As Introduced

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Representative Upchurch

Cosponsors: Representatives Mohamed, Williams, Brennan, Fischer

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To amend sections 4303.271, 5743.15, and 5743.61 of the Revised Code to require the renewal of various licenses or permits related to liquor, tobacco, and vapor products within forty-eight hours of filing.

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

Section 1. That sections 4303.271, 5743.15, and 5743.61 of the Revised Code be amended to read as follows:

Sec. 4303.271. (A) Except as provided in divisions (B) and (D) of this section, the holder of a permit issued under sections 4303.02 to 4303.232 of the Revised Code, who files an application for the renewal of the same class of permit for the same premises, shall be entitled to the renewal of the permit. The division of liquor control shall renew the permit unless the division rejects for good cause any renewal application, subject to the right of the applicant to appeal the rejection to the liquor control commission.

(B) The legislative authority of the municipal corporation, the board of township trustees, or the board of county commissioners of the county in which a permit premises is located may object to the renewal of a permit issued under sections 4303.11 to 4303.183 of the Revised Code for any of the reasons contained in division (A) of section 4303.292 of the Revised Code. Any objection shall be made no later than thirty days prior to the expiration of the permit, and the division shall accept the objection if it is postmarked no later than thirty days prior to the expiration of the permit. The objection shall be made by a resolution specifying the reasons for objecting to the renewal and requesting a hearing, but no objection shall be based upon noncompliance of the permit premises with local zoning regulations that prohibit the sale of beer or intoxicating liquor in an area zoned for commercial or industrial uses, for a permit premises that would otherwise qualify for a proper permit issued by the division. The resolution shall be accompanied by a statement by the chief legal officer of the political subdivision that, in the chief legal officer's opinion, the objection is based upon substantial legal grounds within the meaning and intent of division (A) of section 4303.292 of the Revised Code.

Upon receipt of a resolution of a legislative authority or board objecting to the renewal of a permit and a statement from the chief legal officer, the division shall set a time for the hearing and send by certified mail to the permit holder, at the permit holder's usual place of business, a copy of the resolution and notice of the hearing. The division shall then hold a hearing in the central office of the division, except that, upon written request of the legislative authority or board, the hearing shall be held in the county seat of the county in which the permit premises is located, to determine whether the renewal shall be denied for any of the reasons contained in division (A) of section 4303.292 of the Revised

Code. Only the reasons for refusal contained in division (A) of section 4303.292 of the Revised Code and specified in the resolution of objection shall be considered at the hearing.

The permit holder and the objecting legislative authority or board shall be parties to the proceedings under this section and shall have the right to be present, to be represented by counsel, to offer evidence, to require the attendance of witnesses, and to cross-examine witnesses at the hearing.

(C) An application for renewal of a permit shall be filed with the division at least fifteen days prior to the expiration of an existing permit, and the existing permit shall continue in effect as provided in section 119.06 of the Revised Code until the application is approved or rejected by the division. Any holder of a permit, which has expired through failure to be renewed as provided in this section, shall obtain a renewal of the permit, upon filing an application for renewal with the division, at any time within thirty days from the date of the expired permit. A penalty of ten per cent of the permit fee shall be paid by the permit holder if the application for renewal is not filed at least fifteen days prior to the expiration of the permit. If there are no objections filed under this section, the division shall issue a renewal of a permit not later than forty-eight hours after an application for renewal is filed.

(D)(1) Annually, the tax commissioner shall examine the department of taxation's records for the horse-racing, alcoholic beverage, motor fuel, petroleum activity, sales or use, cigarette, other tobacco products, employer withholding, commercial activity, and gross casino revenue tax and gross receipts taxes levied pursuant to section 5739.101 of the

Revised Code for each holder of a permit issued under sections 4303.02 to 4303.232 of the Revised Code to determine if the permit holder is delinquent in filing any returns, submitting any information required by the commissioner, or remitting any payments with respect to those taxes or any fees, charges, penalties, or interest related to those taxes.

