

SUMMARY

OF

IOWA'S TOBACCO LAWS  
(Updated May, 2004)

# OVERVIEW OF INCLUDED MATERIAL

## PAGE(S)

- SUMMARY OF IOWA'S NEW TOBACCO LAWS REGARDING RETAIL CIVIL PENALTIES UPDATED FOR THE NEW LAWS FROM 1st SESSION 80th GENERAL ASSEMBLY ..... 3
- COMPARISON OF THE NEW LAW AND THE OLD LAW ..... 4-5
- TOBACCO PROSECUTION CHECKLIST ..... 6-8
- TOBACCO PROSECUTION FLOW CHART ..... 9-10
- FREQUENTLY ASKED QUESTIONS ..... 11-15
- SAMPLE NOTICES OF HEARING ..... 16-21
- SAMPLE HEARING COMPLAINTS ..... 22-32
- SAMPLE ACKNOWLEDGMENT/SETTLEMENT AGREEMENTS ..... 33-39
- SAMPLE ORDERS TO PLACE BEFORE COUNCIL OR BOARD ACCEPTING AGREEMENT ..... 40-45
- SAMPLE LETTER TO PLACE BEFORE COUNCIL OR BOARD WITH ORDER ACCEPTING AGREEMENT ..... 46-47
- SAMPLE ORDERS TO PLACE BEFORE COUNCIL OR BOARD AFTER CONTESTED HEARINGS ..... 48-53
- OTHER RELEVANT TOBACCO LAWS ..... 54-55
- RELEVANT CASE LAW ..... 56
- ROLE OF OTHERS: CITY CLERKS, COUNTY AUDITORS; COUNTY CLERKS; LAW ENFORCEMENT ..... 57

# SUMMARY OF IOWA'S TOBACCO LAWS

## Prepared By:

Brian Meyer  
Assistant Attorney General/  
Legislative Liaison  
Iowa Department of Justice  
Telephone: (515) 281-6898  
Facsimile: (515) 281-4209  
bmeyer@ag.state.ia.us

---

## RELEVANT DEFINITIONS:

**Retail Permit:** Cigarette permits issued to retailers by their local licensing authority.

**Person:** Every individual, firm, association, joint stock company, syndicate, co-partnership, corporation, trustee, agency or receiver, or respective legal representative.

**Cigarette Vending Machines:** Any self-service device, that takes money and dispenses cigarettes or tobacco products.

**Cigarettes:** Any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, regardless of size or shape and regardless of the mix of ingredients. Cigars are excluded.

**Tobacco Products:** Cigars, little cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smokeless tobacco, snuff, snuff flower, cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, or refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Cigarettes are excluded from this definition.

# **COMPARISON OF THE NEW LAW AND THE OLD LAW**

## **CIVIL PROSECUTION OF CIGARETTE PERMIT HOLDERS:**

### **NEW LAW:**

If a RETAILER or an EMPLOYEE of a RETAILER has committed any of the following violations: 453A.22(2)

- Sells, gives, or otherwise supplies any tobacco, tobacco products, or cigarettes to an individual under the age of 18. 453A.2(1)
- Had vending machines that contain cigarettes or tobacco products located in a place where persons under 18 are present or permitted AT ANY TIME. 453A.36(6)

### **The following penalties shall be assessed:**

- 1<sup>st</sup> violation: \$300.00 fine. Failure to pay this penalty as ordered shall result in automatic suspension of the permit for 14 days. Iowa Code section 453A.22(2)(a).
- 2<sup>nd</sup> violation within 2 years: \$1,500.00 fine or 30 day suspension. Iowa Code section 453A.22(2)(b).
- 3<sup>rd</sup> violation within 3 years: \$1,500.00 fine and 30 day suspension. Iowa Code section 453A.22(2)(c).
- 4<sup>th</sup> violation within 3 years: \$1,500.00 fine and 60 day suspension. Iowa Code section 453A.22(2)(d).
- 5<sup>th</sup> violation within 4 years: Revocation. Iowa Code section 453A.22(2)(e).

### **OLD LAW:**

- For a first violation, the retailer shall be assessed a civil penalty in the amount of \$300.00. Failure to pay this penalty as ordered shall result in automatic suspension of the permit for 14 days. Iowa Code section 453A.22(2)(a).
- For a second violation within a period of two years, the retailer's permit shall be

- suspended for a period of 30 days. Iowa Code section 453A.22(2)(b).
- For a third violation within a period of three years, the retailer's permit shall be suspended for a period of 60 days. Iowa Code section 453A.22(2)(c).
- For a fourth violation within a period of three years, the retailer's permit shall be revoked. Iowa Code section 453A.22(2)(d).

