 papers of the department of revenue and finance related to  
35 chapter 453A to ensure proper administration and enforcement

1 of this division VI, chapter 421B, and chapter 453A.

2 Sec. 3. NEW SECTION. 123.192 RETAIL PERMITS -- ACTION BY  
3 LOCAL AUTHORITIES AND DIVISION ON APPLICATIONS.

4 1. RETAIL PERMITS.

5 a. PERMITS REQUIRED. A retailer, engaged or who desires  
6 to become engaged in the sale or use of cigarettes, upon which  
7 a tax is required to be paid pursuant to chapter 453A, shall  
8 obtain a retail cigarette permit as a retailer.

9 b. NO SALES WITHOUT PERMIT. A retailer shall not sell any  
10 cigarettes until an application has been filed and the fee  
11 prescribed paid for a permit and until such permit is obtained  
12 and only while the permit is unrevoked and unexpired.

13 c. NUMBER OF PERMITS. An application shall be filed and a  
14 permit obtained for each premises owned or operated by a  
15 retailer.

16 d. GROUP BUSINESSES. If a distributor or wholesaler sells  
17 cigarettes at both retail and wholesale, the distributor or  
18 wholesaler shall obtain a separate retail permit for retail  
19 sales.

20 2. APPLICATION. Except as otherwise provided in section  
21 123.195, a verified application for the original issuance or  
22 the renewal of a retail permit shall be filed at the time and  
23 in the number of copies as the administrator shall prescribe,  
24 on a form prescribed by the administrator, and shall set forth  
25 under oath the following information:

26 a. The name and address of the applicant.

27 b. The name of the owner of the premises, and if that  
28 owner is not the applicant, a statement that the applicant is  
29 the actual lessee of the premises.

30 c. The precise location of the premises for which a permit  
31 is sought.

32 d. The names and addresses of all persons, partners,  
33 officers, directors, shareholders, and all others having  
34 financial interest, by way of loan, ownership, or otherwise,  
35 in the business.

1 e. The manner under which the retailer transacts or  
2 intends to transact business.

3 f. When required by the administrator, a sketch or drawing  
4 of the premises proposed to be permitted, in such form and  
5 containing such information as the administrator may require.

6 g. A statement whether any person specified in paragraph  
7 "d" has ever been convicted of any offense against the laws of  
8 the United States, or any state or territory of the United  
9 States, of any political subdivision of any state or  
10 territory.

11 h. Such other information as the administrator shall  
12 prescribe by rule.

13 3. FILING OF APPLICATION.

14 a. An application for a retail permit, accompanied by the  
15 necessary fee, shall be filed with the appropriate city  
16 council if the premises for which the permit is sought are  
17 located within the corporate limits of a city, or with the  
18 county board of supervisors if the premises for which the  
19 permit is sought are located outside the corporate limits of a  
20 city including if the premises are located in an  
21 unincorporated town.

22 b. A retail permit shall be issued only upon an  
23 application accompanied by the necessary fee as provided in  
24 subsection 1.

25 4. ACTION BY LOCAL AUTHORITIES. The local authority shall  
26 either approve or deny the issuance of a retail permit, shall  
27 endorse its approval or denial on the application, and shall  
28 forward the application with the necessary fee to the  
29 division. The number of retail permits which may be approved  
30 for issuance by local authorities is not limited.

31 5. ACTION BY ADMINISTRATOR.

32 a. Upon receipt of an application that has been  
33 disapproved by the local authority, the administrator shall  
34 notify the applicant that the applicant may appeal the  
35 disapproval of the application to the administrator. The

1 applicant shall be notified by certified mail, and the  
2 application and the fee shall be returned to the applicant.

3 b. Upon receipt of an application that has been approved  
4 by the local authority, the division shall perform an  
5 investigation as the administrator deems necessary to  
6 determine that the applicant complies with all requirements  
7 for holding a permit, and may require the applicant to appear  
8 to be examined under oath to demonstrate that the applicant  
9 complies with all of the requirements to hold a permit. If  
10 the administrator requires the applicant to appear and to  
11 testify under oath, a record shall be made of all testimony or  
12 evidence and the record shall become a part of the  
13 application. The administrator may appoint a member of the  
14 division or may request an administrative law judge of the  
15 department of inspections and appeals to receive the testimony  
16 under oath and evidence, and to issue a proposed decision to  
17 approve or disapprove the application for a permit. The  
18 administrator may affirm, reverse, or modify the proposed  
19 decision to approve or disapprove the application for the  
20 permit. If the application is approved by the administrator,  
21 the permit shall be issued. If the application is disapproved  
22 by the administrator, the applicant and the appropriate local  
23 authority shall be so notified by certified mail.

24 6. APPEAL OF DISAPPROVAL TO ADMINISTRATOR. An applicant  
25 for a retail permit may appeal from the local authority's  
26 disapproval of an application for a retail permit to the  
27 administrator. In the appeal, the applicant shall be allowed  
28 the opportunity to demonstrate in an evidentiary hearing  
29 conducted pursuant to chapter 17A that the applicant complies  
30 with all of the requirements for holding the permit. The  
31 administrator may appoint a member of the division or may  
32 request an administrative law judge of the department of  
33 inspections and appeals to conduct the evidentiary hearing and  
34 to render a proposed decision to approve or deny the issuance  
35 of the permit. The administrator may affirm, reverse, or

1 modify the proposed decision. If the administrator determines  
 2 that the applicant complies with all of the requirements for  
 3 holding a retail permit, the administrator shall order the  
 4 issuance of the permit. If the administrator determines that  
 5 the applicant does not comply with the requirements for  
 6 holding a permit, the administrator shall deny the issuance of  
 7 the permit.

8 7. JUDICIAL REVIEW OF ACTION OF ADMINISTRATOR. The  
 9 applicant or the local authority may seek judicial review of  
 10 the action of the administrator in accordance with the terms  
 11 of chapter 17A. Notwithstanding the terms of chapter 17A,  
 12 petitions for judicial review may be filed in the district  
 13 court of the county where the premises covered by the  
 14 application are situated.

15 8. APPEAL OF LOCAL AUTHORITY ACTION TO ADMINISTRATOR. A  
 16 retail permit holder whose permit has been suspended or  
 17 revoked or upon whom a civil penalty has been imposed by a  
 18 local authority for a violation of this division VI or whose  
 19 permit has been suspended by a local authority for violation  
 20 of a local ordinance may appeal the suspension, revocation, or  
 21 civil penalty to the administrator. The administrator may  
 22 appoint a member of the division or may request an  
 23 administrative law judge of the department of inspections and  
 24 appeals to hear the appeal which shall be conducted in  
 25 accordance with chapter 17A and to issue a proposed decision.  
 26 The administrator may review the proposed decision upon the  
 27 motion of a party to the appeal or upon the administrator's  
 28 own motion in accordance with chapter 17A. Upon review of the  
 29 proposed decision, the administrator may affirm, reverse, or  
 30 modify the proposed decision. A retail permit holder or a  
 31 local authority aggrieved by a decision of the administrator  
 32 may seek judicial review of the decision pursuant to chapter  
 33 17A.

34 9. ISSUANCE OR DENIAL.

35 a. A local authority or the division may deny the issuance

1 of a permit to a retailer who is substantially delinquent in  
2 the payment of a tax due, or the interest or penalty on the  
3 tax, administered by the department of revenue and finance  
4 pursuant to chapter 453A at the time of the application. If  
5 the applicant is a partnership, a permit may be denied if a  
6 partner is substantially delinquent on any delinquent tax,  
7 penalty, or interest. If the applicant is a corporation, a  
8 permit may be denied if any officer having a substantial legal  
9 or equitable interest in the ownership of the corporation owes  
10 any delinquent tax, interest, or penalty of the applicant  
11 corporation.

12 b. A retail permit shall not be issued for premises which  
13 do not conform to all applicable laws, ordinances,  
14 resolutions, and health and fire regulations.

15 10. PERMIT -- FORM AND CONTENTS. A permit shall describe  
16 clearly the premises for which the permit is issued, shall be  
17 nonassignable, shall designate the kind of permit, and shall  
18 authorize the sale of cigarettes in this state subject to the  
19 limitations and restrictions contained in this division VI. A  
20 retail permit shall be issued upon a form furnished by the  
21 division.

22 11. PERMIT DISPLAYED. The permit shall, at all times, be  
23 publicly displayed by the retailer, at the premises, so as to  
24 be easily seen by the public and the persons authorized to  
25 inspect the premises. The proprietor or keeper of any  
26 building or place where cigarettes are kept for sale, or with  
27 intent to sell, shall upon request of any agent of the  
28 division, the department of revenue and finance, or any peace  
29 officer exhibit the permit. A refusal or failure to exhibit  
30 the permit is prima facie evidence that the cigarettes are  
31 kept for sale or with intent to sell in violation of this  
32 division.

33 12. INFORMATION ACCESS. The division shall provide  
34 electronic access to all records regarding the application for  
35 and issuance of retail permits under this division VI to the

1 Iowa department of public health.

2 Sec. 4. NEW SECTION. 123.193 RETAIL PERMIT FOR RAILWAY  
3 CAR -- WATERCRAFT -- EXCURSION GAMBLING BOATS.

4 Subject to this division VI, a retail permit may be issued  
5 by the division to any dining car company, sleeping car  
6 company, railroad, railway company, passenger-carrying train,  
7 or watercraft operating intrastate only. The permit shall  
8 authorize the holder of the permit to keep for sale, and sell,  
9 cigarettes at retail on any such dining car, sleeping car,  
10 passenger car, or watercraft operated by the applicant in,  
11 through, or across the state of Iowa, subject to all of the  
12 restrictions imposed upon retailers under this division VI and  
13 chapter 453A. The application for the permit shall be in the  
14 form and contain the information required by the  
15 administrator. A permit is good throughout the state and only  
16 one permit is required by a permittee for all railway cars or  
17 watercraft described in this section. The division shall  
18 issue a duplicate permit for each such railway car or  
19 watercraft. If the boat is an excursion gambling boat  
20 licensed under chapter 99F, the owner shall obtain a separate  
21 permit for each excursion gambling boat operated by the owner  
22 in the state. If a permit is obtained in accordance with this  
23 section, a further permit shall not be required or tax levied  
24 for the privilege of selling cigarettes in the railway cars,  
25 watercraft, or gambling boat. Cigarettes shall not be sold in  
26 the railway cars, watercraft, or gambling boats without having  
27 stamps affixed evidencing the payment of the tax as provided  
28 in chapter 453A.

29 Sec. 5. NEW SECTION. 123.194 RECORDS -- INSPECTIONS.

30 1. Every holder of a retail permit shall keep a daily  
31 record of the gross receipts of the holder's business and  
32 shall maintain invoices to provide proof of purchase of  
33 cigarettes. The records and invoices required and the  
34 premises of the retail permit holder shall be open to  
35 inspection pursuant this section, during normal business hours

1 of the retail permit holder, or at any time that the permittee  
2 or the permittee's agents or patrons are on the premises.  
3 Records shall be kept for a period of three years from the  
4 date of the transaction for the purpose of inspection.

5 2. A state permit holder who sells cigarettes at retail  
6 shall issue an invoice to the holder's retail department for  
7 cigarettes to be sold at retail and such cigarette invoices  
8 shall be kept separate and apart.

9 3. As a condition for issuance of a retail permit, the  
10 applicant shall provide consent to members of the fire,  
11 police, and health departments and the building inspector of  
12 cities, the county sheriff, deputy sheriff, members of the  
13 department of public safety, representatives of the division,  
14 representatives of the department of inspections and appeals  
15 and representatives of the department of revenue and finance,  
16 certified police officers, and any official county health  
17 officer to enter upon areas of the premises where cigarettes  
18 are stored or sold without warrant during business hours of  
19 the retail permit holder or at any time the permittee or the  
20 permittee's agents or patrons are on the premises to inspect  
21 for violations of this division VI, chapter 453A, or  
22 ordinances and regulations that cities and county boards of  
23 supervisors may adopt. However, a subpoena issued under  
24 section 421.17 or a warrant is required for inspection of  
25 private records, a private business office, or attached living  
26 quarters. Persons who are not certified peace officers shall  
27 limit the scope of their inspections of permitted premises to  
28 the regulatory authority under which the inspection is  
29 conducted. All persons who enter upon permitted premises to  
30 conduct an inspection shall present appropriate identification  
31 to the owner of the establishment or the person who appears to  
32 be in charge of the establishment prior to commencing an  
33 inspection; however, this provision does not apply to  
34 undercover criminal investigations conducted by peace  
35 officers.

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1     Sec. 6.   NEW SECTION.   123.195   SIMPLIFIED RENEWAL  
2   PROCEDURE.

3     The administrator shall prescribe simplified application  
4 forms for the renewal of retail permits which may be filed by  
5 permittees in lieu of a detailed renewal application form when  
6 qualifications and qualification information have not changed  
7 since the original issuance of the permit. The simplified  
8 form shall require the permittee to verify under oath that the  
9 information contained in the original application remains  
10 current, and that no reason exists for the division's refusal  
11 to renew the permit as originally issued.

12    Sec. 7.   NEW SECTION.   123.196   PERMITS -- FEES --  
13   EXPIRATION.

- 14    1. The annual fee for retail permits is as follows:
- 15    a. In places outside any city, fifty dollars.
- 16    b. In cities of less than fifteen thousand population,
- 17    seventy-five dollars.
- 18    c. In cities of fifteen thousand or more population, one
- 19    hundred dollars.
- 20    d. For railway cars, watercraft, and excursion gambling
- 21    boats, twenty-five dollars. A duplicate permit for railway
- 22    cars, watercraft, and excursion gambling boats is two dollars.
- 23    2. Refunds shall not be issued if an unrevoked permit for
- 24    which the holder has paid the full annual fee is surrendered
- 25    at any time during the twelve-month period following issuance
- 26    of the permit.
- 27    3. Retail permits, unless sooner suspended or revoked,
- 28    expire one year from the date of issuance. The administrator
- 29    shall provide sixty days' written notice of the expiration to
- 30    each permittee.
- 31    4. The division may establish a per diem permit fee for
- 32    persons who apply for a retail permit under this division VI
- 33    and a permit or license held under any other provision of this
- 34    chapter in order to coordinate the period during which the
- 35    permits apply.

1 Sec. 8. NEW SECTION. 123.197 REVENUES REMITTED --  
2 DEPOSITED.

3 1. The division shall remit to the appropriate local  
4 authority the following amounts based on fees collected for  
5 retail permits pursuant to section 123.196 covering premises  
6 located within the local authority's jurisdiction.

7 a. Sixty-five percent of the first fifty dollars of the  
8 retail permit fee for places outside any city.

9 b. Sixty-five percent of the first seventy-five dollars of  
10 the retail permit fee for cities of less than fifteen thousand  
11 population.

12 c. Sixty-five percent of the first one hundred dollars of  
13 the retail permit fee for cities of fifteen thousand or more  
14 population.

15 2. The remaining fees collected are to be retained by the  
16 division and are appropriated for use by the division to  
17 perform retail permit activities and enforcement.

18 Notwithstanding section 8.33, the remainder of the fees  
19 collected shall not revert to the general fund of the state.

20 Sec. 9. NEW SECTION. 123.198 CIGARETTES RETAILER MAY NOT  
21 SELL.

22 It is unlawful for a retailer to sell or have in the  
23 retailer's possession cigarettes upon which the stamp tax  
24 required pursuant to chapter 453A has not been affixed.

25 Sec. 10. NEW SECTION. 123.199 SELF-SERVICE SALES  
26 PROHIBITED.

27 1. Except as provided in section 123.203, subsection 2, a  
28 retailer shall not sell or offer for sale cigarettes or  
29 tobacco products, in a quantity of less than a carton, through  
30 the use of a self-service display.

31 2. Violation of this section by a holder of a retail  
32 permit is grounds for revocation of such permit.

33 Sec. 11. NEW SECTION. 123.200 VIOLATION AS A FRAUDULENT  
34 PRACTICE.

35 A person who violates a provision of this division VI is

1 guilty of a fraudulent practice unless otherwise provided in  
2 this division VI.

3 Sec. 12. NEW SECTION. 123.201 PERSONS UNDER AGE  
4 EIGHTEEN.

5 1. A person shall not sell, give, or otherwise supply any  
6 tobacco, tobacco products, or cigarettes to any person under  
7 eighteen years of age.

8 2. A person under eighteen years of age shall not smoke,  
9 use, possess, purchase, or attempt to purchase any tobacco,  
10 tobacco products, or cigarettes.

11 3. Possession of cigarettes or tobacco products by an  
12 individual under eighteen years of age does not constitute a  
13 violation under this section if the individual under eighteen  
14 years of age possesses the cigarettes or tobacco products as  
15 part of the individual's employment and the individual is  
16 employed by a person who holds a valid permit under this  
17 division or chapter 453A or who lawfully offers for sale or  
18 sells cigarettes or tobacco products.

19 4. The Iowa department of public health, a county health  
20 department, a city health department, or a city may directly  
21 enforce this section in district court and initiate  
22 proceedings pursuant to section 123.204 before a permit-  
23 issuing authority against a permit holder violating this  
24 section.

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

29 6. A person shall not be guilty of a violation of this  
30 section if conduct that would otherwise constitute a violation  
31 is performed to assess compliance with cigarette and tobacco  
32 products laws if any of the following applies:

33 a. The compliance effort is conducted by or under the  
34 supervision of law enforcement officers.

