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STATE AUDITORS OFFICE

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

JASON KANDER
SECRETARY OF STATE
STATE OF MISSOURI

ELECTIONS DIVISION
(573) 751-2301

16-110

September 17, 2015

The Honorable Nicole Galloway
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Edward Greim regarding a proposed statutory amendment to Chapters 210, 196 & 149, version 12 (2016-110)

Dear Auditor Galloway:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Revised Statutes of Missouri filed by Edward Greim on September 17, 2015.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

Jason Kander

Jason Kander

cc: Hon. Chris Koster
Sheri Hoffman
Barbara Wood

16-110

County _____
Page _____

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

INITIATIVE PETITION

To the Honorable Jason Kander, Secretary of State for the State of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or city of St. Louis), respectfully order that the following proposed law shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 8th day of November, 2016, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or city of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

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SEP 17 AM 8:48

(INSERT BALLOT TITLE HERE)

CIRCULATOR'S AFFIDAVIT STATE OF MISSOURI, COUNTY OF _____

I, _____, being first duly sworn, say (print or type names of signers)

NAME (Signature)	DATE SIGNED	REGISTERED VOTING ADDRESS (Street) (City, Town or Village)	ZIP CODE	CONGR. DIST.	NAME (Printed or Typed)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County.

FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY.

I am at least 18 years of age. I do □ do not □ (check one) expect to be paid for circulating this petition. If paid, list the payer _____

_____
Signature of Affiant (Person obtaining signatures)

_____
Address of Affiant

_____
Printed Name of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D. 201__.

_____
Signature of Notary

Notary Public (Seal)

_____
Address of Notary

My commission expires _____

16-110

NOTICE: You are advised that the proposed law changes, repeals, or modifies by implication, or may be construed to change, repeal or modify by implication, the following provisions of the Missouri Revised Statutes — Sections 66.340, 66.350, 149.015, 149.021, 149.065, 149.160, 196.1003, 210.102, and 210.320. The proposed law enacts two new sections, to be known as sections 149.017 and 149.161.

Be it enacted by the people of the State of Missouri:

Sections 210.102 and 196.1003 of the Revised Statutes of Missouri are amended and sections 149.017 and 149.161 are enacted, to read as follows:

210.102. 1. Sections 149.017 and 149.161, and certain amendments to 196.1003 and 210.102, shall be referred to as the Early Childhood Health and Education Act, with the purpose of supporting and improving early childhood health and education through regulation of tobacco manufacturers and sellers. This Act:

(1) Creates the Early Childhood Health and Education Trust Fund in order to support and improve early childhood health and education across the state;

(2) Reforms the Coordinating Board for Early Childhood to administer the Early Childhood Health and Education Trust Fund and provide grants that support and improve early childhood health and education; and

(3) Funds the Early Childhood Health and Education Trust Fund through increased regulations on tobacco manufacturers and sellers.

All of the provisions of this act are severable. If any provision of this act is found by a court of competent jurisdiction to be unconstitutional or unconstitutionally enacted, the remaining provisions of this act shall be and remain valid and in full force and effect.

RECEIVED 2015 SEP 17 AM 8:48

2. It shall be the duty of the Missouri children's services commission to:

(1) Make recommendations which will encourage greater interagency coordination, cooperation, more effective utilization of existing resources and less duplication of effort in activities of state agencies which affect the legal rights and well-being of children in Missouri;

(2) Develop an integrated state plan for the care provided to children in this state through state programs;

(3) Develop a plan to improve the quality of children's programs statewide. Such plan shall include, but not be limited to:

(a) Methods for promoting geographic availability and financial accessibility for all children and families in need of such services;

(b) Program recommendations for children's services which include child development, education, supervision, health and social services;

(4) Design and implement evaluation of the activities of the commission in fulfilling the duties as set out in this section;

(5) Report annually to the governor with five copies each to the house of representatives and senate about its activities including, but not limited to the following:

(a) A general description of the activities pertaining to children of each state agency having a member on the commission;

(b) A general description of the plans and goals, as they affect children, of each state agency having a member on the commission;

(c) Recommendations for statutory and appropriation initiatives to implement the integrated state plan;

(d) A report from the commission regarding the state of children in Missouri.

