Reviewed As To Form By
Legislative Service Commission

I_136_3694-2

136th General Assembly
Regular Session
2025-2026

Sub. H. B. No. 849

To amend sections 9.681, 169.02, 169.05, 183.34, 2927.021, 3313.751, 3794.05, 5502.01, 5502.13, 5502.14, 5502.99, 5743.54, and 5743.61 and to enact sections 169.054, 169.20, 169.201, 169.202, 2935.034, 5502.141, 5502.80, 5502.81, 5502.82, 5502.83, 5502.84, 5743.541, 5743.611, 5743.74, and 5743.75 of the Revised Code regarding the regulation, registration, licensure, inspection, and enforcement of electronic smoking, tobacco, nicotine, and vapor products retailers.

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

Section 1. That sections 9.681, 169.02, 169.05, 183.34, 2927.021, 3313.751, 3794.05, 5502.01, 5502.13, 5502.14, 5502.99, 5743.54, and 5743.61 be amended and sections 169.054, 169.20, 169.201, 169.202, 2935.034, 5502.141, 5502.80, 5502.81, 5502.82, 5502.83, 5502.84, 5743.541, 5743.611, 5743.74, and 5743.75 of the Revised Code be enacted to read as follows:

Sec. 9.681. (A) As used in this section, "tobacco product" and "alternative nicotine product" have the same meanings as in

section 2927.02 of the Revised Code.

(B) The regulation of tobacco products and alternative nicotine products is a matter of general statewide concern that requires statewide regulation. The state has adopted a comprehensive plan with respect to all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products. No political subdivision may enact, adopt, renew, maintain, enforce, or continue in existence any charter provision, ordinance, resolution, rule, or other measure that conflicts with or preempts any policy of the state regarding the regulation of tobacco products or alternative nicotine products, including, without limitation, by:

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

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

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

(4) Prohibiting an employee eighteen years of age or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from handling tobacco products or alternative nicotine products in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking, bagging, loading, or unloading.

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

(D) The general assembly finds and declares that this section is part of a statewide and comprehensive legislative enactment regulating all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products. The general assembly further finds and declares that the imposition of tobacco product and alternative nicotine product regulation by any political subdivision is a matter of statewide concern and would be inconsistent with that statewide, comprehensive enactment. Therefore, regulation of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco products and alternative nicotine products is a matter of general statewide concern that requires uniform statewide regulation. By the enactment of this section, it is the intent of the general assembly to preempt political subdivisions from the regulation of tobacco products and alternative nicotine products.

(E) This section does not prohibit a political subdivision from levying a tax expressly authorized by state law, including the taxes authorized under Chapters 5739. and 5741. or sections 5743.021, 5743.024, 5743.026, 5743.321, 5743.323, 5743.324, 5743.511, 5743.521, 5743.621, and 5743.631 of the Revised Code.

(F) This section does not prohibit a city, local, exempted village, or joint vocational school district; 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 from declaring school property or school facilities to be a nonsmoking place, consistent with section 3794.05 of the Revised Code, or from enacting policies to implement section 3313.751 of the Revised Code.

Sec. 169.02. Subject to division (B) of section 169.01 of the Revised Code, the following constitute unclaimed funds:

(A) Except as provided in division (R) of this section, any demand, savings, or matured time deposit account, or matured certificate of deposit, together with any interest or dividend on it, less any lawful claims, that is held or owed by a holder which is a financial organization, unclaimed for a period of five years;

(B) Any funds paid toward the purchase of withdrawable shares or other interest in a financial organization, and any interest or dividends on them, less any lawful claims, that is held or owed by a holder which is a financial organization, unclaimed for a period of five years;

(C) Except as provided in division (A) of section 3903.45 of the Revised Code, moneys held or owed by a holder, including

a fraternal association, providing life insurance, including annuity or endowment coverage, unclaimed for three years after becoming payable as established from the records of such holder under any life or endowment insurance policy or annuity contract that has matured or terminated. An insurance policy, the proceeds of which are payable on the death of the insured, not matured by proof of death of the insured is deemed matured and the proceeds payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based.

Moneys otherwise payable according to the records of such holder are deemed payable although the policy or contract has not been surrendered as required.

(D) Any deposit made to secure payment or any sum paid in advance for utility services of a public utility and any amount refundable from rates or charges collected by a public utility for utility services held or owed by a holder, less any lawful claims, that has remained unclaimed for one year after the termination of the services for which the deposit or advance payment was made or one year from the date the refund was payable, whichever is earlier;

(E) Except as provided in division (R) of this section, any certificates, securities as defined in section 1707.01 of the Revised Code, nonwithdrawable shares, other instruments evidencing ownership, or rights to them or funds paid toward the purchase of them, or any dividend, capital credit, profit, distribution, interest, or payment on principal or other sum, held or owed by a holder, including funds deposited with a fiscal agent or fiduciary for payment of them, and instruments representing an ownership interest, unclaimed for five years.

Any underlying share or other intangible instrument representing an ownership interest in a business association, in which the issuer has recorded on its books the issuance of the share but has been unable to deliver the certificate to the shareholder, constitutes unclaimed funds if such underlying share is unclaimed for five years. In addition, an underlying share constitutes unclaimed funds if a dividend, distribution, or other sum payable as a result of the underlying share has remained unclaimed by the owner for five years.

