

Pennsylvania Statutes
Title 72 – Taxation and Fiscal Affairs
Chapter 1 – The Fiscal Code

72 P.S. § 202-A. Definitions

Effective: December 22, 2025

As used in this article--

“Basic Cost of Cigarettes” shall mean the manufacturer’s list price to which shall be added the full face value of any tax which may be required by law, if not already included in the manufacturer’s list price. Manufacturer’s list price shall mean the gross price of the cigarettes from the manufacturer to the dealer in the quantities stated and shall include any Federal tax, freight or handling charges, if not already included.

“Board” shall mean the Board of Appeals in the Department of Revenue.

“Cigarettes” shall mean and include 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 or any other substance or material, excepting tobacco, and shall not include cigars. For purposes of licensing under this article, the term shall include little cigars.

“Cigarette Stamping Agent” shall mean any person who is licensed as such by the Department of Revenue for the purpose of affixing cigarette tax stamps to packages of cigarettes and transmitting the proper tax to the Commonwealth.

“Cigarette Tax Act” shall mean Article XII of the act of March 4, 1971 (P.L. 6, No. 2), known as the “Tax Reform Code of 1971.”

“Cigarette Vending Machine” shall mean any mechanical or electrical device from which cigarettes are dispensed for a consideration.

“Cost of Doing Business” shall mean that amount, as evidenced by the standards and methods of accounting regularly employed in the determination of costs for the purpose of Federal income tax reporting, for the total operation of the establishment for the previous twelve-month period and must include, but shall not be limited to, all direct and indirect costs such as product cost, freight charges, labor costs, cost of equipment, rental and maintenance expenses, cigarette licenses, preopening expenses, management fees, costs, rents, depreciation, selling costs, maintenance expenses, interest expenses, delivery costs, all types of licenses, all types of taxes, insurance, advertising and any central and regional administrative expenses.

“Cost of the Retailer” shall mean the basic cost of cigarettes to the retailer plus the cost of doing business by the retailer in excess of the basic cost of cigarettes, expressed as a percentage and applied to the basic cost of cigarettes. In the absence of filing of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be the per centum as provided in section 234-A of the basic cost of cigarettes to the retailer. When a retailer establishes a lesser cost of doing business than the presumptive per centum cost of doing business as provided in section 234-A, such lesser cost of doing business may be used to compute the cost of the retailer for a period of time no greater than twelve months, at the end of which time the cost to the retailer shall be computed using the presumptive per centum cost of doing business as provided in section 234-A, unless the retailer again establishes a lesser cost of doing business. Any fractional part of a cent in such cost per carton shall be rounded off to the next higher cent. In the case of any person who purchases cigarettes for sale at retail from any manufacturer of cigarettes without resort to a wholesaler as such, such person shall be deemed, for the purposes of this article, to be engaged in the sale of cigarettes as a stamping agent, wholesaler and retailer and as such shall be subject to all mark-up provisions of this article in the order named.

“Cost of the Stamping Agent” shall mean the basic cost of cigarettes plus the cost of doing business by the cigarette stamping agent in excess of the basic cost of cigarettes, expressed as a percentage and applied to the basic cost of cigarettes. Any fractional part of a cent in the cost per carton of cigarettes shall be rounded off to the next higher cent. In the case of sales at retail by cigarette stamping agents, the cost of the cigarette stamping agent shall be the same as the cost of the retailer. There shall be determined a separate cost of the cigarette stamping agent for sales to wholesale dealers and for sales to retail dealers. In the absence of filing of satisfactory proof of a lesser cost of doing business of the cigarette stamping agent making the sale, the cost of doing business shall be presumed to be one and seven-tenths per centum of the basic cost of cigarettes to the stamper for sales to wholesale dealers and, with respect to sales to retail dealers, the cost of the stamping agent plus the cost of the wholesaler. When a cigarette stamping agent establishes a lesser cost of doing business than the presumptive costs contained herein, such lesser cost of doing business may be used to compute the cost of the cigarette stamping agent for a period of time no greater than twelve months, at the end of which time the cost of the cigarette stamping agent shall be computed using the presumptive costs contained herein, unless the cigarette stamping agent again establishes a lesser cost of doing business.