35 b. The compliance effort is conducted with the advance

1 knowledge of law enforcement officers and reasonable measures  
2 are adopted by those conducting the effort to ensure that use  
3 of cigarettes or tobacco products by individuals under  
4 eighteen years of age does not result from participation by  
5 any individual under eighteen years of age in the compliance  
6 effort.

7 For the purposes of this subsection, "law enforcement  
8 officer" means a peace officer as defined in section 801.4 and  
9 includes persons designated under subsection 4 to enforce this  
10 section.

11 Sec. 13. NEW SECTION. 123.202 SEIZURE OF FALSE OR  
12 ALTERED DRIVER'S LICENSE OR NONOPERATOR'S IDENTIFICATION CARD.

13 1. If a person holding a permit under this division VI or  
14 chapter 453A or an employee of such a permittee has a  
15 reasonable belief based on factual evidence that a driver's  
16 license as defined in section 321.1, subsection 20A, or  
17 nonoperator's identification card issued pursuant to section  
18 321.190 offered by a person who wishes to purchase cigarettes  
19 or tobacco products is altered or falsified or belongs to  
20 another person, the permittee or employee may retain the  
21 driver's license or nonoperator's identification card. Within  
22 twenty-four hours, the card shall be delivered to the  
23 appropriate city or county law enforcement agency of the  
24 jurisdiction in which the permittee's premises are located,  
25 and the permittee shall file a written report of the  
26 circumstances under which the card was retained. The local  
27 law enforcement agency may investigate whether a violation of  
28 section 321.216, 321.216A, or 321.216C has occurred. If an  
29 investigation is not initiated or probable cause is not  
30 established by the local law enforcement agency, the driver's  
31 license or nonoperator's identification card shall be  
32 delivered to the person to whom it was issued. The local law  
33 enforcement agency may forward the card with the report to the  
34 state department of transportation for investigation, in which  
35 case, the state department of transportation may investigate

1 whether a violation of section 321.216, 321.216A, or 321.216C  
2 has occurred. The state department of transportation shall  
3 return the card to the person to whom it was issued if an  
4 investigation is not initiated or probable cause is not  
5 established.

6 2. Upon taking possession of an identification card as  
7 provided in subsection 1, a receipt for the card with the date  
8 and hour of seizure noted shall be provided to the person from  
9 whom the card is seized.

10 3. A person holding a permit under this division VI or  
11 chapter 453A or an employee of such a permittee is not subject  
12 to criminal prosecution for, or to civil liability for damages  
13 alleged to have resulted from, the retention and delivery of a  
14 driver's license or a nonoperator's identification card which  
15 is taken pursuant to subsections 1 and 2. This section shall  
16 not be construed to relieve a permittee or an employee of such  
17 a permittee from civil liability for damages resulting from  
18 the use of unreasonable force in obtaining the alleged altered  
19 or falsified driver's license or identification card or the  
20 driver's license or identification card believed to belong to  
21 another person.

22 Sec. 14. NEW SECTION. 123.203 UNLAWFUL ACTS.

23 1. A person, unless the person is the holder of a retail  
24 permit or the holder's representative, shall not solicit the  
25 sale of cigarettes, provided that this section shall not  
26 prevent solicitation by a nonpermit holder for the sale of  
27 cigarettes to any state permit holder.

28 2. Sales of cigarettes or tobacco products made through a  
29 cigarette vending machine are subject to rules and penalties  
30 relative to retail sales of cigarettes and tobacco products  
31 provided for in this division VI and chapter 453A. Cigarettes  
32 shall not be sold through any cigarette vending machine unless  
33 the cigarettes have been properly stamped or metered as  
34 provided by chapter 453A, and in case of violation of this  
35 provision, the permit of the dealer authorizing retail sales

1 of cigarettes shall be revoked. Payment of the permit fee as  
2 provided in section 453A.13 authorizes a cigarette vendor to  
3 sell cigarettes or tobacco products through vending machines.  
4 However, cigarettes or tobacco products shall not be sold  
5 through a vending machine unless the vending machine is  
6 located in a place where the retailer ensures that no person  
7 younger than eighteen years of age is present or permitted to  
8 enter at any time. This section does not require a retail  
9 permit holder to buy a cigarette vendor's permit if the retail  
10 permit holder is in fact the owner of the cigarette vending  
11 machines and the machines are operated in the location  
12 described in the retail permit.

13 3. It shall be unlawful for a person other than a holder  
14 of a retail permit to sell cigarettes at retail. A state  
15 permit holder shall not sell or distribute cigarettes at  
16 wholesale to any person in the state of Iowa who does not hold  
17 a permit authorizing the retail sale of cigarettes or who does  
18 not hold a state permit as a manufacturer, distributing agent,  
19 wholesaler, or distributor.

20 Sec. 15. NEW SECTION. 123.204 REVOCATION -- SUSPENSION  
21 -- CIVIL PENALTY.

22 1. If a retail permit holder has willfully violated  
23 section 123.201, the division shall revoke the permit upon  
24 notice and hearing. If a retail permit holder violates any  
25 other provision of this division VI, the division may revoke  
26 the permit issued to the person, after giving the permit  
27 holder an opportunity to be heard upon ten days' written  
28 notice stating the reason for the contemplated revocation and  
29 the time and place at which the person may appear and be  
30 heard. The hearing before the division may be held at a site  
31 in the state as the division may direct. The notice shall be  
32 given by mailing a copy to the permit holder's premises as it  
33 appears on the application for the permit. If, upon hearing,  
34 the division finds that the violation has occurred, the  
35 division may revoke the permit.

1 2. If a retailer or employee of a retailer is convicted of  
 2 or found in violation of section 123.201, subsection 1,  
 3 section 142A.6, subsection 6, or section 123.203, subsection  
 4 2, the division or local authority, in addition to other  
 5 penalties fixed for such violations in this section, shall  
 6 assess a penalty upon the same notice and hearing as  
 7 prescribed in subsection 1 as follows:

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

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

16 c. For a third violation within a period of three years,  
 17 the retailer's permit shall be suspended for a period of sixty  
 18 days.

19 d. For a fourth violation within a period of three years,  
 20 the retailer's permit shall be revoked.

21 3. If a permit is revoked, a new permit shall not be  
 22 issued to the permit holder for any premises, or to any other  
 23 person for the premises at which the violation occurred, until  
 24 one year has expired from the date of revocation, unless good  
 25 cause to the contrary is shown to the issuing authority.

26 4. Notwithstanding subsection 3, if a retail permit is  
 27 suspended or revoked under this section, the suspension or  
 28 revocation shall only apply to the premises at which the  
 29 violation occurred and shall not apply to any other premises  
 30 of the holder of the retail permit.

31 5. If a permit holder fails to keep any of the records  
 32 required to be kept by the provisions of this division VI or  
 33 chapter 453A, or sells cigarettes upon which a tax is required  
 34 to be paid pursuant to chapter 453A without at the time having  
 35 a valid permit, or purchases or is in possession of unstamped

1 cigarettes, or fails or refuses to abide by any of the  
2 provisions of this division VI or chapter 453A or the rules  
3 adopted pursuant to this division VI or chapter 453A, or  
4 violates chapter 421B, the person is civilly liable to the  
5 state for a penalty as follows:

6 a. For possession of unstamped cigarettes:

7 (1) A two hundred dollar penalty for the first violation  
8 if a person is in possession of more than forty but not more  
9 than four hundred unstamped cigarettes.

10 (2) A five hundred dollar penalty for the first violation  
11 if a person is in possession of more than four hundred but not  
12 more than two thousand unstamped cigarettes.

13 (3) A one thousand dollar penalty for the first violation  
14 if a person is in possession of more than two thousand  
15 unstamped cigarettes.

16 (4) For a second violation within three years of the first  
17 violation, the penalty is four hundred dollars if a person is  
18 in possession of more than forty but not more than four  
19 hundred unstamped cigarettes; one thousand dollars if a person  
20 is in possession of more than four hundred but not more than  
21 two thousand unstamped cigarettes; and two thousand dollars if  
22 a person is in possession of more than two thousand unstamped  
23 cigarettes.

24 (5) For a third or subsequent violation within three years  
25 of the first violation, the penalty is six hundred dollars if  
26 a person is in possession of more than forty but not more than  
27 four hundred unstamped cigarettes; one thousand five hundred  
28 dollars if a person is in possession of more than four hundred  
29 but not more than two thousand unstamped cigarettes; and three  
30 thousand dollars if a person is in possession of more than two  
31 thousand unstamped cigarettes.

32 b. For all other violations of this subsection:

33 (1) A two hundred dollar penalty for the first violation.

34 (2) A five hundred dollar penalty for a second violation  
35 within three years of the first violation.

1 (3) A thousand dollar penalty for a third or subsequent  
2 violation within three years of the first violation.

3 The penalty imposed under this subsection shall be assessed  
4 and collected pursuant to section 453A.28 and is in addition  
5 to the tax, penalty, and interest imposed in that section.

6 6. A permit issued under this division VI may be suspended  
7 or revoked, or a civil penalty may be imposed on the permit  
8 holder by the local authority or the administrator for any of  
9 the following causes:

10 a. Misrepresentation of any material fact in the  
11 application for the permit.

12 b. Violation of any of the provisions of this division or  
13 the rules adopted pursuant to this division.

14 c. Any change in the ownership or interest in the business  
15 operated under the permit, which change was not previously  
16 reported to and approved by the division or the local  
17 authority.

18 d. An event which would have resulted in disqualification  
19 from receiving the permit when originally issued.

20 e. Any sale, hypothecation, or transfer of the permit.

21 f. The failure or refusal on the part of the permit holder  
22 to render any report or remit any taxes under this division VI  
23 or chapter 453A when due.

24 8. A criminal conviction is not a prerequisite to  
25 suspension, revocation, or imposition of a civil penalty  
26 pursuant to this section. A local authority which acts  
27 pursuant to this section shall notify the division in writing  
28 of the action taken, and shall notify the permit holder of the  
29 right to appeal a suspension, revocation, or imposition of a  
30 civil penalty to the division.

31 a. A local authority may suspend a retail permit for  
32 violation of any ordinance or regulation adopted by the local  
33 authority.

34 b. A local authority shall retain civil penalties  
35 collected under this section if the proceeding to impose the

1 penalty is conducted by the local authority. The division  
2 shall retain civil penalties collected under this section if  
3 the proceeding to impose the penalty is conducted by the  
4 administrator of the division.

5 Sec. 16. NEW SECTION. 123.205 PENALTY.

6 1. PROVISION TO PERSON UNDER AGE EIGHTEEN.

7 a. A person, other than a retailer, who violates section  
8 123.201, subsection 1, is guilty of a simple misdemeanor.

9 b. An employee of a retailer who violates section 123.201,  
10 subsection 1, commits a simple misdemeanor punishable as a  
11 scheduled violation under section 805.8, subsection 11.

12 2. POSSESSION OR PURCHASE BY PERSON UNDER AGE EIGHTEEN. A  
13 person who violates section 123.201, subsection 2, is subject  
14 to the following, as applicable:

15 a. A civil penalty pursuant to section 805.8, subsection  
16 11. Notwithstanding section 602.8106 or any other provision  
17 to the contrary, any civil penalty paid under this subsection  
18 shall be retained by the city or county enforcing the  
19 violation.

20 b. For a first offense, performance of eight hours of  
21 community work requirements, unless waived by the court.

22 c. For a second offense, performance of twelve hours of  
23 community work requirements.

24 d. For a third or subsequent offense, performance of  
25 sixteen hours of community work requirements.

26 Sec. 17. NEW SECTION. 123.206 SUBPOENA FOR WITNESSES AND  
27 PAPERS.

28 For the purpose of enforcing the provisions of this  
29 division VI and of detecting violations of this division VI,  
30 the administrator shall have the power to administer oaths and  
31 to require by subpoena the attendance and testimony of  
32 witnesses and the production of all relevant books, papers,  
33 and records. Such attendance and production may be required  
34 at any place convenient for the investigation. If a person  
35 fails or refuses to obey a subpoena issued under this section,

1 the administrator may procure an order from the district court  
2 in the county where the person resides, or where the person is  
3 found, requiring the person to appear for examination or  
4 requiring the person to produce the books, papers, and records  
5 as required in the subpoena. Failure to obey the order shall  
6 be punished as contempt of court.

7 Sec. 18. NEW SECTION. 123.207 VENUE OF ACTIONS TO  
8 COLLECT.

9 Venue of any civil proceedings filed under the provision of  
10 this division VI to collect fees and penalties levied shall be  
11 in a court of competent jurisdiction in Polk county, or in any  
12 court having jurisdiction.

13 Sec. 19. Section 232.8, subsection 1, paragraph b, Code  
14 2001, is amended to read as follows:

15 b. Violations by a child of provisions of chapter 321,  
16 321G, ~~453A~~ 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B,  
17 or of chapter 123, division VI, which would be simple  
18 misdemeanors if committed by an adult, and violations by a  
19 child of county or municipal curfew or traffic ordinances, are  
20 excluded from the jurisdiction of the juvenile court and shall  
21 be prosecuted as simple misdemeanors as provided by law. A  
22 child convicted of a violation excluded from the jurisdiction  
23 of the juvenile court under this paragraph shall be sentenced  
24 pursuant to section 805.8, where applicable, and pursuant to  
25 section 903.1, subsection 3, for all other violations.

26 Sec. 20. Section 321.216C, Code 2001, is amended to read  
27 as follows:

28 321.216C USE OF DRIVER'S LICENSE OR NONOPERATOR'S  
29 IDENTIFICATION CARD BY ~~UN~~DERAGE PERSON UNDER AGE EIGHTEEN TO  
30 OBTAIN CIGARETTES OR TOBACCO PRODUCTS.

31 A person who is under the age of eighteen, who alters or  
32 displays or has in the person's possession a fictitious or  
33 fraudulently altered driver's license or nonoperator's  
34 identification card and who uses the license or card to  
35 violate or attempt to violate section ~~453A-2~~ 123.201,

1 subsection 2, commits a simple misdemeanor punishable by a  
2 fine of one hundred dollars. The court shall forward a copy  
3 of the conviction to the department.

4 Sec. 21. Section 421B.3, subsection 1, Code 2001, is  
5 amended to read as follows:

6 1. It shall be unlawful for any wholesaler or retailer to  
7 offer to sell, or sell, at wholesale or retail, cigarettes at  
8 less than cost to such wholesaler or retailer, as the case may  
9 be, as defined in this chapter. Any wholesaler or retailer  
10 who violates the provisions of this section shall be guilty of  
11 a simple misdemeanor and is also subject to the penalties  
12 described in section 123.204, subsection 5, paragraph "b".

13 Sec. 22. Section 421B.10, Code 2001, is amended to read as  
14 follows:

15 421B.10 INJUNCTION.

16 The director administrator of revenue-and-finance the  
17 alcoholic beverages division of the department of commerce, or  
18 any person or persons injured by any violation, or who would  
19 suffer injury from any threatened violation of this chapter,  
20 may maintain an action in any equity court to enjoin such the  
21 actual or threatened violation. If a violation or threatened  
22 violation of this chapter ~~shall-be~~ is established, the court  
23 shall enjoin such the violation or threatened violation, and,  
24 in addition ~~thereto~~, the court shall assess in favor of the  
25 plaintiff and against the defendant the costs of suit  
26 including reasonable attorney's fees. Where alleged and  
27 proved, the plaintiff, in addition to such injunctive relief  
28 and costs of suit, including reasonable attorney's fees, shall  
29 be entitled to recover from the defendant the actual damages  
30 sustained by the plaintiff.

31 Sec. 23. Section 421B.11, Code 2001, is amended to read as  
32 follows:

33 421B.11 DIRECTOR ADMINISTRATOR OF REVENUE-AND-FINANCE THE  
34 ALCOHOLIC BEVERAGES DIVISION -- POWERS AND DUTIES.

35 The director administrator of revenue-and-finance the

1 alcoholic beverages division of the department of commerce may  
 2 adopt rules for the enforcement of this chapter and the  
 3 ~~director-is-empowered-to-and~~ administrator may from time to  
 4 time undertake and make or cause to be made such cost surveys  
 5 for the state or such trading area or areas as the ~~director~~  
 6 administrator shall deem necessary and it shall be permissible  
 7 to use such cost survey as provided in section 421B.7,  
 8 subsection 2 and section 421B.8, subsection 2.

9 The director of revenue and finance or the administrator  
 10 may, upon notice and after hearing, suspend or revoke any  
 11 permit issued under the provisions of ~~the-cigarette-tax~~  
 12 chapter 453A or chapter 123, division VI, and the rules of the  
 13 ~~director promulgated-thereunder~~ or administrator adopted  
 14 pursuant to those chapters, as applicable to the permit  
 15 holder, for failure of the permit holder to comply with any  
 16 provision of this ~~unfair-cigarette-sales~~ chapter or any rule  
 17 adopted ~~thereunder~~ pursuant to this chapter. The suspension  
 18 or revocation of a permit shall be for a period of not less  
 19 than six months from the date of suspension or revocation, and  
 20 ~~no~~ a permit shall not be issued for the location designated in  
 21 the suspended or revoked permit, during the period of  
 22 suspension or revocation.

23 Judicial review of the actions of the director or  
 24 administrator may be sought in accordance with the terms of  
 25 the Iowa administrative procedure Act, and section 422.55.

