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136th General Assembly  
Regular Session  
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Sub. H. B. No. 849

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To amend sections 9.681, 3313.751, 3794.05, 1  
5502.01, 5502.13, 5502.14, 5502.99, 5743.01, 2  
5743.54, and 5743.61 and to enact sections 3  
2935.034, 5502.80, 5502.81, 5502.82, 5502.83, 4  
5743.541, 5743.611, 5743.74, and 5743.75 of the 5  
Revised Code regarding the regulation, 6  
registration, licensure, inspection, and 7  
enforcement of electronic smoking, tobacco, 8  
nicotine, and vapor products retailers. 9

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

**Section 1.** That sections 9.681, 3313.751, 3794.05, 10  
5502.01, 5502.13, 5502.14, 5502.99, 5743.01, 5743.54, and 11  
5743.61 be amended and sections 2935.034, 5502.80, 5502.81, 12  
5502.82, 5502.83, 5743.541, 5743.611, 5743.74, and 5743.75 of 13  
the Revised Code be enacted to read as follows: 14

**Sec. 9.681.** (A) As used in this section, "tobacco product" 15  
and "alternative nicotine product" have the same meanings as in 16  
section 2927.02 of the Revised Code. 17

(B) The regulation of tobacco products and alternative 18  
nicotine products is a matter of general statewide concern that 19



requires statewide regulation. The state has adopted a 20  
comprehensive plan with respect to all aspects of the giveaway, 21  
sale, purchase, distribution, manufacture, use, possession, 22  
licensing, taxation, inspection, and marketing of tobacco 23  
products and alternative nicotine products. No political 24  
subdivision may enact, adopt, renew, maintain, enforce, or 25  
continue in existence any charter provision, ordinance, 26  
resolution, rule, or other measure that conflicts with or 27  
preempts any policy of the state regarding the regulation of 28  
tobacco products or alternative nicotine products, including, 29  
without limitation, by: 30

(1) Setting or imposing standards, requirements, taxes, 31  
fees, assessments, or charges of any kind regarding tobacco 32  
products or alternative nicotine products that are the same as 33  
or similar to, that conflict with, that are different from, or 34  
that are in addition to, any standard, requirement, tax, fee, 35  
assessment, or other charge established or authorized by state 36  
law; 37

(2) Lowering or raising an age requirement provided for in 38  
state law in connection with the giveaway, sale, purchase, 39  
distribution, manufacture, use, possession, licensing, taxation, 40  
inspection, and marketing of tobacco products or alternative 41  
nicotine products; 42

(3) Prohibiting an employee eighteen years of age or older 43  
of a manufacturer, producer, distributor, wholesaler, or 44  
retailer of tobacco products or alternative nicotine products 45  
from selling tobacco products or alternative nicotine products; 46

(4) Prohibiting an employee eighteen years of age or older 47  
of a manufacturer, producer, distributor, wholesaler, or 48  
retailer of tobacco products or alternative nicotine products 49

from handling tobacco products or alternative nicotine products 50  
in sealed containers in connection with manufacturing, storage, 51  
warehousing, placement, stocking, bagging, loading, or 52  
unloading. 53

(C) In addition to any other relief provided, the court 54  
shall award costs and reasonable attorney's fees to any person, 55  
group, or entity that prevails in a challenge to an ordinance, 56  
resolution, regulation, local law, or other action as being in 57  
conflict with this section. 58

(D) The general assembly finds and declares that this 59  
section is part of a statewide and comprehensive legislative 60  
enactment regulating all aspects of the giveaway, sale, 61  
purchase, distribution, manufacture, use, possession, licensing, 62  
taxation, inspection, and marketing of tobacco products and 63  
alternative nicotine products. The general assembly further 64  
finds and declares that the imposition of tobacco product and 65  
alternative nicotine product regulation by any political 66  
subdivision is a matter of statewide concern and would be 67  
inconsistent with that statewide, comprehensive enactment. 68  
Therefore, regulation of the giveaway, sale, purchase, 69  
distribution, manufacture, use, possession, licensing, taxation, 70  
inspection, and marketing of tobacco products and alternative 71  
nicotine products is a matter of general statewide concern that 72  
requires uniform statewide regulation. By the enactment of this 73  
section, it is the intent of the general assembly to preempt 74  
political subdivisions from the regulation of tobacco products 75  
and alternative nicotine products. 76

(E) This section does not prohibit a political subdivision 77  
from levying a tax expressly authorized by state law, including 78  
the taxes authorized under Chapters 5739. and 5741. or sections 79

5743.021, 5743.024, 5743.026, 5743.321, 5743.323, 5743.324, 80  
5743.511, 5743.521, 5743.621, and 5743.631 of the Revised Code. 81

(F) This section does not prohibit a city, local, exempted 82  
village, or joint vocational school district; a STEM school 83  
established under Chapter 3326. of the Revised Code; an 84  
educational service center; or a community school established 85  
under Chapter 3314. of the Revised Code from declaring school 86  
property or school facilities to be a nonsmoking place, 87  
consistent with section 3794.05 of the Revised Code, or from 88  
enacting policies to implement section 3313.751 of the Revised 89  
Code. 90

**Sec. 2935.034.** A peace officer acting within the officer's 91  
territorial jurisdiction has the same authority vested in 92  
enforcement agents under division (B) of section 5502.14 of the 93  
Revised Code. 94

**Sec. 3313.751.** (A) As used in this section: 95

(1) "School district" means a city, local, exempted 96  
village, or joint vocational school district. 97

(2) "Smoke" means to burn any substance containing 98  
tobacco, including a lighted cigarette, cigar, or pipe, or to 99  
burn a clove cigarette. "Smoke" includes the use of an 100  
electronic smoking device or vapor product, as those terms are 101  
defined in section 2927.02 of the Revised Code. 102

(3) "Use tobacco" means to chew or maintain any substance 103  
containing tobacco, including smokeless tobacco, in the mouth to 104  
derive the effects of tobacco, or to use or consume any product, 105  
whether smoked, heated, chewed, absorbed, dissolved, inhaled, or 106  
ingested by any other means, that is made or derived from 107  
tobacco or that contains any form of nicotine. 108

(B) No pupil shall smoke or use tobacco or possess any substance containing tobacco or nicotine in any area under the control of a school district or an educational service center or at any activity supervised by any school operated by a school district or an educational service center.

(C) No pupil shall use or possess any substance containing betel nut in any area under the control of a school district or an educational service center or at any activity supervised by any school operated by a school district or an educational service center.

(D) The board of education of each school district and the governing board of each educational service center shall adopt a policy providing for the enforcement of division (B) of this section and establishing disciplinary measures for a violation of division (B) of this section.

**Sec. 3794.05. Declaration of establishment as nonsmoking.**

(A) Notwithstanding any other provision of this chapter, the owner, manager, operator, or other person in charge or control of an establishment, facility, or outdoor area which does not otherwise qualify as a public place or place of employment may declare such establishment, facility, or outdoor area as a nonsmoking place.

(B) Notwithstanding any other provision of this chapter, a city, local, exempted village, or joint vocational school; a STEM school established under Chapter 3326. of the Revised Code; an educational service center; or a community school established under Chapter 3314. of the Revised Code may declare school property or school facilities as a nonsmoking place.