“Cost of the Wholesaler” shall mean the basic cost of cigarettes to the wholesaler plus the cost of doing business by the wholesaler in excess of the basic cost of cigarettes, expressed as a percentage and applied to the basic cost of cigarettes. Any fractional part of a cent in the cost to the wholesaler per carton of cigarettes shall be rounded off to the next higher cent. There shall be determined a separate cost of the wholesaler for sale to retail dealers. In the absence of filing satisfactory proof of a lesser cost of doing business by the wholesaler with respect to sales to retail dealers, the cost of doing business shall be presumed to be four per centum of the basic cost of cigarettes. When a wholesaler establishes a lesser cost of doing business than the presumptive cost of doing business, such lesser cost of doing business may be used to compute

the cost of the wholesaler for a period of time no greater than twelve months, at the end of which time the cost of the wholesaler shall be computed using the presumptive four per centum cost of doing business, unless the wholesaler again establishes a lesser cost of doing business.

“Dealer” shall mean any cigarette stamping agency, wholesaler or retailer as these terms are more specifically defined herein. When used in this article, the term shall include all of the above-mentioned categories. Nothing contained in this article shall preclude any person from being a cigarette stamping agency, wholesaler or retailer: Provided, That such person meets the requirements for each category of dealer and that, where a person holds more than one license, the presumptive minimum price shall include all presumptive costs of doing business if the product is sold at retail.

“Department” shall mean the Department of Revenue of the Commonwealth.

“Franchisee” shall mean any person engaged in the sale of cigarettes who is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by the grantor of that right, for which a direct or indirect fee is paid, and whose franchisor franchises five or more retail outlets in this Commonwealth through which cigarettes are sold.

“Little cigars” shall mean any roll for smoking that weighs not more than four pounds per thousand, where the wrapper or cover is made of natural leaf tobacco or of any substance containing tobacco.

“Person” shall mean any individual, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership, conservator and any political subdivision of the Commonwealth or any other state. As applied to a partnership, unincorporated association or other joint venture, the term shall also mean the partners or members thereof and, as applied to a corporation, shall also mean all the officers and directors thereof.

“Retailer” shall mean:

(a) Any person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale to the ultimate consumer.

(b) Any person who, in the usual course of business, owns, leases or otherwise operates one or more vending machines for the purpose of sale of cigarettes to the ultimate consumer.

(c) Any person who buys, sells, transfers or deals in cigarettes for profit and is not licensed as a cigarette stamping agency or wholesaler under this article.

“Sale” and “Sell” shall mean any transfer for a consideration, in exchange, as barter, as a gift, as an offer for sale or in distribution, in any manner or by any means whatsoever.

“Secretary” shall mean the Secretary of Revenue of the Commonwealth.

“Vending Machine Operator” shall mean any person who places or services one or more cigarette vending machines whether owned, leased or otherwise operated by him at locations from which cigarettes are sold to the ultimate consumer. The owner or tenant of the premises upon which a vending machine is placed shall not be considered a vending machine operator if his sole remuneration therefrom is a flat rental fee or commission based upon the number or value of cigarettes sold from the machine, unless the owner or tenant actually owns the vending machine or leases the vending machine under an agreement whereby the profits from the sale of the cigarettes directly inure to his benefit.

“Wholesaler” shall mean and include:

(a) Any person who, in the usual course of business, purchases cigarettes from a cigarette stamping agent or other wholesaler and receives, stores, sells and distributes within this Commonwealth at least seventy-five per centum of all such cigarettes purchased by him or her to retail dealers or wholesale dealers or any combination who shall buy the cigarettes from him or her for the purpose of resale to the ultimate consumer: Provided, That such person maintains an established place of business for the receiving, storage and distribution of cigarettes.

