

(127th General Assembly)
(Substitute House Bill Number 500)

AN ACT

To amend sections 5703.21 and 5743.08 and to enact sections 3739.01 to 3739.18, 3739.99, 4112.31, and 4112.32 of the Revised Code to establish reduced ignition propensity standards for cigarettes, to authorize the State Fire Marshal to monitor and the Attorney General and the State Fire Marshal to enforce such standards, to establish penalties for violations of such standards, and to establish a New African Immigrants Commission to advocate for the development and implementation of policies and programs to address the needs of the State's sub-Saharan African population.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5703.21 and 5743.08 be amended and sections 3739.01, 3739.02, 3739.03, 3739.04, 3739.05, 3739.06, 3739.07, 3739.08, 3739.09, 3739.10, 3739.11, 3739.12, 3739.13, 3739.14, 3739.15, 3739.16, 3739.17, 3739.18, 3739.99, 4112.31, and 4112.32 of the Revised Code be enacted to read as follows:

Sec. 3739.01. As used in this chapter:

(A) "Agent" means any person licensed by a county auditor or the tax commissioner to purchase and affix adhesive or meter stamps on packages of cigarettes pursuant to Chapter 5743. of the Revised Code.

(B) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s." "Brand family" includes cigarettes sold under a brand name, whether that name is used alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indicia of product identification identical or similar to, or identifiable with, a previous brand of cigarettes.

(C) "Cigarettes" has the same meaning as in division (D)(1) of section

1346.01 of the Revised Code but does not include "roll-your-own" cigarettes as defined in division (D)(2) of that section.

(D) "Manufacturer" means either of the following:

(1) Any entity or the entity's successor that, in any location, manufactures or otherwise produces cigarettes, or causes cigarettes to be manufactured or produced, that the entity intends to be sold in this state, including, but not limited to, cigarettes intended to be sold in the United States through an importer;

(2) Any entity or the entity's successor that meets both of the following criteria:

(a) Purchases cigarettes, in any location, from a second entity that manufactures or otherwise produces cigarettes in any location when that second entity does not intend that the cigarettes it manufactures be sold in the United States;

(b) Intends to resell the cigarettes described in division (D)(2)(a) of this section in the United States.

(E) "Repeatability" means the range of values within which ninety-five per cent of the results of cigarette test trials from a single laboratory will fall.

(F) "Retail dealer" has the same meaning as in division (C)(1) of section 5743.01 of the Revised Code.

(G) "Quality control and quality assurance program" means the procedures a laboratory implements to ensure both of the following:

(1) Operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect cigarette test results.

(2) Testing repeatability remains within the required repeatability values for all test trials used by the laboratory to certify cigarettes in accordance with this chapter and is not greater than 0.19.

(H) "Sale" has the same meaning as in section 5743.01 of the Revised Code.

(I) "Wholesale dealer" means either of the following persons:

(1) A person, other than a manufacturer, who sells cigarettes to retail dealers or other persons for purposes of resale;

(2) A person who owns, operates, or maintains one or more cigarette vending machines upon premises owned or occupied by any other person.

Sec. 3739.02. Except as otherwise permitted in section 3739.12 of the Revised Code, no person shall sell or offer to sell cigarettes in this state or sell or offer to sell cigarettes to persons located in this state unless all of the following requirements are met:

(A) The manufacturer of the cigarettes has the cigarettes tested in

accordance with the testing method specified in section 3739.03 of the Revised Code or the testing method approved by the state fire marshal under section 3739.04 of the Revised Code.

(B) The cigarettes meet the performance standard specified under division (B) of section 3739.03 of the Revised Code or the performance standard approved by the state fire marshal under section 3739.04 of the Revised Code.

(C) The manufacturer has marked the packaging of the cigarettes as required in section 3739.06 of the Revised Code.

(D) The manufacturer files a written certification with the state fire marshal as required under section 3739.07 of the Revised Code.