## **NEW PROCEDURAL LAW**

Local licensing authorities will have 60 days from the time the underlying violation of selling tobacco to a minor is adjudicated before assessing the civil penalty against the retailer. If local authorities fail to act within 60 days, the prosecution is automatically transferred to the state. See Iowa Code § 453A.2(6).

## **NEW AFFIRMATIVE DEFENSES**

The new law provides that retailers may assert an affirmative defense of training as a bar to prosecution of the civil sanction for selling to a minor. To qualify, the employee who sold must have received training in a training program authorized by the Alcoholic Beverages Division. This defense can be asserted only once by a retailer at a particular retail location in a four-year period. See Iowa Code § 453A.22(4).

## **CIVIL PROSECUTION OF TOBACCO VIOLATIONS CHECKLIST:**

### **Find out if there are violations in your jurisdiction:**

- ✓ ABD will forward violations within your jurisdiction as they are reported by the law enforcement agency issuing the citations.
- ✓ Ask the county clerk's office to forward all criminal citations involving Iowa Code sections 453A.2(1) or 453A.36(6) that fall within the jurisdiction of the permit issuing authority.

### **Settlement Negotiations:**

- ✓ Attempt to settle the case prior to scheduling a hearing before the permit issuing authority by serving a notice and hearing complaint by certified mail upon the cigarette permittee at the location of the business and address of the legal owner as found on cigarette permit application and sending the same notice and hearing complaint to the permit issuing authority (See sample).
  - ✓ Notice Cover
  - ✓ Hearing complaint
  - ✓ Copy of cigarette permit application
  - ✓ Copy of cigarette permit
  - ✓ Copy of criminal citation written: simple misdemeanor/scheduled violation Iowa Code section 453A.2(1) (obtained from the county clerk)
  - ✓ Copy of disposition from the criminal action
  - ✓ Acknowledgment and settlement agreement form
- ✓ The only acceptable settlements are the penalties prescribed by law:
  - ✓ 1<sup>st</sup> violation: \$300.00 fine
  - ✓ 2<sup>nd</sup> violation within 2 years: \$1,500.00 fine **or** 30 day suspension
  - ✓ 3<sup>rd</sup> violation within 3 years: \$1,500.00 fine **and** 30 day suspension
  - ✓ 4<sup>th</sup> violation within 3 years: \$1,500.00 fine **and** 60 day suspension
  - ✓ 5<sup>th</sup> violation within 4 years: Revocation

### **First Violation:**

- ✓ If the permittee wishes to settle a 1<sup>st</sup> offense the settlement must be accompanied by:

- ✓ a signed acknowledgment/settlement agreement
- ✓ a \$300.00 check
- ✓ The agreement can then be presented with an order accepting the settlement to the issuing authority (see sample order).

**Second Violation:**

- ✓ If the permittee wishes to settle a second violation by 30 day suspension, the settlement must be presented to the issuing authority for the dates by which the suspension will be served (see sample order). If the permittee wishes to settle with a \$1,500.00 fine, the \$1,500.00 must be presented with the settlement agreement.

**Third Violation:**

- ✓ If the permittee wishes to settle a third violation by \$1,500.00 fine and 30 day suspension, the settlement must be presented to the issuing authority for the dates by which the suspension will be served (see sample order).

**Fourth Violation:**

- ✓ If the permittee wishes to settle a fourth violation by \$1,500.00 fine and a 60 day suspension, the settlement must be presented to the issuing authority for the dates by which the suspension will be served (see sample order).

**Fifth Violation:**

- ✓ If the permittee wishes to settle a fifth violation within four years by revocation, the settlement must be presented to the issuing authority for the revocation to be enforced.

**Forfeiture:**

- ✓ If the permittee wishes to voluntarily forfeit the permit in lieu of any of the above penalties, the forfeiture will be for no less than 1 year.

**Hearing phase:**

- ✓ Because these are civil penalties imposed administratively through the permit issuing authority, the permittee is afforded constitutional procedural due process rights: 1. Notice; 2. Opportunity to be heard. Procedural due process and other defenses have been raised and successfully overcome.

- ✓ Under Iowa Law two elements must be proven with substantial evidence to impose a civil penalty on a retailer for selling tobacco to a minor:
  - ✓ Sale to a minor
  - ✓ Sale made by permittee or employee of a permittee
  
- ✓ Before the scheduled hearing, obtain certified copies of:
  - ✓ cigarette permit
  - ✓ criminal citation
  - ✓ criminal disposition
  
- ✓ **For a second or subsequent violation a certified copy of the order pertaining to the first and/or subsequent violation from the issuing authority must be included in the evidence presented to prove a previous violation.**
  
- ✓ Present these certified copies of the above evidence to the council. Substantial evidence is necessary to prove a violation.