(b) Any person who is engaged in the business of distributing cigarettes through vending machines to the ultimate consumer by means of placing the cigarette vending machines, owned or leased by him, in various outlets within this Commonwealth and who pays to the owner or lessee of the premises a commission or rental for the use of the premises: Provided, That such vending machine operator shall operate at least ten vending machines: Provided further, That the vending machine operator meets all the other requirements for licensing of wholesalers under this article, including maintaining an established place of business for the receiving, storage and distribution of cigarettes.

(c) Any person, including a franchisee, who owns and operates no less than five retail outlets in this Commonwealth, having one hundred per centum common ownership, who purchases cigarettes from a cigarette stamping agency or another wholesaler for resale to the ultimate consumer: Provided, That such person maintains complete and accurate records of all purchases and sales in his or her main office and also in the retail outlet.

72 P.S. § 206-I. Electronic Nicotine Delivery System Directory

Effective: February 20, 2026

(a) Intent.--It is the intent of the General Assembly under this section to establish effective tools for use by the department and the Attorney General to prevent and deter the sale of electronic

cigarettes that contain nicotine in the Commonwealth which have not been certified under subsection (b). To accomplish this, this section requires annual manufacturer and product certifications and a public directory listing all certified manufacturers and electronic cigarettes that contain nicotine. In addition, this section authorizes the department and the Attorney General, and their agents, to perform regular inspections of businesses who sell or store electronic cigarettes that contain nicotine, inspect the books and records of the persons and impose penalties for noncompliance. This section requires the Attorney General to annually report to the General Assembly on the effectiveness of the enforcement activities taken under this section, to identify all resources used in the enforcement activities and their costs and to set the level consistent with any enforcement activities to the amount budgeted by the General Assembly for the enforcement activities.

(b) Certification.--

(1) Within 60 days of the effective date of this subsection and annually thereafter, every manufacturer of electronic cigarettes that contain nicotine that are sold for retail sale in this Commonwealth, whether directly or through an importer, wholesaler, retailer or similar intermediary or intermediaries, shall execute and deliver to the Attorney General a certification, under penalty of perjury on a form and in the manner prescribed by the Attorney General, that the manufacturer is compliant with this section, agrees to continue to comply with this section, has posted the surety bond required by subsection (k) and that, for each electronic cigarette that contains nicotine:

(i) the manufacturer has received a marketing granted order for the electronic cigarette that contains nicotine from the FDA in accordance with 21 U.S.C. § 387j (relating to application for review of certain tobacco products);

(ii) the manufacturer has submitted a timely filed premarket tobacco product application for the electronic cigarette that contains nicotine to the FDA under 21 U.S.C. § 387j and the application either remains under review by the FDA or has received a denial order that has been and remains stayed by the FDA or court order, rescinded by the FDA or vacated by a court; or

(iii) the manufacturer was not required to submit an additional premarket tobacco product application for the electronic cigarette that contains nicotine because the electronic cigarette that contains nicotine reflects changes to the name, brand style or packaging of an electronic cigarette that contains nicotine that is covered under subparagraph (i) or (ii).

(2) To the extent that 21 U.S.C. § 387j is amended or the Federal Government issues subsequent regulations, official guidance or a formal policy statement changing compliance requirements or standards for an electronic cigarette that contains nicotine to become federally compliant, each manufacturer of an electronic cigarette that contains

nicotine that is sold for retail sale or to a consumer in this Commonwealth shall submit documentation to the Attorney General substantiating compliance with the new Federal requirements or standards within 30 days of the date compliance is mandated. Failure to substantiate compliance with a new Federal mandate shall be grounds for removal of the manufacturer and its electronic cigarettes that contain nicotine from the directory established under this section.

(c) Declaration.--The form prescribed by the Attorney General under subsection (b) must require each manufacturer to:

(1) Specify the name under which the manufacturer transacts or intends to transact business, the address of the location of the manufacturer's principal place of business, the manufacturer's email address and the brand name, category, such as e-liquid, power unit, device, e-liquid cartridge, e-liquid pod or disposable, product name and flavor of each electronic cigarette that contains nicotine that is sold in this Commonwealth.