Sec. 3739.03. (A) A manufacturer shall have a laboratory conduct the testing required under division (B) of this section. The laboratory that the manufacturer uses for the testing shall be accredited pursuant to the international organization for standardization and international electrotechnical commission standard 17025 of the international organization for standardization, or another comparable accreditation standard required by the state fire marshal. The laboratory shall implement a quality control and quality assurance program and shall use that program when conducting the testing required under division (B) of this section.

(B) A manufacturer shall have the laboratory described in division (A) of this section test the manufacturer's cigarettes in accordance with all of the following requirements:

(1) The laboratory shall test the cigarettes in accordance with the American society of testing and materials standard E2187-04, titled "standard test method for measuring ignition strength of cigarettes" or any subsequent standard adopted by the state fire marshal in accordance with division (E) of this section.

(2) The laboratory shall test the cigarettes on ten layers of filter paper.

(3) Not more than twenty-five per cent of the cigarettes tested in a test trial shall exhibit full-length burns.

(C) The performance standard required under division (B)(3) of this section shall apply only to a complete test trial. For purposes of this division and division (B)(3) of this section, "test trial" means forty replicate tests for each type of cigarette tested.

(D) The requirements described in division (B) of this section shall not be construed to require additional cigarette testing if a manufacturer tests cigarettes in accordance with the requirements listed in that division for any other purposes other than the purposes specified in that division.

(E) The state fire marshal may adopt any American society of testing

and materials standard used to measure the ignition strength of cigarettes that takes effect after the effective date of this section if the state fire marshal determines that that subsequent standard does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested using the American society of testing and materials standard E2187-04 referenced in division (B)(1) of this section and the performance standard specified in division (B)(3) of this section.

Sec. 3739.04. (A) If a manufacturer manufactures a cigarette that the state fire marshal determines cannot be tested in accordance with division (B) of section 3739.03 of the Revised Code, the state fire marshal shall require the manufacturer to propose and submit a test method and performance standard for the cigarette to the state fire marshal for approval. If the state fire marshal determines that the test method and performance standard proposed by the manufacturer are equivalent to the test method and performance standard prescribed in division (B) of section 3739.03 of the Revised Code, the state fire marshal shall approve the proposed test method and performance standard, and the manufacturer may use that test method and performance standard to certify the cigarettes pursuant to section 3739.07 of the Revised Code.

(B) If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those specified in section 3739.03 of the Revised Code and that the officials responsible for implementing those standards have determined that the alternative test method and performance standard for a particular cigarette proposed by the manufacturer under division (A) of this section satisfies the standards for that state's law or regulation under a statute or regulation that is comparable to this section, the state fire marshal shall authorize the manufacturer to use that alternative test method and performance standard to certify the manufacturer's cigarettes for sale in this state. The state fire marshal is not required to approve an alternative test method and performance standard approved in another state if the state fire marshal demonstrates a reasonable basis for why that alternative test method and performance standard should not be approved under this section.

All other applicable requirements of this chapter apply to a manufacturer authorized to use an alternative test method and performance standard under this section.

Sec. 3739.05. (A) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale in this state for

a period of three years after a test is concluded, and shall make copies of these reports available to the state fire marshal and the attorney general upon receipt of a written request from the state fire marshal or attorney general.

(B) No manufacturer shall fail to make these copies available to the state fire marshal or attorney general within sixty days after receiving such a request from the state fire marshal or the attorney general.

Sec. 3739.06. (A) A manufacturer, shall place a marking on each package of cigarettes that is certified under section 3739.07 of the Revised Code. The marking shall be in eight-point type or larger, permanently printed, stamped, engraved, or embossed upon the cigarette package or cellophane wrap at or near the UPC code on the package, and consist of only the letters "FSC" that shall signify "fire standards compliant."