26 Sec. 24. Section 453A.1, subsection 25, Code 2001, is  
 27 amended to read as follows:

28 25. "State permit" shall mean and include permits issued  
 29 by the department to distributors, wholesalers, manufacturers,  
 30 and ~~retailers~~ cigarette vendors.

31 Sec. 25. Section 453A.1, Code 2001, is amended by adding  
 32 the following new subsection:

33 NEW SUBSECTION. 17A. "Permit holder", "holder of a  
 34 permit", or "permittee" includes a person who holds a permit  
 35 under this chapter or a person who holds a retail permit under

1 chapter 123, division VI, unless the context otherwise  
2 requires.

3 Sec. 26. Section 453A.13, Code 2001, is amended to read as  
4 follows:

5 453A.13 DISTRIBUTOR'S 7 AND WHOLESALER'S 7 -AND-RETAILER'S  
6 PERMITS.

7 1. PERMITS REQUIRED. Every distributor, wholesaler, and  
8 cigarette vendor 7 -and-retailer 7 now engaged or who desires to  
9 become engaged in the sale or use of cigarettes, upon which a  
10 tax is required to be paid, shall obtain a state or-retail  
11 cigarette permit as a distributor, wholesaler, or cigarette  
12 vendor, or-retailer 7 as the case may be.

13 2. ISSUANCE OR DENIAL.

14 a. The department shall issue state permits to  
15 distributors, wholesalers, and cigarette vendors subject to  
16 the conditions provided in this division. Cities-may-issue  
17 retail-permits-to-dealers-within-their-respective-limits  
18 County-boards-of-supervisors-may-issue-retail-permits-to  
19 dealers-in-their-respective-counties 7 -outside-of-the-corporate  
20 limits-of-cities 7

21 b. The department may deny the issuance of a permit to a  
22 distributor, wholesaler, or vendor or-retailer who is  
23 substantially delinquent in the payment of a tax due, or the  
24 interest or penalty on the tax, administered by the department  
25 at the time of application. If the applicant is a  
26 partnership, a permit may be denied if a partner is  
27 substantially delinquent on any delinquent tax, penalty or  
28 interest. If the applicant is a corporation, a permit may be  
29 denied if any officer having a substantial legal or equitable  
30 interest in the ownership of the corporation owes any  
31 delinquent tax, interest or penalty of the applicant  
32 corporation.

33 e --The-department 7 -or-a-city-or-county 7 -shall-submit-a  
34 duplicate-of-any-application-for-a-retail-permit-and-any  
35 retail-permit-issued-by-the-entity-under-this-subsection-to

1 ~~the Iowa department of public health within thirty days of the~~  
2 ~~issuance.~~

3 c. As a condition for issuance of a permit under this  
4 division, the applicant shall provide consent to members of  
5 the fire, police, and health departments and the building  
6 inspector of cities, the county sheriff, deputy sheriff,  
7 members of the department of public safety, representatives of  
8 the alcoholic beverages division, representatives of the  
9 department of inspections and appeals, and representatives of  
10 the department of revenue and finance, certified police  
11 officers, and any official county health officer to enter upon  
12 areas of the premises where cigarettes are stored or sold  
13 without warrant during business hours of the permit holder or  
14 at any time the permittee or the permittee's agents or patrons  
15 are on the premises to inspect for violations of this division  
16 or ordinances and regulations that cities and county boards of  
17 supervisors may adopt. However, a subpoena issued under  
18 section 421.17 or a warrant is required for inspection of  
19 private records, a private business office, or attached living  
20 quarters. Persons who are not certified peace officers shall  
21 limit the scope of their inspections of permitted premises to  
22 the regulatory authority under which the inspection is  
23 conducted. All persons who enter upon permitted premises to  
24 conduct an inspection shall present appropriate identification  
25 to the owner of the establishment or the person who appears to  
26 be in charge of the establishment prior to commencing an  
27 inspection; however, this provision does not apply to  
28 undercover criminal investigations conducted by peace  
29 officers.

30 3. FEES -- EXPIRATION.

31 a. All permits provided for in this division shall expire  
32 on June 30 of each year. A permit shall not be granted or  
33 issued until the applicant has paid for the period ending June  
34 30 next, to the department or the city or county granting the  
35 permit, the fees provided for in this division through the

1 period ending the next June 30.

2     b. The annual state permit fee for a distributor,  
3 cigarette vendor, and wholesaler is one hundred dollars when  
4 ~~the permit is granted during the months of July, August, or~~  
5 September. However, whenever a state permit holder operates  
6 more than one place of business, a duplicate state permit  
7 shall be issued for each additional place of business on  
8 payment of five dollars for each duplicate state permit, but  
9 ~~refunds as provided in this division do not apply to any~~  
10 ~~duplicate permit issued.~~

11     ~~The fee for retail permits is as follows when the permit is~~  
12 ~~granted during the months of July, August, or September:~~

13     ~~---a.---In places outside any city, fifty dollars.~~

14     ~~---b.---In cities of less than fifteen thousand population,~~  
15 ~~seventy-five dollars.~~

16     ~~---c.---In cities of fifteen thousand or more population, one~~  
17 ~~hundred dollars.~~

18     ~~If any permit is granted during the months of October,~~  
19 ~~November, or December, the fee shall be three-fourths of the~~  
20 ~~above maximum schedule, if granted during the months of~~  
21 ~~January, February, or March, one-half of the maximum schedule,~~  
22 ~~and if granted during the months of April, May, or June, one-~~  
23 ~~fourth of the maximum schedule.~~

24     4. REFUNDS.

25     ~~a.---An unrevoked permit for which the holder has paid the~~  
26 ~~full annual fee may be surrendered during the first nine~~  
27 ~~months of said year to the officer issuing it, and the~~  
28 ~~department, or the city or county granting the permit shall~~  
29 ~~make refunds to the said holder as follows: Refunds shall not~~  
30 ~~be issued if an unrevoked permit for which the holder has paid~~  
31 ~~the full annual fee is surrendered at any time during the~~  
32 ~~twelve-month period following issuance of the permit.~~

33     ~~Three-fourths of the annual fee if the surrender is made~~  
34 ~~during July, August, or September.~~

35     ~~One-half of the annual fee if the surrender is made during~~

1 October, November, or December;  
 2 One-fourth of the annual fee if the surrender is made  
 3 during January, February, or March;  
 4 b. An unrevoked permit for which the holder has paid  
 5 three-fourths of a full annual fee may be so surrendered  
 6 during the first six months of the period covered by said  
 7 payment and the said department, city or county shall make  
 8 refunds to the holder as follows:

9 A sum equal to one-half of an annual fee if the surrender  
 10 is made during October, November or December;

11 A sum equal to one-fourth of an annual fee if the surrender  
 12 is made during January, February or March;

13 c. An unrevoked permit for which the holder has paid one-  
 14 half of a full annual fee may be so surrendered during the  
 15 first three months of the period covered by said payment, and  
 16 the department, city or county shall refund to the holder a  
 17 sum equal to one-fourth of an annual fee;

18 5. APPLICATION -- BOND. Said permits Permits shall be  
 19 issued only upon applications accompanied by the fee indicated  
 20 above, and by an adequate bond as provided in section 453A.14,  
 21 and upon forms furnished by the department upon written  
 22 request. The failure to furnish such the forms shall be no  
 23 excuse for the failure to file the same form unless absolute  
 24 refusal is shown. Said The forms shall set forth:

25 a. The manner under which such distributor, or wholesaler,  
 26 or retailer, transacts or intends to transact such business as  
 27 a distributor, or wholesaler, or retailer.

28 b. The principal office, residence, and place of business,  
 29 for which the permit is to apply.

30 c. If the applicant is not an individual, the principal  
 31 officers or members thereof, not to exceed three, of the  
 32 entity and their addresses.

33 d. Such other information as the director shall by rules  
 34 prescribe.

35 6. NO SALES WITHOUT PERMIT. No A distributor, wholesaler,

1 or cigarette vendor, ~~or-retailer~~ shall not sell any cigarettes  
2 until such an application has been filed and the fee  
3 prescribed paid for a permit and until such a permit is  
4 obtained and only while such the permit is unrevoked and  
5 unexpired.

6 7. NUMBER OF PERMITS -- TRUCKS. An application shall be  
7 filed and a permit obtained for each place of business owned  
8 or operated by a distributor, wholesaler, or ~~retailer,~~  
9 ~~excepting-that-no~~ vendor. However, a permit need not be  
10 obtained for a delivery or sales truck of a distributor, or  
11 wholesaler, or vendor holding a permit, provided that the  
12 director may by regulation rule require that ~~said the~~ truck  
13 bear the distributor's, or wholesaler's, or vendor's name, and  
14 that the permit number of the place of business for and from  
15 which it the truck operates be conspicuously displayed on the  
16 outside of the body of the truck, immediately under the name.

17 8. GROUP BUSINESS. Any A person who operates both as a  
18 distributor and wholesaler in the same place of business shall  
19 only be required to obtain a state permit for the particular  
20 place of business where such the operation of ~~said the~~  
21 business is conducted. A separate retail permit issued under  
22 chapter 123, division VI, however, shall be required if any  
23 distributor or wholesaler sells cigarettes at both retail and  
24 wholesale.

25 9. PERMIT -- FORM AND CONTENTS. Each A permit issued  
26 shall describe clearly the place of business for which it the  
27 permit is issued, shall be nonassignable, ~~consecutively~~  
28 ~~numbered,~~ designating shall designate the kind of permit, and  
29 shall authorize the sale of cigarettes in this state subject  
30 to the limitations and restrictions herein contained in this  
31 chapter and chapter 123, division VI, as applicable. ~~The~~  
32 ~~retail-permits-shall-be-upon-forms-furnished-by-the~~  
33 ~~department.~~

34 Sec. 27. Section 453A.15, subsection 1, Code 2001, is  
35 amended to read as follows:

1 1. The director may prescribe the forms necessary for the  
 2 efficient administration of this division and may require  
 3 uniform books and records to be used and kept by each permit  
 4 holder or other person as deemed necessary. The director may  
 5 also require each permit holder or other person to keep and  
 6 retain in the director's possession evidence on prescribed  
 7 forms of all transactions involving the purchase and sale of  
 8 cigarettes or the purchase and use of stamps. The evidence  
 9 shall be kept for a period of ~~two~~ three years from the date of  
 10 each transaction, for the inspection at all times by the  
 11 department.

12 Sec. 28. Section 453A.21, Code 2001, is amended to read as  
 13 follows:

14 453A.21 CIGARETTES RETAILER MAY NOT SELL.

15 ~~Unless a retail permit holder shall also hold a state~~  
 16 ~~permit~~ ~~it~~ It shall be unlawful for a retailer to sell or have  
 17 in the retailer's possession cigarettes upon which the stamp  
 18 tax has not been affixed.

19 Sec. 29. Section 453A.22, Code 2001, is amended to read as  
 20 follows:

21 453A.22 REVOCATION -- SUSPENSION -- CIVIL PENALTY.

22 1. If a person holding a permit issued by the department  
 23 under this division ~~including a retailer permit for railway~~  
 24 ~~car~~ has willfully violated section 453A-2 123.201, the  
 25 department shall revoke the permit upon ~~notice and hearing~~  
 26 notification by the administrator of the alcoholic beverages  
 27 division pursuant to chapter 123, division VI. If the person  
 28 violates any ~~other~~ provision of this division, or a rule  
 29 adopted under this division, or is substantially delinquent in  
 30 the payment of a tax administered by the department or the  
 31 interest or penalty on the tax, or if the person is a  
 32 corporation and if any officer having a substantial legal or  
 33 equitable interest in the ownership of the corporation owes  
 34 any delinquent tax of the permit-holding corporation, or  
 35 interest or penalty on the tax, administered by the

1 department, the department may revoke the permit issued to the  
2 person, after giving the permit holder an opportunity to be  
3 heard upon ten days' written notice stating the reason for the  
4 contemplated revocation and the time and place at which the  
5 person may appear and be heard. The hearing before the  
6 department may be held at a site in the state as the  
7 department may direct. The notice shall be given by mailing a  
8 copy to the permit holder's place of business as it appears on  
9 the application for a permit. If, upon hearing, the  
10 department finds that the violation has occurred, the  
11 department may revoke the permit.

12 ~~2.---If-a-retailer-or-employee-of-a-retailer-has-violated~~  
13 ~~section-453A.2-or-section-453A.367-subsection-67-the~~  
14 ~~department-or-local-authority7-in-addition-to-the-other~~  
15 ~~penalties-fixed-for-such-violations-in-this-section7-shall~~  
16 ~~assess-a-penalty-upon-the-same-hearing-and-notice-as~~  
17 ~~prescribed-in-subsection-1-as-follows:~~

18 ~~a.---For-a-first-violation7-the-retailer-shall-be-assessed-a~~  
19 ~~civil-penalty-in-the-amount-of-three-hundred-dollars.---Failure~~  
20 ~~to-pay-the-civil-penalty-as-ordered-under-this-subsection~~  
21 ~~shall-result-in-automatic-suspension-of-the-permit-for-a~~  
22 ~~period-of-fourteen-days.~~

23 ~~b.---For-a-second-violation-within-a-period-of-two-years7~~  
24 ~~the-retailer's-permit-shall-be-suspended-for-a-period-of~~  
25 ~~thirty-days.~~

26 ~~c.---For-a-third-violation-within-a-period-of-three-years7~~  
27 ~~the-retailer's-permit-shall-be-suspended-for-a-period-of-sixty~~  
28 ~~days.~~

29 ~~d.---For-a-fourth-violation-within-a-period-of-three-years7~~  
30 ~~the-retailer's-permit-shall-be-revoked.~~

31 2. A permit issued under this division may be suspended or  
32 revoked, or a civil penalty may be imposed on the permit  
33 holder by the director for any of the following causes:

34 a. Misrepresentation of any material fact in the  
35 application for the permit.

1 b. Violation of any of the provisions of this division or  
2 the rules adopted pursuant to this division.

3 c. Any change in the ownership or interest in the business  
4 operated under the permit, which change was not previously  
5 reported to and approved by the department.

6 d. An event which would have resulted in disqualification  
7 from receiving the permit when originally issued.

8 e. Any sale, hypothecation, or transfer of the permit.

9 f. The failure or refusal on the part of the permit holder  
10 to render any report or remit any taxes under this chapter or  
11 chapter 123, division VI, when due.

12 3. If a permit is revoked a new permit shall not be issued  
13 to the permit holder for any place of business, or to any  
14 other person for the place of business at which the violation  
15 occurred, until one year has expired from the date of  
16 revocation, unless good cause to the contrary is shown to the  
17 issuing authority.

18 ~~4.--Notwithstanding subsection 3, if a retail permit is~~  
19 ~~suspended or revoked under this section, the suspension or~~  
20 ~~revocation shall only apply to the place of business at which~~  
21 ~~the violation occurred and shall not apply to any other place~~  
22 ~~of business to which the retail permit applies but at which~~  
23 ~~the violation did not occur.~~

24 ~~5.--The department or local authority shall report the~~  
25 ~~suspension or revocation of a retail permit under this section~~  
26 ~~to the Iowa department of public health within thirty days of~~  
27 ~~the suspension or revocation of the retail permit.~~

28 Sec. 30. Section 453A.25, Code 2001, is amended by adding  
29 the following new subsection:

30 NEW SUBSECTION. 4. The director shall have access to all  
31 records, reports, audits, tax reports, and all other documents  
32 and papers of the alcoholic beverages division related to  
33 chapter 123, division VI, to ensure proper administration of  
34 this chapter, chapter 123, division VI, and chapter 421B.

35 Sec. 31. Section 453A.28, Code 2001, is amended to read as

1 follows:

2 453A.28 ASSESSMENT OF TAX BY DEPARTMENT -- INTEREST --  
3 PENALTY.

4 If after any audit, examination of records, or other  
5 investigation the department finds that any person has sold  
6 cigarettes without stamps affixed or that any person  
7 responsible for paying the tax has not done so as required by  
8 this division, the department shall fix and determine the  
9 amount of tax due, and shall assess the tax against the  
10 person, together with a penalty as provided in section 421.27.  
11 The taxpayer shall pay interest on the tax or additional tax  
12 at the rate determined under section 421.7 counting each  
13 fraction of a month as an entire month, computed from the date  
14 the tax was due. If any person fails to furnish evidence  
15 satisfactory to the director showing purchases of sufficient  
16 stamps to stamp unstamped cigarettes purchased by the person,  
17 the presumption shall be that the cigarettes were sold without  
18 the proper stamps affixed. Within two three years after the  
19 report is filed or within two three years after the report  
20 became due, whichever is later, the department shall examine  
21 the report and determine the correct amount of tax. The  
22 period for examination and determination of the correct amount  
23 of tax is unlimited in the case of a false or fraudulent  
24 report made with the intent to evade tax, or in the case of a  
25 failure to file a report, or if a person purchases or is in  
26 possession of unstamped cigarettes.

27 The two-year three-year period of limitation may be  
28 extended by a taxpayer by signing a waiver agreement form to  
29 be provided by the department. The agreement must stipulate  
30 the period of extension and the tax period to which the  
31 extension applies. The agreement must also provide that a  
32 claim for refund may be filed by the taxpayer at any time  
33 during the period of extension.

