

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 500

Representative Hughes

Cosponsors: Representatives Flowers, Yuko, Letson, Stebelton

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A B I L L

To enact sections 3739.01 to 3739.18 and 3739.99 of 1
the Revised Code to establish reduced ignition 2
propensity standards for cigarettes, to authorize 3
the State Fire Marshal to monitor and the Attorney 4
General and the State Fire Marshal to enforce such 5
standards, and to establish penalties for 6
violations. 7

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

Section 1. That sections 3739.01, 3739.02, 3739.03, 3739.04, 8
3739.05, 3739.06, 3739.07, 3739.08, 3739.09, 3739.10, 3739.11, 9
3739.12, 3739.13, 3739.14, 3739.15, 3739.16, 3739.17, 3739.18, and 10
3739.99 of the Revised Code be enacted to read as follows: 11

Sec. 3739.01. As used in this chapter: 12 13

(A) "Agent" means any person licensed by a county auditor or 14
the tax commissioner to purchase and affix adhesive or meter 15
stamps on packages of cigarettes pursuant to Chapter 5743. of the 16
Revised Code. 17

(B) "Brand family" means all styles of cigarettes sold under 18
the same trademark and differentiated from one another by means of 19

additional modifiers or descriptors, including, but not limited 20
to, "menthol," "lights," "kings," and "100s." "Brand family" 21
includes cigarettes sold under a brand name, whether that name is 22
used alone or in conjunction with any other word, trademark, logo, 23
symbol, motto, selling message, recognizable pattern of colors, or 24
other indicia of product identification identical or similar to, 25
or identifiable with, a previous brand of cigarettes. 26

(C) "Cigarettes" and "sale" have the same meanings as in 27
section 5743.01 of the Revised Code. 28

(D) "Manufacturer" means either of the following: 29

(1) Any entity or the entity's successor that, in any 30
location, manufactures or otherwise produces cigarettes, or causes 31
cigarettes to be manufactured or produced, that the entity intends 32
to be sold in this state, including, but not limited to, 33
cigarettes intended to be sold in the United States through an 34
importer; 35

(2) Any entity or the entity's successor that meets both of 36
the following criteria: 37

(a) Purchases cigarettes, in any location, from a second 38
entity that manufactures or otherwise produces cigarettes in any 39
location when that second entity does not intend that the 40
cigarettes it manufactures be sold in the United States; 41

(b) Intends to resell the cigarettes described in division 42
(D)(2)(a) of this section in the United States. 43

(E) "Repeatability" means the range of values within which 44
ninety-five per cent of the results of cigarette test trials from 45
a single laboratory will fall. 46

(F) "Retail dealer" has the same meaning as in division 47
(C)(1) of section 5743.01 of the Revised Code. 48

(G) "Quality control and quality assurance program" means the 49

procedures a laboratory implements to ensure both of the 50
following: 51

(1) Operator bias, systematic and nonsystematic 52
methodological errors, and equipment-related problems do not 53
affect cigarette test results. 54

(2) Testing repeatability remains within the required 55
repeatability values for all test trials used by the laboratory to 56
certify cigarettes in accordance with this chapter and is not 57
greater than 0.19. 58

(H) "Wholesale dealer" means either of the following persons: 59

(1) A person, other than a manufacturer, who sells cigarettes 60
to retail dealers or other persons for purposes of resale; 61

(2) A person who owns, operates, or maintains one or more 62
cigarette vending machines upon premises owned or occupied by any 63
other person. 64

Sec. 3739.02. Except as otherwise permitted in section 65
3739.12 of the Revised Code, no person shall sell or offer to sell 66
cigarettes in this state or sell or offer to sell cigarettes to 67
persons located in this state unless all of the following 68
requirements are met: 69

(A) The manufacturer of the cigarettes has the cigarettes 70
tested in accordance with the testing method specified in section 71
3739.03 of the Revised Code or the testing method approved by the 72
state fire marshal under section 3739.04 of the Revised Code. 73