(B) A manufacturer shall include the approved mark on each package of cigarettes that is certified under section 3739.07 of the Revised Code to indicate compliance with the requirements of this chapter. A manufacturer shall use such marking for all of the cigarettes the manufacturer sells and shall apply the marking uniformly to all packages, including, but not limited to, packs, cartons, cases, and brands sold by that manufacturer.

Sec. 3739.07. (A) Each manufacturer shall submit to the state fire marshal a written certification that each type of cigarette listed in the certification has been tested in accordance with division (B) of section 3739.03 or section 3739.04 of the Revised Code and each type of cigarette listed in the certification meets the performance standard set forth in division (B) of section 3739.03 of the Revised Code or approved under section 3739.04 of the Revised Code.

(B) A manufacturer shall include in the written certification the manufacturer submits under division (A) of this section all of the following information for each type of cigarette listed in the certification:

- (1) The brand or trade name on the cigarette package;
- (2) The style of cigarette;
- (3) The length of the cigarette in millimeters;
- (4) The circumference of the cigarette in millimeters;
- (5) The flavor of the cigarette, if applicable;
- (6) Whether the cigarette is filter or nonfilter;
- (7) A description of the package;
- (8) The marking the manufacturer uses that the state fire marshal approved in accordance with section 3739.06 of the Revised Code;
- (9) The name, address, and telephone number of the laboratory, if different than the manufacturer, that conducted the test of the cigarette;
- (10) The date that the testing of the cigarette occurred.

(C) A manufacturer shall make the written certification required under division (A) of this section available to the attorney general and the tax commissioner for the purposes of ensuring compliance with this chapter.

(D) No manufacturer shall submit a false certification to the state fire marshal.

Sec. 3739.08. Each cigarette a manufacturer lists in a certification submitted pursuant to section 3739.07 of the Revised Code for which the manufacturer uses lowered permeability bands in the cigarette paper to comply with the testing requirements described in division (B) of section 3739.03 of the Revised Code shall have either of the following bands surrounding the tobacco column:

(A) For cigarettes on which bands are not positioned by design, at least two nominally identical bands, one of which shall be located at least fifteen millimeters from the lighting end of the cigarette;

(B) For cigarettes on which bands are positioned by design, at least two bands, one of which is located at least fifteen millimeters from the lighting end of the cigarette and the other of which is located in either of following places:

(1) For filtered cigarettes, ten millimeters from the filter end of the tobacco column;

(2) For nonfiltered cigarettes, ten millimeters from the labeled end of the tobacco column.

Sec. 3739.09. A manufacturer shall recertify each cigarette the manufacturer certifies pursuant to section 3739.07 of the Revised Code every three years. A manufacturer that certifies a cigarette in accordance with that section and that subsequently makes any change to that cigarette that alters the cigarette in such a way that the manufacturer knows that the cigarette is likely to no longer meet the standard specified in section 3739.03 of the Revised Code or the standard approved under section 3739.04 of the Revised Code shall not sell or offer to sell that cigarette in this state until the manufacturer retests the cigarette in accordance with the testing standards specified in section 3739.03 of the Revised Code or approved under section 3739.04 of the Revised Code. The manufacturer shall maintain records of that retesting in the same manner as the manufacturer maintains records under section 3739.05 of the Revised Code. A manufacturer shall not sell in this state any altered cigarette that does not meet either the performance standard set forth in division (B)(3) of section 3739.03 of the Revised Code or the performance standard approved under section 3739.04 of the Revised Code.

Sec. 3739.10. A manufacturer that certifies its cigarettes in accordance

with section 3739.07 of the Revised Code shall provide a copy of the certifications to each wholesale dealer and agent to which the manufacturer sells cigarettes and shall provide sufficient copies of an illustration of the package marking used by the manufacturer pursuant to section 3739.06 of the Revised Code for each retail dealer to which the wholesale dealer or agent sells cigarettes. Each wholesale dealer and agent who receives a copy of a manufacturer's certification and copies of the manufacturer's illustration shall provide to each retail dealer to which the wholesale dealer and agent sell the manufacturer's cigarettes a copy of the illustration provided to the wholesale dealer or agent by the manufacturer. A wholesale dealer, agent, or retail dealer shall allow the state fire marshal, the tax commissioner, and the attorney general to inspect the markings of cigarette packaging marked in accordance with section 3739.06 of the Revised Code.