(C) Smoking shall be prohibited in any place declared

nonsmoking under this section where a sign conforming to the 138  
requirements of section 3794.06 of the Revised Code is posted. 139

**Sec. 5502.01.** (A) The department of public safety shall 140  
administer and enforce the laws relating to the registration, 141  
licensing, sale, and operation of motor vehicles and the laws 142  
pertaining to the licensing of drivers of motor vehicles. 143

The department shall compile, analyze, and publish 144  
statistics relative to motor vehicle accidents and the causes of 145  
them, prepare and conduct educational programs for the purpose 146  
of promoting safety in the operation of motor vehicles on the 147  
highways, and conduct research and studies for the purpose of 148  
promoting safety on the highways of this state. 149

(B) The department shall administer the laws and rules 150  
relative to trauma and emergency medical services specified in 151  
Chapter 4765. of the Revised Code and any laws and rules 152  
relative to medical transportation services specified in Chapter 153  
4766. of the Revised Code. 154

(C) The department shall administer and enforce the laws 155  
contained in Chapters 4301. and 4303. of the Revised Code and 156  
enforce the rules and orders of the liquor control commission 157  
pertaining to retail liquor permit holders. 158

(D) The department shall administer the laws governing the 159  
state emergency management agency and shall enforce all 160  
additional duties and responsibilities as prescribed in the 161  
Revised Code related to emergency management services. 162

(E) The department shall conduct investigations pursuant 163  
to Chapter 5101. of the Revised Code in support of the duty of 164  
the department of job and family services to administer the 165  
supplemental nutrition assistance program throughout this state. 166

The department of public safety shall conduct investigations 167  
necessary to protect the state's property rights and interests 168  
in the supplemental nutrition assistance program. 169

(F) The department of public safety shall enforce 170  
compliance with orders and rules of the public utilities 171  
commission and applicable laws in accordance with Chapters 172  
4905., 4921., and 4923. of the Revised Code regarding commercial 173  
motor vehicle transportation safety, economic, and hazardous 174  
materials requirements. 175

(G) Notwithstanding Chapter 4117. of the Revised Code, the 176  
department of public safety may establish requirements for its 177  
enforcement personnel, including its enforcement agents 178  
described in section 5502.14 of the Revised Code, that include 179  
standards of conduct, work rules and procedures, and criteria 180  
for eligibility as law enforcement personnel. 181

(H) The department shall administer, maintain, and operate 182  
the Ohio criminal justice network. The Ohio criminal justice 183  
network shall be a computer network that supports state and 184  
local criminal justice activities. The network shall be an 185  
electronic repository for various data, which may include arrest 186  
warrants, notices of persons wanted by law enforcement agencies, 187  
criminal records, prison inmate records, stolen vehicle records, 188  
vehicle operator's licenses, and vehicle registrations and 189  
titles. 190

(I) The department shall coordinate all homeland security 191  
activities of all state agencies and shall be a liaison between 192  
state agencies and local entities for those activities and 193  
related purposes. 194

(J) The department shall administer and enforce the laws 195

relative to private investigators and security service providers	196
specified in Chapter 4749. of the Revised Code.	197
(K) The department shall administer criminal justice	198
services in accordance with sections 5502.61 to 5502.66 of the	199
Revised Code.	200
(L) The department shall administer the Ohio school safety	201
and crisis center and the Ohio mobile training team in	202
accordance with sections 5502.70 to 5502.703 of the Revised	203
Code.	204
(M) The department shall coordinate security measures and	205
operations, and may direct the department of administrative	206
services to implement any security measures and operations the	207
department of public safety requires, at the Vern Riffe Center	208
and the James A. Rhodes state office tower.	209
Notwithstanding section 125.28 of the Revised Code, the	210
director of public safety may recover the costs of directing	211
security measures and operations under this division by either	212
issuing intrastate transfer voucher billings to the department	213
of administrative services, which the department shall process	214
to pay for the costs, or, upon the request of the director of	215
administrative services, the director of budget and management	216
may transfer cash in the requested amount from the building	217
management fund created under section 125.28 of the Revised	218
Code. Payments received or cash transfers made under this	219
division for the costs of directing security measures and	220
operations shall be deposited into the state treasury to the	221
credit of the security, investigations, and policing fund	222
created under section 4501.11 of the Revised Code.	223
(N) The department shall assist the division of marijuana	224

control in enforcing Chapter 3796. of the Revised Code, as 225  
provided in that chapter. 226

(O) The department, through the investigative unit 227  
maintained in accordance with section 5502.13 of the Revised 228  
Code, shall administer and enforce section 5502.81 of the 229  
Revised Code and shall coordinate enforcement activities with 230  
the department of taxation related to inspections of the 231  
premises of persons licensed to do business distributing or 232  
selling at retail tobacco products, alternative nicotine 233  
products, electronic smoking products, and vapor products to 234  
determine compliance with Chapter 5743. of the Revised Code. 235

**Sec. 5502.13.** The department of public safety shall 236  
maintain an investigative unit in order to conduct 237  
investigations and other enforcement activity authorized by 238  
Chapters 3796., 4301., 4303., 5101., 5107., ~~and 5108.~~, 5502., 239  
and 5743. and sections 2903.12, 2903.13, 2903.14, 2907.09, 240  
2913.46, 2917.11, 2921.13, 2921.31, 2921.32, 2921.33, 2923.12, 241  
2923.121, 2925.11, 2925.13, 2927.02, and 4507.30 of the Revised 242  
Code. The director of public safety shall appoint the employees 243  
of the unit who are necessary, designate the activities to be 244  
performed by those employees, and prescribe their titles and 245  
duties. 246

**Sec. 5502.14.** (A) As used in this section, "felony": 247

(1) "Felony" has the same meaning as in section 109.511 of 248  
the Revised Code. 249

(2) "Contraband" has the same meaning as in section 250  
2901.01 of the Revised Code and includes electronic smoking 251  
products designated as contraband under section 5502.81 of the 252  
Revised Code. 253

(B) (1) Any person who is employed by the department of public safety and designated by the director of public safety to enforce Title XLIII of the Revised Code and the rules adopted under it, Chapter 3796. of the Revised Code and the rules adopted under that chapter, and the laws and rules regulating the use of supplemental nutrition assistance program benefits shall be known as an enforcement agent. The employment by the department of public safety and the designation by the director of public safety of a person as an enforcement agent shall be subject to division (D) of this section. An enforcement agent has the authority vested in peace officers pursuant to section 2935.03 of the Revised Code to keep the peace, to enforce all of the following:

(a) All applicable laws and rules on any retail liquor permit premises, or on any other premises of public or private property, where a violation of Title XLIII of the Revised Code or any rule adopted under it is occurring;

(b) All applicable laws and rules on persons and premises licensed under Chapter 3796. of the Revised Code and on any other public or private property where a violation of Chapter 3796. or any rule adopted under that chapter is occurring;

(c) All laws and rules governing the use of supplemental nutrition assistance program benefits, women, infants, and children's coupons, electronically transferred benefits, or any other access device that is used alone or in conjunction with another access device to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds, pursuant to the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) or any

supplemental food program administered by any department of this 284  
state pursuant to the "Child Nutrition Act of 1966," 80 Stat. 285  
885, 42 U.S.C.A. 1786. Enforcement agents, in enforcing 286  
compliance with the laws and rules described in this division, 287  
may keep the peace and make arrests for violations of those laws 288  
and rules. 289

(2) In addition to the authority conferred by division (B) 290  
(1) of this section, an enforcement agent also may execute 291  
search warrants and seize and take into custody any contraband,~~—~~ 292  
~~as defined in section 2901.01 of the Revised Code,~~ or any 293  
property that is otherwise necessary for evidentiary purposes 294  
related to any violations of the laws or rules described in 295  
division (B)(1) of this section. An enforcement agent may enter 296  
public or private premises where activity alleged to violate the 297  
laws or rules described in division (B)(1) of this section is 298  
occurring. 299

(3) Enforcement agents who are on, immediately adjacent 300  
to, or across from retail liquor permit premises or premises 301  
licensed under Chapter 3796. of the Revised Code and who are 302  
performing investigative duties relating to those premises, 303  
enforcement agents who are on premises that are not liquor 304  
permit premises or premises licensed under Chapter 3796. of the 305  
Revised Code but on which a violation of Title XLIII or Chapter 306  
3796. of the Revised Code or any rule adopted under that title 307  
or chapter allegedly is occurring, and enforcement agents who 308  
view a suspected violation of Title XLIII or Chapter 3796. of 309  
the Revised Code, of a rule adopted under that title or chapter, 310  
or of another law or rule described in division (B)(1) of this 311  
section have the authority to enforce the laws and rules 312  
described in division (B)(1) of this section, authority to 313  
enforce any section in Title XXIX of the Revised Code or any 314

other section of the Revised Code listed in section 5502.13 of 315  
the Revised Code if they witness a violation of the section 316  
under any of the circumstances described in this division, and 317  
authority to make arrests for violations of the laws and rules 318  
described in division (B) (1) of this section and violations of 319  
any of those sections. 320

(4) The jurisdiction of an enforcement agent under 321  
division (B) of this section shall be concurrent with that of 322  
the peace officers of the county, township, or municipal 323  
corporation in which the violation occurs. 324

(C) Enforcement agents of the department of public safety 325  
who are engaged in the enforcement of the laws and rules 326  
described in division (B) (1) of this section may carry concealed 327  
weapons when conducting undercover investigations pursuant to 328  
their authority as law enforcement officers and while acting 329  
within the scope of their authority pursuant to this chapter. 330