34 Sec. 32. Section 453A.31, subsection 1, paragraphs d and  
35 e, Code 2001, are amended to read as follows:

1 d. For a second violation within two three years of the  
 2 first violation, the penalty is four hundred dollars if a  
 3 person is in possession of more than forty but not more than  
 4 four hundred unstamped cigarettes; one thousand dollars if a  
 5 person is in possession of more than four hundred but not more  
 6 than two thousand unstamped cigarettes; and two thousand  
 7 dollars if a person is in possession of more than two thousand  
 8 unstamped cigarettes.

9 e. For a third or subsequent violation within two three  
 10 years of the first violation, the penalty is six hundred  
 11 dollars if a person is in possession of more than forty but  
 12 not more than four hundred unstamped cigarettes; one thousand  
 13 five hundred dollars if a person is in possession of more than  
 14 four hundred but not more than two thousand unstamped  
 15 cigarettes; and three thousand dollars if a person is in  
 16 possession of more than two thousand unstamped cigarettes.

17 Sec. 33. Section 453A.31, subsection 2, paragraphs b and  
 18 c, Code 2001, are amended to read as follows:

19 b. A five hundred dollar penalty for a second violation  
 20 within two three years of the first violation.

21 c. A thousand dollar penalty for a third or subsequent  
 22 violation within two three years of the first violation.

23 Sec. 34. Section 453A.32, subsection 5, Code 2001, is  
 24 amended to read as follows:

25 5. In the event the cigarettes seized hereunder and sought  
 26 to be sold upon forfeiture shall be unstamped, the cigarettes  
 27 shall be sold by the director or the director's designee to  
 28 the highest bidder among the ~~licensed~~ permitted distributors  
 29 in this state after written notice has been mailed to all such  
 30 distributors. If there is no bidder or in the opinion of the  
 31 director the quantity of cigarettes to be sold is insufficient  
 32 or for any other reason such disposition of the cigarettes is  
 33 impractical, the cigarettes shall be destroyed or disposed of  
 34 in a manner as determined by the director. The proceeds of  
 35 such sales shall be paid into the state treasury.

1     Sec. 35. Section 453A.33, Code 2001, is amended to read as  
2 follows:

3     453A.33 SEIZURE NOT TO AFFECT CRIMINAL PROSECUTION.

4     The seizure, forfeiture, and sale of cigarettes, tobacco  
5 products, and other property under the terms and conditions  
6 hereinabove set out, shall not constitute any defense to the  
7 person owning or having control or possession of the property  
8 from criminal prosecution for any act or omission made or  
9 offense committed under this chapter or chapter 123, division  
10 VI, or from liability to pay penalties provided by this  
11 chapter or chapter 123, division VI.

12     Sec. 36. Section 453A.35, Code 2001, is amended to read as  
13 follows:

14     453A.35 TAX AND FEES PAID TO GENERAL FUND.

15     The proceeds derived from the sale of stamps and the  
16 payment of taxes, fees and penalties provided for under this  
17 chapter, and the permit fees received from all permits issued  
18 by the department, shall be credited to the general fund of  
19 the state. ~~All-permit-fees-provided-for-in-this-chapter-and~~  
20 ~~collected-by-cities-in-the-issuance-of-permits-granted-by-the~~  
21 ~~cities-shall-be-paid-to-the-treasurer-of-the-city-where-the~~  
22 ~~permit-is-effective, or to another city officer as designated~~  
23 ~~by the council, and credited to the general fund of the city.~~  
24 ~~Permit-fees-so-collected-by-counties shall be paid to the~~  
25 ~~county treasurer.~~

26     Sec. 37. Section 453A.36, subsections 5, 6, and 7, Code  
27 2001, are amended to read as follows:

28     5. No person, unless the person be the holder of a permit  
29 under this chapter or chapter 123, division VI, or the  
30 holder's representative, shall solicit the sale of cigarettes,  
31 provided that this section shall not prevent solicitation by a  
32 nonpermitholder for the sale of cigarettes to any state  
33 permitholder.

34     6. Any sales of cigarettes or tobacco products made  
35 through a cigarette vending machine are subject to rules and

1 penalties relative to retail sales of cigarettes and tobacco  
 2 products provided for in this chapter and chapter 123,  
 3 division VI. No cigarettes shall be sold through any  
 4 cigarette vending machine unless the cigarettes have been  
 5 properly stamped or metered as provided by this division, and  
 6 in case of violation of this provision, the permit of the  
 7 dealer authorizing retail sales of cigarettes shall be  
 8 ~~canceled~~ revoked. Payment of the license permit fee as  
 9 provided in section 453A.13 authorizes a cigarette vendor to  
 10 sell cigarettes or tobacco products through vending machines.  
 11 However, cigarettes or tobacco products shall not be sold  
 12 through a vending machine unless the vending machine is  
 13 located in a place where the retailer ensures that no person  
 14 younger than eighteen years of age is present or permitted to  
 15 enter at any time. This section does not require a retail  
 16 licensee pernitee to buy a cigarette vendor's permit if the  
 17 retail licensee pernitee is in fact the owner of the cigarette  
 18 vending machines and the machines are operated in the location  
 19 described in the retail permit issued pursuant to chapter 123,  
 20 division VI.

21 7. It shall be unlawful for a person other than a holder  
 22 of a retail permit issued pursuant to chapter 123, division  
 23 VI, to sell cigarettes at retail. No A state permit holder  
 24 shall not sell or distribute cigarettes at wholesale to any  
 25 person in the state of Iowa who does not hold a permit  
 26 authorizing the retail sale of cigarettes or who does not hold  
 27 a state permit as a manufacturer, distributing agent,  
 28 wholesaler, or distributor.

29 Sec. 38. Section 453A.40, subsection 1, Code 2001, is  
 30 amended to read as follows:

31 1. All persons required to be licensed permitted under  
 32 section 453A.13 as distributors having in their possession and  
 33 held for resale on the effective date of an increase in the  
 34 tax rate cigarettes or little cigars upon which the tax under  
 35 section 453A.6 or 453A.43 has been paid, unused cigarette tax

1 stamps which have been paid for under section 453A.8, or  
2 unused metered imprints which have been paid for under section  
3 453A.12 shall be subject to an inventory tax on the items as  
4 provided in this section.

5 Sec. 39. Section 602.6405, subsection 2, Code 2001, is  
6 amended to read as follows:

7 2. a. Magistrates shall hear and determine violations of  
8 and penalties for violations of section ~~453A-2~~ 123.201,  
9 subsection 2.

10 b. Magistrates shall forward copies of citations issued  
11 for violations of section ~~453A-2~~ 123.201, subsection 2, and of  
12 their dispositions to the clerk of the district court. The  
13 clerk of the district court shall maintain records of  
14 citations issued and the dispositions of citations, and shall  
15 forward a copy of the records to the Iowa department of public  
16 health.

17 Sec. 40. Section 805.6, subsection 3, Code 2001, is  
18 amended to read as follows:

19 3. The uniform citation and complaint shall contain a  
20 place for citing a person in violation of section ~~453A-2~~  
21 123.201, subsection 2.

22 Sec. 41. Section 805.8, subsection 11, paragraphs b and c,  
23 Code 2001, are amended to read as follows:

24 b. For violations of section ~~453A-2~~ 123.201, subsection 1,  
25 by an employee of a retailer, the scheduled fine is as  
26 follows:

27 (1) If the violation is a first offense, the scheduled  
28 fine is one hundred dollars.

29 (2) If the violation is a second offense, the scheduled  
30 fine is two hundred fifty dollars.

31 (3) If the violation is a third or subsequent offense, the  
32 scheduled fine is five hundred dollars.

33 c. For violations of section ~~453A-2~~ 123.201, subsection 2,  
34 the scheduled fine is as follows and is a civil penalty, and  
35 the criminal penalty surcharge under section 911.2 shall not

1 be added to the penalty, and the court costs pursuant to  
2 section 805.9, subsection 6, shall not be imposed:

3 (1) If the violation is a first offense, the scheduled  
4 fine is fifty dollars.

5 (2) If the violation is a second offense, the scheduled  
6 fine is one hundred dollars.

7 (3) If the violation is a third or subsequent offense, the  
8 scheduled fine is two hundred fifty dollars.

9 Sec. 42. Section 805.10, subsection 1, Code 2001, is  
10 amended by adding the following new paragraph:

11 NEW PARAGRAPH. e. When the violation charged is a  
12 violation of section 123.201, subsection 2.

13 Sec. 43. Section 903.1, subsection 3, Code 2001, is  
14 amended to read as follows:

15 3. A person under eighteen years of age convicted of a  
16 simple misdemeanor under chapter 321, 321G, 453A, 461A, 461B,  
17 462A, 481A, 481B, 483A, 484A, or 484B, or chapter 123,  
18 division VI, or a violation of a county or municipal curfew or  
19 traffic ordinance, except for an offense subject to section  
20 805.8, may be required to pay a fine, not to exceed one  
21 hundred dollars, as fixed by the court, or may be required to  
22 perform community service as ordered by the court.

23 Sec. 44. EFFECTIVE DATE.

24 1. Sections 1 through 43 and sections 46 and 47 of this  
25 Act take effect January 1, 2002.

26 2. This section and section 45 of this Act take effect  
27 July 1, 2001.

28 Sec. 45. NOTIFICATION OF LOCAL AUTHORITIES -- EXPIRATION  
29 OF PERMITS JUNE 30, 2002, STAGGERED RENEWAL -- PRORATED FEES  
30 -- EFFECTIVE DATE.

31 1. The administrator of the alcoholic beverages division  
32 of the department of commerce shall notify local authorities  
33 as defined under this Act of the provisions of this Act by  
34 October 1, 2001, and shall include projections of revenue  
35 generated under the provisions of this Act to assist the local

1 authorities in certifying local budgets pursuant to chapter  
2 24.

3 2. a. Notwithstanding any provision of this Act to the  
4 contrary, beginning January 1, 2002, the administrator of the  
5 alcoholic beverages division of the department of commerce may  
6 provide for staggered renewal, prior to June 30, 2002, of  
7 retail permits that were issued prior to January 1, 2002, and  
8 that expire on June 30, 2002. The administrator shall provide  
9 sixty days' written notice of the date by which a retail  
10 permit holder shall renew the expired permit. However, all  
11 permits that expire June 30, 2002, shall be renewed no later  
12 than July 1, 2002.

13 b. The administrator of the alcoholic beverages division  
14 of the department of commerce shall honor retail permits  
15 issued prior to January 1, 2002, until such time as a permit  
16 is renewed under the provisions of this Act. The  
17 administrator shall provide a process for pro rating permit  
18 fees for permits renewed under the staggered renewal process  
19 to provide credit for the portion of the annual permit fee  
20 submitted with the prior permit application.

21 3. The administrator of the alcoholic beverages division  
22 of the department of commerce may adopt rules to implement  
23 this section.

24 Sec. 46. DIRECTIONS TO CODE EDITOR. The Code editor is  
25 directed to create a new "DIVISION VI -- CIGARETTE RETAIL  
26 PERMITS -- VIOLATIONS -- PENALTIES" of chapter 123.

27 Sec. 47. Sections 453A.2, 453A.3, 453A.4, 453A.23, and  
28 453.36A, Code 2001, are repealed.

29 EXPLANATION

30 This bill transfers the authority of the department of  
31 revenue and finance to issue permits to retailers of  
32 cigarettes from the department of revenue and finance to the  
33 alcoholic beverages division of the department of commerce  
34 (division) and establishes a new division under the alcoholic  
35 beverage control chapter (Code chapter 123), division VI,

1 cigarette retail permits -- violations -- penalties. The bill  
 2 provides the process for retail permits to be issued by local  
 3 authorities in a manner similar to that of the issuance of  
 4 alcoholic beverage permits. Following collection of fees for  
 5 retail permits, the division is to remit a sum equal to 65  
 6 percent of the fees collected to the local authority under  
 7 whose jurisdiction the permit was issued. Any remaining fees  
 8 collected do not revert to the general fund but are  
 9 appropriated to the division for the purposes of retail permit  
 10 activities and enforcement.

11 The bill also relocates a number of violations relating to  
 12 cigarettes from Code chapter 453A (cigarette and tobacco  
 13 taxes) to the new division in Code chapter 123. These include  
 14 violations relating to self-service sales, violations relating  
 15 to persons under age 18, seizure of false or altered driver's  
 16 licenses or nonoperator's identification cards, and other  
 17 unlawful acts all of which are not changed in the transfer.  
 18 The bill also relocates violations related to suspension and  
 19 revocation of a retail permit and the penalties related to  
 20 such suspension or revocation, all of which are not changed in  
 21 the transfer.

22 The bill also provides that a minor who is issued a  
 23 citation for smoking, using, possessing, purchasing, or  
 24 attempting to purchase tobacco, tobacco products, or  
 25 cigarettes is not allowed to utilize the admission of  
 26 scheduled violation process, but must appear in court and the  
 27 citation is to include a notation that a court appearance is  
 28 required.

29 The bill includes the administrator of the alcoholic  
 30 beverages division in enforcement of Code chapter 421B  
 31 regarding cigarette sales at less than cost.

32 The bill also makes conforming changes throughout the Code  
 33 necessitated by the transfer of authority and other changes  
 34 under the bill. The bill provides for staggered renewal of  
 35 retail permits that expire June 30, 2002. The bill directs

1 the Code editor to create the new division VI in Code chapter  
2 123. The bill takes effect January 1, 2002, with the  
3 exception of provisions relating to notifying local  
4 authorities of the provisions of the bill and staggered  
5 renewal provisions of the bill, which take effect upon  
6 enactment.

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1205

# Memorandum

**To:** Tobacco Use Prevention and Control Commission  
**From:** Subcommittee on Tobacco Enforcement  
**Date:** November 17, 2000  
**Re:** Subcommittee's Legislative Proposals  
**CC:** Attorney General Tom Miller, Dr. Steve Gleason

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As required by HF 2565, the Governor's Commission on Tobacco Use Prevention and Control, in cooperation with the Office of the Attorney General, the Iowa Department of Public Health and the Iowa Alcoholic Beverages Division, shall review and make recommendations to the Governor and Iowa General Assembly, on or before December 1, 2000, for the purpose of providing balanced and uniformed enforcement statewide.

Pursuant to this mandate, the Commission appointed a subcommittee to study the issue and make a recommendation. The individuals serving on the subcommittee include: Cathy Callaway, Mark Schoeberl, Lynn Walding, Kevin McCarthy, Randy Meyer, Bruce Upchurch, Andrew Goedecken, John Pederson, Nicole Watson and Donn Stanley.

The following general, non-controversial proposals were agreed upon and are recommended to the Commission:

1. **State Licensing Tobacco:** Statewide licensing and regulation of tobacco permit holders, to be issued by the Iowa Alcoholic Beverages Division, would be modeled after the state's alcohol licensing model.
2. **Consolidation of Code Provisions:** Consolidate the various penalty provisions regarding clerks, retailers and minors, and locate the new section with the provision for statewide licensing of tobacco permit holders.
3. **Mandating Court Appearances:** To clarify confusion that has arisen regarding penalty language for persons under 18, the subcommittee proposes replacing changing the language for "scheduled" violations with the phrase "mandatory minimum." This will eliminate confusion and allow more efficient execution of the legislative mandate requiring persons under the age of 18 to appear before a magistrate to receive the minor's appropriate progressive punishment.

The Legislative Service Bureau is in the process of drafting language to reflect these proposals. The subcommittee's proposals will be discussed in detail at the next Commission meeting, scheduled for November 20<sup>th</sup>.

3-27-01  
Rereferred To: Approp.

FILED MAR 15 '01

SENATE FILE 457  
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 1205)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to cigarettes and tobacco products, including  
2 permits for retailers of cigarettes, appropriating fees,  
3 providing penalties, and providing effective dates.

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

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SF 457

## DIVISION VI

## CIGARETTE RETAIL PERMITS -- VIOLATIONS

Section 1. NEW SECTION. 123.190 DEFINITIONS.

For the purpose of this division, unless the context otherwise requires:

1. "Administrator" means the administrator of the division, appointed pursuant to this chapter, or the administrator's designee.

2. "Application" means a formal written request for the issuance of a permit supported by a verified statement of fact.

3. "Carton" means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

4. "Cigarette" means a roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. "Cigarette" does not include cigars.

5. "Cigarette vending machine" means a 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.

6. "Cigarette vendor" means a person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more cigarette vending machines for the purpose of selling cigarettes at retail.

7. "City" means a municipal corporation but not including a county, township, school district, or any special purpose district or authority.

1 8. "Commission" means the alcoholic beverages commission  
2 established in this chapter.

3 9. "Distributing agent" means a person in this state who  
4 acts as an agent of a manufacturer outside of the state by  
5 storing cigarettes received in interstate commerce from the  
6 manufacturer subject to distribution or delivery to a  
7 distributor upon an order received by the manufacturer in  
8 interstate commerce and transmitted to the distributing agent  
9 for fulfillment from such place of storage.

10 10. "Distributor" means a person in this state who  
11 manufactures or produces cigarettes or who ships, transports,  
12 or imports into this state or in any manner acquires or  
13 possesses cigarettes without stamps affixed for the purpose of  
14 making a first sale of the cigarettes within the state.

15 11. "Division" means the alcoholic beverages division of  
16 the department of commerce established by this chapter.

17 12. "First sale" means the first sale or distribution of  
18 cigarettes in intrastate commerce, or the first use or  
19 consumption of cigarettes within this state.

20 13. "Individual package of cigarettes" means a package of  
21 cigarettes ordinarily sold at retail.