This division shall not prejudice the rights of fiscal agents or fiduciaries for payment to return the items described in this division to their principals, according to the terms of an agency or fiduciary agreement, but such a return shall constitute the principal as the holder of the items and shall not interrupt the period for computing the time for which the items have remained unclaimed.

In the case of any such funds accruing and held or owed by a corporation under division (E) of section 1701.24 of the Revised Code, such corporation shall comply with this chapter, subject to the limitation contained in section 1701.34 of the Revised Code. The period of time for which such funds have gone unclaimed specified in section 1701.34 of the Revised Code shall be computed, with respect to dividends or distributions, commencing as of the dates when such dividends or distributions would have been payable to the shareholder had such shareholder surrendered the certificates for cancellation and exchange by the date specified in the order relating to them.

Capital credits of a cooperative which after January 1, 1972, have been allocated to members and which by agreement are expressly required to be paid if claimed after death of the

owner are deemed payable, for the purpose of this chapter, fifteen years after either the termination of service by the cooperative to the owner or upon the nonactivity as provided in division (B) of section 169.01 of the Revised Code, whichever occurs later, provided that this provision does not apply if the payment is not mandatory.

(F) Any sum payable on certified checks or other written instruments certified or issued and representing funds held or owed by a holder, less any lawful claims, that are unclaimed for five years from the date payable or from the date of issuance if payable on demand; except that the unclaimed period for money orders that are not third party bank checks is seven years, and the unclaimed period for traveler's checks is fifteen years, from the date payable or from the date of issuance if payable on demand.

As used in this division, "written instruments" include, but are not limited to, certified checks, cashier's checks, bills of exchange, letters of credit, drafts, money orders, and traveler's checks.

If there is no address of record for the owner or other person entitled to the funds, such address is presumed to be the address where the instrument was certified or issued.

(G) Except as provided in division (R) of this section, all moneys, rights to moneys, or other intangible property, arising out of the business of engaging in the purchase or sale of securities, or otherwise dealing in intangibles, less any lawful claims, that are held or owed by a holder and are unclaimed for five years from the date of transaction.

(H) Except as provided in division (A) of section 3903.45

of the Revised Code, all moneys, rights to moneys, and other intangible property distributable in the course of dissolution or liquidation of a holder that are unclaimed for one year after the date set by the holder for distribution;

(I) All moneys, rights to moneys, or other intangible property removed from a safe-deposit box or other safekeeping repository located in this state or removed from a safe-deposit box or other safekeeping repository of a holder, on which the lease or rental period has expired, or any amount arising from the sale of such property, less any lawful claims, that are unclaimed for three years from the date on which the lease or rental period expired;

(J) Subject to division (M)(2) of this section, all moneys, rights to moneys, or other intangible property, and any income or increment on them, held or owed by a holder which is a fiduciary for the benefit of another, or a fiduciary or custodian of a qualified retirement plan or individual retirement arrangement under section 401 or 408 of the Internal Revenue Code, unclaimed for three years after the final date for distribution;

(K) All moneys, rights to moneys, or other intangible property held or owed in this state or held for or owed to an owner whose last known address is within this state, by the United States government or any state, as those terms are described in division (E) of section 169.01 of the Revised Code, unclaimed by the owner for three years, excluding any property in the control of any court in a proceeding in which a final adjudication has not been made;

(L) Amounts payable pursuant to the terms of any policy of insurance, other than life insurance, or any refund available

under such a policy, held or owed by any holder, unclaimed for three years from the date payable or distributable;

(M)(1) Subject to division (M)(2) of this section, any funds constituting rents or lease payments due, any deposit made to secure payment of rents or leases, or any sum paid in advance for rents, leases, possible damage to property, unused services, performance requirements, or any other purpose, held or owed by a holder unclaimed for one year;

(2) Any escrow funds, security deposits, or other moneys that are received by a licensed broker in a fiduciary capacity and that, pursuant to division (A)(26) of section 4735.18 of the Revised Code, are required to be deposited into and maintained in a special or trust, noninterest-bearing bank account separate and distinct from any personal or other account of the licensed broker, held or owed by the licensed broker unclaimed for two years.

(N) Any sum greater than fifty dollars payable as wages, any sum payable as salaries or commissions, any sum payable for services rendered, funds owed or held as royalties, oil and mineral proceeds, funds held for or owed to suppliers, and moneys owed under pension and profit-sharing plans, held or owed by any holder unclaimed for one year from date payable or distributable, and all other credits held or owed, or to be refunded to a retail customer, by any holder unclaimed for three years from date payable or distributable;

(O) Amounts held in respect of or represented by lay-aways sold after January 1, 1972, less any lawful claims, when such lay-aways are unclaimed for three years after the sale of them;

(P) All moneys, rights to moneys, and other intangible

property not otherwise constituted as unclaimed funds by this section, including any income or increment on them, less any lawful claims, which are held or owed by any holder, other than a holder which holds a permit issued pursuant to Chapter 3769. of the Revised Code, and which have remained unclaimed for three years after becoming payable or distributable;

(Q) All moneys that arise out of a sale held pursuant to section 5322.03 of the Revised Code, that are held by a holder for delivery on demand to the appropriate person pursuant to division (I) of that section, and that are unclaimed for two years after the date of the sale.

