As Introduced

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H. B. No. 849

Representatives Plummer, Salvo

To amend sections 9.681, 3313.751, 3794.05, 5502.01, 5502.13, 5502.14, 5502.99, 5743.01, 5743.54, and 5743.61 and to enact sections 2935.034, 5502.80, 5502.81, 5502.82, 5502.83, 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, 3313.751, 3794.05, 5502.01, 5502.13, 5502.14, 5502.99, 5743.01, 5743.54, and 5743.61 be amended and sections 2935.034, 5502.80, 5502.81, 5502.82, 5502.83, 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. 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, alternative nicotine 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. 5502.80. As used in sections 5502.80 to 5502.89 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 open-system 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 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 and nicotine analogues, such as metatine.

(G) "Nicotine analogue" means a substance that meets any of the following:

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

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

(3) Is manufactured, formulated, sold, distributed, or marketed with the intent to avoid the provisions of this chapter.

(H) "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.

(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) "Timely filed premarket tobacco product application" means an application pursuant to 21 U.S.C. 387j for an electronic smoking product or vapor product marketed in the United States as of August 8, 2016, that was submitted to the United States food and drug administration on or before September 9, 2020, and accepted for filing.

(N) "Vapor product" means any liquid solution or other substance that contains nicotine and is depleted as it is used in an electronic smoking product, whether sold with or separately from an electronic smoking product. "Vapor product" does not include any solution or substance regulated as a drug, device, or combination product under Chapter V of the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. 301, et seq.

(O)(1) "Wholesale dealer" includes only persons that either:

(a) Subject to division (O)(2)(a) of this section, bring in or cause to be brought into this state unstamped cigarettes

purchased directly from the manufacturer, producer, or importer of cigarettes for sale in this state;

(b) Are engaged in the business of selling cigarettes, tobacco products, or vapor products to others for the purpose of resale.

(2) "Wholesale dealer" does not include either of the following:

(a) A person that brings in or causes to be brought into this state cigarettes with respect to which no evidence of tax payment is required thereon as provided in section 5743.04 of the Revised Code;

(b) A cigarette manufacturer, export warehouse proprietor, or importer with a valid permit under 26 U.S.C. 5713, if that person sells cigarettes in this state only to wholesale dealers holding valid and current licenses under section 5743.15 of the Revised Code or to an export warehouse proprietor or another manufacturer.

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 manufacturer submitted a timely filed premarket tobacco product application for the electronic smoking product to the United States food and drug administration pursuant to 21 U.S.C. 387j, and the application 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 timely filed premarket tobacco product application for the electronic smoking product described in division (A)(2)(b) of this section was submitted and either remains pending or is not otherwise in effect, 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 set by rule of the department of public safety.

(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) 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.

(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 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, thirty days after the investigative unit publishes an updated directory that includes the product's removal;

(2) For all other electronic smoking products, January 1, 2027, or on the date that the investigative unit first publishes the directory on the investigative unit's public web site, whichever is later.

(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) 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.

(K)(1) The investigative unit may impose a civil penalty on a distributor, wholesale dealer, retail dealer, or any other person who sells or offers for retail sale in this state an electronic smoking product that is not included in the directory. The department of public safety shall set the amount of the civil penalty by rule. Each day that the electronic smoking product is sold or offered for retail sale in violation of this section is a separate violation and subject to an additional civil penalty under this division.

(2) The investigative unit may impose a civil penalty on 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 department of public safety shall set the amount of the civil penalty by rule. Each day that the electronic smoking product is sold or offered for retail sale in violation of this section is a separate violation and subject to an additional civil penalty under this division.

(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.

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

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, alternative nicotine products, electronic smoking 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, alternative nicotine products, electronic smoking 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, alternative nicotine products, electronic smoking 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 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 and shall only be fined five hundred dollars.

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. 5743.01. As used in this chapter:

(A) "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.

(B) "Wholesale dealer" includes only those persons:

(1) Who bring in or cause to be brought into this state unstamped cigarettes purchased directly from the manufacturer, producer, or importer of cigarettes for sale in this state but does not include persons who bring in or cause to be brought into this state cigarettes with respect to which no evidence of tax payment is required thereon as provided in section 5743.04 of the Revised Code; or

(2) Who are engaged in the business of selling cigarettes, tobacco products, or vapor products to others for the purpose of resale.

"Wholesale dealer" does not include any cigarette manufacturer, export warehouse proprietor, or importer with a valid permit under 26 U.S.C. 5713 if that person sells cigarettes in this state only to wholesale dealers holding valid

and current licenses under section 5743.15 of the Revised Code or to an export warehouse proprietor or another manufacturer.