If any delinquency or liability exists, the commissioner shall send a notice of that fact to the permit holder in the manner provided in section 5703.37 of the Revised Code. The notice shall specify, in as much detail as is possible, the periods for which returns have not been filed and the nature and amount of unpaid assessments and other liabilities and shall be sent on or before the first day of the third month preceding the month in which the permit expires. The commissioner also shall notify the division of liquor control of the delinquency or liability, identifying the permit holder by name and permit number.

(2)(a) Except as provided in division (D)(4) of this section, the division of liquor control shall not renew the permit of any permit holder the tax commissioner has identified as being delinquent in filing any returns, providing any information, or remitting any payments with respect to the taxes listed in division (D)(1) of this section as of the first day of the sixth month preceding the month in which the permit expires, or of any permit holder the commissioner has identified as having been assessed by the department on or before the first day of the third month preceding the month in which the permit expires, until the division is notified by the commissioner that the delinquency, liability, or assessment has been resolved.

(b)(i) Within ninety days after the date on which the permit expires, any permit holder whose permit is not renewed under this division may file an appeal with the liquor control commission. The commission shall notify the tax commissioner regarding the filing of any such appeal. During the period in which the appeal is pending, the permit shall not be renewed by the division. The permit shall be reinstated if the permit holder and the commissioner or the attorney general demonstrate to the liquor control commission that the commissioner's notification of a delinquency or assessment was in error or that the issue of the delinquency or assessment has been resolved.

(ii) A permit holder who has filed an appeal under division (D)(2)(b)(i) of this section may file a motion to withdraw the appeal. The division of liquor control may renew a permit holder's permit if the permit holder has withdrawn such an appeal and the division receives written certification from the tax commissioner that the permit holder's delinquency or assessment has been resolved.

(3) A permit holder notified of delinquency or liability under this section may protest the notification to the tax commissioner on the basis that no return or information is delinquent and no tax, fee, charge, penalty, or interest is outstanding. The commissioner shall expeditiously consider any evidence submitted by the permit holder and, if it is determined that the notification was in error, immediately shall inform the division of liquor control that the renewal application may be granted. The renewal shall not be denied if the delinquency or unreported liability is the subject of a bona fide dispute as to the validity of the delinquency or unreported liability and is the subject of an assessment and of an appeal properly filed by the permit holder.

(4) If the commissioner concludes that under the circumstances the permit holder's delinquency or liability has been conditionally resolved, the commissioner shall allow the permit to be renewed, conditioned upon the permit holder's continuing performance in satisfying the delinquency and liability. The conditional nature of the renewal shall be specified in the notification given to the division of liquor control under division (D)(1) of this section. Upon receipt of notice of the resolution, the division shall issue a conditional renewal. If the taxpayer defaults on any agreement to pay the delinquency or liability or fails to keep subsequent tax or fee payments current, the liquor control commission, upon request and proof of the default or failure to keep subsequent tax or fee payments current, shall indefinitely suspend the permit holder's permit until all taxes or fees and interest due are paid.

(5) The commissioner may adopt rules to assist in administering the duties imposed by this section.

Sec. 5743.15. (A) Except as otherwise provided in this division, no person shall engage in this state in the wholesale or retail business of trafficking in cigarettes or in the business of a manufacturer or importer of cigarettes without having a license to conduct each such activity issued by a county auditor under division (B) of this section or the tax commissioner under divisions (C) and (F) of this section. On dissolution of a partnership by death, the surviving partner may operate under the license of the partnership until expiration of the license, and the heirs or legal representatives of deceased persons, and receivers and trustees in bankruptcy appointed by any competent authority, may operate under the license of the person succeeded in possession by such heir, representative, receiver, or trustee in bankruptcy if the partner or successor notifies the issuer of the license of the dissolution or succession within thirty days after the dissolution or succession.