(2) For electronic cigarettes that contain nicotine manufactured outside of the United States, provide a complete list of its importers into the United States who sell the products into the Commonwealth and the brand families sold by the importers, including the importer's name, address, contact name, phone number and email address at which the importer can be reached, and a declaration signed by each importer on a form prescribed by the Attorney General. The declaration shall state the following:

(i) The importer accepts joint and several liability with the manufacturer for payment of civil penalties, costs, expenses and attorney fees related to this section.

(ii) The importer consents to personal jurisdiction in this Commonwealth for the purposes of claims by the Commonwealth for payment of civil penalties, costs, expenses and attorney fees.

(iii) The importer has appointed an agent for service of process in this Commonwealth according to the same requirements under this section.

(iv) The importer holds a valid permit under 26 U.S.C. § 5713 (relating to permit).

(v) The importer agrees to provide any information required under this section.

(d) Content.--Each annual certification form required by subsections (b) and (c) shall be accompanied by:

(1) A copy of:

- (i) the marketing granted order issued by the FDA under 21 U.S.C. § 387j;
- (ii) the acceptance letter issued by the FDA under 21 U.S.C. § 387j for a timely filed premarket tobacco product application; or
- (iii) a document issued by the FDA or by a court confirming that the premarket tobacco product application has received a denial order that has been and remains stayed by the FDA or court order, rescinded by the FDA or vacated by a court.

(2) A payment of \$2,000 for each brand family of electronic cigarette that contains nicotine, plus \$200 for each brand style of the product, the first time a manufacturer submits a certification form for that brand family of electronic cigarette that contains nicotine and a payment of \$1,000 annually thereafter for each brand family of electronic cigarette that contains nicotine, plus \$100 for each brand style of the product.

(e) Confidentiality.--Except to the extent that the FDA or the manufacturer has made the information public or a third party disclosed the information and the manufacturer has not taken legal action to prevent further disclosure, the information submitted by the manufacturer under subsections (d)(1) and (h) shall be considered confidential commercial or financial information for purposes of the act of February 14, 2008 (P.L. 6, No. 3), known as the Right-to-Know Law. The manufacturer may redact confidential commercial or financial information provided under subsections (d)(1) and (h). The Attorney General or department shall not disclose the information except as required or authorized by law.

(f) Notification.--A manufacturer required to submit a certification form under subsections (b) and (c) shall notify the Attorney General within 30 days of any material change to the certification form, including the issuance or denial of a marketing order by the FDA under 21 U.S.C. § 387j, or any other order or action by the FDA or any court that affects the ability of the electronic cigarette that contains nicotine to be introduced or delivered into interstate commerce for commercial distribution in the United States.

(g) Directory.--Within 120 days from the effective date of this subsection,³ the Attorney General shall maintain and make available on the Attorney General's publicly accessible Internet website a directory that lists all manufacturers of electronic cigarettes that contain nicotine, brand names, categories, such as e-liquid, e-liquid cartridge, e-liquid pod or disposable, product names and flavors for which certification forms have been submitted and approved by the Attorney General and shall update the directory at least monthly to ensure accuracy. The Attorney General shall establish a process to provide licensed retailers and wholesalers notice of the initial publication of the directory and changes made to the directory in the prior month.

(h) Compliance.--The Attorney General may require a manufacturer to submit additional information as necessary to determine compliance with this section, including, but not limited to, samples of the packaging or labeling of each brand family and style, each stock-keeping unit

number for each brand style included in the certification for listing on the directory, copies of invoices and other sales records for each brand family of electronic cigarettes that contain nicotine sold in this Commonwealth, and any documents related to the manufacturer's premarket tobacco application, to determine whether a manufacturer is in compliance with this section. The Attorney General may require manufacturers to provide a sworn affidavit as to the authenticity of any documents submitted by the manufacturer in support of its certification or in response to a request by the Attorney General.