**Post-hearing phase:**

Obtain an order from the council and request the clerk of the permit issuing authority forward the order from the council to the prosecuting entity and the permit holder.

- ✓ For a first offense the fine must be paid or there is an automatic suspension of the permit for 14 days. The 14-day suspension is an additional penalty for not paying the assessed fine. It is not the alternative to the \$300.00 fine.
  
- ✓ Any appeal from a retailer of the decision by the city council/board of supervisors must be done by Writ of Certiorari through the district court.

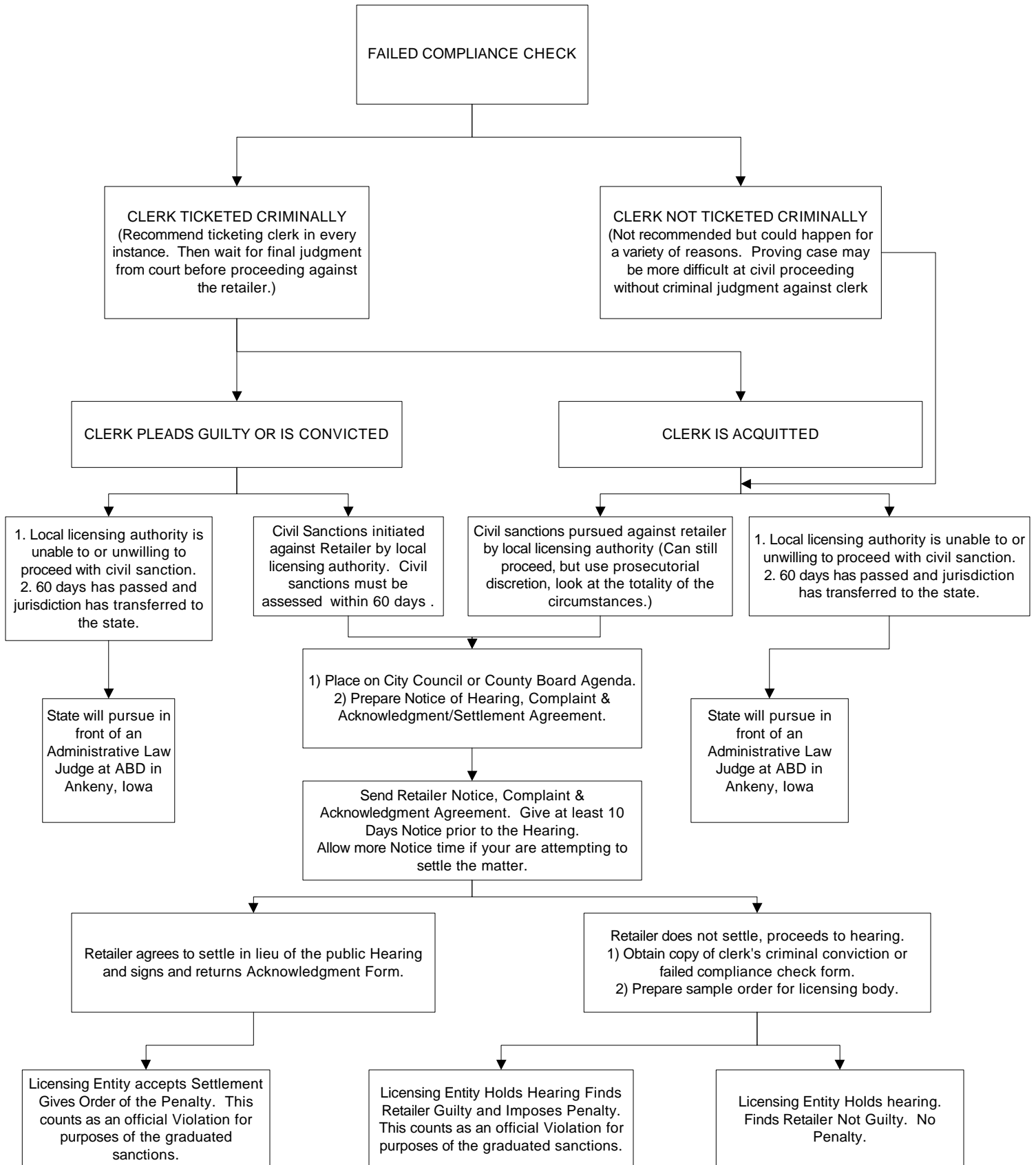
**Failure to assess a civil penalty within 60 days of the adjudication of the criminal action will transfer jurisdiction to the State by operation of law. See Iowa Code section 453A.**