(D) (1) The department of public safety shall not employ, 331  
and the director of public safety shall not designate, a person 332  
as an enforcement agent on a permanent basis, on a temporary 333  
basis, for a probationary term, or on other than a permanent 334  
basis if the person previously has been convicted of or has 335  
pleaded guilty to a felony. 336

(2) (a) The department of public safety shall terminate the 337  
employment of a person who is designated as an enforcement agent 338  
and who does either of the following: 339

(i) Pleads guilty to a felony; 340

(ii) Pleads guilty to a misdemeanor pursuant to a 341  
negotiated plea agreement as provided in division (D) of section 342  
2929.43 of the Revised Code in which the enforcement agent 343

agrees to surrender the certificate awarded to that agent under 344  
section 109.77 of the Revised Code. 345

(b) The department shall suspend the employment of a 346  
person who is designated as an enforcement agent if the person 347  
is convicted, after trial, of a felony. If the enforcement agent 348  
files an appeal from that conviction and the conviction is 349  
upheld by the highest court to which the appeal is taken or if 350  
no timely appeal is filed, the department shall terminate the 351  
employment of that agent. If the enforcement agent files an 352  
appeal that results in that agent's acquittal of the felony or 353  
conviction of a misdemeanor, or in the dismissal of the felony 354  
charge against the agent, the department shall reinstate the 355  
agent. An enforcement agent who is reinstated under division (D) 356  
(2) (b) of this section shall not receive any back pay unless the 357  
conviction of that agent of the felony was reversed on appeal, 358  
or the felony charge was dismissed, because the court found 359  
insufficient evidence to convict the agent of the felony. 360

(3) Division (D) of this section does not apply regarding 361  
an offense that was committed prior to January 1, 1997. 362

(4) The suspension or termination of the employment of a 363  
person designated as an enforcement agent under division (D) (2) 364  
of this section shall be in accordance with Chapter 119. of the 365  
Revised Code. 366

Sec. 5502.80. As used in sections 5502.80 to 5502.89 of 367  
the Revised Code: 368

(A) "Contraband" has the same meaning as in section 369  
2901.01 of the Revised Code. 370

(B) "Disposable electronic smoking product" means an 371  
electronic smoking product that is filled with a solution or 372

other substance containing nicotine before the product is sold, 373  
is sealed by the manufacturer and not intended to be opened by 374  
the consumer, and is intended to be disposed of after the 375  
solution or other substance containing nicotine has been 376  
depleted. 377

(C) "Distributor" means any of the following: 378

(1) A person that sells vapor products to a retail dealer; 379

(2) A retail dealer that receives vapor products with 380  
respect to which the tax imposed by Chapter 5743. of the Revised 381  
Code has not or will not be paid by another person that is a 382  
distributor; 383

(3) A secondary manufacturer; 384

(4) A wholesale dealer located in this state that receives 385  
vapor products from a manufacturer, or receives vapor products 386  
on which the tax imposed by Chapter 5743. of the Revised Code 387  
has not been paid; 388

(5) A wholesale dealer located outside this state that 389  
sells vapor products to a wholesale dealer in this state. 390

(D) "Electronic smoking product" means any noncombustible 391  
product, other than a cigarette or tobacco product, that 392  
contains or is designed to use vapor products and employs a 393  
heating element, power source, electronic circuit, or other 394  
electronic, chemical, or mechanical means, regardless of shape 395  
or size, that can be used to produce vapor from the vapor 396  
product. "Electronic smoking product" includes a vapor product 397  
whether sold with or separately from an electronic smoking 398  
product, an electronic cigarette, a disposable electronic 399  
smoking product, an open-system electronic smoking product, an 400  
electronic cigar, an electronic cigarillo, an electronic pipe, 401

an electronic hookah, a vape pen, a vaporizer, or any similar 402  
product or device. "Electronic smoking product" does not include 403  
any product regulated as a drug, device, or combination product 404  
under Chapter V of the "Federal Food, Drug, and Cosmetic Act," 405  
21 U.S.C. 301, et seq. 406

(E) "Investigative unit" means the investigative unit 407  
maintained by the department of public safety in accordance with 408  
section 5502.13 of the Revised Code. 409

(F) "Nicotine" means any form of the chemical nicotine, 410  
including any salt or complex, regardless of whether the 411  
chemical is naturally or synthetically derived, and nicotinic 412  
alkaloids and nicotine analogues, such as metatine. 413

(G) (1) "Nicotine analogue" means a substance that meets 414  
either of the following: 415

(a) Has a chemical structure substantially similar to the 416  
chemical structure of nicotine; 417

(b) Has, or is represented to have, an effect on the 418  
central nervous system similar to the chemical nicotine. 419

(2) Factors relevant to determining whether a substance is 420  
a "nicotine analogue" include the marketing, advertising, and 421  
labeling of the substance and whether the substance has been 422  
manufactured, formulated, sold, distributed, or marketed with 423  
the intent to avoid the provisions of this chapter. 424

(H) "Open-system electronic smoking product" means an 425  
electronic smoking product that utilizes a nicotine solution in 426  
a container that is intended to be refillable or that otherwise 427  
makes the nicotine solution accessible to the consumer through 428  
customary or reasonably foreseeable handling or use. 429

(I) "Person" includes individuals, firms, partnerships, associations, joint-stock companies, corporations, combinations of individuals of any form, and the state and any of its political subdivisions. 430  
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(J) "Secondary manufacturer" means any person in this state engaged in the business of repackaging, reconstituting, diluting, or reprocessing a vapor product for resale to consumers. 434  
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(K) "Retail dealer" includes any person in this state engaged in the business of selling vapor products to ultimate consumers in this state, regardless of quantity, amount, or number of sales. 438  
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(L) "Sale" includes an exchange, barter, gift, offer for sale, or distribution, and includes transactions in interstate or foreign commerce. 442  
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(M) "Vapor product" means any liquid solution or other substance that contains nicotine and is depleted as it is used in an electronic smoking product, whether sold with or separately from an electronic smoking product. "Vapor product" does not include any solution or substance regulated as a drug, device, or combination product under Chapter V of the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. 301, et seq. 445  
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(N) "Wholesale dealer" means any person engaged in the business of selling vapor products to others for the purpose of resale. 452  
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**Sec. 5502.81.** (A) Within sixty days after the effective date of this section, and annually thereafter, every manufacturer of electronic smoking products sold at retail in this state or to a person in this state, whether directly or 455  
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through a distributor, wholesale dealer, retail dealer, or 459  
similar intermediary or intermediaries, shall submit all of the 460  
following to the investigative unit, in the form and manner 461  
prescribed by the department of public safety: 462

(1) Certification that the manufacturer agrees to comply 463  
with this chapter; 464

(2) Certification under penalty of perjury, that at least 465  
one of the following applies: 466

(a) The manufacturer has received a marketing 467  
authorization or similar order for the electronic smoking 468  
product from the United States food and drug administration 469  
pursuant to 21 U.S.C. 387j. 470

(b) The electronic smoking product is otherwise marketed 471  
pursuant to a published United States food and drug 472  
administration enforcement policy, and the premarket tobacco 473  
product application filed with respect to the electronic smoking 474  
product pursuant to 21 U.S.C. 387j either remains under review 475  
or a final decision on the application is not otherwise in 476  
effect. 477

(c) The United States food and drug administration has 478  
issued a rule, guidance, or other formal statement that 479  
temporarily exempts the electronic smoking product from federal 480  
marketing authorization requirements. 481