(B)(1) Each applicant for a license to engage in the retail business of trafficking in cigarettes under this section, annually, on or before the first day of June, shall make and deliver to the county auditor of the county in which the applicant desires to engage in the retail business of trafficking in cigarettes, upon a blank form furnished by such auditor for that purpose, a statement showing the name of the applicant, each physical place in the county where the applicant's business is conducted, the nature of the business, and any other information the tax commissioner requires in the form of statement prescribed by the commissioner. If the applicant is a firm, partnership, or association other than a corporation, the application shall state the name and address of each of its members. If the applicant is a corporation, the application shall state the name and address of each of its officers. At the time of making the application required by this section, every person desiring to engage in the retail business of trafficking in cigarettes shall pay an application fee in the sum of one hundred twenty-five dollars for each physical place where the person proposes to carry on such business. Each place of business shall be deemed such space, under lease or license to, or under the control of, or under the supervision of the applicant, as is contained in one or more contiguous, adjacent, or adjoining buildings constituting an industrial plant or a place of business operated by, or under the control of, one person, or under one roof and connected by doors, halls, stairways, or elevators, which space may contain any number of points at which cigarettes are offered for sale, provided that each additional point at which cigarettes are offered for sale shall be listed in the application.

(2) Upon receipt of the application and exhibition of the county treasurer's receipt showing the payment of the application fee, the county auditor shall issue to the applicant a license for each place of business designated in the application, authorizing the applicant to engage in such business at such place for one year commencing on the first day of June. The form of the license shall be prescribed by the commissioner. A duplicate license may be obtained from the county auditor upon payment of a five-dollar fee if the original license is lost, destroyed, or defaced. When an application is filed after the first day of June, the application fee required to be paid shall be proportioned in amount to the remainder of the license year, except that it shall not be less than twenty-five dollars in any one year.

(3) The holder of a retail dealer's cigarette license may transfer the license to a place of business within the same county other than that designated on the license on condition that the licensee's ownership interest and business structure remain unchanged, and that the licensee applies to the county auditor therefor, upon forms approved by the commissioner and the payment of a fee of five dollars into the county treasury.

(4) If an application for a renewal of a license to engage in the retail business of trafficking in cigarettes under this section meets all the requirements for the renewal of the license, the county auditor shall issue the renewal not later than forty-eight hours after an application for renewal is filed.

(C)(1) Each applicant for a license to engage in the wholesale business of trafficking in cigarettes under this section, annually, on or before the first day of June, shall make and deliver to the tax commissioner, upon a blank form furnished by the commissioner for that purpose, a statement showing the name of the applicant, physical street address where the applicant's business is conducted, the nature of the business, and any other information required by the commissioner. If the applicant is a firm, partnership, or association other than a corporation, the applicant shall state the name and address of each of its members. If the applicant is a corporation, the applicant shall state the name and address of each of its officers. At the time of making the application required by this section, every person desiring to engage in the wholesale business of trafficking in cigarettes shall pay an application fee of one thousand dollars for each physical place where the person proposes to carry on such business. Each place of business shall be deemed such space, under lease or license to, or under the control of, or under the supervision of the applicant, as is contained in one or more contiguous, adjacent, or adjoining buildings constituting an industrial plant or a place of business operated by, or under the control of, one person, or under one roof and connected by doors, halls, stairways, or elevators. A duplicate license may be obtained from the commissioner upon payment of a twenty-five-dollar fee if the original license is lost, destroyed, or defaced.

(2) Upon receipt of the application and payment of any application fee required by this section, the commissioner shall verify that the applicant is not in violation of any provision of Chapter 1346. or Title LVII of the Revised Code. The commissioner shall also verify that the applicant has filed any

returns, submitted any information, and paid any outstanding taxes, charges, or fees as required for any tax, charge, or fee administered by the commissioner, to the extent that the commissioner is aware of the returns, information, or payments at the time of the application. Upon approval, the commissioner shall issue to the applicant a license for each physical place of business designated in the application authorizing the applicant to engage in business at that location for one year commencing on the first day of June. For licenses issued after the first day of June, the application fee shall be reduced proportionately by the remainder of the twelve-month period for which the license is issued, except that the application fee required to be paid under this section shall be not less than two hundred dollars in any one year.