Sec. 3739.11. The state fire marshal may conduct testing on cigarettes certified by a manufacturer pursuant to section 3739.07 of the Revised Code to determine whether the manufacturer complied with the requirements of this chapter. The state fire marshal shall conduct any such testing in accordance with division (B) of section 3739.03 of the Revised Code.

Whenever the state fire marshal or a designee of the state fire marshal discovers any cigarettes that do not include a mark as required under section 3739.06 of the Revised Code, or for which no certification has been filed in accordance with section 3739.07 of the Revised Code, the state fire marshal or the state fire marshal's designee may seize and take possession of such cigarettes and shall give such cigarettes to the tax commissioner, and such cigarettes thereupon shall be forfeited to the state. The tax commissioner shall order the destruction of any cigarettes forfeited pursuant to this section, but prior to the destruction of any cigarette forfeited pursuant to this section, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

In addition to any other remedy provided by law, if the state fire marshal or attorney general determines that reasonable evidence exists that a violation of this chapter has occurred, the state fire marshal or attorney general may file an action in the court of common pleas in the county where the alleged violation occurred. The action may include a petition for preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or any other person or entity to enjoin such entity from selling, offering to sell, or affixing tax stamps to any cigarette that does not comply with the requirements of this chapter, or a claim to recover any costs or damages suffered by the state because a violation of this chapter occurred, including enforcement costs relating to

the specific violation and attorney's fees. Each violation of this chapter or the rules adopted pursuant to it constitutes a separate civil violation for which the state fire marshal may obtain relief. Upon obtaining judgment for injunctive relief under this section, the state fire marshal shall provide a copy of the judgment to all wholesale dealers and agents to which the cigarette has been sold.

To enforce the requirements of this chapter, the state fire marshal may examine the books, papers, invoices, and other business records of any person in possession or control of, or occupying any premises where cigarettes are placed, stored, sold, or offered for sale, including the stock of cigarettes on the premises, if the state fire marshal reasonably suspects that a violation of this chapter has occurred. Every person in the possession or control of, or occupying any premises where cigarettes are placed, sold, or offered for sale shall give to the state fire marshal the means, facilities, and opportunity for the examinations authorized under this section.

The tax commissioner, in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under section 5743.14 of the Revised Code, may inspect any cigarette packaging to determine if the package is marked as required under section 3739.06 of the Revised Code. If a package containing cigarettes is not marked, the tax commissioner shall notify the state fire marshal of this fact.

Sec. 3739.12. (A) Nothing in this chapter shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements specified in this chapter if the cigarette's packaging is or will be stamped for sale in another state or is packaged for sale outside of the United States, and that person or entity has taken reasonable steps to ensure that those cigarettes will not be sold or offered for sale to persons located in this state.

(B) The requirements of sections 3739.02 to 3739.10 of the Revised Code shall not prohibit a wholesale dealer or retail dealer of cigarettes from selling the dealer's inventory of cigarettes in existence on or after the effective date of this section if the dealer establishes both of the following:

(1) That the state tax stamps were affixed to the cigarettes prior to the effective date of this section;

(2) That the inventory that was purchased prior to the effective date of this section is comparable in quantity to the inventory purchased during the same period of the prior year.