(3) A copy of the marketing authorization described in 482  
division (A) (2) (a) of this section, evidence that the electronic 483  
smoking product meets the requirements described in division (A) 484  
(2) (b) of this section, or a document issued by the United 485  
States food and drug administration demonstrating that the 486  
electronic smoking product is temporarily exempt from federal 487

marketing authorization requirements; 488

(4) A certification form that separately lists the brand name, product name, and flavor for each electronic smoking product that the manufacturer, directly or indirectly, sells at retail in this state or to a person in this state. 489  
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(B) The manufacturer shall submit with the annual certification required by division (A) of this section a filing fee of one thousand dollars for each brand family of electronic smoking products, plus one hundred dollars for each brand style of that product. 493  
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(C) The information submitted by a manufacturer under division (A) (3) of this section is confidential commercial or financial information for purposes of sections 149.43 to 149.45 of the Revised Code. The investigative unit shall not disclose such information except as required or authorized by law. A manufacturer may partially redact information required to be submitted under division (A) (3) of this section upon request and approval by the investigative unit. 498  
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(D) (1) A manufacturer required to submit a certification under division (A) of this section shall notify the investigative unit within thirty days after any material change to the information required to be provided as part of that certification, including either of the following: 506  
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(a) Issuance or denial of a marketing authorization or other order by the United States food and drug administration pursuant to 21 U.S.C. 387j; 511  
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(b) Any other order or action by the United States food and drug administration that affects the ability of the electronic smoking product to be introduced or delivered into 514  
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interstate commerce for commercial distribution in the United States. 517  
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(2) A manufacturer is not required to resubmit the certification and documentation described in divisions (A) (2) and (3) of this section based solely on changes to the name, brand style, or packaging of an electronic smoking product. 519  
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(E) (1) Beginning ninety days after the effective date of this section, the investigative unit shall maintain and make publicly available on the investigative unit's public web site a directory that lists all electronic smoking product manufacturers, brand names, product names, and flavors for which certification forms have been submitted and approved by the investigative unit under this section. The investigative unit shall update the directory at least one time each month. 523  
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(2) As necessary to correct mistakes, or to add or remove an electronic smoking product, and to keep the directory in conformity with the requirements of this section, the investigative unit shall promptly publish notice of any pending removal in the directory and notify the tax commissioner. 531  
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(3) Upon receipt of the notification described in division (E) (2) of this section, the tax commissioner shall promptly transmit notice of the pending removal, by electronic mail, to each wholesale dealer and retailer who has provided an electronic address to the commissioner. 536  
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(F) The investigative unit shall not add a manufacturer or electronic smoking product to the directory if the investigative unit determines that any of the following apply: 541  
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(1) The manufacturer failed to provide a complete and accurate certification as required by division (A) of this 544  
545

<u>section.</u>	546
<u>(2) The manufacturer failed to include with such</u>	547
<u>certification the payment required by division (B) of this</u>	548
<u>section.</u>	549
<u>(3) The manufacturer sold products in this state required</u>	550
<u>to be certified under this section during a period when either</u>	551
<u>the manufacturer or the product had not been certified and</u>	552
<u>listed on the directory.</u>	553
<u>(4) The manufacturer's certification under this section</u>	554
<u>contains false information, material misrepresentations, or</u>	555
<u>omissions.</u>	556
<u>(G) (1) If the investigative unit determines that division</u>	557
<u>(D) of this section or any of the violations described in</u>	558
<u>divisions (F) (1) to (4) of this section apply to a manufacturer</u>	559
<u>or electronic smoking product that is already listed on the</u>	560
<u>directory, the investigative unit shall provide the manufacturer</u>	561
<u>notice of the violation and an opportunity to cure deficiencies</u>	562
<u>before removing the manufacturer or electronic smoking product</u>	563
<u>from the directory.</u>	564
<u>(2) The investigative unit shall not remove a manufacturer</u>	565
<u>or an electronic smoking product from the directory sooner than</u>	566
<u>thirty days after sending such notice.</u>	567
<u>(3) The investigative unit shall send the notice</u>	568
<u>electronically or by facsimile to an electronic mail address or</u>	569
<u>facsimile number, as the case may be, provided by the</u>	570
<u>manufacturer in the manufacturer's most recent certification</u>	571
<u>filed under this section.</u>	572
<u>(4) The investigative unit shall include in the notice a</u>	573
<u>description of the violation, instructions for how to cure the</u>	574

violation, and an explanation that failure to cure the violation 575  
within thirty days could result in removal of the manufacturer 576  
or electronic smoking product from the directory. 577

(5) If the manufacturer does not cure the violation within 578  
thirty days after notice is sent, the investigative unit shall 579  
remove the manufacturer or the electronic smoking product, as 580  
applicable, from the directory. 581

(H) An electronic smoking product that is not listed in 582  
the directory is contraband, as of the following dates: 583

(1) In the case of an electronic smoking product that is 584  
removed from the directory under division (G) of this section, 585  
forty-five days after the investigative unit publishes an 586  
updated directory that includes the product's removal; 587

(2) For all other electronic smoking products, January 1, 588  
2027, or ninety days after the investigative unit first 589  
publishes the directory on the investigative unit's public web 590  
site, whichever is later. 591

(I) Subject to division (J) of this section, no person 592  
shall sell or offer for retail sale in this state or to a person 593  
in this state an electronic smoking product that is not included 594  
in the directory. A manufacturer shall not sell, either directly 595  
or through a distributor or wholesale dealer, retail dealer, or 596  
similar intermediary or intermediaries, an electronic smoking 597  
product in this state that is not included in the directory. 598

(J) (1) Except as provided in division (J) (2) of this 599  
section, a retail dealer, distributor, or wholesale dealer 600  
shall, before the electronic smoking product is contraband 601  
pursuant to division (H) of this section, either sell the 602  
product or remove the product from the retail dealer's, 603

distributor's, or wholesale dealer's inventory. After the 604  
electronic smoking product is considered contraband, it is 605  
subject to seizure, forfeiture, and destruction by the 606  
investigative unit. The cost of such seizure, forfeiture, and 607  
destruction shall be paid by the person from whom the products 608  
are confiscated. The investigative unit may store and dispose of 609  
the seized products as appropriate, in accordance with federal, 610  
state, and local laws pertaining to storage and disposal of such 611  
products, including by contracting with a licensed hazardous 612  
waste disposal facility. No electronic smoking products shall be 613  
seized under this section from a consumer who makes a bona fide 614  
purchase of such product. 615

(2) A wholesale dealer may retain in its inventory an 616  
electronic smoking device that is otherwise contraband, provided 617  
that the wholesale dealer has inventory of that product solely 618  
for the purpose of shipping the product to another state where 619  
such product may be sold legally. Upon request of the 620  
investigative unit, the wholesale dealer shall provide evidence 621  
via prior invoices that the wholesale dealer previously has 622  
shipped such product to an out-of-state customer. 623

(K) (1) The investigative unit may impose the following 624  
civil penalties on a distributor, wholesale dealer, retail 625  
dealer, or any other person who sells or offers for retail sale 626  
in this state an electronic smoking product that is not included 627  
in the directory: 628

(a) For a first violation, a civil penalty of five hundred 629  
dollars per day for each individual electronic smoking product 630  
offered for sale in violation of this section; 631

(b) For a second violation within a twelve-month period, a 632  
civil penalty of at least seven hundred fifty dollars, but not 633

more than one thousand dollars per day, for each individual 634  
electronic smoking product offered for sale in violation of this 635  
section, and a license issued under section 5743.15 or 5743.611 636  
of the Revised Code shall be suspended for at least fourteen 637  
days; 638

(c) For a third violation within a twelve-month period, a 639  
civil penalty of at least one thousand dollars, but not more 640  
than one thousand five hundred dollars per day, for each 641  
individual electronic smoking product offered for sale in 642  
violation of this section, and a license issued under section 643  
5743.15 or 5743.611 of the Revised Code shall be revoked. 644

(d) In addition to the civil penalties described in 645  
divisions (K) (1) (a) to (c) of this section, the violator shall 646  
be responsible for the cost of destruction of seized contraband, 647  
which includes costs associated with seizure, transportation, 648  
storage, and destruction of contraband products. 649

(2) For an electronic smoking product manufacturer whose 650  
electronic smoking products are not listed in the directory and 651  
are sold for retail sale in this state or to a person in this 652  
state, whether directly or through a distributor or wholesale 653  
dealer, retail dealer, or similar intermediary or 654  
intermediaries, the investigative unit may impose a civil 655  
penalty of ten thousand dollars for each individual electronic 656  
smoking product offered for sale in violation of this section. 657

(3) All fees and penalties collected under this section 658  
shall be deposited to the electronic smoking products 659  
enforcement fund, which is created in the state treasury. All 660  
investment earnings of the fund shall be credited to the fund. 661  
The investigative unit shall use money in the fund for 662  
administration and enforcement of this section. The 663

investigative unit may allocate money in the fund to the 664  
department of taxation for the purposes of funding inspections 665  
and enforcement actions. 666