22 14. "Local authority" means the city council of a city in  
23 this state, or the county board of supervisors of a county in  
24 this state, which is empowered by this chapter to approve or  
25 deny applications for retail cigarette permits; empowered to  
26 recommend that such permits be granted and issued by the  
27 division; and empowered to take other actions reserved to the  
28 city council or county board by this division VI.

29 15. "Manufacturer" means a person who ships cigarettes  
30 into this state from outside the state.

31 16. "Package" or "pack" means a container of any kind in  
32 which cigarettes or tobacco products are offered for sale,  
33 sold, or otherwise distributed to consumers.

34 17. "Permit" means an express written authorization issued  
35 by the division for the retail sale of cigarettes.

1 18. "Permit holder", "holder of a permit", or "permittee"  
2 includes a person who holds a retail permit under this  
3 division VI or who holds a permit under chapter 453A, unless  
4 the context otherwise requires.

5 19. "Permitted premises" or "premises" means a room,  
6 enclosure, contiguous area, or place susceptible of precise  
7 description satisfactory to the administrator where cigarettes  
8 are sold under authority of a retail permit. A single  
9 premises may consist of multiple rooms, enclosures, areas, or  
10 places if they are wholly within the confines of a single  
11 building or contiguous grounds.

12 20. "Person" means an individual, firm, association, joint  
13 stock company, syndicate, copartnership, corporation, trustee,  
14 agency or receiver, or respective legal representative.

15 21. "Retailer" means a person in this state who sells,  
16 distributes, or offers for sale for consumption or possesses  
17 for the purpose of sale for consumption, cigarettes  
18 irrespective of quantity or amount or the number of sales.

19 22. "Retail permit" means a permit issued to a retailer.

20 23. "Self-service display" means any manner of product  
21 display, placement, or storage from which a person purchasing  
22 the product may take possession of the product, prior to  
23 purchase, without assistance from the retailer or employee of  
24 the retailer, in removing the product from a restricted access  
25 location.

26 24. "State permit" means a permit issued by the department  
27 of revenue and finance to a distributor, wholesaler,  
28 manufacturer, or cigarette vendor.

29 25. "Tobacco product" means a cigar; little cigar as  
30 defined in section 453A.42, subsection 5; cheroot; stogy;  
31 perique; granulated; plug cut, crimp cut, ready rubbed, and  
32 other smoking tobacco; snuff, snuff flour; cavendish; plug and  
33 twist tobacco; fine-cut and other chewing tobacco; short; or  
34 refuse scraps, clippings, cuttings and sweepings of tobacco,  
35 and other kinds and forms of tobacco, prepared in such manner

1 as to be suitable for chewing or smoking in a pipe or  
2 otherwise, or both for chewing and smoking; but does not mean  
3 cigarettes.

4 26. "Unincorporated town" means a compactly populated area  
5 recognized as a distinct place with a distinct place-name  
6 which is not itself incorporated or within the corporate  
7 limits of a city.

8 27. "Wholesaler" means a person other than a distributor  
9 or distributing agent who engages in the business of selling  
10 or distributing cigarettes within the state, for the purpose  
11 of resale.

12 Sec. 2. NEW SECTION. 123.191 RETAIL PERMIT ENFORCEMENT  
13 -- POWERS OF ADMINISTRATOR.

14 1. The division is the primary retail permit enforcement  
15 authority for this state. The department of public safety,  
16 the county attorney, the county sheriff and the sheriff's  
17 deputies, and the police department of every city shall aid in  
18 the enforcement of this division VI. Persons authorized to  
19 enforce this division VI shall have access to all records,  
20 reports, audits, tax reports, and all other documents and  
21 papers of the division pertaining to retail permits under this  
22 division VI.

23 2. In addition to the powers otherwise authorized under  
24 this chapter, the administrator shall have the following  
25 powers:

26 a. To grant and issue retail permits and to suspend or  
27 revoke retail permits as provided under this division VI.

28 b. To permit, inspect, and control retailers under this  
29 division VI.

30 c. To adopt rules pursuant to chapter 17A to implement and  
31 enforce this division VI.

32 3. The administrator shall have access to all records,  
33 reports, audits, tax reports, and all other documents and  
34 papers of the department of revenue and finance related to  
35 chapter 453A to ensure proper administration and enforcement

1 of this division VI, chapter 421B, and chapter 453A.

2 Sec. 3. NEW SECTION. 123.192 RETAIL PERMITS -- ACTION BY  
3 LOCAL AUTHORITIES AND DIVISION ON APPLICATIONS.

4 1. RETAIL PERMITS.

5 a. PERMITS REQUIRED. A retailer, engaged or who desires  
6 to become engaged in the sale or use of cigarettes, upon which  
7 a tax is required to be paid pursuant to chapter 453A, shall  
8 obtain a retail cigarette permit as a retailer.

9 b. NO SALES WITHOUT PERMIT. A retailer shall not sell any  
10 cigarettes until an application has been filed and the fee  
11 prescribed paid for a permit and until such permit is obtained  
12 and only while the permit is unrevoked and unexpired.

13 c. NUMBER OF PERMITS. An application shall be filed and a  
14 permit obtained for each premises owned or operated by a  
15 retailer.

16 d. GROUP BUSINESSES. If a distributor or wholesaler sells  
17 cigarettes at both retail and wholesale, the distributor or  
18 wholesaler shall obtain a separate retail permit for retail  
19 sales.

20 2. APPLICATION. Except as otherwise provided in section  
21 123.195, a verified application for the original issuance or  
22 the renewal of a retail permit shall be filed at the time and  
23 in the number of copies as the administrator shall prescribe,  
24 on a form prescribed by the administrator, and shall set forth  
25 under oath the following information:

26 a. The name and address of the applicant.

27 b. The name of the owner of the premises, and if that  
28 owner is not the applicant, a statement that the applicant is  
29 the actual lessee of the premises.

30 c. The precise location of the premises for which a permit  
31 is sought.

32 d. The names and addresses of all persons, partners,  
33 officers, directors, shareholders, and all others having a  
34 financial interest, by way of loan, ownership, or otherwise,  
35 in the business.

1 e. The manner under which the retailer transacts or  
2 intends to transact business.

3 f. When required by the administrator, a sketch or drawing  
4 of the premises proposed to be permitted, in such form and  
5 containing such information as the administrator may require.

6 g. A statement whether any person specified in paragraph  
7 "d" has ever been convicted of any offense against the laws of  
8 the United States, or any state or territory of the United  
9 States, of any political subdivision of any state or  
10 territory.

11 h. Such other information as the administrator shall  
12 prescribe by rule.

13 3. FILING OF APPLICATION.

14 a. An application for a retail permit, accompanied by the  
15 necessary fee, shall be filed with the appropriate city  
16 council if the premises for which the permit is sought are  
17 located within the corporate limits of a city, or with the  
18 county board of supervisors if the premises for which the  
19 permit is sought are located outside the corporate limits of a  
20 city including if the premises are located in an  
21 unincorporated town.

22 b. A retail permit shall be issued only upon an  
23 application accompanied by the necessary fee as provided in  
24 subsection 1.

25 4. ACTION BY LOCAL AUTHORITIES. The local authority shall  
26 either approve or deny the issuance of a retail permit, shall  
27 endorse its approval or denial on the application, and shall  
28 forward the application with the necessary fee to the  
29 division. The number of retail permits which may be approved  
30 for issuance by local authorities is not limited.

31 5. ACTION BY ADMINISTRATOR.

32 a. Upon receipt of an application that has been  
33 disapproved by the local authority, the administrator shall  
34 notify the applicant that the applicant may appeal the  
35 disapproval of the application to the administrator. The

1 applicant shall be notified by certified mail, and the  
2 application and the fee shall be returned to the applicant.  
3 b. Upon receipt of an application that has been approved  
4 by the local authority, the division shall perform an  
5 investigation as the administrator deems necessary to  
6 determine that the applicant complies with all requirements  
7 for holding a permit, and may require the applicant to appear  
8 to be examined under oath to demonstrate that the applicant  
9 complies with all of the requirements to hold a permit. If  
10 the administrator requires the applicant to appear and to  
11 testify under oath, a record shall be made of all testimony or  
12 evidence and the record shall become a part of the  
13 application. The administrator may appoint a member of the  
14 division or may request an administrative law judge of the  
15 department of inspections and appeals to receive the testimony  
16 under oath and evidence, and to issue a proposed decision to  
17 approve or disapprove the application for a permit. The  
18 administrator may affirm, reverse, or modify the proposed  
19 decision to approve or disapprove the application for the  
20 permit. If the application is approved by the administrator,  
21 the permit shall be issued. If the application is disapproved  
22 by the administrator, the applicant and the appropriate local  
23 authority shall be so notified by certified mail.

24 6. APPEAL OF DISAPPROVAL TO ADMINISTRATOR. An applicant  
25 for a retail permit may appeal from the local authority's  
26 disapproval of an application for a retail permit to the  
27 administrator. In the appeal, the applicant shall be allowed  
28 the opportunity to demonstrate in an evidentiary hearing  
29 conducted pursuant to chapter 17A that the applicant complies  
30 with all of the requirements for holding the permit. The  
31 administrator may appoint a member of the division or may  
32 request an administrative law judge of the department of  
33 inspections and appeals to conduct the evidentiary hearing and  
34 to render a proposed decision to approve or deny the issuance  
35 of the permit. The administrator may affirm, reverse, or

1 modify the proposed decision. If the administrator determines  
2 that the applicant complies with all of the requirements for  
3 holding a retail permit, the administrator shall order the  
4 issuance of the permit. If the administrator determines that  
5 the applicant does not comply with the requirements for  
6 holding a permit, the administrator shall deny the issuance of  
7 the permit.

8 7. JUDICIAL REVIEW OF ACTION OF ADMINISTRATOR. The  
9 applicant or the local authority may seek judicial review of  
10 the action of the administrator in accordance with the terms  
11 of chapter 17A. Notwithstanding the terms of chapter 17A,  
12 petitions for judicial review may be filed in the district  
13 court of the county where the premises covered by the  
14 application are situated.

15 8. APPEAL OF LOCAL AUTHORITY ACTION TO ADMINISTRATOR. A  
16 retail permit holder whose permit has been suspended or  
17 revoked or upon whom a civil penalty has been imposed by a  
18 local authority for a violation of this division VI or whose  
19 permit has been suspended by a local authority for violation  
20 of a local ordinance may appeal the suspension, revocation, or  
21 civil penalty to the administrator. The administrator may  
22 appoint a member of the division or may request an  
23 administrative law judge of the department of inspections and  
24 appeals to hear the appeal which shall be conducted in  
25 accordance with chapter 17A and to issue a proposed decision.  
26 The administrator may review the proposed decision upon the  
27 motion of a party to the appeal or upon the administrator's  
28 own motion in accordance with chapter 17A. Upon review of the  
29 proposed decision, the administrator may affirm, reverse, or  
30 modify the proposed decision. A retail permit holder or a  
31 local authority aggrieved by a decision of the administrator  
32 may seek judicial review of the decision pursuant to chapter  
33 17A.

34 9. ISSUANCE OR DENIAL.

35 a. A local authority or the division may deny the issuance

1 of a permit to a retailer who is substantially delinquent in  
2 the payment of a tax due, or the interest or penalty on the  
3 tax, administered by the department of revenue and finance  
4 pursuant to chapter 453A at the time of the application. If  
5 the applicant is a partnership, a permit may be denied if a  
6 partner is substantially delinquent on any delinquent tax,  
7 penalty, or interest. If the applicant is a corporation, a  
8 permit may be denied if any officer having a substantial legal  
9 or equitable interest in the ownership of the corporation owes  
10 any delinquent tax, interest, or penalty of the applicant  
11 corporation.

12 b. A retail permit shall not be issued for premises which  
13 do not conform to all applicable laws, ordinances,  
14 resolutions, and health and fire regulations.

15 10. PERMIT -- FORM AND CONTENTS. A permit shall describe  
16 clearly the premises for which the permit is issued, shall be  
17 nonassignable, shall designate the kind of permit, and shall  
18 authorize the sale of cigarettes in this state subject to the  
19 limitations and restrictions contained in this division VI. A  
20 retail permit shall be issued upon a form furnished by the  
21 division.

22 11. PERMIT DISPLAYED. The permit shall, at all times, be  
23 publicly displayed by the retailer, at the premises, so as to  
24 be easily seen by the public and the persons authorized to  
25 inspect the premises. The proprietor or keeper of any  
26 building or place where cigarettes are kept for sale, or with  
27 intent to sell, shall upon request of any agent of the  
28 division, the department of revenue and finance, or any peace  
29 officer exhibit the permit. A refusal or failure to exhibit  
30 the permit is prima facie evidence that the cigarettes are  
31 kept for sale or with intent to sell in violation of this  
32 division.

33 12. INFORMATION ACCESS. The division shall provide  
34 electronic access to all records regarding the application for  
35 and issuance of retail permits under this division VI to the

1 Iowa department of public health.

2 Sec. 4. NEW SECTION. 123.193 RETAIL PERMIT FOR RAILWAY  
3 CAR -- WATERCRAFT -- EXCURSION GAMBLING BOATS.

4 Subject to this division VI, a retail permit may be issued  
5 by the division to any dining car company, sleeping car  
6 company, railroad, railway company, passenger-carrying train,  
7 or watercraft operating intrastate only. The permit shall  
8 authorize the holder of the permit to keep for sale, and sell,  
9 cigarettes at retail on any such dining car, sleeping car,  
10 passenger car, or watercraft operated by the applicant in,  
11 through, or across the state of Iowa, subject to all of the  
12 restrictions imposed upon retailers under this division VI and  
13 chapter 453A. The application for the permit shall be in the  
14 form and contain the information required by the  
15 administrator. A permit is good throughout the state and only  
16 one permit is required by a permittee for all railway cars or  
17 watercraft described in this section. The division shall  
18 issue a duplicate permit for each such railway car or  
19 watercraft. If the boat is an excursion gambling boat  
20 licensed under chapter 99F, the owner shall obtain a separate  
21 permit for each excursion gambling boat operated by the owner  
22 in the state. If a permit is obtained in accordance with this  
23 section, a further permit shall not be required or tax levied  
24 for the privilege of selling cigarettes in the railway cars,  
25 watercraft, or gambling boat. Cigarettes shall not be sold in  
26 the railway cars, watercraft, or gambling boats without having  
27 stamps affixed evidencing the payment of the tax as provided  
28 in chapter 453A.

29 Sec. 5. NEW SECTION. 123.194 RECORDS -- INSPECTIONS.

30 1. Every holder of a retail permit shall keep a daily  
31 record of the gross receipts of the holder's business and  
32 shall maintain invoices to provide proof of purchase of  
33 cigarettes. The records and invoices required and the  
34 premises of the retail permit holder shall be open to  
35 inspection pursuant to this section, during normal business

1 hours of the retail permit holder, or at any time that the  
2 permittee or the permittee's agents or patrons are on the  
3 premises. Records shall be kept for a period of three years  
4 from the date of the transaction for the purpose of  
5 inspection.

6 2. A state permit holder who sells cigarettes at retail  
7 shall issue an invoice to the holder's retail department for  
8 cigarettes to be sold at retail and such cigarette invoices  
9 shall be kept separate and apart.

10 3. As a condition for issuance of a retail permit, the  
11 applicant shall provide consent to members of the fire,  
12 police, and health departments and the building inspector of  
13 cities, the county sheriff, deputy sheriff, members of the  
14 department of public safety, representatives of the division,  
15 representatives of the department of inspections and appeals  
16 and representatives of the department of revenue and finance,  
17 certified police officers, and any official county health  
18 officer to enter upon areas of the premises where cigarettes  
19 are stored or sold without warrant during business hours of  
20 the retail permit holder or at any time the permittee or the  
21 permittee's agents or patrons are on the premises to inspect  
22 for violations of this division VI, chapter 453A, or  
23 ordinances and regulations that cities and county boards of  
24 supervisors may adopt. However, a subpoena issued under  
25 section 421.17 or a warrant is required for inspection of  
26 private records, a private business office, or attached living  
27 quarters. Persons who are not certified peace officers shall  
28 limit the scope of their inspections of permitted premises to  
29 the regulatory authority under which the inspection is  
30 conducted. All persons who enter upon permitted premises to  
31 conduct an inspection shall present appropriate identification  
32 to the owner of the establishment or the person who appears to  
33 be in charge of the establishment prior to commencing an  
34 inspection; however, this provision does not apply to  
35 undercover criminal investigations conducted by peace

1 officers.

2 Sec. 6. NEW SECTION. 123.195 SIMPLIFIED RENEWAL  
3 PROCEDURE.

4 The administrator shall prescribe simplified application  
5 forms for the renewal of retail permits which may be filed by  
6 permittees in lieu of a detailed renewal application form when  
7 qualifications and qualification information have not changed  
8 since the original issuance of the permit. The simplified  
9 form shall require the permittee to verify under oath that the  
10 information contained in the original application remains  
11 current, and that no reason exists for the division's refusal  
12 to renew the permit as originally issued.

13 Sec. 7. NEW SECTION. 123.196 PERMITS -- FEES --  
14 EXPIRATION.

15 1. The annual fee for retail permits is as follows:

16 a. In places outside any city, fifty dollars.

17 b. In cities of less than fifteen thousand population,  
18 seventy-five dollars.

19 c. In cities of fifteen thousand or more population, one  
20 hundred dollars.