# **TOBACCO PROSECUTION FLOW CHART** **FOR CIVIL PROSECUTION OF** **CIGARETTE PERMIT HOLDERS**

- IMMEDIATELY AFTER A FAILED COMPLIANCE CHECK, THE CLERK SHOULD BE CRIMINALLY TICKETED.
- IT IS BEST TO WAIT FOR THE CLERK TO EITHER PLEAD GUILTY OR BE CONVICTED BEFORE PROCEEDING AGAINST THE RETAILER.
- THEN USE THIS CRIMINAL DISPOSITION FROM THE COURT AS THE EVIDENCE AGAINST RETAILER.
- REFER TO CASE AT END OF MANUAL ALLOWING VICARIOUS LIABILITY IN CIVIL PROCEEDING WHEN THERE HAS BEEN A CRIMINAL CONVICTION.

# TOBACCO PROSECUTION FLOW CHART

Prepared by the Iowa Attorney General's Office  
April, 2003



# **FREQUENTLY ASKED QUESTIONS** **FOR CITIES AND COUNTIES PURSUING** **SANCTIONS AGAINST RETAILERS** **WHO HAVE SOLD CIGARETTES OR** **TOBACCO TO MINORS**

prepared by Donald D. Stanley, Jr., Assistant Attorney General  
January 16, 2002  
Revised April, 2003

## **1. Why are these cases being prosecuted in front of the local licensing bodies if prosecuted by local authorities?**

In Iowa, cigarette permits are issued locally. Cities issue permits to retailers within their corporate limits. Counties issue permits to retailers in unincorporated areas. The only state issued retail permit is the one held by Amtrak for its club car that travels across several Iowa counties.

## **2. How long does a city have to decide whether it wants to prosecute?**

Sixty days then jurisdiction transfers by operation of law.

## **3. Does the council have to impose the sanction?**

Yes, if the council finds there was a violation of Iowa Code section 453A.2(1), selling or giving cigarettes or tobacco to a minor by a permit holder or employee of a permit holder, then Iowa Code section 453A.22(2)(a) requires that the permit holder SHALL be assessed a civil penalty of three hundred dollars (\$300.00) for a first violation. Subsequent penalties for second through fifth violations are also mandatory under Iowa law.

- (a) Council needs to find a violation of 453A.2(1) was committed;
- (b) Council needs to impose the prescribed penalty.

## **4. Can the city suspend the sanction/fine?**

No, the penalties are mandatory and the local licensing bodies have no authority to suspend or modify the fines or suspensions specifically outlined in the Iowa Code.

**5. Will the State pursue the sanctions even if the local city or county attorney declines to do so?**

Yes, if the local city or county attorney cannot or will not pursue the retail sanctions for whatever reason,(lack of resources, conflict, direction of local licensing body, etc.), the Iowa Attorney General's office will pursue the retail sanctions in front of an administrative law judge.

The Iowa Attorney General's office will act on behalf of the Iowa Alcoholic Beverages Division ("ABD") under authority granted by a 28E agreement reached between ABD and the Iowa Department of Public Health. The Health Department has authority to pursue violations before the local licensing body under Iowa Code section 453A.2(4).

Either the local City or County Attorney or the Attorney General will prosecute each violation of 453A.22.

**6. Where does the fine money go?**

If the city or county attorney prosecutes the case for the civil sanctions the fine is paid to the local licensing body. If the Attorney General's office prosecutes the case the fine is paid to the Treasurer, State of Iowa and deposited in the tobacco training and compliance fund.

**7. How do I find out if there have been violations in my jurisdiction?**

Check with local law enforcement if they conducted the compliance checks. If the State Patrol conducted the compliance checks, contact Nicole Gehl at the ABD at (515) 281-7641 or call Connie Larson at (515) 281-5846.

**8. Where can I find sample forms?**

<http://www.state.ia.us/government/ag/resources/index.html> or go to [www.iowaattorneygeneral.org](http://www.iowaattorneygeneral.org) then scroll to the bottom of the screen to where it says resources. Click on resources and follow that page down to:

**Tobacco Enforcement**

Civil Prosecution Procedures & Laws for City and County Attorneys. Click on this and go to page that features "view entire document." Clicking on this document will open it and it may be printed or downloaded. If you need a hard copy of the prosecution manual, please call Connie Larson at (515) 281-5846 or e-mail at [clarson@ag.state.ia.us](mailto:clarson@ag.state.ia.us).