(L) To enforce this section, the investigative unit may 667  
examine the books, papers, invoices, and other records of any 668  
person in possession, control, or occupancy of any premises 669  
where electronic smoking products are placed, stored, sold, or 670  
offered for sale, as well as the stock of electronic smoking 671  
products on the premises. Every person in the possession, 672  
control, or occupancy of any premises where such products are 673  
placed, sold, or offered for sale shall give the investigative 674  
unit the means, facilities, and opportunity for the examinations 675  
authorized by this section. 676

(M) The investigative unit shall annually conduct 677  
unannounced compliance checks for each distributor, wholesale 678  
dealer, and retail dealer that sells or distributes electronic 679  
smoking products in this state for the purposes of enforcing 680  
this section. In addition, the investigative unit shall conduct 681  
an unannounced follow-up compliance check of any distributor, 682  
wholesale dealer, or retail dealer after the investigative unit 683  
determines that the distributor, wholesale dealer, or retail 684  
dealer has violated this section. The investigative unit shall 685  
publish the results of all compliance checks and follow-up 686  
compliance checks at least annually and shall make the results 687  
available to the public on request. 688

(N) (1) As used in division (N) of this section 689  
"nonresident or foreign manufacturer" means a person that 690  
manufactures or sells electronic smoking products that is not a 691  
resident of this state; incorporated, formed, or organized under 692  
the laws of this state; or licensed, registered, or certified to 693

transact business in the state under Title XVII of the Revised 694  
Code. 695

(2) A nonresident or foreign manufacturer, as a condition 696  
precedent to inclusion and retention of the manufacturer and the 697  
manufacturer's electronic smoking products in the directory 698  
developed and published under this section, shall do all of the 699  
following: 700

(a) Appoint and continually engage without interruption 701  
the services of an agent in this state to act as agent for the 702  
service, in any manner authorized by law, of all process 703  
pertaining to any action or proceeding in the courts of this 704  
state against the manufacturer concerning or arising out of the 705  
enforcement of this section; 706

(b) Agree that service on the manufacturer's agent 707  
constitutes legal and valid service of process on the 708  
manufacturer; 709

(c) Provide the investigative unit with proof, to the 710  
satisfaction of the department of public safety, of the 711  
appointment of, and notice of the name, address, telephone 712  
number, and availability of, the manufacturer's agent; 713

(d) Provide notice to the investigative unit thirty days 714  
prior to terminating the agent and provide proof, to the 715  
satisfaction of the department of public safety, of the 716  
appointment of a new agent not less than five days prior to the 717  
termination; 718

(e) Provide notice to the investigative unit within five 719  
days after the agent terminates the appointment and include 720  
proof, to the satisfaction of the department of public safety, 721  
of the appointment of a new agent. 722

(3) (a) Any nonresident or foreign manufacturer whose 723  
electronic smoking products are sold in the state or to a person 724  
in this state and who has not appointed and continually engaged 725  
an agent in accordance with division (N) (2) of this section is 726  
deemed to have appointed the secretary of state as the 727  
manufacturer's agent and may be proceeded against in any action 728  
or proceeding arising under this section by service of process 729  
on the secretary of state. 730

(b) The deemed appointment of the secretary of state as a 731  
manufacturer's agent does not satisfy the condition precedent in 732  
division (N) (2) of this section to be included or retained in 733  
the directory. 734

(4) (a) A nonresident or foreign manufacturer, as a 735  
condition precedent to inclusion and retention of the 736  
manufacturer and the manufacturer's electronic smoking products 737  
in the directory developed and published under this section, 738  
shall obtain and maintain in effect at all times a surety bond 739  
issued by a surety company or insurance company authorized to do 740  
business in this state. 741

(b) The bond shall be in the amount of twenty-five 742  
thousand dollars in favor of the department of public safety. 743  
The bond shall be conditioned upon the performance by the 744  
nonresident or foreign manufacturer of all requirements and 745  
obligations imposed by this section. A surety on a 746  
manufacturer's bond is liable up to the amount of the bond, and 747  
the department of public safety may execute on such surety bond 748  
for the payment of fines and penalties imposed on the 749  
manufacturer under this section and for the costs of seizure and 750  
destruction of products sold in violation of this section. If 751  
the department executes on the surety bond, the department may 752

require the manufacturer to provide an additional bond as a 753  
condition precedent for retaining the manufacturer and the 754  
manufacturer's electronic smoking products in the directory. 755

(c) A surety on a bond furnished by a manufacturer as 756  
provided in this section shall be released and discharged from 757  
liability to the department sixty days after a written request 758  
to the investigative unit. This division shall not be construed 759  
to relieve, release, or discharge the surety from liability 760  
already accrued or which accrues before the expiration of the 761  
sixty-day period. The investigative unit shall, upon receiving 762  
any such request, notify the manufacturer that furnished the 763  
bond. Unless the manufacturer, on or before the expiration of 764  
the sixty-day period, files with the investigative unit a new 765  
bond, with the surety approved by and acceptable to the 766  
investigative unit, the investigative unit shall remove the 767  
manufacturer and the manufacturer's electronic smoking products 768  
from the directory. 769

(O) A determination by the investigative unit to not 770  
include or to remove from the directory a manufacturer or an 771  
electronic smoking product is subject to review by filing a 772  
civil action for prospective declaratory or injunctive relief. 773

(P) The department of public safety may promulgate rules 774  
necessary to effect the purposes of this section. 775

(Q) Starting six months after the effective date of this 776  
section, and every six months thereafter, the investigative unit 777  
shall provide a report to the general assembly regarding the 778  
status of the directory, manufacturers and products included in 779  
the directory, revenue and expenditures related to 780  
administration of this section, and enforcement activities 781  
undertaken pursuant to this section. 782

(R) Any violation of this section is an unfair or 783  
deceptive act or practice in violation of section 1345.02 of the 784  
Revised Code. 785

**Sec. 5502.82.** (A) (1) The investigative unit shall conduct 786  
inspections of the premises of persons licensed to do business 787  
distributing or selling at retail tobacco products, alternative 788  
nicotine products, electronic smoking products, and vapor 789  
products to determine compliance with section 5502.81 and 790  
Chapter 5743. of the Revised Code, and the rules adopted 791  
thereunder, pertaining to distributor license and retail license 792  
holders. 793

(2) Except as otherwise provided in this section, those 794  
inspections shall be conducted only during those hours in which 795  
the license holder is open for business and only by authorized 796  
enforcement agents of the investigative unit or by any peace 797  
officer, as defined in section 2935.01 of the Revised Code. 798  
Inspections may be conducted at other hours only to determine 799  
compliance with laws or department of taxation rules that 800  
regulate the hours of sale of tobacco products, alternative 801  
nicotine products, electronic smoking products, and vapor 802  
products. Any inspection conducted pursuant to this section is 803  
subject to all of the following requirements: 804

(a) No property shall be confiscated other than 805  
contraband, as defined in section 2901.01 of the Revised Code 806  
and including electronic smoking products designated as 807  
contraband under section 5502.81 of the Revised Code, tobacco 808  
products, alternative nicotine products, electronic smoking 809  
products, and vapor products being offered for sale without the 810  
required license, or property that is otherwise necessary for 811  
evidentiary purposes. 812

(b) A complete inventory of all property confiscated from 813  
the premises shall be given to the license holder or the license 814  
holder's agent or employee by the confiscating enforcement agent 815  
or peace officer at the conclusion of the inspection. At that 816  
time, the inventory shall be signed by the confiscating 817  
enforcement agent or peace officer, and the enforcement agent or 818  
peace officer shall give the license holder or the license 819  
holder's agent or employee the opportunity to sign the 820  
inventory. 821

(c) Inspections conducted pursuant to this section shall 822  
be conducted in a reasonable manner. A finding by any court of 823  
competent jurisdiction that the inspection was not conducted in 824  
a reasonable manner in accordance with this section or, as 825  
applicable, any rules promulgated by the department of taxation 826  
or department of public safety, may be considered grounds for 827  
suppression of evidence. A finding that the inspection was not 828  
conducted in a reasonable manner in accordance with this section 829  
or, as applicable, any rules promulgated by the department of 830  
taxation or department of public safety, may be considered 831  
grounds for dismissal of the case. 832