(i) Nondisclosure.--A manufacturer or the manufacturer's electronic cigarette that contains nicotine may not be included or retained in the directory if the Attorney General determines that any of the following apply:

- (1) The manufacturer failed to provide a complete and accurate certification as required by subsection (b).
- (2) The manufacturer submitted a certification that does not comply with the requirements of subsections (b), (c) and (d)(1).
- (3) The manufacturer failed to include with its certification the payment required by subsection (d)(2).
- (4) If the manufacturer is located outside of the United States, the manufacturer failed to provide the information and declaration required by subsection (c)(2).
- (5) The manufacturer failed to provide the surety bond required by subsection (k) or misrepresented any of the information required by the surety bond.
- (6) The information provided by the manufacturer in its certification is determined by the Attorney General to contain false information or material misrepresentations or omissions.

(j) Denial.--The Attorney General may deny a manufacturer's certification if any of the following apply:

- (1) The manufacturer sold products in this Commonwealth required to be certified under this section during a period when either the manufacturer or the brand family had not been certified and listed on the directory.
- (2) The manufacturer was denied listing or was involuntarily removed from another state's electronic cigarette directory and the agency decision is final and no longer subject to appeal, if the other state's directory has requirements similar to those of the directory under this section.

- (3) The manufacturer failed to provide any information requested under subsection (h).
- (4) The information provided by the manufacturer in its certification or under subsection (h) is determined to contain false information or material misrepresentations or omissions.
- (5) The manufacturer failed to submit complete and accurate reports as required by the Prevent All Cigarette Trafficking Act of 2009 (Public Law 111-154, 124 Stat. 1087).
- (6) The manufacturer has been convicted of violating 18 Pa.C.S. § 6305 (relating to sale of tobacco products).
- (7) The manufacturer failed to adhere to the Federal nicotine packaging standard required by 15 U.S.C. § 1472a (relating to special packaging for liquid nicotine containers). For purposes of this paragraph, all electronic cigarettes constitute “liquid nicotine containers” under the Federal nicotine packaging standard.

(k) Surety bond.--

- (1) Manufacturers seeking certification to sell electronic cigarettes that contain nicotine shall submit to the Attorney General at the time of certification a surety bond payable to the Commonwealth in an amount fixed by the Attorney General of at least \$50,000.
- (2) The required surety bond:
 - (i) Shall be subject to execution under paragraph (4).
 - (ii) Shall be conditioned on the manufacturer’s compliance with the requirements of this section.
 - (iii) Shall be posted by a surety bond company located within this Commonwealth and approved by the Attorney General.
 - (iv) Must state that the manufacturer will faithfully comply with the provisions of this article during the effective period of the certification.
- (3) The Attorney General may require a manufacturer to furnish a bond in excess of \$50,000, as necessary to ensure the manufacturer’s compliance with this section. For the purpose of determining whether an existing bond is sufficient, the Attorney General may, by written notice, require a manufacturer to furnish an inventory by brand and cost, financial statement and additional records in the form as the Attorney General may prescribe to determine whether additional bonding is warranted when compared to the risk of unrecouped costs of destruction of contraband to the Commonwealth. Upon

failure of a manufacturer to furnish an inventory by brand and cost, financial statement or additional requested records within 30 days of written notice, or upon a determination that the manufacturer misrepresented the information or the volume of its product shipped into or within the United States, the Attorney General may deny listing or remove the manufacturer from the directory.

(4) A surety on a manufacturer's bond shall be liable up to the amount of the bond, and the Commonwealth may execute on the surety bond:

(i) for costs of destruction of the manufacturer's product to the extent it exceeds the amounts recovered from the person from whom such product is confiscated or a surety for the person; and

(ii) to recover civil penalties, costs and fees assessed against the manufacturer under this section.