21 d. For railway cars, watercraft, and excursion gambling  
22 boats, twenty-five dollars. A duplicate permit for railway  
23 cars, watercraft, and excursion gambling boats is two dollars.

24 2. Refunds shall not be issued if an unrevoked permit for  
25 which the holder has paid the full annual fee is surrendered  
26 at any time during the twelve-month period following issuance  
27 of the permit.

28 3. Retail permits, unless sooner suspended or revoked,  
29 expire one year from the date of issuance. The administrator  
30 shall provide sixty days' written notice of the expiration to  
31 each permittee.

32 4. The division may establish a per diem permit fee for  
33 persons who apply for a retail permit under this division VI  
34 and a permit or license held under any other provision of this  
35 chapter in order to coordinate the period during which the

1 permits apply.

2 Sec. 8. NEW SECTION. 123.197 REVENUES REMITTED --  
3 DEPOSITED.

4 1. The division shall remit to the appropriate local  
5 authority the following amounts based on fees collected for  
6 retail permits pursuant to section 123.196 covering premises  
7 located within the local authority's jurisdiction.

8 a. Sixty-five percent of the first fifty dollars of the  
9 retail permit fee for places outside any city.

10 b. Sixty-five percent of the first seventy-five dollars of  
11 the retail permit fee for cities of less than fifteen thousand  
12 population.

13 c. Sixty-five percent of the first one hundred dollars of  
14 the retail permit fee for cities of fifteen thousand or more  
15 population.

16 2. The remaining fees collected are to be retained by the  
17 division and are appropriated for use by the division to  
18 perform retail permit activities and enforcement.

19 Notwithstanding section 8.33, the remainder of the fees  
20 collected shall not revert to the general fund of the state.

21 Sec. 9. NEW SECTION. 123.198 CIGARETTES RETAILER MAY NOT  
22 SELL.

23 It is unlawful for a retailer to sell or have in the  
24 retailer's possession cigarettes upon which the stamp tax  
25 required pursuant to chapter 453A has not been affixed.

26 Sec. 10. NEW SECTION. 123.199 SELF-SERVICE SALES  
27 PROHIBITED.

28 1. Except as provided in section 123.203, subsection 2, a  
29 retailer shall not sell or offer for sale cigarettes or  
30 tobacco products, in a quantity of less than a carton, through  
31 the use of a self-service display.

32 2. Violation of this section by a holder of a retail  
33 permit is grounds for revocation of such permit.

34 Sec. 11. NEW SECTION. 123.200 VIOLATION AS A FRAUDULENT  
35 PRACTICE.

1 A person who violates a provision of this division VI is  
2 guilty of a fraudulent practice unless otherwise provided in  
3 this division VI.

4 Sec. 12. NEW SECTION. 123.201 PERSONS UNDER AGE  
5 EIGHTEEN.

6 1. A person shall not sell, give, or otherwise supply any  
7 tobacco, tobacco products, or cigarettes to any person under  
8 eighteen years of age.

9 2. A person under eighteen years of age shall not smoke,  
10 use, possess, purchase, or attempt to purchase any tobacco,  
11 tobacco products, or cigarettes.

12 3. Possession of cigarettes or tobacco products by an  
13 individual under eighteen years of age does not constitute a  
14 violation under this section if the individual under eighteen  
15 years of age possesses the cigarettes or tobacco products as  
16 part of the individual's employment and the individual is  
17 employed by a person who holds a valid permit under this  
18 division or chapter 453A or who lawfully offers for sale or  
19 sells cigarettes or tobacco products.

20 4. The Iowa department of public health, a county health  
21 department, a city health department, or a city may directly  
22 enforce this section in district court and initiate  
23 proceedings pursuant to section 123.204 before a permit-  
24 issuing authority against a permit holder violating this  
25 section.

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

30 6. A person shall not be guilty of a violation of this  
31 section if conduct that would otherwise constitute a violation  
32 is performed to assess compliance with cigarette and tobacco  
33 products laws if any of the following applies:

34 a. The compliance effort is conducted by or under the  
35 supervision of law enforcement officers.

1 b. The compliance effort is conducted with the advance  
2 knowledge of law enforcement officers and reasonable measures  
3 are adopted by those conducting the effort to ensure that use  
4 of cigarettes or tobacco products by individuals under  
5 eighteen years of age does not result from participation by  
6 any individual under eighteen years of age in the compliance  
7 effort.

8 For the purposes of this subsection, "law enforcement  
9 officer" means a peace officer as defined in section 801.4 and  
10 includes persons designated under subsection 4 to enforce this  
11 section.

12 Sec. 13. NEW SECTION. 123.202 SEIZURE OF FALSE OR  
13 ALTERED DRIVER'S LICENSE OR NONOPERATOR'S IDENTIFICATION CARD.

14 1. If a person holding a permit under this division VI or  
15 chapter 453A or an employee of such a permittee has a  
16 reasonable belief based on factual evidence that a driver's  
17 license as defined in section 321.1, subsection 20A, or  
18 nonoperator's identification card issued pursuant to section  
19 321.190 offered by a person who wishes to purchase cigarettes  
20 or tobacco products is altered or falsified or belongs to  
21 another person, the permittee or employee may retain the  
22 driver's license or nonoperator's identification card. Within  
23 twenty-four hours, the card shall be delivered to the  
24 appropriate city or county law enforcement agency of the  
25 jurisdiction in which the permittee's premises are located,  
26 and the permittee shall file a written report of the  
27 circumstances under which the card was retained. The local  
28 law enforcement agency may investigate whether a violation of  
29 section 321.216, 321.216A, or 321.216C has occurred. If an  
30 investigation is not initiated or probable cause is not  
31 established by the local law enforcement agency, the driver's  
32 license or nonoperator's identification card shall be  
33 delivered to the person to whom it was issued. The local law  
34 enforcement agency may forward the card with the report to the  
35 state department of transportation for investigation, in which

1 case, the state department of transportation may investigate  
2 whether a violation of section 321.216, 321.216A, or 321.216C  
3 has occurred. The state department of transportation shall  
4 return the card to the person to whom it was issued if an  
5 investigation is not initiated or probable cause is not  
6 established.

7 2. Upon taking possession of an identification card as  
8 provided in subsection 1, a receipt for the card with the date  
9 and hour of seizure noted shall be provided to the person from  
10 whom the card is seized.

11 3. A person holding a permit under this division VI or  
12 chapter 453A or an employee of such a permittee is not subject  
13 to criminal prosecution for, or to civil liability for damages  
14 alleged to have resulted from, the retention and delivery of a  
15 driver's license or a nonoperator's identification card which  
16 is taken pursuant to subsections 1 and 2. This section shall  
17 not be construed to relieve a permittee or an employee of such  
18 a permittee from civil liability for damages resulting from  
19 the use of unreasonable force in obtaining the alleged altered  
20 or falsified driver's license or identification card or the  
21 driver's license or identification card believed to belong to  
22 another person.

23 Sec. 14. NEW SECTION. 123.203 UNLAWFUL ACTS.

24 1. A person, unless the person is the holder of a retail  
25 permit or the holder's representative, shall not solicit the  
26 sale of cigarettes, provided that this section shall not  
27 prevent solicitation by a nonpermit holder for the sale of  
28 cigarettes to any state permit holder.

29 2. Sales of cigarettes or tobacco products made through a  
30 cigarette vending machine are subject to rules and penalties  
31 relative to retail sales of cigarettes and tobacco products  
32 provided for in this division VI and chapter 453A. Cigarettes  
33 shall not be sold through any cigarette vending machine unless  
34 the cigarettes have been properly stamped or metered as  
35 provided by chapter 453A, and in case of violation of this

1 provision, the permit of the dealer authorizing retail sales  
2 of cigarettes shall be revoked. Payment of the permit fee as  
3 provided in section 453A.13 authorizes a cigarette vendor to  
4 sell cigarettes or tobacco products through vending machines.  
5 However, cigarettes or tobacco products shall not be sold  
6 through a vending machine unless the vending machine is  
7 located in a place where the retailer ensures that no person  
8 younger than eighteen years of age is present or permitted to  
9 enter at any time. This section does not require a retail  
10 permit holder to buy a cigarette vendor's permit if the retail  
11 permit holder is in fact the owner of the cigarette vending  
12 machines and the machines are operated in the location  
13 described in the retail permit.

14 3. It shall be unlawful for a person other than a holder  
15 of a retail permit to sell cigarettes at retail. A state  
16 permit holder shall not sell or distribute cigarettes at  
17 wholesale to any person in the state of Iowa who does not hold  
18 a permit authorizing the retail sale of cigarettes or who does  
19 not hold a state permit as a manufacturer, distributing agent,  
20 wholesaler, or distributor.

21 Sec. 15. NEW SECTION. 123.204 REVOCATION -- SUSPENSION  
22 -- CIVIL PENALTY.

23 1. If a retail permit holder has willfully violated  
24 section 123.201, the division shall revoke the permit upon  
25 notice and hearing. If a retail permit holder violates any  
26 other provision of this division VI, the division may revoke  
27 the permit issued to the person, after giving the permit  
28 holder an opportunity to be heard upon ten days' written  
29 notice stating the reason for the contemplated revocation and  
30 the time and place at which the person may appear and be  
31 heard. The hearing before the division may be held at a site  
32 in the state as the division may direct. The notice shall be  
33 given by mailing a copy to the permit holder's premises as it  
34 appears on the application for the permit. If, upon hearing,  
35 the division finds that the violation has occurred, the

1 division may revoke the permit.

2 2. If a retailer or employee of a retailer is convicted of  
3 or found in violation of section 123.201, subsection 1,  
4 section 142A.6, subsection 6, or section 123.203, subsection  
5 2, the division or local authority, in addition to other  
6 penalties fixed for such violations in this section, shall  
7 assess a penalty upon the same notice and hearing as  
8 prescribed in subsection 1 as follows:

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

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

17 c. For a third violation within a period of three years,  
18 the retailer's permit shall be suspended for a period of sixty  
19 days.

20 d. For a fourth violation within a period of three years,  
21 the retailer's permit shall be revoked.

22 3. If a permit is revoked, a new permit shall not be  
23 issued to the permit holder for any premises, or to any other  
24 person for the premises at which the violation occurred, until  
25 one year has expired from the date of revocation, unless good  
26 cause to the contrary is shown to the issuing authority.

27 4. Notwithstanding subsection 3, if a retail permit is  
28 suspended or revoked under this section, the suspension or  
29 revocation shall only apply to the premises at which the  
30 violation occurred and shall not apply to any other premises  
31 of the holder of the retail permit.

32 5. If a permit holder fails to keep any of the records  
33 required to be kept by the provisions of this division VI or  
34 chapter 453A, or sells cigarettes upon which a tax is required  
35 to be paid pursuant to chapter 453A without at the time having

1 a valid permit, or purchases or is in possession of unstamped  
2 cigarettes, or fails or refuses to abide by any of the  
3 provisions of this division VI or chapter 453A or the rules  
4 adopted pursuant to this division VI or chapter 453A, or  
5 violates chapter 421B, the person is civilly liable to the  
6 state for a penalty as follows:

7 a. For possession of unstamped cigarettes:

8 (1) A two hundred dollar penalty for the first violation  
9 if a person is in possession of more than forty but not more  
10 than four hundred unstamped cigarettes.

11 (2) A five hundred dollar penalty for the first violation  
12 if a person is in possession of more than four hundred but not  
13 more than two thousand unstamped cigarettes.

14 (3) A one thousand dollar penalty for the first violation  
15 if a person is in possession of more than two thousand  
16 unstamped cigarettes.

17 (4) For a second violation within three years of the first  
18 violation, the penalty is four hundred dollars if a person is  
19 in possession of more than forty but not more than four  
20 hundred unstamped cigarettes; one thousand dollars if a person  
21 is in possession of more than four hundred but not more than  
22 two thousand unstamped cigarettes; and two thousand dollars if  
23 a person is in possession of more than two thousand unstamped  
24 cigarettes.

25 (5) For a third or subsequent violation within three years  
26 of the first violation, the penalty is six hundred dollars if  
27 a person is in possession of more than forty but not more than  
28 four hundred unstamped cigarettes; one thousand five hundred  
29 dollars if a person is in possession of more than four hundred  
30 but not more than two thousand unstamped cigarettes; and three  
31 thousand dollars if a person is in possession of more than two  
32 thousand unstamped cigarettes.

33 b. For all other violations of this subsection:

34 (1) A two hundred dollar penalty for the first violation.

35 (2) A five hundred dollar penalty for a second violation

1 within three years of the first violation.

2 (3) A thousand dollar penalty for a third or subsequent  
3 violation within three years of the first violation.

4 The penalty imposed under this subsection shall be assessed  
5 and collected pursuant to section 453A.28 and is in addition  
6 to the tax, penalty, and interest imposed in that section.

7 6. A permit issued under this division VI may be suspended  
8 or revoked, or a civil penalty may be imposed on the permit  
9 holder by the local authority or the administrator for any of  
10 the following causes:

11 a. Misrepresentation of any material fact in the  
12 application for the permit.

13 b. Violation of any of the provisions of this division or  
14 the rules adopted pursuant to this division.

15 c. Any change in the ownership or interest in the business  
16 operated under the permit, which change was not previously  
17 reported to and approved by the division or the local  
18 authority.

19 d. An event which would have resulted in disqualification  
20 from receiving the permit when originally issued.

21 e. Any sale, hypothecation, or transfer of the permit.

22 f. The failure or refusal on the part of the permit holder  
23 to render any report or remit any taxes under this division VI  
24 or chapter 453A when due.

25 8. A criminal conviction is not a prerequisite to  
26 suspension, revocation, or imposition of a civil penalty  
27 pursuant to this section. A local authority which acts  
28 pursuant to this section shall notify the division in writing  
29 of the action taken, and shall notify the permit holder of the  
30 right to appeal a suspension, revocation, or imposition of a  
31 civil penalty to the division.

32 a. A local authority may suspend a retail permit for  
33 violation of any ordinance or regulation adopted by the local  
34 authority.

35 b. A local authority shall retain civil penalties

1 collected under this section if the proceeding to impose the  
2 penalty is conducted by the local authority. The division  
3 shall retain civil penalties collected under this section if  
4 the proceeding to impose the penalty is conducted by the  
5 administrator of the division.

6 Sec. 16. NEW SECTION. 123.205 PENALTY.

7 1. PROVISION TO PERSON UNDER AGE EIGHTEEN.

8 a. A person, other than a retailer, who violates section  
9 123.201, subsection 1, is guilty of a simple misdemeanor.

10 b. An employee of a retailer who violates section 123.201,  
11 subsection 1, commits a simple misdemeanor punishable as a  
12 scheduled violation under section 805.8, subsection 11.

13 2. POSSESSION OR PURCHASE BY PERSON UNDER AGE EIGHTEEN. A  
14 person who violates section 123.201, subsection 2, is subject  
15 to the following, as applicable:

16 a. A civil penalty pursuant to section 805.8, subsection  
17 11. Notwithstanding section 602.8106 or any other provision  
18 to the contrary, any civil penalty paid under this subsection  
19 shall be retained by the city or county enforcing the  
20 violation.

21 b. For a first offense, performance of eight hours of  
22 community work requirements, unless waived by the court.

23 c. For a second offense, performance of twelve hours of  
24 community work requirements.

25 d. For a third or subsequent offense, performance of  
26 sixteen hours of community work requirements.

27 3. NEW SECTION. 123.206 SUBPOENA FOR WITNESSES AND  
28 PAPERS.

29 For the purpose of enforcing the provisions of this  
30 division VI and of detecting violations of this division VI,  
31 the administrator shall have the power to administer oaths and  
32 to require by subpoena the attendance and testimony of  
33 witnesses and the production of all relevant books, papers,  
34 and records. Such attendance and production may be required  
35 at any place convenient for the investigation. If a person

1 fails or refuses to obey a subpoena issued under this section,  
2 the administrator may procure an order from the district court  
3 in the county where the person resides, or where the person is  
4 found, requiring the person to appear for examination or  
5 requiring the person to produce the books, papers, and records  
6 as required in the subpoena. Failure to obey the order shall  
7 be punished as contempt of court.

8 Sec. 18. NEW SECTION. 123.207 VENUE OF ACTIONS TO  
9 COLLECT.

10 Venue of any civil proceedings filed under the provision of  
11 this division VI to collect fees and penalties levied shall be  
12 in a court of competent jurisdiction in Polk county, or in any  
13 court having jurisdiction.

14 Sec. 19. Section 232.8, subsection 1, paragraph b, Code  
15 2001, is amended to read as follows:

16 b. Violations by a child of provisions of chapter 321,  
17 321G, ~~453A~~, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B,  
18 or of chapter 123, division VI, which would be simple  
19 misdemeanors if committed by an adult, and violations by a  
20 child of county or municipal curfew or traffic ordinances, are  
21 excluded from the jurisdiction of the juvenile court and shall  
22 be prosecuted as simple misdemeanors as provided by law. A  
23 child convicted of a violation excluded from the jurisdiction  
24 of the juvenile court under this paragraph shall be sentenced  
25 pursuant to section 805.8, where applicable, and pursuant to  
26 section 903.1, subsection 3, for all other violations.

27 Sec. 20. Section 321.216C, Code 2001, is amended to read  
28 as follows:

29 321.216C USE OF DRIVER'S LICENSE OR NONOPERATOR'S  
30 IDENTIFICATION CARD BY UNDERAGE PERSON UNDER AGE EIGHTEEN TO  
31 OBTAIN CIGARETTES OR TOBACCO PRODUCTS.