(B) If any court of competent jurisdiction finds that 833  
property confiscated as the result of an inspection is not 834  
necessary for evidentiary purposes and is not contraband or was 835  
not offered for sale in violation of license requirements, the 836  
court shall order the immediate return of the confiscated 837  
property, if such property is not otherwise subject to 838  
forfeiture, to the license holder. The return of this property 839  
is not grounds for dismissal of the case. The commission may 840  
order the return of confiscated property if no criminal 841  
prosecution is pending or anticipated. 842

Sec. 5502.83. (A) No person shall negligently sell in this 843  
state an electronic smoking product that is accompanied by, 844  
uses, or has advertising, labeling, packaging, trade dress, 845  
trademarks, branding, or design of the product that does any of 846  
the following: 847

(1) Depicts a cartoon or cartoon-like character that 848  
mimics a character primarily aimed at entertaining minors; 849

(2) Includes an image of a celebrity or a character in a 850  
comic book, movie, television show, or video game, or a mythical 851  
creature; 852

(3) Imitates or mimics trademarks or trade dress of 853  
products that are or have been primarily marketed to minors; 854

(4) Includes a symbol that is primarily used to market 855  
products to minors; 856

(5) Imitates, mimics, or replicates the design of a 857  
product that is not a vapor product, including all the 858  
following: 859

(a) School supplies commonly used by minors, including an 860  
eraser, highlighter, pen, pencil, or backpack; 861

(b) A smart phone, smart watch, smart phone case, smart 862  
watch case, headphones, or ear buds; 863

(c) A cosmetic product, including lipstick; 864

(d) A toy; 865

(6) Has entertainment features, such as the ability to 866  
play games, play music or other audio, display photos or video, 867  
or any similar electronic entertainment features. 868

(B) A person who violates this section is guilty of a 869

misdemeanor of the third degree and shall only be fined five 870  
hundred dollars. 871

**Sec. 5502.99.** (A) Whoever violates division (A) of section 872  
5502.37 of the Revised Code shall be fined fifty dollars or 873  
imprisoned for not less than sixty days, or both. 874

(B) Whoever violates division (B) of section 5502.37 of 875  
the Revised Code shall be fined not less than five thousand nor 876  
more than ten thousand dollars, or imprisoned for not less than 877  
one nor more than five years, or both. 878

(C) Whoever violates division (C) or (D) of section 879  
5502.37 of the Revised Code shall be fined not less than two 880  
thousand nor more than five thousand dollars, or imprisoned for 881  
not less than one nor more than five years, or both. 882

(D) Except as provided in divisions (A), (B), and (C) of 883  
this section and unless another penalty is provided by the laws 884  
of this state, whoever violates sections 5502.21 to 5502.37 of 885  
the Revised Code, or any other law enacted, adopted, or issued 886  
pursuant to those sections, shall be fined not more than fifty 887  
dollars or imprisoned for not more than sixty days, or both. 888

(E) Whoever knowingly presents false information in a 889  
certification required under division (A) of section 5502.81 of 890  
the Revised Code is guilty of a misdemeanor of the fourth degree 891  
for each such false representation. 892

**Sec. 5743.01.** As used in this chapter: 893

(A) "Person" includes individuals, firms, partnerships, 894  
associations, joint-stock companies, corporations, combinations 895  
of individuals of any form, and the state and any of its 896  
political subdivisions. 897

(B) "Wholesale dealer" includes only those persons:	898
(1) Who bring in or cause to be brought into this state unstamped cigarettes purchased directly from the manufacturer, producer, or importer of cigarettes for sale in this state but does not include persons who bring in or cause to be brought into this state cigarettes with respect to which no evidence of tax payment is required thereon as provided in section 5743.04 of the Revised Code; or	899 900 901 902 903 904 905
(2) Who are engaged in the business of selling cigarettes, tobacco products, or vapor products to others for the purpose of resale.	906 907 908
"Wholesale dealer" does not include any cigarette manufacturer, export warehouse proprietor, or importer with a valid permit under 26 U.S.C. 5713 if that person sells cigarettes in this state only to wholesale dealers holding valid and current licenses under section 5743.15 of the Revised Code or to an export warehouse proprietor or another manufacturer.	909 910 911 912 913 914
(C) "Retail dealer" includes:	915
(1) In reference to dealers in cigarettes, every person other than a wholesale dealer engaged in the business of selling cigarettes in this state, regardless of whether the person is located in this state or elsewhere, and regardless of quantity, amount, or number of sales;	916 917 918 919 920
(2) In reference to dealers in tobacco products, any person in this state engaged in the business of selling tobacco products to ultimate consumers in this state, regardless of quantity, amount, or number of sales;	921 922 923 924
(3) In reference to dealers in vapor products, any person in this state engaged in the business of selling vapor products	925 926

to ultimate consumers in this state, regardless of quantity,	927
amount, or number of sales.	928
(D) "Sale" includes exchange, barter, gift, offer for	929
sale, and distribution, and includes transactions in interstate	930
or foreign commerce.	931
(E) "Cigarettes" includes any roll for smoking made wholly	932
or in part of tobacco, irrespective of size or shape, and	933
whether or not such tobacco is flavored, adulterated, or mixed	934
with any other ingredient, the wrapper or cover of which is made	935
of paper, reconstituted cigarette tobacco, homogenized cigarette	936
tobacco, cigarette tobacco sheet, or any similar materials other	937
than cigar tobacco.	938
(F) "Package" means the individual package, box, or other	939
container in or from which retail sales of cigarettes are	940
normally made or intended to be made.	941
(G) "Storage" includes any keeping or retention of	942
cigarettes, tobacco products, or vapor products for use or	943
consumption in this state.	944
(H) "Use" includes the exercise of any right or power	945
incidental to the ownership of cigarettes, tobacco products, or	946
vapor products.	947
(I) "Tobacco product" or "other tobacco product" means any	948
product made from tobacco, other than cigarettes, that is made	949
for smoking or chewing, or both, and snuff.	950
(J) "Wholesale price" means the invoice price, including	951
all federal excise taxes, at which the manufacturer of the	952
tobacco product sells the tobacco product to unaffiliated	953
distributors, excluding any discounts based on the method of	954
payment of the invoice or on time of payment of the invoice. If	955

the taxpayer buys from other than a manufacturer, "wholesale price" means the invoice price, including all federal excise taxes and excluding any discounts based on the method of payment of the invoice or on time of payment of the invoice.

(K) "Distributor" means:

(1) Any manufacturer who sells, barter, exchanges, or distributes tobacco products to a retail dealer in the state, except when selling to a retail dealer that has filed with the manufacturer a signed statement agreeing to pay and be liable for the tax imposed by section 5743.51 of the Revised Code;

(2) Any wholesale dealer located in the state who receives tobacco products from a manufacturer, or who receives tobacco products on which the tax imposed by this chapter has not been paid;

(3) Any wholesale dealer located outside the state who sells, barter, exchanges, or distributes tobacco products to a wholesale or retail dealer in the state; or

(4) Any retail dealer who receives tobacco products on which the tax has not or will not be paid by another distributor, including a retail dealer that has filed a signed statement with a manufacturer in which the retail dealer agrees to pay and be liable for the tax that would otherwise be imposed on the manufacturer by section 5743.51 of the Revised Code.

(L) "Taxpayer" means any person liable for the tax imposed by section 5743.51, 5743.62, or 5743.63 of the Revised Code.

(M) "Seller" means any person located outside this state engaged in the business of selling tobacco products or vapor products to consumers for storage, use, or other consumption in this state.