(C) Nothing in this chapter shall be construed to prohibit the sale of cigarettes solely for the purpose of consumer testing. For purposes of this division, "consumer testing" means an assessment of cigarettes that is

conducted by a manufacturer or under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

Sec. 3739.13. The implementation and substance of the New York fire safety standards for cigarettes shall be persuasive authority in implementing this chapter. The state fire marshal and attorney general may adopt rules, pursuant to Chapter 119, of the Revised Code, as necessary to administer this chapter. The tax commissioner may adopt rules, pursuant to division (M) of section 5703.05 of the Revised Code and section 5703.14 of the Revised Code, as necessary to enforce this chapter.

Sec. 3739.14. The state fire marshal shall periodically evaluate the effectiveness of this chapter. The state fire marshal shall submit a report that consists of the state fire marshal's findings to the general assembly on the first day of the forty-ninth month after the effective date of this section, and every three years after that date.

Sec. 3739.15. Notwithstanding any provision of law to the contrary, no political subdivision of this state may enact or enforce any ordinance or other local law or regulation that conflicts with or preempts this chapter or any policy of this state expressed in this chapter.

Sec. 3739.16. No person is required to comply with this chapter or the rules adopted pursuant to it if a federal reduced cigarette ignition propensity standard that preempts this chapter or rules adopted under it is adopted and becomes effective.

Sec. 3739.17. In addition to any other immunities, defenses, and exclusions provided under the Revised Code, the state, the department of taxation, the department of commerce, the division of the fire marshal within the department of commerce, and any employees of the state, either department, or the division, are immune from liability in any civil action or proceeding arising from the performance or nonperformance of any duties specified in this chapter that the state, either department, the division, or any employees of the state, either department, or division are required to perform. In no event shall the state, either department, division, or any employees of the state, either department, or division be liable to any person for any claims for injury or damages, including, but not limited to, claims for indirect, consequential, incidental, special, or punitive damages or claims for lost profits, arising from the performance or nonperformance of the duties specified in this chapter that the state, either department, division, or employees of the state, either department, or division are required to perform.

Sec. 3739.18. (A) A manufacturer shall pay the state fire marshal a fee of one thousand dollars or an adjusted fee pursuant to division (B) of this section for each type of brand family included in a certification required under division (A) of section 3739.07 of the Revised Code. The fee for each type of brand family includes any new cigarette certified under this chapter within that brand family during the three-year certification period described in section 3739.09 of the Revised Code.

(B) The state fire marshal may adjust the fee described in division (A) of this section annually to ensure the fee is sufficient to defray the actual costs of processing, testing, enforcing, and overseeing the activities required under this chapter. The fee as adjusted by the state fire marshal pursuant to this division shall not exceed two thousand five hundred dollars for each type of brand family.

(C) There is hereby created in the state treasury the reduced cigarette ignition propensity and firefighter protection act enforcement fund. The fund shall consist of all certification fees submitted by manufacturers and any other moneys made available to the state fire marshal specifically to support processing certifications, testing, enforcing, and overseeing activities conducted pursuant to this chapter. The state fire marshal shall use the fund only for the activities specified in this division.

(D) There is hereby created in the state treasury the fire prevention and public safety fund. Moneys collected from penalties assessed under divisions (B) to (E) of section 3739.99 of the Revised Code shall be deposited into the fund. The state fire marshal shall use this fund to support fire safety and prevention programs. If the department of taxation has expenses for the storage or destruction of cigarettes as required by this chapter, the state fire marshal also may use the fund to compensate the department of taxation for those expenses.

Sec. 3739.99. (A) A manufacturer who violates division (B) of section 3739.05 of the Revised Code shall be subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer fails to comply with that division.

(B) A manufacturer, wholesale dealer, agent, or any other person other than a retail dealer who knowingly sells or offers to sell cigarettes in violation of section 3739.02 of the Revised Code is liable for a civil penalty not to exceed one hundred dollars per each pack of such cigarettes sold or offered for sale, provided that in no case shall the penalty against any such person or entity exceed one hundred thousand dollars during any thirty-day period.