[2.]3. For years ending on or before December 31, 2016, [There is hereby established within the children's services commission] the "Coordinating Board for Early Childhood", which shall constitute a body corporate and politic, shall be established within the children's services commission, and shall include but not be limited to the following members:

(1) A representative from the governor's office;

(2) A representative from each of the following departments: health and senior services, mental health, social services, and elementary and secondary education;

(3) A representative of the judiciary;

(4) A representative of the family and community trust board (FACT);

(5) A representative from the head start program;

(6) Nine members appointed by the governor with the advice and consent of the senate who are representatives of the groups, such as business, philanthropy, civic groups, faith-based organizations, parent groups, advocacy organizations, early childhood service providers, and other stakeholders. The coordinating board may make all rules it deems necessary to enable it to conduct its meetings, elect its officers, and set the terms and duties of its officers. The coordinating board shall elect from amongst its members a chairperson, vice chairperson, a secretary-reporter, and such other officers as it deems necessary. Members of the board shall serve without compensation but may be reimbursed for actual expenses necessary to the performance of their official duties for the board.

4. Beginning on January 1, 2017, the coordinating board for early childhood, which shall constitute a body corporate and politic, shall be established within the department of elementary and secondary education and shall include the following members:

(1) The director or the director's designee from each of the following departments: health and senior services, mental health, and

16-110

social services;

(2) The commissioner or the commissioner's designee from the department of elementary and secondary education;

(3) Two members of the Missouri general assembly. One member shall be the chairman of the joint committee on education. One member shall be a member of the joint committee on education, shall be from a different party and different legislative chamber than the chairman of the joint committee on education, and shall be appointed by the elected leader, either the speaker of the house of representatives or the president pro tempore of the senate, of the member's legislative chamber;

(4) The director of the Missouri head start-state collaborative office;

(5) Six citizens, representing each of the following areas: early childhood education and development providers, local Head Start agencies, higher education, business, faith, and medicine. The Governor shall appoint, with the advice and consent of the senate, the three citizens representing the areas of medicine, business, and higher education. The state board of education shall appoint the citizens representing the areas of early childhood education and development providers, local Head Start agencies, and faith.

Citizens appointed under subdivision (5) shall serve a term of three years. Such citizens shall be eligible to serve two terms. Such citizens that serve a partial term of less than eighteen months shall be eligible to serve the partial term and two full terms. Such citizens that serve a partial term of more than eighteen months shall be eligible to serve the partial term and one full term.

[3.]5. The coordinating board for early childhood shall have the power to:

(1) Develop a comprehensive statewide long-range strategic plan for a cohesive early childhood system. The board shall review the plan each year and make amendments to the plan as it deems necessary. The board shall submit the plan to the governor, the president pro tempore of the senate, and the speaker of the house of representatives on or before January fifteenth of 2018 and each year thereafter;

RECEIVED 2015 SEP 17 AM 8:48

(2) Confer with public and private entities for the purpose of promoting and improving the development of children from birth through age five of this state;

(3) Identify legislative recommendations to improve services for children from birth through age five;

(4)Promote coordination of existing services and programs across public and private entities;

(5) Promote research-based approaches to services and ongoing program evaluation;

(6) Identify service gaps and advise public and private entities on methods to close such gaps;

(7) Apply for and accept gifts, grants, appropriations, loans, or contributions to the coordinating board for early childhood fund from any source, public or private, and enter into contracts or other transactions with any federal or state agency, any private organizations, or any other source in furtherance of the purpose of subsections 3 through 15[2 and 3] of this section, and take any and all actions necessary to avail itself of such aid and cooperation;

(8) Direct disbursements and grants from the coordinating board for early childhood fund and the early childhood health and education trust fund as provided in this section;

(9) Administer the coordinating board for early childhood fund and the early childhood health and education trust fund [and invest any portion of the moneys not required for immediate disbursement in obligations of the United States or any agency or instrumentality of the United States, in obligations of the state of Missouri and its political subdivisions, in certificates of deposit and time deposits, or other obligations of banks and savings and loan associations, or in such other obligations as may be prescribed by the board];