**9. If the retailer fails to pay, how do I collect?**

If the retailer fails to pay the civil penalty, a judgment may be pursued in small claims court.

**10. Is the \$300.00 fine applicable even if the retailer serves the 14 day suspension for not paying within thirty days after the sanction is imposed?**

Serving the fourteen day suspension does not wipe out the obligation to pay the \$300.00 fine for a first offense. It is not an either-or proposition. The fourteen-day suspension is an additional penalty for not paying the fine in a timely manner.

**11. What happens if the retailer has forfeited its permit or gone out of business?**

If the retailer forfeited its cigarette permit or has gone out of business the local licensing body should still find the penalty and assess the sanction, however, the local authority may choose not to pursue the fine through the small claims court process.

**12. What if the ownership of the retail business has changed since the citation was issued?**

If there is new ownership, the new owners cannot be held liable for a violation that occurred before they were the owners of the business. It also may be impossible to pursue sanctions against the former owners if they no longer hold a permit. This is a reason to pursue violations in the most timely fashion possible.

**13. What rules apply for the hearing?**

Most importantly, defendants are entitled to ten days notice and an opportunity to be heard according to Iowa Code section 453A.22. Defendants may be represented by legal counsel at their own expense. Hearsay rules do not apply to the hearing because the sanctions are administrative not criminal.

**14. What are some common defenses and how do I rebut?**

Honest Mistake – Retailer claims to have made one honest mistake with no intention to make a sale to a minor.

In most cases, this is probably true. However, the Iowa Code does not have an exception to the prescribed penalty for those retailers who just made a mistake. Having the intent to sell is not an element of this offense. The only two elements are: 1) a minor was given or sold cigarettes or tobacco 2) by the permit holder or an employee of the permit holder.

Vicarious Liability – Retailer claims it is wrong for it to be held liable for the mistake of the clerk. This defense is often combined with evidence that the retailer trained and instructed the employee to check identification before selling cigarettes and tobacco products.

The Iowa Code prescribes this vicarious liability by not only providing a penalty to the person that makes the sale (453A.3(1)(b)), but also to the retailer (453A.22(2)). Iowa case law supports the imposition of these penalties. See *Randall's Intl Inc. v. Iowa Liquor Control Dept.*, 429 N.W.2d 163.

**Non-profit Organization – Retailer claims it is a nonprofit business that does good works for the community.**

The Iowa Code makes no distinction for nonprofit businesses. These permit-holders have the same responsibilities and must face the same penalties as other businesses where a sale is made.

**Good Corporate Citizen – Some businesses believe they should get a break because they are good corporate citizens. They employ a lot of people, pay a lot of taxes and support various community projects.**

While all of these things are commendable, again the Iowa Code does not allow for different or reduced penalties for good corporate citizens.

**Entrapment – Some defendants claim the use of undercover youth attempting to purchase cigarettes is entrapment.**

However, the Iowa Supreme Court has ruled that the use of undercover youths in alcohol stings is not entrapment. See *Jim O. Inc. v. City of Cedar Rapids*, 587 N.W.2d 476.

**Fake ID – Some defendants claim the undercover youth used a Fake ID when trying to purchase the cigarettes.**

All the youth participating in the program use their real identification. The law enforcement partners examine the identification before and after the sting is completed.

**The only affirmative defense is for training. It can be used only once within a four year period.**

**15. Under what circumstances may a retailer assert the affirmative defense of training?**

If the employee who sold received training and if the training was substantially similar to the training offered by the ABD the retailer may assert the defense. After April 11, 2004, the employee must have received training from an authorized ABD program. A retailer may assert this defense only once in a four year period.

**16. May a retailer assert the affirmative defense of training for violations that occurred before the new law was enacted?**

No. The defense may only be asserted for new violations of the law.

**17. For the affirmative defense, how does the licensing authority calculate the four year period?**

The four year period begins on the date the affirmative defense is asserted.

**18. Does the retailer have the right to appeal the decision of the council?**

The only avenue of appeal is filing a Writ of Certiorari with the district court if the defendant argues the decision of the city council was illegal.

**19. What if the criminal citation was dismissed, a deferred judgment was given, or the defendant in the criminal trial was found not guilty?**

Civil sanctions can be pursued independently of what happens with the criminal prosecution of the clerk. Whether or not sanctions are pursued depend on whether a sale was made to a minor.

**20. Does a retailer need to remove cigarette and tobacco products from its shelves while serving a suspension of its license?**

No, but the retailer may want to remove the product for its own protection. If a sale is made (even to an adult) while a business is under suspension, the retailer faces more penalties.