(C) A retail dealer who knowingly violates section 3739.02 of the

Revised Code is liable for a civil penalty not to exceed one hundred dollars per each pack of cigarettes sold or offered for sale, provided that in no case shall the penalty against any retail dealer exceed twenty-five thousand dollars for sales or offers to sell during any thirty-day period.

(D) A manufacturer that is a corporation, partnership, sole proprietorship, limited partnership, or association who knowingly violates division (D) of section 3739.07 of the Revised Code is liable for a civil penalty of at least seventy-five thousand dollars, not to exceed two hundred fifty thousand dollars for each such violation, in addition to any other penalty prescribed by law.

(E) Any person who violates any provision of this chapter other than section 3739.02, division (B) of section 3739.05, and division (D) of section 3739.07 of the Revised Code, for a first offense is liable for a civil penalty not to exceed one thousand dollars for each violation and for a subsequent offense is liable for a civil penalty not to exceed five thousand dollars for each violation.

Sec. 4112.31. The new African immigrants commission shall do all of the following:

(A) Gather and disseminate information and conduct hearings, conferences, investigations, and special studies on problems and programs concerning sub-Saharan African people;

(B) Secure appropriate recognition of the accomplishments and contributions of sub-Saharan African people to this state;

(C) Stimulate public awareness of the problems of sub-Saharan African people by conducting a program of public education;

(D) Develop, coordinate, and assist other public and private organizations that serve sub-Saharan African people, including the conducting of training programs for community leadership and service project staff;

(E) Advise the governor, general assembly, and state departments and agencies of the nature, magnitude, and priorities of the problems of sub-Saharan African people;

(F) Advise the governor, general assembly, and state departments and agencies on, and assist in the development and implementation of, comprehensive and coordinated policies, programs, and procedures focusing on the special problems and needs of sub-Saharan African people, especially in the fields of education, employment, energy, health, housing, welfare, and recreation;

(G) Propose new programs concerning sub-Saharan African people to public and private agencies and evaluate for such agencies existing

programs or prospective legislation concerning sub-Saharan African people;

(H) Review and approve grants to be made from federal, state, or private funds that are administered or subcontracted by the commission;

(I) Prepare, review, and approve an annual report;

(J) Serve as a clearinghouse to review and comment on all proposals to meet the needs of sub-Saharan African people that are submitted to it by public and private agencies;

(K) Apply for and accept grants and gifts from governmental and private sources to be administered by the commission or subcontracted to local agencies;

(L) Monitor and evaluate all programs subcontracted to local agencies by the commission;

(M) Endeavor to assure that sub-Saharan African people have access to decision-making bodies in all state and local governmental departments and agencies;

(N) Establish advisory committees on special subjects as needed to facilitate and maximize community participation in the operation of the commission;

(O) Establish with state and local governments and private business and industry relationships that promote and assure equal opportunity for sub-Saharan African people in government, education, and employment.

(P) Create an interagency council consisting of the following persons or their authorized representatives: one member of the senate appointed by the president of the senate; one member of the house of representatives appointed by the speaker of the house of representatives; the directors of administrative services, agriculture, education, development, health, highway safety, job and family services, liquor control, mental health, mental retardation and developmental disabilities, natural resources, rehabilitation and correction, youth services, transportation, environmental protection, and budget and management; the chairperson of the Ohio civil rights commission, the administrators of the bureau of workers' compensation and the rehabilitation services commission, and an additional member of the governor's cabinet appointed by the governor. The new African immigrants commission, by rule, may designate other state officers or their representatives to be members of the council. The director of the commission shall be the chairperson of the council.

The interagency council shall provide and coordinate the exchange of information relative to the needs of sub-Saharan African people and promote the delivery of state services to such people. The council shall meet at the call of the chairperson.

Advisory committees shall be composed of persons representing community organizations and charitable institutions, public officials, and such other persons as the commission determines.