(3) The holder of a wholesale dealer cigarette license may transfer the license to a place of business other than that designated on the license on condition that the licensee's ownership or business structure remains unchanged, and that the licensee applies to the commissioner for such a transfer upon a form promulgated by the commissioner and pays a fee of twenty-five dollars, which shall be deposited into the cigarette tax enforcement fund created in division (E) of this section.

<u>(4) If an application for a renewal of a license to engage in the wholesale business of trafficking in cigarettes under this section meets all the requirements for the renewal of the license, the tax commissioner shall issue the renewal not later than forty-eight hours after an application for renewal is filed.</u>

(D)(1) The wholesale cigarette license application fees collected under this section shall be paid into the cigarette tax enforcement fund.

(2) The retail cigarette license application fees collected under this section shall be distributed as follows:

(a) Thirty per cent shall be paid upon the warrant of the county auditor into the treasury of the municipal corporation or township in which the places of business for which the tax revenue was received are located;

(b) Ten per cent shall be credited to the general fund of the county;

(c) Sixty per cent shall be paid into the cigarette tax enforcement fund.

(3) The remainder of the revenues and fines collected under this section and the penal laws relating to cigarettes shall be distributed as follows:

(a) Three-fourths shall be paid upon the warrant of the county auditor into the treasury of the municipal corporation or township in which the place of business, on account of which the revenues and fines were received, is located;

(b) One-fourth shall be credited to the general fund of the county.

(E) There is hereby created within the state treasury the cigarette tax enforcement fund for the purpose of providing funds to assist in paying the costs of enforcing sections 1333.11 to 1333.21 and Chapter 5743. of the Revised Code.

The portion of cigarette license application fees received by a county auditor during the annual application period that ends on the first day of June and that is required to be deposited in the cigarette tax enforcement fund shall be sent to the tax commissioner by the thirtieth day of June each year accompanied by the form prescribed by the tax commissioner. The portion of cigarette license application fees received by each county auditor after the first day of June and that is required to be deposited in the cigarette tax enforcement fund shall be sent to the commissioner by the last day of the month following the month in which such fees were collected.

(F)(1) Every person who desires to engage in the business of a manufacturer or importer of cigarettes shall, annually, on or before the first day of June, make and deliver to the tax commissioner, upon a blank form furnished by the commissioner for that purpose, a statement showing the name of the applicant, the nature of the applicant's business, and any other information required by the commissioner. If the applicant is a firm, partnership, or association other than a corporation, the applicant shall state the name and address of each of its members. If the applicant is a corporation, the applicant shall state the name and address of each of its officers.

(2) Upon receipt of the application required under this section, the commissioner shall verify that the applicant is not in violation of any provision of Chapter 1346. of the Revised Code. The commissioner shall also verify that the applicant has filed any returns, submitted any information, and paid any outstanding taxes, charges, or fees as required for any tax, charge, or fee administered by the commissioner, to the extent that the commissioner is aware of the returns, information, taxes, charges, or fees at the time of the application. Upon approval, the commissioner shall issue to the applicant a license authorizing the applicant to engage in the business of manufacturer or importer, whichever the case may be, for one year commencing on the first day of June.

(3) The issuing of a license under division (F)(1) of this section to a manufacturer does not excuse a manufacturer from the certification process required under section 1346.05 of the Revised Code. A manufacturer who is issued a license under division (F)(1) of this section and who is not listed on the directory required under section 1346.05 of the Revised Code shall not be permitted to sell cigarettes in this state other than to a licensed cigarette wholesaler for sale outside this state. Such a manufacturer shall provide documentation to the commissioner evidencing that the cigarettes are legal for sale in another state.

(4) If an application for a renewal of a license to engage in the business of a manufacturer or importer of cigarettes under this section meets all the requirements for the renewal of the license, the tax commissioner shall issue the renewal not later than forty-eight hours after an application for renewal is filed.

(G) The tax commissioner may adopt rules necessary to administer this section.

Sec. 5743.61. (A)(1) No distributor or vapor distributor shall engage in the business of distributing tobacco products, vapor products, or both within this state without having a license issued by the department of taxation to engage in that business.