(N) "Manufacturer" means any person who manufactures and 985  
sells cigarettes, tobacco products, or vapor products. 986

(O) "Importer" means any person that is authorized, under 987  
a valid permit issued under Section 5713 of the Internal Revenue 988  
Code, to import finished cigarettes into the United States, 989  
either directly or indirectly. 990

(P) "Little cigar" means any roll for smoking, other than 991  
cigarettes, made wholly or in part of tobacco that uses an 992  
integrated cellulose acetate filter or other filter and is 993  
wrapped in any substance containing tobacco, other than natural 994  
leaf tobacco. 995

(Q) "Premium cigar" means any roll for smoking, other than 996  
cigarettes and little cigars, that is made wholly or in part of 997  
tobacco and that has all of the following characteristics: 998

(1) The binder and wrapper of the roll consist entirely of 999  
leaf tobacco. 1000

(2) The roll contains no filter or tip, nor any mouthpiece 1001  
consisting of a material other than tobacco. 1002

(3) The weight of one thousand such rolls is at least six 1003  
pounds. 1004

(R) "Maximum tax amount" means fifty cents plus the tax 1005  
adjustment factor computed under this division. 1006

In April of each year beginning in 2018, the tax 1007  
commissioner shall compute a tax adjustment factor by 1008  
multiplying fifty cents by the cumulative percentage increase in 1009  
the consumer price index (all items, all urban consumers) 1010  
prepared by the bureau of labor statistics of the United States 1011  
department of labor from January 1, 2017, to the last day of 1012

December of the preceding year and rounding the resulting 1013  
product to the nearest one cent; provided, that the tax 1014  
adjustment factor for any year shall not be less than that for 1015  
the immediately preceding year. The maximum tax amount resulting 1016  
from the computation of the tax adjustment factor applies on and 1017  
after the ensuing first day of July through the thirtieth day of 1018  
June thereafter. 1019

(S) "Secondary manufacturer" means any person in this 1020  
state engaged in the business of repackaging, reconstituting, 1021  
diluting, or reprocessing a vapor product for resale to 1022  
consumers. 1023

(T) "Vapor product" means any liquid solution or other 1024  
substance that (1) contains nicotine and (2) is depleted as it 1025  
is used in an electronic smoking product. "Vapor product" does 1026  
not include any solution or substance regulated as a drug, 1027  
device, or combination product under Chapter V of the "Federal 1028  
Food, Drug, and Cosmetic Act," 21 U.S.C. 301, et seq. 1029

(U) "Electronic smoking product" means any noncombustible 1030  
product, other than a cigarette or tobacco product, that (1) 1031  
contains or is designed to use vapor products and (2) employs a 1032  
heating element, power source, electronic circuit, or other 1033  
electronic, chemical, or mechanical means, regardless of shape 1034  
or size, that can be used to produce vapor from the vapor 1035  
product. "Electronic smoking product" includes, but is not 1036  
limited to, an electronic cigarette, electronic cigar, 1037  
electronic cigarillo, electronic pipe, electronic hookah, vape 1038  
pen, vaporizer, or similar product or device, but does not 1039  
include any product regulated as a drug, device, or combination 1040  
product under Chapter V of the "Federal Food, Drug, and Cosmetic 1041  
Act," 21 U.S.C. 301, et seq. 1042

(V) "Vapor distributor" means any person that:	1043
(1) Sells vapor products to a retail dealer;	1044
(2) Is a retail dealer that receives vapor products with respect to which the tax imposed by this chapter has not or will not be paid by another person that is a vapor distributor;	1045 1046 1047
(3) Is a secondary manufacturer;	1048
(4) Is a wholesale dealer located in this state that receives vapor products from a manufacturer, or receives vapor products on which the tax imposed by this chapter has not been paid;	1049 1050 1051 1052
(5) Is a wholesale dealer located outside this state that sells vapor products to a wholesale dealer in this state.	1053 1054
(W) "Vapor volume" means one of the following, as applicable:	1055 1056
(1) If a vapor product is sold in liquid form, one-tenth of one milliliter of vapor product;	1057 1058
(2) If the vapor product is sold in a nonliquid form, one-tenth of one gram of vapor product.	1059 1060
<u>(X) "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include a cigarette, tobacco product, electronic smoking product, vapor product, or any product regulated as a drug, device, or combination product under Chapter V of the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. 301, et seq.</u>	1061 1062 1063 1064 1065 1066 1067 1068
<b>Sec. 5743.54.</b> (A) Each distributor of tobacco products and	1069

each vapor distributor of vapor products shall maintain complete 1070  
and accurate records of all purchases and sales of tobacco 1071  
products or vapor products, and shall procure and retain all 1072  
invoices, bills of lading, and other documents relating to the 1073  
purchases and sales of those products. The distributor or vapor 1074  
distributor shall keep open records and documents during 1075  
business hours for the inspection of the tax commissioner, and 1076  
shall preserve them for a period of three years from the date 1077  
the return was due or was filed, whichever is later, unless the 1078  
commissioner, in writing, consents to their destruction within 1079  
that period, or orders that they be kept for a longer period of 1080  
time. 1081

(B) (1) Each distributor of tobacco products and each vapor 1082  
distributor of vapor products subject to the tax levied by 1083  
section 5743.51 or 5743.511 of the Revised Code shall mark on 1084  
the invoices of tobacco products or vapor products sold that the 1085  
tax levied by that section has been paid and shall indicate the 1086  
distributor's or vapor distributor's account number as assigned 1087  
by the commissioner and the brand and product name of each 1088  
product sold. 1089

(2) Each vapor distributor subject to the tax imposed by 1090  
section 5743.51 of the Revised Code shall mark on all invoices 1091  
the total weight of the vapor product, rounded to the nearest 1092  
one-tenth of one gram, if the vapor product is not sold in 1093  
liquid form. If the vapor product is sold in liquid form, the 1094  
invoice shall instead indicate the total volume of the vapor 1095  
product, rounded to the nearest one-tenth of one milliliter. 1096

(C) No person shall make a false entry upon any invoice or 1097  
record upon which an entry is required by this section and no 1098  
person shall present any false entry for the inspection of the 1099

commissioner with the intent to evade the tax levied under 1100  
section 5743.51, 5743.511, 5743.62, 5743.621, 5743.63, or 1101  
5743.631 of the Revised Code. 1102

Sec. 5743.541. Each retail dealer of tobacco products and 1103  
vapor products not subject to section 5747.54 of the Revised 1104  
Code and each person that sells alternative nicotine products or 1105  
electronic smoking products at retail shall maintain complete 1106  
and accurate records of all purchases and sales of those 1107  
products and shall procure and retain all invoices, bills of 1108  
lading, and other documents relating to the purchases and sales 1109  
of those products. The person shall make records and documents 1110  
available for inspection upon request of the tax commissioner 1111  
and shall preserve them for a period of three years from the 1112  
date the return was due or was filed, whichever is later, unless 1113  
the commissioner, in writing, consents to their destruction 1114  
within that period or orders that they be kept for a longer 1115  
period of time. 1116

No person shall make a false entry upon any invoice or 1117  
record upon which an entry is required by this section, and no 1118  
person shall present any false entry for the inspection of the 1119  
commissioner with the intent to evade the tax levied under 1120  
section 5743.51, 5743.62, or 5743.63 of the Revised Code. 1121

**Sec. 5743.61.** (A) (1) No distributor or vapor distributor 1122  
shall engage in the business of distributing tobacco products, 1123  
vapor products, or both within this state without having a 1124  
license issued by the department of taxation to engage in that 1125  
business. 1126

(2) On the dissolution of a partnership by death, the 1127  
surviving partner may operate under the license of the 1128  
partnership until the expiration of the license, and the heirs 1129

or legal representatives of deceased persons, and receivers and 1130  
trustees in bankruptcy appointed by any competent authority, may 1131  
operate under the license of the person succeeded in possession 1132  
by the heir, representative, receiver, or trustee in bankruptcy 1133  
if the partner or successor notifies the department of taxation 1134  
of the dissolution or succession within thirty days after the 1135  
dissolution or succession. 1136

(B) (1) Each applicant for a license described by division 1137  
(A) (1) of this section, annually, on or before the first day of 1138  
February, shall make and deliver to the tax commissioner, upon a 1139  
form furnished by the commissioner for that purpose, a statement 1140  
showing the name of the applicant, each physical place from 1141  
which the applicant distributes to distributors, vapor 1142  
distributors, retail dealers, or wholesale dealers, and any 1143  
other information the commissioner considers necessary for the 1144  
administration of sections 5743.51 to 5743.66 of the Revised 1145  
Code. 1146

(2) At the time of making the application for a license to 1147  
engage either in the business of distributing tobacco products 1148  
or in the business of distributing both tobacco products and 1149  
vapor products, the applicant shall pay an application fee of 1150  
one thousand dollars for each place listed on the application 1151  
where the applicant proposes to carry on that business. The 1152  
application fee for a license to engage solely in the business 1153  
of distributing vapor products shall be one hundred twenty-five 1154  
dollars for each place listed on the application where the 1155  
applicant proposes to carry on that business. The fee charged 1156  
for the application shall accompany the application and shall be 1157  
made payable to the treasurer of state for deposit into the 1158  
cigarette tax enforcement fund. 1159