Sec. 4112.32. There is hereby created the new African immigrants commission consisting of eleven members appointed by the governor with the advice and consent of the senate. The speaker of the house of representatives shall recommend to the governor two persons for appointment to the commission, the president of the senate shall recommend to the governor two such persons, and the minority leaders of the house and senate shall each recommend to the governor one such person. The governor shall make initial appointments to the commission. Of the initial appointments made to the commission, three shall be for a term ending October 7, 2009, four shall be for a term ending October 7, 2010, and four shall be for a term ending October 7, 2011. Thereafter, terms of office shall be for three years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Vacancies shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first. At the first organizational meeting of the commission, the original eleven members shall draw lots to determine the length of the term each member shall serve.

All members of the commission shall be of sub-Saharan African origin, and shall be American citizens or lawful, permanent, resident aliens. Members shall be from urban, suburban, and rural geographical areas representative of sub-Saharan African people with a numerical and geographical balance of the sub-Saharan African population throughout the state.

The commission shall elect a chairperson, vice-chairperson, and other officers from among its members as it considers advisable. Six members constitute a quorum. The commission shall adopt rules governing its procedures. No action of the commission is valid without the concurrence of six members.

Members shall not be compensated for work as members of the commission.

Sec. 5743.08. Whenever the tax commissioner discovers any cigarettes

which are being shipped, or which have been shipped, or transported in violation of section 2927.023 of the Revised Code, or discovers cigarettes, subject to the taxes levied under section 5743.02, 5743.021, 5743.024, or 5743.026 of the Revised Code, and upon which the taxes have not been paid or that are held for sale or distribution in violation of any other provision of this chapter, the commissioner may seize and take possession of such cigarettes, which shall thereupon be forfeited to the state, and the commissioner, within a reasonable time thereafter shall sell or destroy the forfeited cigarettes. If the commissioner takes possession of cigarettes seized pursuant to section 3739.11 of the Revised Code, such cigarettes shall be forfeited to the state, and the commissioner shall destroy such cigarettes, except prior to the destruction of any such cigarettes, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes. If the commissioner sells cigarettes under this section, the commissioner shall use proceeds from the sale to pay the costs incurred in the proceedings. Any proceeds remaining after all costs have been paid shall be considered revenue arising from the taxes levied under this chapter. Seizure and sale shall not be deemed to relieve any person from the fine or imprisonment provided for violation of sections 5743.01 to 5743.20 of the Revised Code or from a civil penalty under section 3739.99 of the Revised Code. A sale shall be made where it is most convenient and economical. The tax commissioner may order the destruction of the forfeited cigarettes if the quantity or quality of the cigarettes is not sufficient to warrant their sale.

Sec. 5703.21. (A) Except as provided in divisions (B) and (C) of this section, no agent of the department of taxation, except in the agent's report to the department or when called on to testify in any court or proceeding, shall divulge any information acquired by the agent as to the transactions, property, or business of any person while acting or claiming to act under orders of the department. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the department.

(B)(1) For purposes of an audit pursuant to section 117.15 of the Revised Code, or an audit of the department pursuant to Chapter 117. of the Revised Code, or an audit, pursuant to that chapter, the objective of which is to express an opinion on a financial report or statement prepared or issued pursuant to division (A)(7) or (9) of section 126.21 of the Revised Code, the officers and employees of the auditor of state charged with conducting the audit shall have access to and the right to examine any state tax returns and state tax return information in the possession of the department to the extent that the access and examination are necessary for purposes of the audit. Any

information acquired as the result of that access and examination shall not be divulged for any purpose other than as required for the audit or unless the officers and employees are required to testify in a court or proceeding under compulsion of legal process. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the auditor of state.

(2) For purposes of an internal audit pursuant to section 126.45 of the Revised Code, the officers and employees of the office of internal auditing in the office of budget and management charged with conducting the internal audit shall have access to and the right to examine any state tax returns and state tax return information in the possession of the department to the extent that the access and examination are necessary for purposes of the internal audit. Any information acquired as the result of that access and examination shall not be divulged for any purpose other than as required for the internal audit or unless the officers and employees are required to testify in a court or proceeding under compulsion of legal process. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the office of internal auditing.