(C) "Retail dealer" includes:

(1) In reference to dealers in cigarettes, every person other than a wholesale dealer engaged in the business of selling cigarettes in this state, regardless of whether the person is located in this state or elsewhere, and regardless of quantity, amount, or number of sales;

(2) In reference to dealers in tobacco products, any person in this state engaged in the business of selling tobacco products to ultimate consumers in this state, regardless of quantity, amount, or number of sales;

(3) In reference to dealers in vapor products, 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.

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

(E) "Cigarettes" includes any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper, reconstituted cigarette tobacco, homogenized cigarette tobacco, cigarette tobacco sheet, or any similar materials other than cigar tobacco.

(F) "Package" means the individual package, box, or other container in or from which retail sales of cigarettes are normally made or intended to be made.

(G) "Storage" includes any keeping or retention of cigarettes, tobacco products, or vapor products for use or consumption in this state.

(H) "Use" includes the exercise of any right or power incidental to the ownership of cigarettes, tobacco products, or vapor products.

(I) "Tobacco product" or "other tobacco product" means any product made from tobacco, other than cigarettes, that is made for smoking or chewing, or both, and snuff.

(J) "Wholesale price" means the invoice price, including all federal excise taxes, at which the manufacturer of the tobacco product sells the tobacco product to unaffiliated distributors, excluding any discounts based on the method of payment of the invoice or on time of payment of the invoice. If the taxpayer buys from other than a manufacturer, "wholesale price" means the invoice price, including all federal excise taxes and excluding any discounts based on the method of payment of the invoice or on time of payment of the invoice.

(K) "Distributor" means:

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

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

(3) Any wholesale dealer located outside the state who

sells, barters, exchanges, or distributes tobacco products to a wholesale or retail dealer in the state; or

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

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

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

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

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

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

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

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

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

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

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

In April of each year beginning in 2018, the tax commissioner shall compute a tax adjustment factor by multiplying fifty cents by the cumulative percentage increase in the consumer price index (all items, all urban consumers) prepared by the bureau of labor statistics of the United States department of labor from January 1, 2017, to the last day of December of the preceding year and rounding the resulting product to the nearest one cent; provided, that the tax adjustment factor for any year shall not be less than that for the immediately preceding year. The maximum tax amount resulting from the computation of the tax adjustment factor applies on and after the ensuing first day of July through the thirtieth day of June thereafter.

(S) "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.

(T) "Vapor product" means any liquid solution or other substance that (1) contains nicotine and (2) is depleted as it is used in an electronic smoking product. "Vapor product" does not include any solution or substance regulated as a drug,

device, or combination product under Chapter V of the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. 301, et seq.

(U) "Electronic smoking product" means any noncombustible product, other than a cigarette or tobacco product, that (1) contains or is designed to use vapor products and (2) 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, but is not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, vaporizer, or similar product or device, but does not include 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.

(V) "Vapor distributor" means any person that:

(1) Sells vapor products to a retail dealer;

(2) Is a retail dealer that receives vapor products with respect to which the tax imposed by this chapter has not or will not be paid by another person that is a vapor distributor;

(3) Is a secondary manufacturer;

(4) Is a wholesale dealer located in this state that receives vapor products from a manufacturer, or receives vapor products on which the tax imposed by this chapter has not been paid;

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

(W) "Vapor volume" means one of the following, as

applicable:

(1) If a vapor product is sold in liquid form, one-tenth of one milliliter of vapor product;

(2) If the vapor product is sold in a nonliquid form, one-tenth of one gram of vapor product.

(X) "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include a cigarette, tobacco product, electronic smoking product, vapor product, or any product regulated as a drug, device, or combination product under Chapter V of the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. 301, et seq.

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 alternative nicotine products or 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 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.

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 this section and 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) No person shall engage in the business of selling at retail tobacco products, alternative nicotine products, electronic smoking products, or vapor products within this state without having a license issued by the department of taxation to engage in that business under this section.

(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 of the applicant, each physical place from which the applicant

engages in the retail sale of tobacco products, alternative nicotine products, 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 tobacco products, alternative nicotine products, electronic smoking products, or vapor products are offered for sale, provided that each additional point at which tobacco products, alternative nicotine products, 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 tobacco products, alternative nicotine products, 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 tobacco products, alternative nicotine products, 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 tobacco products, alternative nicotine products, 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, alternative nicotine 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, 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, alternative

nicotine 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, 3313.751, 3794.05, 5502.01, 5502.13, 5502.14, 5502.99, 5743.01, 5743.54, and 5743.61 of the Revised Code are hereby repealed.