(R)(1) Any funds that are subject to an agreement between the holder and owner providing for automatic reinvestment and that constitute dividends, distributions, or other sums held or owed by a holder in connection with a security as defined in section 1707.01 of the Revised Code, an ownership interest in an investment company registered under the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C. 80a-1, as amended, or a certificate of deposit, unclaimed for a period of five years.

(2) The five-year period under division (R)(1) of this section commences from the date a second shareholder notification or communication mailing to the owner of the funds is returned to the holder as undeliverable by the United States postal service or other carrier. The notification or communication mailing by the holder shall be no less frequent than quarterly.

All moneys in a personal allowance account, as defined by rules adopted by the medicaid director, up to and including the maximum resource limitation, of a medicaid recipient who has died after receiving care in a long-term care facility, and for

whom there is no identifiable heir or sponsor, are not subject to this chapter.

(S)(1) Funds held or owed by a holder pursuant to a preneed funeral contract, as defined in section 4717.01 of the Revised Code, unclaimed as of the last day of the calendar year in which the beneficiary turns one hundred five years of age, unless the holder or the seller or successor seller confirms during that calendar year that the beneficiary is still alive;

(2) Funds held or owed by a holder that is the trustee of a preneed funeral contract trust if the trustee was unable to pay the net funds held by the trustee as required by division (J)(2) of section 4717.36 of the Revised Code upon the expiration of the one-hundred-eighty-day period specified in that division.

(3) Funds held or owed by a holder which is a trustee of a preneed funeral contract trust that the trustee was unable to pay as required by division (J)(2) of section 4717.36 of the Revised Code upon the expiration of the one hundred eighty-day-period specified in that division.

(T) Any tobacco escrow funds deposited pursuant to section 1346.02 of the Revised Code that have been unclaimed for a period of five years as of, on, or after the effective date of this amendment.

Sec. 169.05. (A) ~~Every~~ Except as provided in section 169.054 of the Revised Code, every holder required to file a report under section 169.03 of the Revised Code shall, at the time of filing, pay to the director of commerce ten per cent of the aggregate amount of unclaimed funds as shown on the report, except for aggregate amounts of fifty dollars or less in which

case one hundred per cent shall be paid. The funds may be deposited by the director in the state treasury to the credit of the unclaimed funds trust fund, which is hereby created, or placed with a financial organization. Any interest earned on money in the trust fund shall be credited to the trust fund. The remainder of the aggregate amount of unclaimed funds as shown on the report, plus earnings accrued to date of payment to the director, shall, at the option of the director, be retained by the holder or paid to the director for deposit as agent for the mortgage funds with a financial organization as defined in section 169.01 of the Revised Code, with the funds to be in income-bearing accounts to the credit of the mortgage funds, or the holder may enter into an agreement with the director specifying the obligations of the United States in which funds are to be invested, and agree to pay the interest on the obligations to the state. Holders retaining any funds not in obligations of the United States shall enter into an agreement with the director specifying the classification of income-bearing account in which the funds will be held and pay the state interest on the funds at a rate equal to the prevailing market rate for similar funds. Moneys that the holder is required to pay to the director rather than to retain may be deposited with the treasurer of state, or placed with a financial organization.

Securities and other intangible property transferred to the director shall, within a reasonable time, be converted to cash and the proceeds deposited as provided for other funds.

The funds evidenced by agreements, in income-bearing accounts, or on deposit with the treasurer of state shall be allocated on the records of the director, after allocation of sufficient moneys to the minority business bonding fund to meet

the provisions of division (B) of this section, to the housing development fund created by division (A) of section 175.11 of the Revised Code.

(B) The director shall serve as agent for the director of development and as agent for the Ohio housing finance agency in making deposits and withdrawals and maintaining records pertaining to the minority business bonding fund created by section 122.88 of the Revised Code and the housing development fund created by section 175.11 of the Revised Code. Funds from the housing development fund are available upon request to the Ohio housing finance agency, in an amount not to exceed the funds allocated on the records of the director, for the purposes of section 175.05 of the Revised Code. Funds from the minority business bonding fund are available to the director of development upon request to pay obligations on bonds the director writes pursuant to section 122.88 of the Revised Code; except that, unless the general assembly authorizes additional amounts, the total maximum amount of moneys that may be allocated to the minority business bonding fund under this division is ten million dollars.

When funds are to be disbursed, the appropriate agency shall call upon the director to transfer the necessary funds to it. The director shall first withdraw the funds paid by the holders and deposited with the treasurer of state or in a financial institution as agent for the funds. Whenever these funds are inadequate to meet the request, the director shall provide for a withdrawal of funds, within a reasonable time and in the amount necessary to meet the request, from financial institutions in which the funds were retained or placed by a holder and from other holders who have retained funds, in an equitable manner as the director prescribes. In the event that

the amount to be withdrawn from any one holder is less than five hundred dollars, the amount to be withdrawn is at the director's discretion. The director shall then transfer to the agency the amount of funds requested.

Funds deposited in the unclaimed funds trust fund are subject to call by the director when necessary to pay claims the director allows under section 169.08 of the Revised Code, in accordance with the director's rules, to defray the necessary costs of making publications this chapter requires and to pay other operating and administrative expenses the department of commerce incurs in the administration and enforcement of this chapter.