(3) As provided by section 6103(d)(2) of the Internal Revenue Code, any federal tax returns or federal tax information that the department has acquired from the internal revenue service, through federal and state statutory authority, may be disclosed to the auditor of state or the office of internal auditing solely for purposes of an audit of the department.

(4) For purposes of Chapter 3739. of the Revised Code, an agent of the department of taxation may share information with the division of state fire marshal that the agent finds during the course of an investigation.

(C) Division (A) of this section does not prohibit any of the following:

(1) Divulging information contained in applications, complaints, and related documents filed with the department under section 5715.27 of the Revised Code or in applications filed with the department under section 5715.39 of the Revised Code;

(2) Providing information to the office of child support within the department of job and family services pursuant to section 3125.43 of the Revised Code;

(3) Disclosing to the board of motor vehicle collision repair registration any information in the possession of the department that is necessary for the board to verify the existence of an applicant's valid vendor's license and current state tax identification number under section 4775.07 of the Revised Code;

(4) Providing information to the administrator of workers' compensation pursuant to sections 4123.271 and 4123.591 of the Revised Code;

(5) Providing to the attorney general information the department obtains under division (J) of section 1346.01 of the Revised Code;

(6) Permitting properly authorized officers, employees, or agents of a municipal corporation from inspecting reports or information pursuant to rules adopted under section 5745.16 of the Revised Code;

(7) Providing information regarding the name, account number, or business address of a holder of a vendor's license issued pursuant to section 5739.17 of the Revised Code, a holder of a direct payment permit issued pursuant to section 5739.031 of the Revised Code, or a seller having a use tax account maintained pursuant to section 5741.17 of the Revised Code, or information regarding the active or inactive status of a vendor's license, direct payment permit, or seller's use tax account;

(8) Releasing invoices or invoice information furnished under section 4301.433 of the Revised Code pursuant to that section;

(9) Providing to a county auditor notices or documents concerning or affecting the taxable value of property in the county auditor's county. Unless authorized by law to disclose documents so provided, the county auditor shall not disclose such documents;

(10) Providing to a county auditor sales or use tax return or audit information under section 333.06 of the Revised Code;

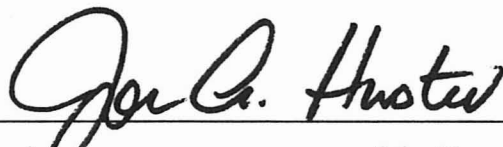
(11) Subject to section 4301.441 of the Revised Code, disclosing to the appropriate state agency information in the possession of the department of taxation that is necessary to verify a permit holder's gallonage or noncompliance with taxes levied under Chapter 4301. or 4305. of the Revised Code.

(12) Disclosing to the department of natural resources information in the possession of the department that is necessary to verify the taxpayer's compliance with division (A)(1), (8), or (9) of section 5749.02 of the Revised Code.

SECTION 2. That existing sections 5703.21 and 5743.08 of the Revised Code are hereby repealed.

SECTION 3. Division (B) of section 3739.05, division (D) of section 3739.07, and sections 3739.02, 3739.09, 3739.11, 3739.12, and 3739.99 of the Revised Code, as enacted by this act, shall take effect on the first day of the thirteenth month after the effective date of this act.

SECTION 4. Section 5703.21 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 562 and Sub. S.B. 150 of the 127th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.



Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed December 17, 2008

Approved January 6, 2009



Governor.

Sub. H. B. No. 500

7361

127th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Mark C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
6th day of January, A. D. 2009.

Jim B.

Secretary of State.

File No. 162

Effective Date April 7, 2009, certain sections
have a later effective date per
section 3 of this act.