(3) Upon receipt of the application and payment of any 1160  
licensing fee required by this section, the commissioner shall 1161  
verify that the applicant has filed all returns, submitted all 1162  
information, and paid all outstanding taxes, charges, or fees as 1163  
required for any taxes, charges, or fees administered by the 1164  
commissioner, to the extent the commissioner is aware of the 1165  
returns, information, taxes, charges, or fees at the time of the 1166  
application. Upon approval, the commissioner shall issue to the 1167  
applicant a license for each place of distribution designated in 1168  
the application authorizing the applicant to engage in business 1169  
at that location for one year commencing on the first day of 1170  
February. For licenses issued after the first day of February, 1171  
the license application fee shall be reduced proportionately by 1172  
the remainder of the twelve-month period for which the license 1173  
is issued, except that the application fee required to be paid 1174  
under this section shall be not less than two hundred dollars. 1175  
If the original license is lost, destroyed, or defaced, a 1176  
duplicate license may be obtained from the commissioner upon 1177  
payment of a license replacement fee of twenty-five dollars. 1178

(C) The holder of a tobacco or vapor products license\_ 1179  
issued under this section may transfer the license to a place of 1180  
business on condition that the licensee's ownership and business 1181  
structure remains unchanged and the licensee applies to the 1182  
commissioner for the transfer on a form issued by the 1183  
commissioner, and pays a transfer fee of twenty-five dollars. 1184

(D) If a distributor or vapor distributor fails to file 1185  
forms as required under Chapter 1346. or section 5743.52 of the 1186  
Revised Code or pay the tax due for two consecutive periods or 1187  
three periods during any twelve-month period, the commissioner 1188  
may suspend the license issued to the distributor or vapor 1189  
distributor under this section. The suspension is effective ten 1190

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.

(F) The nicotine products licensing enforcement fund is created in the state treasury. License and license replacement and transfer fees collected pursuant to section 5743.611 of the Revised Code and penalties assessed pursuant to division (E) of this section and division (D) of section 5743.611 of the Revised Code shall be credited to the fund. The fund shall be used by

the department of taxation for the purpose of administering and 1221  
enforcing this chapter. 1222

(G) The tax commissioner may adopt rules necessary to 1223  
administer this section. 1224

**Sec. 5743.611.** (A) (1) Except as provided in division (A) 1225  
(2) of this section, no person shall engage in the business of 1226  
selling at retail alternative nicotine products, electronic 1227  
smoking products, or vapor products within this state without 1228  
having a license issued by the department of taxation to engage 1229  
in that business under this section. 1230

(2) A person licensed under section 5743.15 of the Revised 1231  
Code may engage in the business of selling alternative nicotine 1232  
products, electronic smoking products, or vapor products within 1233  
this state under that license. 1234

(B) (1) Each applicant for a license under this section, 1235  
annually, on or before the first day of February, shall make and 1236  
deliver to the tax commissioner, upon a form furnished by the 1237  
commissioner for that purpose, a statement showing the name of 1238  
the applicant, each physical place from which the applicant 1239  
engages in the retail sale of alternative nicotine products, 1240  
electronic smoking products, and vapor products, and any other 1241  
information the commissioner considers necessary for the 1242  
administration of sections 5743.51 to 5743.66 of the Revised 1243  
Code. 1244

(2) At the time of making the application required by 1245  
division (B) (1) of this section, the applicant shall pay an 1246  
application fee in the sum of one hundred twenty-five dollars 1247  
for each physical place where the person proposes to carry on 1248  
the business for which the license is required. Each place of 1249

business shall be deemed such space, under lease or license to, 1250  
or under the control of, or under the supervision of the 1251  
applicant, as is contained in one or more contiguous, adjacent, 1252  
or adjoining buildings constituting a place of business operated 1253  
by, or under the control of, one person, or under one roof and 1254  
connected by doors, halls, stairways, or elevators, which space 1255  
may contain any number of points at which alternative nicotine 1256  
products, electronic smoking products, or vapor products are 1257  
offered for sale, provided that each additional point at which 1258  
alternative nicotine products, electronic smoking products, or 1259  
vapor products are offered for sale shall be listed in the 1260  
application. 1261

(3) At the time of making the application required by 1262  
division (B)(1) of this section, the applicant shall affirm that 1263  
the applicant will comply with all federal and state laws 1264  
applicable to the sale of alternative nicotine products, 1265  
electronic smoking products, or vapor products. 1266

(4) Upon receipt of the application and payment of any 1267  
licensing fee required by division (B) of this section, the 1268  
commissioner shall verify that the applicant has filed all 1269  
returns, submitted all information, and paid all outstanding 1270  
taxes, charges, or fees as required for any taxes, charges, or 1271  
fees administered by the commissioner, to the extent the 1272  
commissioner is aware of the returns, information, taxes, 1273  
charges, or fees at the time of the application. Upon approval, 1274  
the commissioner shall issue to the applicant a license for each 1275  
place of retail sale designated in the application authorizing 1276  
the applicant to engage in business at that location for one 1277  
year commencing on the first day of February. For licenses 1278  
issued after the first day of February, the license application 1279  
fee shall be reduced proportionately by the remainder of the 1280

twelve-month period for which the license is issued, except that 1281  
the application fee required to be paid under this section shall 1282  
be not less than twenty-five dollars. If the original license is 1283  
lost, destroyed, or defaced, a duplicate license may be obtained 1284  
from the commissioner upon payment of a license replacement fee 1285  
of twenty-five dollars. 1286

(C) The holder of a license issued under this section may 1287  
transfer the license to a place of business on the conditions 1288  
that the licensee's ownership and business structure remains 1289  
unchanged, the licensee applies to the commissioner for the 1290  
transfer on a form issued by the commissioner, and the licensee 1291  
pays to the commissioner a transfer fee of twenty-five dollars. 1292

On the dissolution of a partnership by death, the 1293  
surviving partner may operate under the license issued to the 1294  
partnership under this section until the expiration of the 1295  
license, and the heirs or legal representatives of deceased 1296  
persons, and receivers and trustees in bankruptcy appointed by 1297  
any competent authority, may operate under the license of the 1298  
person succeeded in possession by the heir, representative, 1299  
receiver, or trustee in bankruptcy if the partner or successor 1300  
notifies the department of taxation of the dissolution or 1301  
succession within thirty days after the dissolution or 1302  
succession. 1303

(D) (1) The tax commissioner may impose a penalty of up to 1304  
one thousand dollars on any person found to be engaging in the 1305  
business of selling at retail alternative nicotine products, 1306  
electronic smoking products, or vapor products without holding a 1307  
license as required by this section. 1308

(2) Any person engaging in the business of selling at 1309  
retail alternative nicotine products, electronic smoking 1310

products, or vapor products without a license as required by 1311  
this section shall comply with divisions (B) (1) to (3) of this 1312  
section within ten days after being notified of the requirement 1313  
to do so. Failure to comply with division (D) (2) of this section 1314  
subjects a person to penalties imposed under section 5743.99 of 1315  
the Revised Code. 1316

(E) The tax commissioner may adopt rules necessary to 1317  
administer this section. 1318

**Sec. 5743.74.** Persons holding a license under section 1319  
5743.61 or 5743.611 of the Revised Code may offer for sale and 1320  
sell tobacco products, alternative nicotine products, electronic 1321  
smoking products, or vapor products that are legal to market in 1322  
the United States pursuant to the "Family Smoking Prevention and 1323  
Tobacco Control Act," 21 U.S.C. 387 et seq., and regulations 1324  
adopted pursuant to that law, provided the products satisfy 1325  
other applicable requirements imposed by this chapter. 1326

**Sec. 5743.75.** The department of public safety may inspect 1327  
the premises of any person engaged in the business of 1328  
distributing or selling at retail tobacco products, alternative 1329  
nicotine products, electronic smoking products, or vapor 1330  
products, regardless of whether the person holds a license under 1331  
section 5743.61 or 5743.611 of the Revised Code. 1332

The department of taxation and department of public safety 1333  
shall coordinate any inspection activities on such persons and 1334  
shall share information regarding the results of inspections. 1335

The department of taxation or department of public safety, 1336  
in consultation with each other, may adopt rules necessary to 1337  
administer this section. 1338

**Section 2.** That existing sections 9.681, 3313.751, 1339

3794.05, 5502.01, 5502.13, 5502.14, 5502.99, 5743.01, 5743.54,  
and 5743.61 of the Revised Code are hereby repealed.

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