(5) A surety on a bond furnished by a manufacturer as provided in this section shall be released and discharged from liability to the Commonwealth accruing on the bond after expiration of 60 days from the date upon which the surety shall have lodged with the Attorney General a written request to be released and discharged. This paragraph shall not operate to relieve, release or discharge the surety from liability already accrued or which shall accrue before the expiration of the 60-day period. The Attorney General shall, upon receiving a request, notify the manufacturer who furnished the bond. Unless the manufacturer, on or before the expiration of the 60-day period, files with the Attorney General a new bond, with corporate surety approved by and acceptable to the Attorney General, the Attorney General shall deny or remove the listing of the manufacturer. If a new bond is furnished by a manufacturer, the Attorney General shall cancel and surrender the old bond of the manufacturer as soon as the bond is satisfied the new bond provides adequate security for the manufacturer's obligations.

(f) Removal from directory.--The Attorney General shall provide manufacturers notice and an opportunity to cure deficiencies before denying a certification or removing manufacturers or products from the directory. The following shall apply:

(1) The Attorney General may not remove the manufacturer or its products from the directory until at least 30 business days after the manufacturer has been given notice of an intended action stating the reasons for removal. Notice shall be sufficient and deemed immediately received by a manufacturer if the notice is sent either electronically or by facsimile to an email address or facsimile number provided by the manufacturer in its most recent certification filed under subsections (a), (b), (c) and (d).

(2) The manufacturer of electronic cigarettes that contain nicotine shall have 30 business days from the date of service of the notice of the Attorney General's intended action to

cure the deficiencies or otherwise establish that the manufacturer or its products should be included in the directory.

(m) Returns.--If a product is removed from the directory, each retailer, wholesaler and importer shall have 30 business days from the day such product is removed from the directory to sell the product or remove the product from its inventory and return the product to the manufacturer for disposal. Manufacturers shall accept returns of and provide refunds for such products and shall dispose of such products in compliance with all Federal, State and local environmental laws and regulations. After 30 business days following removal from the directory, the product identified in the notice of removal is contraband, may not be purchased or sold for retail sale in this Commonwealth and is subject to seizure, forfeiture and destruction. The cost of destruction shall be borne by the person from whom the product is confiscated, except that no product may be seized from a consumer who has made a bona fide purchase of the product. The department and the Attorney General 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.

(n) Prohibition.--Except as provided in paragraphs (1) and (2), within 120 days of the effective date of this subsection or on the date that the Attorney General first makes the directory available for public inspection on its official website, whichever is later, electronic cigarettes that contain nicotine not included in the directory under subsection (g) may not be sold for retail sale in this Commonwealth either directly or through an importer, wholesaler, retailer or similar intermediary or intermediaries. The following shall apply:

(1) Each retailer shall have 120 days from the date that the Attorney General first makes the directory available for inspection on its publicly accessible Internet website to sell products that were in its inventory and not included in the directory or to remove those products from its inventory.

(2) Each wholesaler shall have 120 days from the date that the Attorney General first makes the directory available for inspection on its publicly accessible Internet website to remove the products intended for retail sale in this Commonwealth from its inventory.

(3) After 120 days following publication of the directory, electronic cigarettes that contain nicotine not listed in the directory and intended for retail sale in the Commonwealth are contraband and are subject to seizure, forfeiture and destruction, and may not be purchased or sold for retail sale in this Commonwealth. The cost of destruction shall be borne by the person from whom the products are confiscated, except that no products may be seized from a consumer who has made a bona fide purchase of such product. The department and the Attorney General may store and dispose of the seized products as appropriate, in accordance with Federal, State and local laws pertaining to storage and disposal of the products.

(4) Each wholesaler possessing electronic cigarettes that contain nicotine not listed in the directory and held solely for sale in a jurisdiction outside of this Commonwealth shall physically separate the electronic cigarettes from any electronic cigarettes held for sale in this Commonwealth. A wholesaler's ordering system shall have measures designed to prevent sale within this Commonwealth of electronic cigarettes that contain nicotine not listed in the directory.