(10) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use, and otherwise deal with real or personal property or any interests therein, wherever situated;

(11) Sell, convey, lease, exchange, transfer or otherwise dispose of all or any of its property or any interest therein, wherever situated;

(12) Employ and fix the compensation of an executive director and such other agents or employees as it considers necessary;

(13) Adopt, alter, or repeal by its own bylaws, rules, and regulations governing the manner in which its business may be transacted;

(14) Adopt and use an official seal;

(15) Assess or charge fees as the board determines to be reasonable to carry out its purposes;

(16) Make all expenditures which are incident and necessary to carry out its purposes;

(17) Sue and be sued in its official name;

(18) Take such action, enter into such agreements, and exercise all functions necessary or appropriate to carry out the duties and purposes set forth in this section;

(19) Contract with one or more not-for-profits to meet the requirements of this section;

(20) Provide technical assistance to grantees;

(21) Coordinate with parents, community leaders, local governments, and public and private entities to improve the quality of and increase access to early childhood development programs in communities throughout the state; and

16-110

(22) Pursue public and private partnership opportunities that are consistent with the objectives of subsection 6 of this section.

6. Any grants awarded by the coordinating board for early childhood shall accomplish one or more of the following objectives:

(1) Increasing access to existing quality early childhood development programs;

(2) Improving the quality of early childhood development programs;

(3) Increasing access to preventive health care and health and developmental screenings for children ages birth through five;

(4) Offering parent and family support and education concerning prenatal development, early child development, numeracy, and literacy;

(5) Providing professional development and training for early childhood development providers;

(6) Increasing coordination of early childhood development programs and public information about the importance of early childhood development;

(7) Providing evidenced-based smoking cessation programs for pregnant mothers.

7. The coordinating board for early childhood shall consider the following nonexclusive factors when awarding grants as provided in this section:

(1) Whether the project or activities will improve outcomes for children ages birth through five, consistent with the objectives of this section;

(2) Whether the project or activity leverages matching dollars;

(3) Whether the project or activity addresses needs identified by the local community; and

(4) The sustainability of the project or activity.

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2015 SEP 17 AM 8:48

8. The coordinating board for early childhood shall establish accountability and audit requirements for all grant recipients, including requirements that success be measured by outcomes for children and families.

9. It shall be the duty of the coordinating board for early childhood to:

(1) Establish and maintain a conflict of interest policy for its members and staff;

(2) Prepare an annual report describing the activities of the board and a description of outcomes for children and families achieved by the board and grant recipients, including a list of all grant recipients and the amount of any grants awarded to such recipients. The board shall submit the report to the governor, the president pro tempore of the senate, and the speaker of the house of representatives on or before January fifteenth of each year, beginning in 2019, and shall provide a copy of the report to the secretary of state; and

(3) Ensure a fair and equitable distribution of funds collected as provided under sections 149.017 and 149.161 based on the established residency population of children ages birth through five.

10. There is hereby created the "Coordinating Board for Early Childhood Fund" which shall consist of the following:

(1) Any moneys appropriated by the general assembly for use by the board in carrying out the powers set out in subsections 3 through 9[2 and 3] of this section;

(2) Any moneys received from grants or which are given, donated, or contributed to the fund from any source;

(3) Any moneys received as fees authorized under subsections 3 through 9[2 and 3] of this section;

(4) Any moneys received as interest on deposits or as income on approved investments of the fund;

(5) Any moneys obtained from any other available source. Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the coordinating board for early childhood fund at the end of the biennium shall not revert to the credit of the general revenue fund.

11. There is hereby created the Early Childhood Health and Education Trust Fund which shall consist of all moneys collected as provided in sections 149.017 and 149.161, less any reduction allowed in section 149.021. Interest and moneys earned on the fund shall be credited to the fund.