(B) The cigarettes meet the performance standard specified 74
under division (B) of section 3739.03 of the Revised Code or the 75
performance standard approved by the state fire marshal under 76
section 3739.04 of the Revised Code. 77

(C) The manufacturer has marked the packaging of the 78
cigarettes as required in section 3739.06 of the Revised Code. 79

(D) The manufacturer files a written certification with the state fire marshal as required under section 3739.07 of the Revised Code. 80
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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. 83
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(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: 94
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(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. 97
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(2) The laboratory shall test the cigarettes on ten layers of filter paper. 103
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(3) Not more than twenty-five per cent of the cigarettes tested in a test trial shall exhibit full-length burns. 105
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(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, 107
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"test trial" means forty replicate tests for each type of 110
cigarette tested. 111

(D) The requirements described in division (B) of this 112
section shall not be construed to require additional cigarette 113
testing if a manufacturer tests cigarettes in accordance with the 114
requirements listed in that division for any other purposes other 115
than the purposes specified in that division. 116

(E) The state fire marshal may adopt any American society of 117
testing and materials standard used to measure the ignition 118
strength of cigarettes that takes effect after the effective date 119
of this section if the state fire marshal determines that that 120
subsequent standard does not result in a change in the percentage 121
of full-length burns exhibited by any tested cigarette when 122
compared to the percentage of full-length burns the same cigarette 123
would exhibit when tested using the American society of testing 124
and materials standard E2187-04 referenced in division (B)(1) of 125
this section and the performance standard specified in division 126
(B)(3) of this section. 127

Sec. 3739.04. (A) If a manufacturer manufactures a cigarette 128
that the state fire marshal determines cannot be tested in 129
accordance with division (B) of section 3739.03 of the Revised 130
Code, the state fire marshal shall require the manufacturer to 131
propose and submit a test method and performance standard for the 132
cigarette to the state fire marshal for approval. If the state 133
fire marshal determines that the test method and performance 134
standard proposed by the manufacturer are equivalent to the test 135
method and performance standard prescribed in division (B) of 136
section 3739.03 of the Revised Code, the state fire marshal shall 137
approve the proposed test method and performance standard, and the 138
manufacturer may use that test method and performance standard to 139
certify the cigarettes pursuant to section 3739.07 of the Revised 140

Code. 141

(B) If the state fire marshal determines that another state 142
has enacted reduced cigarette ignition propensity standards that 143
include a test method and performance standard that are the same 144
as those specified in section 3739.03 of the Revised Code and that 145
the officials responsible for implementing those standards have 146
determined that the alternative test method and performance 147
standard for a particular cigarette proposed by the manufacturer 148
under division (A) of this section satisfies the standards for 149
that state's law or regulation under a statute or regulation that 150
is comparable to this section, the state fire marshal shall 151
authorize the manufacturer to use that alternative test method and 152
performance standard to certify the manufacturer's cigarettes for 153
sale in this state. The state fire marshal is not required to 154
approve an alternative test method and performance standard 155
approved in another state if the state fire marshal demonstrates a 156
reasonable basis for why that alternative test method and 157
performance standard should not be approved under this section. 158

All other applicable requirements of this chapter apply to a 159
manufacturer authorized to use an alternative test method and 160
performance standard under this section. 161

Sec. 3739.05. (A) Each manufacturer shall maintain copies of 162
the reports of all tests conducted on all cigarettes offered for 163
sale in this state for a period of three years after a test is 164
concluded, and shall make copies of these reports available to the 165
state fire marshal and the attorney general upon receipt of a 166
written request from the state fire marshal or attorney general. 167

(B) No manufacturer shall fail to make these copies available 168
to the state fire marshal or attorney general within sixty days 169
after receiving such a request from the state fire marshal or the 170

attorney general. 171

Sec. 3739.06. (A) A manufacturer, prior to submitting the 172
written certification required under section 3739.07 of the 173
Revised Code, shall submit a marking that the manufacturer shall 174
place on each package of cigarettes that the manufacturer intends 175
to certify under that section. The marking shall be in eight-point 176
type or larger and include at least one of the following: 177