32 A person who is under the age of eighteen, who alters or  
33 displays or has in the person's possession a fictitious or  
34 fraudulently altered driver's license or nonoperator's  
35 identification card and who uses the license or card to

1 violate or attempt to violate section ~~453A-2~~ 123.201,  
2 subsection 2, commits a simple misdemeanor punishable by a  
3 fine of one hundred dollars. The court shall forward a copy  
4 of the conviction to the department.

5 Sec. 21. Section 421B.3, subsection 1, Code 2001, is  
6 amended to read as follows:

7 1. It shall be unlawful for any wholesaler or retailer to  
8 offer to sell, or sell, at wholesale or retail, cigarettes at  
9 less than cost to such wholesaler or retailer, as the case may  
10 be, as defined in this chapter. Any wholesaler or retailer  
11 who violates the provisions of this section shall be guilty of  
12 a simple misdemeanor and is also subject to the penalties  
13 described in section 123.204, subsection 5, paragraph "b".

14 Sec. 22. Section 421B.10, Code 2001, is amended to read as  
15 follows:

16 421B.10 INJUNCTION.

17 The ~~director~~ administrator of ~~revenue-and-finance~~ the  
18 alcoholic beverages division of the department of commerce, or  
19 any person or persons injured by any violation, or who would  
20 suffer injury from any threatened violation of this chapter,  
21 may maintain an action in any equity court to enjoin ~~such~~ the  
22 actual or threatened violation. If a violation or threatened  
23 violation of this chapter ~~shall-be~~ is established, the court  
24 shall enjoin ~~such~~ the violation or threatened violation, and,  
25 in addition ~~thereto~~, the court shall assess in favor of the  
26 plaintiff and against the defendant the costs of suit  
27 including reasonable attorney's fees. Where alleged and  
28 proved, the plaintiff, in addition to such injunctive relief  
29 and costs of suit, including reasonable attorney's fees, shall  
30 be entitled to recover from the defendant the actual damages  
31 sustained by the plaintiff.

32 Sec. 23. Section 421B.11, Code 2001, is amended to read as  
33 follows:

34 421B.11 DIRECTOR ADMINISTRATOR OF REVENUE-AND-FINANCE THE  
35 ALCOHOLIC BEVERAGES DIVISION -- POWERS AND DUTIES.

1     The ~~director administrator~~ of ~~revenue-and-finance~~ the  
2 alcoholic beverages division of the department of commerce may  
3 adopt rules for the enforcement of this chapter and the  
4 ~~director-is-empowered-to-and~~ administrator may from time to  
5 time undertake and make or cause to be made such cost surveys  
6 for the state or such trading area or areas as the ~~director~~  
7 administrator shall deem necessary and it shall be permissible  
8 to use such cost survey as provided in section 421B.7,  
9 subsection 2 and section 421B.8, subsection 2.

10     The director of revenue and finance or the administrator  
11 may, upon notice and after hearing, suspend or revoke any  
12 permit issued under the provisions of ~~the-cigarette-tax~~  
13 chapter 453A or chapter 123, division VI, and the rules of the  
14 director ~~promulgated-thereunder~~ or administrator adopted  
15 pursuant to those chapters, as applicable to the permit  
16 holder, for failure of the permit holder to comply with any  
17 provision of this ~~unfair-cigarette-sales~~ chapter or any rule  
18 adopted ~~thereunder~~ pursuant to this chapter. The suspension  
19 or revocation of a permit shall be for a period of not less  
20 than six months from the date of suspension or revocation, and  
21 ~~no a~~ permit shall not be issued for the location designated in  
22 the suspended or revoked permit, during the period of  
23 suspension or revocation.

24     Judicial review of the actions of the director or  
25 administrator may be sought in accordance with the terms of  
26 the Iowa administrative procedure Act, and section 422.55.

27     Sec. 24. Section 453A.1, subsection 25, Code 2001, is  
28 amended to read as follows:

29     25. "State permit" shall mean and include permits issued  
30 by the department to distributors, wholesalers, manufacturers,  
31 and ~~retailers~~ cigarette vendors.

32     Sec. 25. Section 453A.1, Code 2001, is amended by adding  
33 the following new subsection:

34     NEW SUBSECTION. 17A. "Permit holder", "holder of a  
35 permit", or "permittee" includes a person who holds a permit

1 under this chapter or a person who holds a retail permit under  
2 chapter 123, division VI, unless the context otherwise  
3 requires.

4 Sec. 26. Section 453A.13, Code 2001, is amended to read as  
5 follows:

6 453A.13 DISTRIBUTOR'S, AND WHOLESALER'S, ~~AND-RETAILER'S~~  
7 PERMITS.

8 1. PERMITS REQUIRED. Every distributor, wholesaler, and  
9 cigarette vendor, ~~and-retailer,~~ now engaged or who desires to  
10 become engaged in the sale or use of cigarettes, upon which a  
11 tax is required to be paid, shall obtain a state ~~or-retail~~  
12 cigarette permit as a distributor, wholesaler, or cigarette  
13 vendor, ~~or-retailer,~~ as the case may be.

14 2. ISSUANCE OR DENIAL.

15 a. The department shall issue state permits to  
16 distributors, wholesalers, and cigarette vendors subject to  
17 the conditions provided in this division. ~~Cities-may-issue~~  
18 ~~retail-permits-to-dealers-within-their-respective-limits.~~  
19 ~~County-boards-of-supervisors-may-issue-retail-permits-to~~  
20 ~~dealers-in-their-respective-counties, outside-of-the-corporate~~  
21 ~~limits-of-cities.~~

22 b. The department may deny the issuance of a permit to a  
23 distributor, wholesaler, or vendor ~~or-retailer~~ who is  
24 substantially delinquent in the payment of a tax due, or the  
25 interest or penalty on the tax, administered by the department  
26 at the time of application. If the applicant is a  
27 partnership, a permit may be denied if a partner is  
28 substantially delinquent on any delinquent tax, penalty or  
29 interest. If the applicant is a corporation, a permit may be  
30 denied if any officer having a substantial legal or equitable  
31 interest in the ownership of the corporation owes any  
32 delinquent tax, interest or penalty of the applicant  
33 corporation.

34 ~~c.--The-department, or-a-city-or-county, shall-submit-a~~  
35 ~~duplicate-of-any-application-for-a-retail-permit-and-any~~

1 ~~retail-permit-issued-by-the-entity-under-this-subsection-to~~  
2 ~~the-Iowa-department-of-public-health-within-thirty-days-of-the~~  
3 ~~issuance.~~

4 c. As a condition for issuance of a permit under this  
5 division, the applicant shall provide consent to members of  
6 the fire, police, and health departments and the building  
7 inspector of cities, the county sheriff, deputy sheriff,  
8 members of the department of public safety, representatives of  
9 the alcoholic beverages division, representatives of the  
10 department of inspections and appeals, and representatives of  
11 the department of revenue and finance, certified police  
12 officers, and any official county health officer to enter upon  
13 areas of the premises where cigarettes are stored or sold  
14 without warrant during business hours of the permit holder or  
15 at any time the permittee or the permittee's agents or patrons  
16 are on the premises to inspect for violations of this division  
17 or ordinances and regulations that cities and county boards of  
18 supervisors may adopt. However, a subpoena issued under  
19 section 421.17 or a warrant is required for inspection of  
20 private records, a private business office, or attached living  
21 quarters. Persons who are not certified peace officers shall  
22 limit the scope of their inspections of permitted premises to  
23 the regulatory authority under which the inspection is  
24 conducted. All persons who enter upon permitted premises to  
25 conduct an inspection shall present appropriate identification  
26 to the owner of the establishment or the person who appears to  
27 be in charge of the establishment prior to commencing an  
28 inspection; however, this provision does not apply to  
29 undercover criminal investigations conducted by peace  
30 officers.

31 3. FEES -- EXPIRATION.

32 a. All permits provided for in this division shall expire  
33 on June 30 of each year. A permit shall not be granted or  
34 issued until the applicant has paid for the period ending June  
35 30 next, to the department or the city or county granting the

1 permit, the fees provided for in this division through the  
2 period ending the next June 30.

3     b. The annual state permit fee for a distributor,  
4 cigarette vendor, and wholesaler is one hundred dollars when  
5 ~~the permit is granted during the months of July, August, or~~  
6 ~~September.~~ However, whenever a state permit holder operates  
7 more than one place of business, a duplicate state permit  
8 shall be issued for each additional place of business on  
9 payment of five dollars for each duplicate state permit, ~~but~~  
10 ~~refunds as provided in this division do not apply to any~~  
11 ~~duplicate permit issued.~~

12     ~~The fee for retail permits is as follows when the permit is~~  
13 ~~granted during the months of July, August, or September:~~

14     ~~a. -- In places outside any city, fifty dollars.~~

15     ~~b. -- In cities of less than fifteen thousand population,~~  
16 ~~seventy-five dollars.~~

17     ~~c. -- In cities of fifteen thousand or more population, one~~  
18 ~~hundred dollars.~~

19     ~~If any permit is granted during the months of October,~~  
20 ~~November, or December, the fee shall be three-fourths of the~~  
21 ~~above maximum schedule, if granted during the months of~~  
22 ~~January, February, or March, one-half of the maximum schedule,~~  
23 ~~and if granted during the months of April, May, or June, one-~~  
24 ~~fourth of the maximum schedule.~~

25     4. REFUNDS.

26     ~~a. -- An unrevoked permit for which the holder has paid the~~  
27 ~~full annual fee may be surrendered during the first nine~~  
28 ~~months of said year to the officer issuing it, and the~~  
29 ~~department, or the city or county granting the permit shall~~  
30 ~~make refunds to the said holder as follows: Refunds shall not~~  
31 ~~be issued if an unrevoked permit for which the holder has paid~~  
32 ~~the full annual fee is surrendered at any time during the~~  
33 ~~twelve-month period following issuance of the permit.~~

34     ~~Three-fourths of the annual fee if the surrender is made~~  
35 ~~during July, August, or September.~~

1 One-half-of-the-annual-fee-if-the-surrender-is-made-during  
2 October, November, or December.

3 One-fourth-of-the-annual-fee-if-the-surrender-is-made  
4 during-January, February, or March.

5 b.--An-unrevoked-permit-for-which-the-holder-has-paid  
6 three-fourths-of-a-full-annual-fee-may-be-so-surrendered  
7 during-the-first-six-months-of-the-period-covered-by-said  
8 payment-and-the-said-department, city-or-county-shall-make  
9 refunds-to-the-holder-as-follows:

10 A-sum-equal-to-one-half-of-an-annual-fee-if-the-surrender  
11 is-made-during-October, November-or-December.

12 A-sum-equal-to-one-fourth-of-an-annual-fee-if-the-surrender  
13 is-made-during-January, February-or-March.

14 c.--An-unrevoked-permit-for-which-the-holder-has-paid-one-  
15 half-of-a-full-annual-fee-may-be-so-surrendered-during-the  
16 first-three-months-of-the-period-covered-by-said-payment, and  
17 the-department, city-or-county, shall-refund-to-the-holder-a  
18 sum-equal-to-one-fourth-of-an-annual-fee.

19 5. APPLICATION -- BOND. Said-permits Permits shall be  
20 issued only upon applications accompanied by the fee indicated  
21 above, and by an adequate bond as provided in section 453A.14,  
22 and upon forms furnished by the department upon written  
23 request. The failure to furnish such the forms shall be no  
24 excuse for the failure to file the same form unless absolute  
25 refusal is shown. Said The forms shall set forth:

26 a. The manner under which such distributor, or wholesaler,  
27 or-retailer, transacts or intends to transact such business as  
28 a distributor, or wholesaler, or-retailer.

29 b. The principal office, residence, and place of business,  
30 for which the permit is to apply.

31 c. If the applicant is not an individual, the principal  
32 officers or members thereof, not-to-exceed-three, of the  
33 entity and their addresses.

34 d. Such other information as the director shall by rules  
35 prescribe.

1 6. NO SALES WITHOUT PERMIT. No A distributor, wholesaler,  
2 or cigarette vendor, ~~or-retailer~~ shall not sell any cigarettes  
3 until such an application has been filed and the fee  
4 prescribed paid for a permit and until such a permit is  
5 obtained and only while such the permit is unrevoked and  
6 unexpired.

7 7. NUMBER OF PERMITS -- TRUCKS. An application shall be  
8 filed and a permit obtained for each place of business owned  
9 or operated by a distributor, wholesaler, or ~~retailer,~~  
10 ~~excepting-that-no~~ vendor. However, a permit need not be  
11 obtained for a delivery or sales truck of a distributor, or  
12 wholesaler, or vendor holding a permit, provided that the  
13 director may by regulation rule require that said the truck  
14 bear the distributor's, or wholesaler's, or vendor's name, and  
15 that the permit number of the place of business for and from  
16 which it the truck operates be conspicuously displayed on the  
17 outside of the body of the truck, immediately under the name.

18 8. GROUP BUSINESS. Any A person who operates both as a  
19 distributor and wholesaler in the same place of business shall  
20 only be required to obtain a state permit for the particular  
21 place of business where such the operation of said the  
22 business is conducted. A separate retail permit issued under  
23 chapter 123, division VI, however, shall be required if any  
24 distributor or wholesaler sells cigarettes at both retail and  
25 wholesale.

26 9. PERMIT -- FORM AND CONTENTS. Each A permit issued  
27 shall describe clearly the place of business for which it the  
28 permit is issued, shall be nonassignable, consecutively  
29 numbered, -designating shall designate the kind of permit, and  
30 shall authorize the sale of cigarettes in this state subject  
31 to the limitations and restrictions herein contained in this  
32 chapter and chapter 123, division VI, as applicable. The  
33 ~~retail-permits-shall-be-upon-forms-furnished-by-the~~  
34 department-

35 Sec. 27. Section 453A.15, subsection 1, Code 2001, is

1 amended to read as follows:

2 1. The director may prescribe the forms necessary for the  
3 efficient administration of this division and may require  
4 uniform books and records to be used and kept by each permit  
5 holder or other person as deemed necessary. The director may  
6 also require each permit holder or other person to keep and  
7 retain in the director's possession evidence on prescribed  
8 forms of all transactions involving the purchase and sale of  
9 cigarettes or the purchase and use of stamps. The evidence  
10 shall be kept for a period of ~~two~~ three years from the date of  
11 each transaction, for the inspection at all times by the  
12 department.

13 Sec. 28. Section 453A.21, Code 2001, is amended to read as  
14 follows:

15 453A.21 CIGARETTES RETAILER MAY NOT SELL.  
16 ~~Unless a retailer permit holder shall also hold a state~~  
17 ~~permit, it~~ It shall be unlawful for a retailer to sell or have  
18 in the retailer's possession cigarettes upon which the stamp  
19 tax has not been affixed.

20 Sec. 29. Section 453A.22, Code 2001, is amended to read as  
21 follows:

22 453A.22 REVOCATION -- SUSPENSION -- CIVIL PENALTY.  
23 1. If a person holding a permit issued by the department  
24 under this division, ~~including a retailer permit for railway~~  
25 ~~car,~~ has willfully violated section ~~453A-2~~ 123.201, the  
26 department shall revoke the permit upon ~~notice and hearing~~  
27 notification by the administrator of the alcoholic beverages  
28 division pursuant to chapter 123, division VI. If the person  
29 violates any ~~other~~ provision of this division, or a rule  
30 adopted under this division, or is substantially delinquent in  
31 the payment of a tax administered by the department or the  
32 interest or penalty on the tax, or if the person is a  
33 corporation and if any officer having a substantial legal or  
34 equitable interest in the ownership of the corporation owes  
35 any delinquent tax of the permit-holding corporation, or

1 interest or penalty on the tax, administered by the  
2 department, the department may revoke the permit issued to the  
3 person, after giving the permit holder an opportunity to be  
4 heard upon ten days' written notice stating the reason for the  
5 contemplated revocation and the time and place at which the  
6 person may appear and be heard. The hearing before the  
7 department may be held at a site in the state as the  
8 department may direct. The notice shall be given by mailing a  
9 copy to the permit holder's place of business as it appears on  
10 the application for a permit. If, upon hearing, the  
11 department finds that the violation has occurred, the  
12 department may revoke the permit.

13 ~~2.--If-a-retailer-or-employee-of-a-retailer-has-violated~~  
14 ~~section-453A.2-or-section-453A.36,subsection-6, the~~  
15 ~~department-or-local-authority, in-addition-to-the-other~~  
16 ~~penalties-fixed-for-such-violations-in-this-section, shall~~  
17 ~~assess-a-penalty-upon-the-same-hearing-and-notice-as~~  
18 ~~prescribed-in-subsection-1-as-follows:~~

19 ~~a.--For-a-first-violation, the-retailer-shall-be-assessed-a~~  
20 ~~civil-penalty-in-the-amount-of-three-hundred-dollars.--Failure~~  
21 ~~to-pay-the-civil-penalty-as-ordered-under-this-subsection~~  
22 ~~shall-result-in-automatic-suspension-of-the-permit-for-a~~  
23 ~~period-of-fourteen-days:~~

24 ~~b.--For-a-second-violation-within-a-period-of-two-years,~~  
25 ~~the-retailer's-permit-shall-be-suspended-for-a-period-of~~  
26 ~~thirty-days:~~

27 ~~c.--For-a-third-violation-within-a-period-of-three-years,~~  
28 ~~the-retailer's-permit-shall-be-suspended-for-a-period-of-sixty~~  
29 ~~days:~~

30 ~~d.--For-a-fourth-violation-within-a-period-of-three-years,~~  
31 ~~the-retailer's-permit-shall-be-revoked:~~

32 2. A permit issued under this division may be suspended or  
33 revoked, or a civil penalty may be imposed on the permit  
34 holder by the director for any of the following causes:

35 a. Misrepresentation of any material fact in the

1 application for the permit.