(2) On the dissolution of a partnership by death, the surviving partner may operate under the license of the partnership until the expiration of the license, and the heirs or legal representatives of deceased persons, and receivers and trustees in bankruptcy appointed by any competent authority, may operate under the license of the person succeeded in possession

by the heir, representative, receiver, or trustee in bankruptcy if the partner or successor notifies the department of taxation of the dissolution or succession within thirty days after the dissolution or succession.

(B)(1) Each applicant for a license described by division (A)(1) of this section, annually, on or before the first day of February, shall make and deliver to the tax commissioner, upon a form furnished by the commissioner for that purpose, a statement showing the name of the applicant, each physical place from which the applicant distributes to distributors, vapor distributors, retail dealers, or wholesale dealers, and any other information the commissioner considers necessary for the administration of sections 5743.51 to 5743.66 of the Revised Code.

(2) At the time of making the application for a license to engage either in the business of distributing tobacco products or in the business of distributing both tobacco products and vapor products, the applicant shall pay an application fee of one thousand dollars for each place listed on the application where the applicant proposes to carry on that business. The application fee for a license to engage solely in the business of distributing vapor products shall be one hundred twenty-five dollars for each place listed on the application where the applicant proposes to carry on that business. The fee charged for the application shall accompany the application and shall be made payable to the treasurer of state for deposit into the cigarette tax enforcement fund.

(3) Upon receipt of the application and payment of any licensing fee required by this section, the commissioner shall verify that the applicant has filed all returns, submitted all

information, and paid all outstanding taxes, charges, or fees as required for any taxes, charges, or fees administered by the commissioner, to the extent the commissioner is aware of the returns, information, taxes, charges, or fees at the time of the application. Upon approval, the commissioner shall issue to the applicant a license for each place of distribution designated in the application authorizing the applicant to engage in business at that location for one year commencing on the first day of February. For licenses issued after the first day of February, the license application fee shall be reduced proportionately by the remainder of the twelve-month period for which the license is issued, except that the application fee required to be paid under this section shall be not less than two hundred dollars. If the original license is lost, destroyed, or defaced, a duplicate license may be obtained from the commissioner upon payment of a license replacement fee of twenty-five dollars.

(4) If an applicant for a renewal of a license to engage in the business of distributing tobacco products, vapor products, or both within this state meets all the requirements for the renewal of the license, the tax commissioner shall issue the renewal not later than forty-eight hours after an application for renewal is filed.

(C) The holder of a tobacco or vapor products license may transfer the license to a place of business on condition that the licensee's ownership and business structure remains unchanged and the licensee applies to the commissioner for the transfer on a form issued by the commissioner, and pays a transfer fee of twenty-five dollars.

(D) If a distributor or vapor distributor fails to file forms as required under Chapter 1346. or section 5743.52 of the

Revised Code or pay the tax due for two consecutive periods or three periods during any twelve-month period, the commissioner may suspend the license issued to the distributor or vapor distributor under this section. The suspension is effective ten days after the commissioner notifies the distributor or vapor distributor of the suspension in writing in the manner provided in section 5703.37 of the Revised Code. The commissioner shall lift the suspension when the distributor or vapor distributor files the delinquent forms and pays the tax due, including any penalties, interest, and additional charges. The commissioner may refuse to issue the annual renewal of the license required by this section and may refuse to issue a new license for a location of the distributor until all delinquent forms are filed and outstanding taxes are paid. This division does not apply to any unpaid or underpaid tax liability that is the subject of a petition or appeal filed pursuant to section 5743.56, 5717.02, or 5717.04 of the Revised Code.

(E)(1) The tax commissioner may impose a penalty of up to one thousand dollars on any person found to be engaging in the business of distributing tobacco products or vapor products without a license as required by this section.

(2) Any person engaging in the business of distributing tobacco products or vapor products without a license as required by this section shall comply with divisions (B)(1) and (2) of this section within ten days after being notified of the requirement to do so. Failure to comply with division (E)(2) of this section subjects a person to penalties imposed under section 5743.99 of the Revised Code.

Section 2. That existing sections 4303.271, 5743.15, and 5743.61 of the Revised Code are hereby repealed.