The unclaimed funds trust fund shall be assessed a proportionate share of the administrative costs of the department of commerce in accordance with procedures the director of commerce prescribes. The assessment shall be paid from the unclaimed funds trust fund to the division of administration fund.

(C) Earnings on the accounts in financial organizations to the credit of the mortgage funds shall, at the option of the financial organization, be credited to the accounts at times and at rates as earnings are paid on other accounts of the same classification held in the financial organization or paid to the director. The director shall be notified annually, and at other times as the director may request, of the amount of the earnings credited to the accounts. Interest on unclaimed funds a holder retains shall be paid to the director or credited as specified in the agreement under which the organization retains the funds. Interest payable to the director under an agreement to invest unclaimed funds in income-bearing accounts or obligations of the

United States shall be paid annually by the holder to the director. Any earnings or interest the director receives under this division shall be deposited in and credited to the mortgage funds.

Sec. 169.054. (A) A holder of funds designated as unclaimed funds pursuant to division (T) of section 169.02 of the Revised Code, at the time of making the report required under division (A)(1) of section 169.03 of the Revised Code, shall pay to the director of commerce one hundred per cent of such funds held.

(B) Except as provided in division (C) of this section, such funds shall be held in accordance with section 169.05 of the Revised Code.

(C) Any amounts designated as unclaimed funds pursuant to division (T) of section 169.02 of the Revised Code, as well as any associated interest and earnings, shall be credited to the unclaimed trust fund.

Sec. 169.20. (A) As used in sections 169.20 to 169.203 of the Revised Code:

(1) "Escrowed tobacco funds" means funds placed in escrow pursuant to division (B)(1) of section 1346.02 of the Revised Code.

(2) "Nonparticipating manufacturer" has the same meaning as in section 1346.04 of the Revised Code.

(B) Notwithstanding any provision of the Revised Code to the contrary, any escrowed tobacco funds, as well as all proceeds thereof, held by the director of commerce as unclaimed funds pursuant to section 169.054 of the Revised Code, shall be presumed abandoned and shall escheat to the state if the

escrowed tobacco funds remain unclaimed and unredeemed at the expiration of the twenty-five-year period specified in division (B)(2)(c) of section 1346.02 of the Revised Code, as of, on, or after the effective date of this section.

(C) All property rights and legal title to and ownership of such funds, as well as proceeds from such funds, including all rights, powers, and privileges of survivorship of any owner, co-owner, or beneficiary, shall vest solely in the state as provided in this section.

(D)(1) If, within one hundred eighty days after the period prescribed under division (B) of this section, or within one hundred eighty days after the effective date of this section for funds that have remained unclaimed and unredeemed as described in division (B) of this section as of the effective date of this section, no claim has been filed under this chapter for the escrowed tobacco funds, the director shall commence a civil action in a court of competent jurisdiction for a determination that the escrowed tobacco funds escheat to the state.

(2) The director may postpone the commencement of an action until a sufficient amount of escrowed tobacco funds have accumulated in the director's custody to justify the expense of the proceedings.

(E) Service by publication shall be made in accordance with Rule 4.4 of the Rules of Civil Procedure.

(F) If no person files a claim or appears at the hearing to substantiate a claim, or if the court determines that a claimant is not entitled to the property in question, and if the court is satisfied by the evidence that the director has substantially complied with the related laws of this state, the

court shall enter a judgment that the escrowed tobacco funds have escheated to the state and that all property rights and legal title to and ownership of the escrowed tobacco funds, as well as the proceeds from the funds, including all rights, powers, and privileges of survivorship of any owner, co-owner, or beneficiary, have vested solely in the state.

(G) The director shall pay all costs incident to the collection and recovery of the escrowed tobacco funds from the escrowed tobacco funds and shall deposit the remaining balance of the proceeds in the tobacco settlement oversight, administration, and enforcement fund created in section 183.34 of the Revised Code.

(H) Notwithstanding section 169.08 of the Revised Code, any person claiming ownership of escrowed tobacco funds that have escheated to the state under this section, or of the proceeds thereof, may file a claim with the director. Upon providing sufficient proof of the validity of the person's claim, the director may, at the director's discretion, pay the claim less any expenses and costs incurred by the state in securing full title and ownership of the property by escheat. If payment has been made to a claimant, no action thereafter may be maintained by any other claimant against the state or any officer of the state, for or on account of the payment of the claim.

Sec. 169.201. Escheatment of escrowed tobacco funds under section 169.20 of the Revised Code does not release a nonparticipating manufacturer from either of the following:

(A) Future escrow deposit obligations under section 1346.02 of the Revised Code;

(B) Liability for any released claims lawsuit, as specified in division (B)(2)(a) of section 1346.02 of the Revised Code.

Sec. 169.202. The director of commerce shall make a report to the attorney general in both of the following circumstances:

(A) When escrowed tobacco funds are transferred to the director of commerce as unclaimed funds pursuant to section 169.054 of the Revised Code;

(B) When a civil claim related to the escheatment of escrowed tobacco funds to the state is initiated pursuant to division (D) of section 169.20 of the Revised Code.