(1) Modification of the product universal product code to 178
include a visible mark printed at or around the area of the code 179
that consists of an alphanumeric or symbolic character permanently 180
stamped, engraved, embossed, or printed in conjunction with the 181
product's code; 182

(2) Any visible combination of alphanumeric or symbolic 183
characters permanently stamped, engraved, or embossed upon the 184
cigarette package or cellophane wrap; 185

(3) Printed, stamped, engraved, or embossed text that 186
indicates that the cigarettes meet the standards specified in 187
section 3739.03 of the Revised Code or approved under section 188
3739.04 of the Revised Code. 189

(B)(1) The manufacturer shall notify the state fire marshal 190
of the marking that the manufacturer selects and request approval 191
of that marking from the state fire marshal. Upon receipt of the 192
request, the state fire marshal shall approve or disapprove the 193
marking offered by the manufacturer. If a manufacturer elects to 194
submit either of the following markings, the state fire marshal 195
shall automatically approve that marking: 196

(a) Any marking used for cigarettes approved for sale in the 197
state of New York pursuant to the New York fire safety standards 198
for cigarettes; 199

(b) A marking consisting of only the letters "FSC", which 200

shall signify "fire standards compliant." 201

(2) If the state fire marshal fails to act within ten 202
business days after receiving a request for approval, the proposed 203
marking is considered approved. A manufacturer shall not modify 204
the marking approved by the state fire marshal unless the 205
modification has been approved in accordance with this division. 206

(C) A manufacturer shall include the approved mark on each 207
package of cigarettes that is certified under section 3739.07 of 208
the Revised Code to indicate compliance with the requirements of 209
this chapter. A manufacturer shall use only one marking for all of 210
the cigarettes the manufacturer sells and shall apply this marking 211
uniformly to all packages, including, but not limited to, packs, 212
cartons, cases, and brands sold by that manufacturer. 213

Sec. 3739.07. (A) Each manufacturer shall submit to the state 214
fire marshal a written certification that each type of cigarette 215
listed in the certification has been tested in accordance with 216
division (B) of section 3739.03 or section 3739.04 of the Revised 217
Code and each type of cigarette listed in the certification meets 218
the performance standard set forth in division (B) of section 219
3739.03 of the Revised Code or approved under section 3739.04 of 220
the Revised Code. 221

(B) A manufacturer shall include in the written certification 222
the manufacturer submits under division (A) of this section all of 223
the following information for each type of cigarette listed in the 224
certification: 225

(1) The brand or trade name on the cigarette package; 226

(2) The style of cigarette; 227

(3) The length of the cigarette in millimeters; 228

(4) The circumference of the cigarette in millimeters; 229

(5) The flavor of the cigarette, if applicable; 230

<u>(6) Whether the cigarette is filter or nonfilter;</u>	231
<u>(7) A description of the package;</u>	232
<u>(8) The marking the manufacturer uses that the state fire</u>	233
<u>marshal approved in accordance with section 3739.06 of the Revised</u>	234
<u>Code;</u>	235
<u>(9) The name, address, and telephone number of the</u>	236
<u>laboratory, if different than the manufacturer, that conducted the</u>	237
<u>test of the cigarette;</u>	238
<u>(10) The date that the testing of the cigarette occurred.</u>	239
<u>(C) A manufacturer shall make the written certification</u>	240
<u>required under division (A) of this section available to the</u>	241
<u>attorney general and the tax commissioner for the purposes of</u>	242
<u>ensuring compliance with this chapter.</u>	243
<u>(D) No manufacturer shall submit a false certification to the</u>	244
<u>state fire marshal.</u>	245
<u>Sec. 3739.08.</u> Each cigarette a manufacturer lists in a	246
<u>certification submitted pursuant to section 3739.07 of the Revised</u>	247
<u>Code for which the manufacturer uses lowered permeability bands in</u>	248
<u>the cigarette paper to comply with the testing requirements</u>	249
<u>described in division (B) of section 3739.03 of the Revised Code</u>	250
<u>shall have either of the following bands surrounding the tobacco</u>	251
<u>column:</u>	252
<u>(A) For cigarettes on which bands are not positioned by</u>	253
<u>design, at least two nominally identical bands, one of which shall</u>	254
<u>be located at least fifteen millimeters from the lighting end of</u>	255
<u>the cigarette;</u>	256
<u>(B) For cigarettes on which bands are positioned by design,</u>	257
<u>at least two bands, one of which is located at least fifteen</u>	258
<u>millimeters from the lighting end of the cigarette and the other</u>	259
<u>of which is located in either of following places:</u>	260