12. No more than eight percent of the moneys received by the early childhood health and education trust fund shall be used for administrative expenses. Eligible administrative expenses shall include only those reasonable and necessary for:

(1) Salaries, fringe benefits, expenses, and equipment of staff employed by the coordinating board for early childhood;

(2) Expenses associated with cost sharing of salaries, fringe benefits, expenses, and equipment of staff employed or contracted by the coordinating board for early childhood from any other state department or agency of the state;

(3) Expenses of the coordinating board for early childhood associated with contracting with not-for-profit entities;

(4) Expenses of the coordinating board for early childhood associated with audits and outcome evaluations of programs and activities funded under this section;

(5) Expenses of grantees associated with meeting administrative requirements of grants established by the coordinating board for early childhood;

16-110

No more than 40% of administrative expenses shall be expended on items (1) through (4) of this subsection.

13. Moneys in the funds may be invested by the state treasurer, and any income therefrom shall be deposited to the credit of the fund. Any moneys credited to and placed in the early childhood health and education trust fund shall be appropriated and used only for purposes which are authorized by this section and shall not be subject to the provisions of section 33.080.

14. The net proceeds from the moneys collected as provided in sections 149.017 and 149.161 shall constitute new and additional funding for the activities, initiatives, and programs funded by the coordinating board for early childhood and shall not be used to replace existing funding as of July 1, 2016, for the same or similar activities, initiatives, and programs.

15. Beginning January 1, 2017, the department of elementary and secondary education and the coordinating board for early childhood may adopt such rules, statements of policy, procedures, forms, and guidelines as may be necessary to carry out the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This subsection and chapter 536 are nonseverable from one another, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after January 1, 2017 shall be invalid and void.

16. Notwithstanding the provisions of this section, section 149.017, or section 149.065, five percent, to be collected annually, of the net proceeds from the moneys collected as provided in sections 149.017 and 149.161 shall constitute new and additional funding for the Missouri Department of Health and Senior Services for the purpose of establishing, maintaining, and enhancing activities, programs, and initiatives to promote tobacco use quit assistance and prevention, including a comprehensive statewide tobacco control program, and public health for tobacco-related diseases. The comprehensive statewide tobacco control program shall be consistent with the United States Centers for Disease Control and Prevention's, or its successor agency's, best practices and guidelines for tobacco control programs, if any, and shall be designed to be effective to prevent and reduce tobacco use, reduce the public's exposure to secondhand smoke, and identify and eliminate disparities related to tobacco use and its effects among different population groups. The components of the comprehensive statewide tobacco control program shall include, but not be limited to: state and community based interventions, health communication interventions, cessation interventions, surveillance and evaluation, and administration and management. No more than fifteen percent of the moneys in this subsection may be expended by the Missouri Department of Health and Senior Services for activities, programs, and initiatives that promote public health for tobacco-related diseases, such as programs to provide student loan forgiveness or scholarships for medical professionals who work in underserved areas of the state, but that are not part of the comprehensive statewide tobacco control program. Moneys pursuant to this subsection expended by the Missouri Department of Health and Senior Services for the purpose of promoting public health for tobacco-related diseases shall be used solely for that purpose and shall not be used directly or indirectly for research activities.

149.017. 1. Beginning January 1, 2017, in addition to the tax levied upon the sale of cigarettes in this state pursuant to section 149.015, a tax shall be levied upon the sale of cigarettes applied a tax at an amount equal to thirty-one and one half mills per cigarette.

2. The tax shall be evidenced by stamps in the same manner as cigarettes stamped pursuant to sections 149.015 and 149.021. Stamped cigarettes in the possession of a wholesaler or retailer before any phase of the additional tax under subsection 1 of this section is imposed, shall not be subject to such phase of the additional tax before retail sale.

3. The tax on any cigarettes contained in packages of four, ten, twenty or similar quantities to be used solely for distribution as samples shall be computed on a per cigarette basis at the rate set forth in this section, and payment of the tax shall be remitted to the director at such time and in such manner as he may prescribe.

4. The provisions of section 149.065 notwithstanding, all moneys collected as a result of the taxes imposed by this section and section 149.161 shall be credited to and placed in the early childhood health and education trust fund established by section 210.102 as said moneys are received. All of the moneys from the taxes imposed by this section shall be kept separate from the general revenue fund as well as any other funds or accounts in the state treasury and shall be credited to and placed only in the early childhood health and education trust fund.