Sec. 183.34. There is hereby created in the state treasury the tobacco settlement oversight, administration, and enforcement fund, which shall consist of amounts transferred under division (I) of section 183.02 of the Revised Code prior to the repeal of that section by H.B. 119 of the 127th general assembly, and amounts transferred to the fund pursuant to section 169.20 of the Revised Code. The attorney general shall use the fund to pay costs incurred in the oversight, administration, and enforcement of the tobacco master settlement agreement.

Sec. 2927.021. (A) As used in this section and section 2927.022 of the Revised Code:

(1) "Card holder" means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive cigarettes, other tobacco products, or alternative nicotine products from the seller, agent, or employee.

(2) "Identification card" means an identification card

issued under sections 4507.50 to 4507.52 of the Revised Code.

(3) "Seller" means a seller of cigarettes, other tobacco products, or alternative nicotine products and includes any person whose gift of or other distribution of cigarettes, other tobacco products, or alternative nicotine products is subject to the prohibitions of section 2927.02 of the Revised Code.

(4) "Transaction scan" means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving cigarettes, other tobacco products, or alternative nicotine products.

(5) "Transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(B)(1) A seller or an agent or employee of a seller ~~may~~ shall perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder cigarettes, other tobacco products, or alternative nicotine products. The transaction scan shall confirm the license or identification card being scanned is not expired and the card holder is at least twenty-one years of age.

(2) ~~If the information deciphered by the transaction scan~~

~~performed under division (B)(1) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither~~ Neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any cigarettes, other tobacco products, or alternative nicotine products to ~~the~~ a card holder if any of the following apply:

(a) The information deciphered by the transaction scan performed under division (B)(1) of this section fails to match the information printed on the license or identification card presented by the card holder.

(b) The transaction scan indicates:

(i) That the information printed on the license or identification card is false or fraudulent;

(ii) That the license or identification card is invalid;

(iii) The card holder is under twenty-one years of age.

(3) Division (B)(1) of this section does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away, or otherwise distributing cigarettes, other tobacco products, or alternative nicotine products to the person presenting the document.

(4) If a license or identification card cannot be electronically scanned, the seller or an agent or employee of a

seller shall do the following:

(a) Verify proof of age by confirming that the purchaser matches the person reflected on the license or identification;

(b) Visually confirm that the license or identification presented by the purchaser shows that the purchaser is at least twenty-one years of age and the license or identification is not expired.

(C) Rules adopted by the registrar of motor vehicles under division (C) of section 4301.61 of the Revised Code apply to the use of transaction scan devices for purposes of this section and section 2927.022 of the Revised Code.

(D)(1) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

(a) The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;

(b) The expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder.

(2) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (D)(1) of this section, except for purposes of section 2927.022 of the Revised Code.

(3) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose

specified in division (B)(1) of this section.

(4) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including, but not limited to, selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by section 2927.022 or another section of the Revised Code.

(E) Nothing in this section or section 2927.022 of the Revised Code relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away, or other distribution of cigarettes, other tobacco products, or alternative nicotine products.

(F) Whoever fails to comply with division (B)(1) or (B)(4) of this section is guilty of engaging in an illegal tobacco product or alternative nicotine product transaction sale. The court shall impose the following penalties:

(1) For a first offense or an offense for which division (F)(2), (F)(3), or (F)(4) of this section do not apply, a fine of five hundred dollars;

(2) For a second offense within twelve months, a fine of one thousand dollars and the person's license shall be suspended for fourteen days;

(3) For a third offense within twelve months, a fine of one thousand dollars and the person's license shall be suspended for thirty days;

(4) For a fourth or subsequent offense within twelve

months, a fine of one thousand five hundred dollars and the person's license shall be revoked.

(G) Whoever violates division (B)(2) or (D) of this section is guilty of engaging in an illegal tobacco product or alternative nicotine product transaction scan, and the court may impose upon the offender a civil penalty of up to one thousand dollars for each violation. The clerk of the court shall pay each collected civil penalty to the county treasurer for deposit into the county treasury.

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

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

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

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

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

(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 requirements of section 3794.06 of the Revised Code is posted.

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

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

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

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

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

(E) The department shall conduct investigations pursuant to Chapter 5101. of the Revised Code in support of the duty of the department of job and family services to administer the supplemental nutrition assistance program throughout this state. The department of public safety shall conduct investigations necessary to protect the state's property rights and interests

in the supplemental nutrition assistance program.

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

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

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

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

(J) The department shall administer and enforce the laws relative to private investigators and security service providers specified in Chapter 4749. of the Revised Code.

(K) The department shall administer criminal justice services in accordance with sections 5502.61 to 5502.66 of the Revised Code.

(L) The department shall administer the Ohio school safety and crisis center and the Ohio mobile training team in accordance with sections 5502.70 to 5502.703 of the Revised Code.

(M) The department shall coordinate security measures and operations, and may direct the department of administrative services to implement any security measures and operations the department of public safety requires, at the Vern Riffe Center and the James A. Rhodes state office tower.

Notwithstanding section 125.28 of the Revised Code, the director of public safety may recover the costs of directing security measures and operations under this division by either issuing intrastate transfer voucher billings to the department of administrative services, which the department shall process to pay for the costs, or, upon the request of the director of administrative services, the director of budget and management may transfer cash in the requested amount from the building management fund created under section 125.28 of the Revised Code. Payments received or cash transfers made under this division for the costs of directing security measures and operations shall be deposited into the state treasury to the credit of the security, investigations, and policing fund created under section 4501.11 of the Revised Code.