(1) For filtered cigarettes, ten millimeters from the filter 261
end of the tobacco column; 262

(2) For nonfiltered cigarettes, ten millimeters from the 263
labeled end of the tobacco column. 264

Sec. 3739.09. A manufacturer shall recertify each cigarette 265
the manufacturer certifies pursuant to section 3739.07 of the 266
Revised Code every three years. A manufacturer that certifies a 267
cigarette in accordance with that section and that subsequently 268
makes any change to that cigarette that alters the cigarette in 269
such a way that the manufacturer knows that the cigarette is 270
likely to no longer meet the standard specified in section 3739.03 271
of the Revised Code or the standard approved under section 3739.04 272
of the Revised Code shall not sell or offer to sell that cigarette 273
in this state until the manufacturer retests the cigarette in 274
accordance with the testing standards specified in section 3739.03 275
of the Revised Code or approved under section 3739.04 of the 276
Revised Code. The manufacturer shall maintain records of that 277
retesting in the same manner as the manufacturer maintains records 278
under section 3739.05 of the Revised Code. A manufacturer shall 279
not sell in this state any altered cigarette that does not meet 280
either the performance standard set forth in division (B)(3) of 281
section 3739.03 of the Revised Code or the performance standard 282
approved under section 3739.04 of the Revised Code. 283

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Sec. 3739.10. A manufacturer that certifies its cigarettes in 285
accordance with section 3739.07 of the Revised Code shall provide 286
a copy of the certifications to each wholesale dealer and agent to 287
which the manufacturer sells cigarettes and shall provide 288
sufficient copies of an illustration of the package marking used 289
by the manufacturer pursuant to section 3739.06 of the Revised 290
Code for each retail dealer to which the wholesale dealer or agent 291

sells cigarettes. Each wholesale dealer and agent who receives a 292
copy of a manufacturer's certification and copies of the 293
manufacturer's illustration shall provide to each retail dealer to 294
which the wholesale dealer and agent sell the manufacturer's 295
cigarettes a copy of the illustration provided to the wholesale 296
dealer or agent by the manufacturer. A wholesale dealer, agent, or 297
retail dealer shall allow the state fire marshal, the tax 298
commissioner, and the attorney general to inspect the markings of 299
cigarette packaging marked in accordance with section 3739.06 of 300
the Revised Code. 301

Sec. 3739.11. The state fire marshal may conduct testing on 302
cigarettes certified by a manufacturer pursuant to section 3739.07 303
of the Revised Code to determine whether the manufacturer complied 304
with the requirements of this chapter. The state fire marshal 305
shall conduct any such testing in accordance with division (B) of 306
section 3739.03 of the Revised Code. 307

Whenever the state fire marshal or a designee of the state 308
fire marshal discovers any cigarettes that do not include a mark 309
as required under section 3739.06 of the Revised Code, the state 310
fire marshal or the state fire marshal's designee may seize and 311
take possession of such cigarettes and shall give such cigarettes 312
to the tax commissioner, and such cigarettes thereupon shall be 313
forfeited to the state. The tax commissioner shall order the 314
destruction of any cigarettes forfeited pursuant to this section, 315
but prior to the destruction of any cigarette forfeited pursuant 316
to this section, the true holder of the trademark rights in the 317
cigarette brand shall be permitted to inspect the cigarette. 318