5. The additional actual costs incurred by the state in collecting and enforcing the taxes imposed by this section and section 149.161 may be paid from moneys appropriated from the early childhood health and education trust fund for that purpose, not to exceed one and one half of one percent (1.5%) of the total moneys collected in that fiscal year. Collection and enforcement activities and initiatives that are paid for with moneys from the early childhood health and education trust fund shall be conducted in a fiscally responsible manner in order to maximize the net proceeds available for distribution pursuant to section 210.102. Moneys appropriated from the early childhood health and education trust fund pursuant to this subdivision shall not be used to pay costs that are not additional actual costs incurred by the state in collecting and enforcing the taxes imposed by this section;

6. The net proceeds from the taxes imposed by this section and section 149.161 shall constitute new and additional funding for the activities, initiatives, and programs described in section 210.102 and shall not be used to replace existing funding as of July 1, 2016, for the same or similar activities, initiatives, and programs.

7. On an annual basis, the director of the department of revenue, in consultation with the director of health and senior services, shall determine whether the taxes imposed by this section and section 149.161 have resulted in a decrease in consumption of tobacco products and thereby directly caused a reduction in the amount of moneys collected and deposited into the fair share fund, the health initiatives fund, or the state school moneys fund pursuant to chapter 149, RSMo or revenues generated from local tobacco taxes authorized under sections 66.340 and 210.320 or revenues to local governments under lawfully enacted sales taxes. If a reduction in the amount of moneys collected and deposited into any of those funds pursuant to chapter 149, RSMo or revenues generated from local tobacco taxes authorized under sections 66.340 and 210.320, or revenues to local governments under lawfully enacted sales taxes has been directly caused by the taxes imposed by this section and section 149.161, an amount equal to the amount of moneys that were not collected and deposited into that fund or funds or were not generated by the local tobacco taxes authorized by sections 66.340, 210.320, and sections providing authority for local government sales taxes because of the taxes imposed by this section and section 149.161 shall be transferred from the early childhood health and education trust fund pursuant to section 210.102 as follows: first, to the appropriate political subdivisions, second, to local governments to account for any decrease in local sales tax collections, and third to the appropriate fund or funds. The aggregate amount

16-110

transferred to such funds and political subdivisions from the early childhood health and education trust fund for any year shall not exceed four percent of the total moneys collected pursuant to this section and section 149.161 during that same year.

149.161. Beginning on January 1, 2017, in addition to the tax levied on the first sales of tobacco products other than cigarettes in section 149.160, a tax shall be levied upon the first sale of tobacco products other than cigarettes within this state in the amount of five percent of the manufacturer's invoice price before discounts and deals, and shall be paid by the person making the first sale within the state. The tax on tobacco products shall be at the rate of five percent of the manufacturer's invoice price before discounts and deals, and shall be paid by the person making the first sale within the state. Licensed persons making first sales shall be allowed credit in accordance with the provisions of section 149.160.1. The additional tax levied by this section shall not apply to inventories of tobacco products in the possession of the retailer or wholesaler on December 31, 2016.

196.1003. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

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(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, (as such amounts are adjusted for inflation) —
1999: $.0094241 per unit sold after the date of enactment of this Act;
2000: $.0104712 per unit sold;
for each of 2001 and 2002: $.0136125 per unit sold;
for each of 2003 through 2006: $.0167539 per unit sold;
for each of 2007 and each year thereafter: $.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances —

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the percentage determined in subdivision (D) of the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(D) The amount in subdivision (B) of the excess released from escrow shall be: for units sold during all years ending on or after December 31, 2017, zero percent.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails [in any year] to place into escrow the funds required under this section shall

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this [subsection] requirement, may impose a civil penalty to be paid to the early childhood health and education trust fund established in section 210.102[State's general revenue fund] in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this [subsection] requirement, may impose a civil penalty to be paid to the early childhood health and education trust fund established in section 210.102[State's general revenue fund] in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. Any tobacco product manufacturer that violates the provisions of this section shall pay the State's cost and attorney's fees incurred during a successful prosecution under this section.