(o) Penalties.--The following penalties shall apply to violations of this section:

(1) A retailer, wholesaler or importer who sells or offers for sale an electronic cigarette that contains nicotine for retail sale in this Commonwealth that is not included in the directory shall be subject to:

(i) A civil penalty of \$500 for each product offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory. The Attorney General, an agent or the department may negotiate the civil penalty for a first offense to an amount sufficient to cover the costs of destruction of contraband electronic cigarettes that contain nicotine, provided that the retailer demonstrates compliance with removal or proper listing within 30 business days of the violation notice. Nothing in this section shall limit the Attorney General or department from seeking the full penalty due, absent an agreement with the violator stating otherwise.

(ii) For a second violation within a 12-month period, a civil penalty of at least \$750 but not more than \$1,000 per day per product, and the license of the licensee shall be suspended for at least 14 days.

(iii) For a third violation within a 12-month period, a civil penalty of at least \$1,000 but not more than \$1,500 per day per product, and the license of the licensee shall be revoked.

(2) A manufacturer whose electronic cigarettes that contain nicotine are not listed in the directory and are sold for retail sale in this Commonwealth, whether directly or through an importer, wholesaler, retailer or similar intermediary or intermediaries, shall be subject to a civil penalty of \$1,000 for each product offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed in the directory. Any manufacturer that falsely represents any information required by subsection (b), (c) or (g) commits a misdemeanor of the third degree for each false representation.

(3) A person, including any manufacturer, importer, wholesaler or retailer, who sells or offers to sell an electronic cigarette that contains nicotine to an importer or dealer listed

in the tobacco noncompliance database shall be subject to a civil penalty of \$500 for each product sold to or offered to be sold to the person. A consumer who has made a bona fide purchase of the product shall not be subject to the penalties in this section.

(4) A person, including any manufacturer, importer, wholesaler or retailer, who purchases for retail sale in this Commonwealth an electronic cigarette that contains nicotine from a person listed in the tobacco noncompliance database shall be subject to a civil penalty of \$500 for each product purchased. A consumer who has made a bona fide purchase of such product shall not be subject to the penalties in this section.

(5) A person, including any manufacturer, importer, wholesaler or retailer that violates both paragraphs (3) and (4) related to the same product shall be subject to the penalties provided under this section only once and not compounded or consecutively.

(6) A violation of this section shall be deemed to be an unfair or deceptive act or practice in violation of the act of December 17, 1968 (P.L. 1224, No. 387), known as the Unfair Trade Practices and Consumer Protection Law.

(7) For purposes of this subsection, the term “**each product**” shall mean each individual electronic cigarette that contains nicotine offered for sale, notwithstanding whether the electronic cigarette that contains nicotine bears the same stock-keeping unit number.

(8) A wholesaler licensee who, after stating that a product not listed in the directory was intended to be sold outside of this Commonwealth, is found to have sold the unlisted product to a retailer in this Commonwealth shall be subject to additional penalty of \$500 per each unlisted product sold to the retailer. Paragraph (5) shall not be construed to apply to this paragraph.

(9) In an action to enforce this section, the Commonwealth shall be entitled to recover costs, including the costs of investigation, expert witness fees and reasonable attorney fees.

(10) Contraband identified under this article shall be destroyed by the department or the Attorney General. The following apply to the cost of destruction:

(i) Costs associated with the destruction of contraband shall be borne by the person from which the contraband is confiscated.

(ii) If there is no bond for the department to draw on, or if the bond amount is insufficient to cover the costs associated with the destruction of the identified contraband, the costs shall be assessed against the person from which the contraband is confiscated. Costs assessed under this subparagraph shall be added to the amount of the tax liability administered by the department as a cost of

collection and may be collected in any way authorized for collection of the underlying tax.

(p) Tobacco Products Administration Cash Fund.-- All amounts received or recovered by the department or the Attorney General under this section, including, but not limited to, costs of investigation, costs of destruction, certification fees, product testing costs, expert witness fees, attorney fees, civil penalties and amounts recovered on surety bonds, shall be remitted to the State Treasurer for credit to the Tobacco Products Administration Cash Fund and used for administration and enforcement of this section.