Any cigarettes sold or offered for sale that do not comply 319
with the performance standard required under section 3739.03 of 320
the Revised Code or approved under section 3739.04 of the Revised 321
Code are subject to forfeiture pursuant to section 5743.08 of the 322

Revised Code and shall be destroyed in accordance with that 323
section, except that prior to the destruction of any cigarette 324
forfeited pursuant to that section, the true holder of the 325
trademark rights in the cigarette brand shall be permitted to 326
inspect the cigarette. 327

In addition to any other remedy provided by law, if the state 328
fire marshal or attorney general determines that reasonable 329
evidence exists that a violation of this chapter has occurred, the 330
state fire marshal or attorney general may file an action in the 331
court of common pleas in the county where the alleged violation 332
occurred. The action may include a petition for injunctive relief 333
or to recover any costs or damages suffered by the state because a 334
violation of this chapter occurred, including enforcement costs 335
relating to the specific violation and attorney's fees. Each 336
violation of this chapter or the rules adopted pursuant to it 337
constitutes a separate civil violation for which the state fire 338
marshal or attorney general may obtain relief. 339

To enforce the requirements of this chapter, the attorney 340
general and the state fire marshal may examine the books, papers, 341
invoices, and other business records of any person in possession 342
or control of, or occupying any premises where cigarettes are 343
placed, stored, sold, or offered for sale, including the stock of 344
cigarettes on the premises, if the attorney general or state fire 345
marshal reasonably suspects that a violation of this chapter has 346
occurred. Every person in the possession or control of, or 347
occupying any premises where cigarettes are placed, sold, or 348
offered for sale shall give to the attorney general and the state 349
fire marshal the means, facilities, and opportunity for the 350
examinations authorized under this section. 351

The tax commissioner, in the regular course of conducting 352
inspections of wholesale dealers, agents, and retail dealers, as 353
authorized under section 5743.14 of the Revised Code, may inspect 354

any cigarette packaging to determine if the package is marked as 355
required under section 3739.06 of the Revised Code. If a package 356
containing cigarettes is not marked, the tax commissioner shall 357
notify the state fire marshal of this fact. 358

Sec. 3739.12. (A) Nothing in this chapter shall be construed 359
to prohibit any person or entity from manufacturing or selling 360
cigarettes that do not meet the requirements specified in this 361
chapter if the cigarette's packaging is or will be stamped for 362
sale in another state or is packaged for sale outside of the 363
United States, and that person or entity has taken reasonable 364
steps to ensure that those cigarettes will not be sold or offered 365
for sale to persons located in this state. 366

(B) The requirements of sections 3739.02 to 3739.10 of the 367
Revised Code shall not prohibit a wholesale dealer or retail 368
dealer of cigarettes from selling the dealer's inventory of 369
cigarettes in existence on or after the effective date of this 370
section if the dealer establishes both of the following: 371

(1) That the state tax stamps were affixed to the cigarettes 372
prior to the effective date of this section; 373

(2) That the inventory that was purchased prior to the 374
effective date of this section is comparable in quantity to the 375
inventory purchased during the same period of the prior year. 376

(C) Nothing in this chapter shall be construed to prohibit 377
the sale of cigarettes solely for the purpose of consumer testing. 378
For purposes of this division, "consumer testing" means an 379
assessment of cigarettes that is conducted by a manufacturer or 380
under the control and direction of a manufacturer for the purpose 381
of evaluating consumer acceptance of such cigarettes, utilizing 382
only the quantity of cigarettes that is reasonably necessary for 383
such assessment. 384