(N) The department shall assist the division of marijuana control in enforcing Chapter 3796. of the Revised Code, as provided in that chapter.

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

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

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

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

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

(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 state pursuant to the "Child Nutrition Act of 1966," 80 Stat.

885, 42 U.S.C.A. 1786. Enforcement agents, in enforcing compliance with the laws and rules described in this division, may keep the peace and make arrests for violations of those laws and rules.

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

(3) Enforcement agents who are on, immediately adjacent to, or across from retail liquor permit premises or premises licensed under Chapter 3796. of the Revised Code and who are performing investigative duties relating to those premises, enforcement agents who are on premises that are not liquor permit premises or premises licensed under Chapter 3796. of the Revised Code but on which a violation of Title XLIII or Chapter 3796. of the Revised Code or any rule adopted under that title or chapter allegedly is occurring, and enforcement agents who view a suspected violation of Title XLIII or Chapter 3796. of the Revised Code, of a rule adopted under that title or chapter, or of another law or rule described in division (B)(1) of this section have the authority to enforce the laws and rules described in division (B)(1) of this section, authority to enforce any section in Title XXIX of the Revised Code or any other section of the Revised Code listed in section 5502.13 of the Revised Code if they witness a violation of the section

under any of the circumstances described in this division, and authority to make arrests for violations of the laws and rules described in division (B)(1) of this section and violations of any of those sections.

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

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

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

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

(i) Pleads guilty to a felony;

(ii) Pleads guilty to a misdemeanor pursuant to a negotiated plea agreement as provided in division (D) of section 2929.43 of the Revised Code in which the enforcement agent agrees to surrender the certificate awarded to that agent under section 109.77 of the Revised Code.

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

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

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

Sec. 5502.141. The tax commissioner has the same authority vested in enforcement agents under division (B) of section 5502.14 of the Revised Code to enforce section 5502.81 of the Revised Code.

Sec. 5502.80. As used in sections 5502.80 to 5502.83 of the Revised Code:

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

(B) "Disposable electronic smoking product" means an electronic smoking product that is filled with a solution or other substance containing nicotine before the product is sold, is sealed by the manufacturer and not intended to be opened by the consumer, and is intended to be disposed of after the solution or other substance containing nicotine has been depleted.

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

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

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

(3) A secondary manufacturer;

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

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

(D) "Electronic smoking product" means any noncombustible product, other than a cigarette or tobacco product, that contains or is designed to use vapor products and employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from the vapor product. "Electronic smoking product" includes a vapor product whether sold with or separately from an electronic smoking product, an electronic cigarette, a disposable electronic

smoking product, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, a vaporizer, or any similar product or device. "Electronic smoking product" does not include an open-system electronic smoking product, an open-system 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.

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

(F) "Nicotine" means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived, and nicotinic alkaloids.

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

(H) "Open-system vapor product" means a vapor product that is intended for use with an open-system electronic smoking product.

(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.

(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.

(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.

(L) "Sale" includes an exchange, barter, gift, offer for sale, or distribution, and includes transactions in interstate or foreign commerce.

(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 an open-system vapor product or 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.

(N) "Wholesale dealer" means any person engaged in the business of selling vapor products to others for the purpose of resale.

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 through a distributor, wholesale dealer, retail dealer, or similar intermediary or intermediaries, shall submit all of the following to the investigative unit, in the form and manner prescribed by the department of public safety:

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

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

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

(b) The electronic smoking product is commercially marketed and is not subject to federal enforcement priority under a United States food and drug administration policy, and the premarket tobacco product application filed with respect to the electronic smoking product pursuant to 21 U.S.C. 387j either remains under review or a final decision on the application is not otherwise in effect.

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

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

(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.

(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.

(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.

(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:

(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;

(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 interstate commerce for commercial distribution in the United States.

(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.

(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.

(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.

(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.

(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:

(1) The manufacturer failed to provide a complete and accurate certification as required by division (A) of this section.

(2) The manufacturer failed to include with such certification the payment required by division (B) of this section.

(3) The manufacturer sold products in this state required to be certified under this section during a period when either

the manufacturer or the product had not been certified and listed on the directory.

(4) The manufacturer's certification under this section contains false information, material misrepresentations, or omissions.

(G)(1) If the investigative unit determines that division (D) of this section or any of the violations described in divisions (F)(1) to (4) of this section apply to a manufacturer or electronic smoking product that is already listed on the directory, the investigative unit shall provide the manufacturer notice of the violation and an opportunity to cure deficiencies before removing the manufacturer or electronic smoking product from the directory.

(2) The investigative unit shall not remove a manufacturer or an electronic smoking product from the directory sooner than thirty days after sending such notice.

(3) The investigative unit shall send the notice electronically or by facsimile to an electronic mail address or facsimile number, as the case may be, provided by the manufacturer in the manufacturer's most recent certification filed under this section.

(4) The investigative unit shall include in the notice a description of the violation, instructions for how to cure the violation, and an explanation that failure to cure the violation within thirty days could result in removal of the manufacturer or electronic smoking product from the directory.