(q) Enforcement.--To enforce the provisions of this section, the department or the Attorney General, or their designees, may examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises in the Commonwealth where electronic cigarettes that contain nicotine are placed, stored, sold or offered for sale, including the stock of electronic cigarettes that contain nicotine on the premises. Each person in the possession, control or occupancy of any premises where electronic cigarettes that contain nicotine are placed, sold or offered for sale shall give the department or the Attorney General, or their designees, including any Commonwealth or local enforcement officer, the means, facilities and opportunity for the examinations authorized by this section. A person that willfully refuses to cooperate with or permit an examination as provided under this section shall be subject to the criminal penalties, fines and costs provided under section 1214-A of the Tax Reform Code of 1971.

(r) Violations.--A person who violates this section shall be subject to the criminal penalties, fines and costs otherwise provided by this article. The Commonwealth may seek injunctive relief or other order to prevent a threatened or actual violation of, or to ensure compliance by, a person with this section.

(s) Compliance.--Each retailer, wholesaler, importer and any similar intermediary that sells or distributes electronic cigarettes that contain nicotine in this Commonwealth shall be subject to unannounced compliance checks. The Attorney General shall publish the results of all compliance checks on a publicly accessible Internet website at least annually.

(t) Database.--The Attorney General shall maintain, provide via electronic mail to each licensed wholesaler that has provided the Attorney General with a current and valid electronic mail address and publish on its publicly accessible Internet website a tobacco noncompliance database listing every person, including any manufacturer, importer, wholesaler or retailer that has three or more violations under this section within the preceding 12 months. The person shall remain listed on the tobacco noncompliance database through the end of the 12th full calendar month after the person's most recent violation under this section.

(u) Agent for service of process.--Any nonresident manufacturer of electronic cigarettes that contain nicotine shall, as a condition precedent to being included in the directory created in this

section, appoint and continually engage without interruption the services of an agent in the Commonwealth to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this section, may be served in any manner authorized by law. Service by certified mail on the agent shall constitute legal and valid service of process on the manufacturer. The manufacturer shall provide the name, address, telephone number, email address and proof of the appointment and availability of such agent to the department and Attorney General. The following shall apply:

(1) The manufacturer shall provide notice to the department and Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof, as required by the department and Attorney General, of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. If an agent terminates an agency appointment, the manufacturer shall notify the department and Attorney General of the termination within five calendar days and shall include proof, as required by the department and Attorney General, of the appointment of a new agent.

(2) Any manufacturer whose electronic cigarettes that contain nicotine are sold in this Commonwealth without the appointment of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State under this subsection shall not satisfy the condition precedent required to be included or retained in the directory.

(v) Foreign importers.--In the case of a manufacturer located outside of the United States, each importer into the United States of the manufacturer's brand families that are sold in this Commonwealth shall bear joint and several liability with the manufacturer for payment of all civil penalties, fees, costs and attorney fees due under this section.

(w) Determination.--A determination by the Attorney General to not include or to remove from the directory a manufacturer or a product shall be subject to review by the filing of a petition for review with Commonwealth Court within 21 days of the determination. No party other than the manufacturer may challenge a determination by the Attorney General.

(x) Resale.--No retailer shall purchase electronic cigarettes that contain nicotine for resale except from a licensed wholesaler operating with a valid license issued in accordance with section 1222-A⁷ of the Tax Reform Code of 1971.

(y) Regulations.--The department or the Attorney General may promulgate rules necessary to effectuate the purposes of this section.

(z) Report.--Beginning July 1 after the effective date of this subsection⁸ and annually thereafter, the Attorney General 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 in accordance with this section.

(aa) Publication.--The department and the Attorney General shall share documents and information obtained pursuant to this section with other Federal, State and local agencies as necessary to enforce this section, similar statutes of other states or localities and other tobacco-related laws and regulations.