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 may adopt rules, pursuant to Chapter 119. of the Revised Code, as necessary to administer this chapter. 385
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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. 390
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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. 396
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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. 401
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Sec. 3739.17. In addition to any other immunities, defenses, and exclusions provided under the Revised Code, the state, the department of commerce, the division of the fire marshal within the department, and any employees of the state, the 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, the department, the division, or any employees of the state, department, or division are required to perform. In no event shall the state, 405
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department, division, or any employees of the state, department, 414
or division be liable to any person for any claims for injury or 415
damages, including, but not limited to, claims for indirect, 416
consequential, incidental, special, or punitive damages or claims 417
for lost profits, arising from the performance or nonperformance 418
of the duties specified in this chapter that the state, 419
department, division, or employees of the state, department, or 420
division are required to perform. 421

Sec. 3739.18. (A) A manufacturer shall pay the state fire 422
marshal a fee of one thousand dollars or an adjusted fee pursuant 423
to division (B) of this section for each type of brand family 424
included in a certification required under division (A) of section 425
3739.07 of the Revised Code. 426

(B) The state fire marshal may adjust the fee described in 427
division (A) of this section annually to ensure the fee is 428
sufficient to defray the actual costs of processing, testing, 429
enforcing, and overseeing the activities required under this 430
chapter. 431

(C) There is hereby created in the state treasury the reduced 432
cigarette ignition propensity and firefighter protection act 433
enforcement fund. The fund shall consist of all certification fees 434
submitted by manufacturers and any other moneys made available to 435
the state fire marshal specifically to support processing 436
certifications, testing, enforcing, and overseeing activities 437
conducted pursuant to this chapter. The state fire marshal shall 438
use the fund only for the activities specified in this division. 439

(D) There is hereby created in the state treasury the fire 440
prevention and public safety fund. Moneys collected from penalties 441
assessed under divisions (B) to (E) of section 3739.99 of the 442
Revised Code shall be deposited in to the fund. The state fire 443

marshal shall use this fund to support fire safety and prevention 444
programs. 445

Sec. 3739.99. (A) A manufacturer who violates division (B) of 446
section 3739.05 of the Revised Code shall be subject to a civil 447
penalty not to exceed ten thousand dollars for each day after the 448
sixtieth day that the manufacturer fails to comply with that 449
division. 450

(B) A manufacturer, wholesale dealer, agent, or any other 451
person other than a retail dealer who knowingly sells or offers to 452
sell cigarettes in violation of section 3739.02 of the Revised 453
Code is liable for a civil penalty not to exceed one hundred 454
dollars per each pack of such cigarettes sold or offered for sale, 455
provided that in no case shall the penalty against any such person 456
or entity exceed one hundred thousand dollars during any 457
thirty-day period. 458

(C) A retail dealer who knowingly violates section 3739.02 of 459
the Revised Code is liable for a civil penalty not to exceed one 460
hundred dollars per each pack of cigarettes sold or offered for 461
sale, provided that in no case shall the penalty against any 462
retail dealer exceed twenty-five thousand dollars for sales or 463
offers to sell during any thirty-day period. 464

(D) A manufacturer that is a corporation, partnership, sole 465
proprietorship, limited partnership, or association who knowingly 466
violates division (D) of section 3739.07 of the Revised Code is 467
liable for a civil penalty of at least seventy-five thousand 468
dollars, not to exceed two hundred fifty thousand dollars for each 469
such violation, in addition to any other penalty prescribed by 470
law. 471

(E) Any person who violates any provision of this chapter 472
other than section 3739.02, division (B) of section 3739.05, and 473
division (D) of section 3739.07 of the Revised Code, for a first 474

offense is liable for a civil penalty not to exceed one thousand 475
dollars for each violation and for a subsequent offense is liable 476
for a civil penalty not to exceed five thousand dollars for each 477
violation. 478

Section 2. Division (B) of section 3739.05, division (D) of 479
section 3739.07, and sections 3739.02, 3739.09, 3739.11, 3739.12, 480
and 3739.99 of the Revised Code, as enacted by this act, shall 481
take effect on the first day of the thirteenth month after the 482
effective date of this act. 483