(5) If the manufacturer does not cure the violation within thirty days after notice is sent, the investigative unit shall remove the manufacturer or the electronic smoking product, as

applicable, from the directory.

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

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

(2) For all other electronic smoking products, ninety days after the investigative unit first publishes the directory on the investigative unit's public web site.

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

(J)(1) Except as provided in division (J)(2) of this section, a retail dealer, distributor, or wholesale dealer shall, before the electronic smoking product is contraband pursuant to division (H) of this section, either sell the product or remove the product from the retail dealer's, distributor's, or wholesale dealer's inventory. After the electronic smoking product is considered contraband, it is subject to seizure, forfeiture, and destruction by the investigative unit. The cost of such seizure, forfeiture, and destruction shall be paid by the person from whom the products are confiscated. The investigative unit may store and dispose of the seized products as appropriate, in accordance with federal,

state, and local laws pertaining to storage and disposal of such products, including by contracting with a licensed hazardous waste disposal facility. No electronic smoking products shall be seized under this section from a consumer who makes a bona fide purchase of such product.

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

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

(a) For a first violation, a civil penalty of two hundred fifty dollars per day for each individual electronic smoking product offered for sale in violation of this section, but shall not exceed five thousand dollars in the aggregate;

(b) For a second violation within a twelve-month period, a civil penalty of at least five hundred fifty dollars, but not more than one thousand dollars per day, for each individual electronic smoking product offered for sale in violation of this section, but shall not exceed five thousand dollars in the aggregate, and a license issued under section 5743.15 or 5743.611 of the Revised Code shall be suspended for at least fourteen days;

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

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

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

(3) All fees and penalties collected under this section shall be deposited to the electronic smoking products enforcement fund, which is created in the state treasury. All investment earnings of the fund shall be credited to the fund. The investigative unit shall use money in the fund for administration and enforcement of this section. The investigative unit may allocate money in the fund to the department of taxation for the purposes of funding inspections and enforcement actions.

(L) To enforce this section, the investigative unit may

examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where electronic smoking products are placed, stored, sold, or offered for sale, as well as the stock of electronic smoking products on the premises. Every person in the possession, control, or occupancy of any premises where such products are placed, sold, or offered for sale shall give the investigative unit the means, facilities, and opportunity for the examinations authorized by this section.

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

(N)(1) As used in division (N) of this section "nonresident or foreign manufacturer" means a person that manufactures or sells electronic smoking products that is not a resident of this state; incorporated, formed, or organized under the laws of this state; or licensed, registered, or certified to transact business in the state under Title XVII of the Revised Code.

(2) A nonresident or foreign manufacturer, as a condition precedent to inclusion and retention of the manufacturer and the

manufacturer's electronic smoking products in the directory developed and published under this section, shall do all of the following:

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

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

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

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

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

(3)(a) Any nonresident or foreign manufacturer whose electronic smoking products are sold in the state or to a person in this state and who has not appointed and continually engaged an agent in accordance with division (N)(2) of this section is

deemed to have appointed the secretary of state as the manufacturer's agent and may be proceeded against in any action or proceeding arising under this section by service of process on the secretary of state.

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

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

(b) The bond shall be in the amount of twenty-five thousand dollars in favor of the department of public safety. The bond shall be conditioned upon the performance by the nonresident or foreign manufacturer of all requirements and obligations imposed by this section. A surety on a manufacturer's bond is liable up to the amount of the bond, and the department of public safety may execute on such surety bond for the payment of fines and penalties imposed on the manufacturer under this section and for the costs of seizure and destruction of products sold in violation of this section. If the department executes on the surety bond, the department may require the manufacturer to provide an additional bond as a condition precedent for retaining the manufacturer and the manufacturer's electronic smoking products in the directory.

(c) A surety on a bond furnished by a manufacturer as

provided in this section shall be released and discharged from liability to the department sixty days after a written request to the investigative unit. This division shall not be construed to relieve, release, or discharge the surety from liability already accrued or which accrues before the expiration of the sixty-day period. The investigative unit shall, upon receiving any such request, notify the manufacturer that furnished the bond. Unless the manufacturer, on or before the expiration of the sixty-day period, files with the investigative unit a new bond, with the surety approved by and acceptable to the investigative unit, the investigative unit shall remove the manufacturer and the manufacturer's electronic smoking products from the directory.

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

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

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

Sec. 5502.82. (A)(1) The investigative unit shall conduct inspections of the premises of persons licensed to do business distributing or selling at retail tobacco products, electronic smoking products, open-system electronic smoking products, open-

system vapor products, and vapor products to determine compliance with section 5502.81 and Chapter 5743. of the Revised Code, and the rules adopted thereunder, pertaining to distributor license and retail license holders.

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

(a) No property shall be confiscated other than contraband, as defined in section 2901.01 of the Revised Code and including electronic smoking products designated as contraband under section 5502.81 of the Revised Code, tobacco products, electronic smoking products, open-system electronic smoking products, open-system vapor products, and vapor products being offered for sale without the required license, or property that is otherwise necessary for evidentiary purposes.