2 b. Violation of any of the provisions of this division or  
3 the rules adopted pursuant to this division.

4 c. Any change in the ownership or interest in the business  
5 operated under the permit, which change was not previously  
6 reported to and approved by the department.

7 d. An event which would have resulted in disqualification  
8 from receiving the permit when originally issued.

9 e. Any sale, hypothecation, or transfer of the permit.

10 f. The failure or refusal on the part of the permit holder  
11 to render any report or remit any taxes under this chapter or  
12 chapter 123, division VI, when due.

13 3. If a permit is revoked a new permit shall not be issued  
14 to the permit holder for any place of business, or to any  
15 other person for the place of business at which the violation  
16 occurred, until one year has expired from the date of  
17 revocation, unless good cause to the contrary is shown to the  
18 issuing authority.

19 ~~4.--Notwithstanding subsection 3, if a retail permit is~~  
20 ~~suspended or revoked under this section, the suspension or~~  
21 ~~revocation shall only apply to the place of business at which~~  
22 ~~the violation occurred and shall not apply to any other place~~  
23 ~~of business to which the retail permit applies but at which~~  
24 ~~the violation did not occur.~~

25 ~~5.--The department or local authority shall report the~~  
26 ~~suspension or revocation of a retail permit under this section~~  
27 ~~to the Iowa department of public health within thirty days of~~  
28 ~~the suspension or revocation of the retail permit.~~

29 Sec. 30. Section 453A.25, Code 2001, is amended by adding  
30 the following new subsection:

31 NEW SUBSECTION. 4. The director shall have access to all  
32 records, reports, audits, tax reports, and all other documents  
33 and papers of the alcoholic beverages division related to  
34 chapter 123, division VI, to ensure proper administration of  
35 this chapter, chapter 123, division VI, and chapter 421B.

1 Sec. 31. Section 453A.28, Code 2001, is amended to read as  
2 follows:

3 453A.28 ASSESSMENT OF TAX BY DEPARTMENT -- INTEREST --  
4 PENALTY.

5 If after any audit, examination of records, or other  
6 investigation the department finds that any person has sold  
7 cigarettes without stamps affixed or that any person  
8 responsible for paying the tax has not done so as required by  
9 this division, the department shall fix and determine the  
10 amount of tax due, and shall assess the tax against the  
11 person, together with a penalty as provided in section 421.27.  
12 The taxpayer shall pay interest on the tax or additional tax  
13 at the rate determined under section 421.7 counting each  
14 fraction of a month as an entire month, computed from the date  
15 the tax was due. If any person fails to furnish evidence  
16 satisfactory to the director showing purchases of sufficient  
17 stamps to stamp unstamped cigarettes purchased by the person,  
18 the presumption shall be that the cigarettes were sold without  
19 the proper stamps affixed. Within ~~two~~ three years after the  
20 report is filed or within ~~two~~ three years after the report  
21 became due, whichever is later, the department shall examine  
22 the report and determine the correct amount of tax. The  
23 period for examination and determination of the correct amount  
24 of tax is unlimited in the case of a false or fraudulent  
25 report made with the intent to evade tax, or in the case of a  
26 failure to file a report, or if a person purchases or is in  
27 possession of unstamped cigarettes.

28 The ~~two-year~~ three-year period of limitation may be  
29 extended by a taxpayer by signing a waiver agreement form to  
30 be provided by the department. The agreement must stipulate  
31 the period of extension and the tax period to which the  
32 extension applies. The agreement must also provide that a  
33 claim for refund may be filed by the taxpayer at any time  
34 during the period of extension.

35 Sec. 32. Section 453A.31, subsection 1, paragraphs d and

1 e, Code 2001, are amended to read as follows:

2 d. For a second violation within ~~two~~ three years of the  
3 first violation, the penalty is four hundred dollars if a  
4 person is in possession of more than forty but not more than  
5 four hundred unstamped cigarettes; one thousand dollars if a  
6 person is in possession of more than four hundred but not more  
7 than two thousand unstamped cigarettes; and two thousand  
8 dollars if a person is in possession of more than two thousand  
9 unstamped cigarettes.

10 e. For a third or subsequent violation within ~~two~~ three  
11 years of the first violation, the penalty is six hundred  
12 dollars if a person is in possession of more than forty but  
13 not more than four hundred unstamped cigarettes; one thousand  
14 five hundred dollars if a person is in possession of more than  
15 four hundred but not more than two thousand unstamped  
16 cigarettes; and three thousand dollars if a person is in  
17 possession of more than two thousand unstamped cigarettes.

18 Sec. 33. Section 453A.31, subsection 2, paragraphs b and  
19 c, Code 2001, are amended to read as follows:

20 b. A five hundred dollar penalty for a second violation  
21 within ~~two~~ three years of the first violation.

22 c. A thousand dollar penalty for a third or subsequent  
23 violation within ~~two~~ three years of the first violation.

24 Sec. 34. Section 453A.32, subsection 5, Code 2001, is  
25 amended to read as follows:

26 5. In the event the cigarettes seized hereunder and sought  
27 to be sold upon forfeiture shall be unstamped, the cigarettes  
28 shall be sold by the director or the director's designee to  
29 the highest bidder among the ~~licensed~~ permitted distributors  
30 in this state after written notice has been mailed to all such  
31 distributors. If there is no bidder or in the opinion of the  
32 director the quantity of cigarettes to be sold is insufficient  
33 or for any other reason such disposition of the cigarettes is  
34 impractical, the cigarettes shall be destroyed or disposed of  
35 in a manner as determined by the director. The proceeds of

1 such sales shall be paid into the state treasury.

2 Sec. 35. Section 453A.33, Code 2001, is amended to read as  
3 follows:

4 453A.33 SEIZURE NOT TO AFFECT CRIMINAL PROSECUTION.

5 The seizure, forfeiture, and sale of cigarettes, tobacco  
6 products, and other property under the terms and conditions  
7 hereinabove set out, shall not constitute any defense to the  
8 person owning or having control or possession of the property  
9 from criminal prosecution for any act or omission made or  
10 offense committed under this chapter or chapter 123, division  
11 VI, or from liability to pay penalties provided by this  
12 chapter or chapter 123, division VI.

13 Sec. 36. Section 453A.35, Code 2001, is amended to read as  
14 follows:

15 453A.35 TAX AND FEES PAID TO GENERAL FUND.

16 The proceeds derived from the sale of stamps and the  
17 payment of taxes, fees and penalties provided for under this  
18 chapter, and the permit fees received from all permits issued  
19 by the department, shall be credited to the general fund of  
20 the state. ~~All-permit-fees-provided-for-in-this-chapter-and~~  
21 ~~collected-by-cities-in-the-issuance-of-permits-granted-by-the~~  
22 ~~cities-shall-be-paid-to-the-treasurer-of-the-city-where-the~~  
23 ~~permit-is-effective, or to another city officer as designated~~  
24 ~~by the council, and credited to the general fund of the city.~~  
25 ~~Permit-fees-so-collected-by-counties-shall-be-paid-to-the~~  
26 ~~county-treasurer.~~

27 Sec. 37. Section 453A.36, subsections 5, 6, and 7, Code  
28 2001, are amended to read as follows:

29 5. No person, unless the person be the holder of a permit  
30 under this chapter or chapter 123, division VI, or the  
31 holder's representative, shall solicit the sale of cigarettes,  
32 provided that this section shall not prevent solicitation by a  
33 nonpermitholder for the sale of cigarettes to any state  
34 permitholder.

35 6. Any sales of cigarettes or tobacco products made

1 through a cigarette vending machine are subject to rules and  
2 penalties relative to retail sales of cigarettes and tobacco  
3 products provided for in this chapter and chapter 123,  
4 division VI. No cigarettes shall be sold through any  
5 cigarette vending machine unless the cigarettes have been  
6 properly stamped or metered as provided by this division, and  
7 in case of violation of this provision, the permit of the  
8 dealer authorizing retail sales of cigarettes shall be  
9 ~~canceled~~ revoked. Payment of the ~~license~~ permit fee as  
10 provided in section 453A.13 authorizes a cigarette vendor to  
11 sell cigarettes or tobacco products through vending machines.  
12 However, cigarettes or tobacco products shall not be sold  
13 through a vending machine unless the vending machine is  
14 located in a place where the retailer ensures that no person  
15 younger than eighteen years of age is present or permitted to  
16 enter at any time. This section does not require a retail  
17 ~~licensee~~ permittee to buy a cigarette vendor's permit if the  
18 retail ~~licensee~~ permittee is in fact the owner of the  
19 cigarette vending machines and the machines are operated in  
20 the location described in the retail permit issued pursuant to  
21 chapter 123, division VI.

22 7. It shall be unlawful for a person other than a holder  
23 of a retail permit issued pursuant to chapter 123, division  
24 VI, to sell cigarettes at retail. No A state permit holder  
25 shall not sell or distribute cigarettes at wholesale to any  
26 person in the state of Iowa who does not hold a permit  
27 authorizing the retail sale of cigarettes or who does not hold  
28 a state permit as a manufacturer, distributing agent,  
29 wholesaler, or distributor.

30 Sec. 38. Section 453A.40, subsection 1, Code 2001, is  
31 amended to read as follows:

32 1. All persons required to be ~~licensed~~ permitted under  
33 section 453A.13 as distributors having in their possession and  
34 held for resale on the effective date of an increase in the  
35 tax rate cigarettes or little cigars upon which the tax under

1 section 453A.6 or 453A.43 has been paid, unused cigarette tax  
2 stamps which have been paid for under section 453A.8, or  
3 unused metered imprints which have been paid for under section  
4 453A.12 shall be subject to an inventory tax on the items as  
5 provided in this section.

6 Sec. 39. Section 602.6405, subsection 2, Code 2001, is  
7 amended to read as follows:

8 2. a. Magistrates shall hear and determine violations of  
9 and penalties for violations of section ~~453A-2~~ 123.201,  
10 subsection 2.

11 b. Magistrates shall forward copies of citations issued  
12 for violations of section ~~453A-2~~ 123.201, subsection 2, and of  
13 their dispositions to the clerk of the district court. The  
14 clerk of the district court shall maintain records of  
15 citations issued and the dispositions of citations, and shall  
16 forward a copy of the records to the Iowa department of public  
17 health.

18 Sec. 40. Section 805.6, subsection 3, Code 2001, is  
19 amended to read as follows:

20 3. The uniform citation and complaint shall contain a  
21 place for citing a person in violation of section ~~453A-2~~  
22 123.201, subsection 2.

23 Sec. 41. Section 805.8, subsection 11, paragraphs b and c,  
24 Code 2001, are amended to read as follows:

25 b. For violations of section ~~453A-2~~ 123.201, subsection 1,  
26 by an employee of a retailer, the scheduled fine is as  
27 follows:

28 (1) If the violation is a first offense, the scheduled  
29 fine is one hundred dollars.

30 (2) If the violation is a second offense, the scheduled  
31 fine is two hundred fifty dollars.

32 (3) If the violation is a third or subsequent offense, the  
33 scheduled fine is five hundred dollars.

34 c. For violations of section ~~453A-2~~ 123.201, subsection 2,  
35 the scheduled fine is as follows and is a civil penalty, and

1 the criminal penalty surcharge under section 911.2 shall not  
2 be added to the penalty, and the court costs pursuant to  
3 section 805.9, subsection 6, shall not be imposed:

4 (1) If the violation is a first offense, the scheduled  
5 fine is fifty dollars.

6 (2) If the violation is a second offense, the scheduled  
7 fine is one hundred dollars.

8 (3) If the violation is a third or subsequent offense, the  
9 scheduled fine is two hundred fifty dollars.

10 Sec. 42. Section 805.10, subsection 1, Code 2001, is  
11 amended by adding the following new paragraph:

12 NEW PARAGRAPH. e. When the violation charged is a  
13 violation of section 123.201, subsection 2.

14 Sec. 43. Section 903.1, subsection 3, Code 2001, is  
15 amended to read as follows:

16 3. A person under eighteen years of age convicted of a  
17 simple misdemeanor under chapter 321, 321G, ~~453A~~, 461A, 461B,  
18 462A, 481A, 481B, 483A, 484A, or 484B, or chapter 123,  
19 division VI, or a violation of a county or municipal curfew or  
20 traffic ordinance, except for an offense subject to section  
21 805.8, may be required to pay a fine, not to exceed one  
22 hundred dollars, as fixed by the court, or may be required to  
23 perform community service as ordered by the court.

24 Sec. 44. EFFECTIVE DATE.

25 1. Sections 1 through 43 and sections 46 and 47 of this  
26 Act take effect January 1, 2002.

27 2. This section and section 45 of this Act take effect  
28 July 1, 2001.

29 Sec. 45. NOTIFICATION OF LOCAL AUTHORITIES -- EXPIRATION  
30 OF PERMITS JUNE 30, 2002, STAGGERED RENEWAL -- PRORATED FEES  
31 -- EFFECTIVE DATE.

32 1. The administrator of the alcoholic beverages division  
33 of the department of commerce shall notify local authorities  
34 as defined under this Act of the provisions of this Act by  
35 October 1, 2001, and shall include projections of revenue

1 generated under the provisions of this Act to assist the local  
2 authorities in certifying local budgets pursuant to chapter  
3 24.

4 2. a. Notwithstanding any provision of this Act to the  
5 contrary, beginning January 1, 2002, the administrator of the  
6 alcoholic beverages division of the department of commerce may  
7 provide for staggered renewal, prior to June 30, 2002, of  
8 retail permits that were issued prior to January 1, 2002, and  
9 that expire on June 30, 2002. The administrator shall provide  
10 sixty days' written notice of the date by which a retail  
11 permit holder shall renew the expired permit. However, all  
12 permits that expire June 30, 2002, shall be renewed no later  
13 than July 1, 2002.

14 b. The administrator of the alcoholic beverages division  
15 of the department of commerce shall honor retail permits  
16 issued prior to January 1, 2002, until such time as a permit  
17 is renewed under the provisions of this Act. The  
18 administrator shall provide a process for pro rating permit  
19 fees for permits renewed under the staggered renewal process  
20 to provide credit for the portion of the annual permit fee  
21 submitted with the prior permit application.

22 3. The administrator of the alcoholic beverages division  
23 of the department of commerce may adopt rules to implement  
24 this section.

25 Sec. 46. DIRECTIONS TO CODE EDITOR. The Code editor is  
26 directed to create a new "DIVISION VI -- CIGARETTE RETAIL  
27 PERMITS -- VIOLATIONS -- PENALTIES" of chapter 123.

28 Sec. 47. Sections 453A.2, 453A.3, 453A.4, 453A.23, and  
29 453.36A, Code 2001, are repealed.

30 EXPLANATION

31 This bill transfers the authority of the department of  
32 revenue and finance to issue permits to retailers of  
33 cigarettes from the department of revenue and finance to the  
34 alcoholic beverages division of the department of commerce  
35 (division) and establishes a new division under the alcoholic

1 beverage control chapter (Code chapter 123), division VI,  
2 cigarette retail permits -- violations -- penalties. The bill  
3 provides the process for retail permits to be issued by local  
4 authorities in a manner similar to that of the issuance of  
5 alcoholic beverage permits. Following collection of fees for  
6 retail permits, the division is to remit a sum equal to 65  
7 percent of the fees collected to the local authority under  
8 whose jurisdiction the permit was issued. Any remaining fees  
9 collected do not revert to the general fund but are  
10 appropriated to the division for the purposes of retail permit  
11 activities and enforcement.

12 The bill also relocates a number of violations relating to  
13 cigarettes from Code chapter 453A (cigarette and tobacco  
14 taxes) to the new division in Code chapter 123. These include  
15 violations relating to self-service sales, violations relating  
16 to persons under age 18, seizure of false or altered driver's  
17 licenses or nonoperator's identification cards, and other  
18 unlawful acts all of which are not changed in the transfer.  
19 The bill also relocates violations related to suspension and  
20 revocation of a retail permit and the penalties related to  
21 such suspension or revocation, all of which are not changed in  
22 the transfer.

23 The bill also provides that a minor who is issued a  
24 citation for smoking, using, possessing, purchasing, or  
25 attempting to purchase tobacco, tobacco products, or  
26 cigarettes is not allowed to utilize the admission of  
27 scheduled violation process, but must appear in court and the  
28 citation is to include a notation that a court appearance is  
29 required.

30 The bill includes the administrator of the alcoholic  
31 beverages division in enforcement of Code chapter 421B  
32 regarding cigarette sales at less than cost.

33 The bill also makes conforming changes throughout the Code  
34 necessitated by the transfer of authority and other changes  
35 under the bill. The bill provides for staggered renewal of

1 retail permits that expire June 30, 2002. The bill directs  
2 the Code editor to create the new division VI in Code chapter  
3 123. The bill takes effect January 1, 2002, with the  
4 exception of provisions relating to notifying local  
5 authorities of the provisions of the bill and staggered  
6 renewal provisions of the bill, which take effect upon  
7 enactment.

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