(b) A complete inventory of all property confiscated from the premises shall be given to the license holder or the license holder's agent or employee by the confiscating enforcement agent or peace officer at the conclusion of the inspection. At that time, the inventory shall be signed by the confiscating enforcement agent or peace officer, and the enforcement agent or

peace officer shall give the license holder or the license holder's agent or employee the opportunity to sign the inventory.

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

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

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

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

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

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

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

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

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

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

(c) A cosmetic product, including lipstick;

(d) A toy;

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

(B) A person who violates this section is guilty of a misdemeanor of the third degree. A court shall impose the following penalties for a violation:

(1) For a first offense or an offense for which division (B)(2), (B)(3), or (B)(4) of this section do not apply, a fine of five hundred dollars;

(2) For a second offense within twelve months, a fine of one thousand dollars and the person's license will be suspended for fourteen days;

(3) For a third offense within twelve months, a fine of one thousand dollars and the person's license will be suspended for thirty days;

(4) For a fourth and subsequent offense within twelve months, a fine of one thousand five hundred dollars and the person's license will be revoked.

Sec. 5502.84. As used in this section:

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

(a) Has a chemical structure substantially similar to the chemical structure of nicotine, including but not limited to metatine;

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

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

(B) No person shall sell in this state a product that contains a nicotine analogue.

(C) A person who violates this section is guilty of a misdemeanor of the third degree and is subject to the same penalties stated in division (B) of section 5502.83 of the Revised Code.

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

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

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

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

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

Sec. 5743.54. (A) Each distributor of tobacco products and each vapor distributor of vapor products shall maintain complete and accurate records of all purchases and sales of tobacco products or vapor products, and shall procure and retain all invoices, bills of lading, and other documents relating to the purchases and sales of those products. The distributor or vapor distributor shall keep open records and documents during business hours for the inspection of the tax commissioner, and

shall preserve them for a period of three years from the date the return was due or was filed, whichever is later, unless the commissioner, in writing, consents to their destruction within that period, or orders that they be kept for a longer period of time.

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

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

(C) No person shall make a false entry upon any invoice or record upon which an entry is required by this section and no person shall present any false entry for the inspection of the commissioner with the intent to evade the tax levied under section 5743.51, 5743.511, 5743.62, 5743.621, 5743.63, or 5743.631 of the Revised Code.

Sec. 5743.541. Each retail dealer of tobacco products and vapor products not subject to section 5747.54 of the Revised Code and each person that sells electronic smoking products at retail shall maintain complete and accurate records of all

purchases and sales of those products and shall procure and retain all invoices, bills of lading, and other documents relating to the purchases and sales of those products. The person shall make records and documents available for inspection upon request of the tax commissioner and shall preserve them for a period of three years from the date the return was due or was filed, whichever is later, unless the commissioner, in writing, consents to their destruction within that period or orders that they be kept for a longer period of time.

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

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.

(C) The holder of a tobacco or vapor products license_ issued under this section 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.

(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 enforcing this chapter.

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

Sec. 5743.611. (A)(1) Except as provided in division (A)(2) of this section, no person shall engage in the business of selling at retail electronic smoking products or vapor products within this state without having a retail tobacco license issued

by the department of taxation to engage in that business under this section. A separate retail tobacco license is required for each premises in the state at which the person sells electronic smoking products or vapor products.

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

(B)(1) Each applicant for a license under 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 and electronic mail address of the applicant, each physical place from which the applicant engages in the retail sale of electronic smoking products and vapor products, 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 required by division (B)(1) of this section, the applicant 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 the business for which the license is required. 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 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 electronic smoking products or vapor products are offered for sale, provided that

each additional point at which electronic smoking products or vapor products are offered for sale shall be listed in the application.

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

(4) Upon receipt of the application and payment of any licensing fee required by division (B) of 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 retail sale 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 twenty-five 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.

(C) The holder of a license issued under this section may transfer the license to a place of business on the conditions

that the licensee's ownership and business structure remains unchanged, the licensee applies to the commissioner for the transfer on a form issued by the commissioner, and the licensee pays to the commissioner a transfer fee of twenty-five dollars.

On the dissolution of a partnership by death, the surviving partner may operate under the license issued to the partnership under this section 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.

(D)(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 selling at retail electronic smoking products or vapor products without holding a license as required by this section.

(2) Any person engaging in the business of selling at retail electronic smoking products or vapor products without a license as required by this section shall comply with divisions (B)(1) to (3) of this section within ten days after being notified of the requirement to do so. Failure to comply with division (D)(2) of this section subjects a person to penalties imposed under section 5743.99 of the Revised Code.

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

Sec. 5743.74. Persons holding a license under section 5743.61 or 5743.611 of the Revised Code may offer for sale and sell tobacco products, electronic smoking products, or vapor products that are legal to market in the United States pursuant to the "Family Smoking Prevention and Tobacco Control Act," 21 U.S.C. 387 et seq., and regulations adopted pursuant to that law, including products for which the manufacturer has received a marketing authorization or similar order for the products from the United States food and drug administration pursuant to 21 U.S.C. 387j, provided the products satisfy other applicable requirements imposed by this chapter.

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

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

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

Section 2. That existing sections 9.681, 169.02, 169.05, 183.34, 2927.021, 3313.751, 3794.05, 5502.01, 5502.13, 5502.14, 5502.99, 5743.54, and 5743.61 of the Revised Code are hereby repealed.