

By: Representative Yancey

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1461

1 AN ACT TO PROVIDE THAT NO LATER THAN AUGUST 1, 2024, EVERY
2 MANUFACTURER OF AN ENDS PRODUCT THAT IS SOLD FOR RETAIL SALE IN
3 MISSISSIPPI SHALL EXECUTE AND DELIVER TO THE DEPARTMENT OF REVENUE
4 A CERTIFICATION THAT THE MANUFACTURER IS COMPLIANT WITH THIS ACT;
5 TO DEFINE CERTAIN TERMS RELATING TO THIS ACT; TO PROVIDE THAT THE
6 INFORMATION SUBMITTED BY THE MANUFACTURER IS CONSIDERED
7 CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION FOR PURPOSES OF
8 THE MISSISSIPPI PUBLIC RECORDS ACT OF 1983; TO PROVIDE THAT
9 BEGINNING ON OCTOBER 1, 2024, THE DEPARTMENT OF REVENUE SHALL
10 MAINTAIN AND MAKE PUBLICLY AVAILABLE ON THE DEPARTMENT OF
11 REVENUE'S OFFICIAL WEBSITE A DIRECTORY THAT LISTS ALL ENDS PRODUCT
12 MANUFACTURERS, BRAND NAMES, CATEGORIES, PRODUCT NAMES, AND FLAVORS
13 FOR WHICH CERTIFICATION FORMS HAVE BEEN SUBMITTED AND APPROVED BY
14 THE DEPARTMENT OF REVENUE AND SHALL UPDATE THE DIRECTORY AT LEAST
15 MONTHLY TO ENSURE ACCURACY; TO REQUIRE THE DEPARTMENT OF REVENUE
16 TO ESTABLISH A PROCESS TO PROVIDE LICENSED RETAILERS,
17 DISTRIBUTORS, AND WHOLESALERS NOTICE OF THE INITIAL PUBLICATION OF
18 THE DIRECTORY AND CHANGES MADE TO THE DIRECTORY IN THE PRIOR
19 MONTH; TO PROVIDE THAT NEITHER A MANUFACTURER NOR ITS ENDS
20 PRODUCTS SHALL BE INCLUDED OR RETAINED IN THE DIRECTORY IF THE
21 DEPARTMENT OF REVENUE DETERMINES THAT THE MANUFACTURER FAILED TO
22 PROVIDE A COMPLETE AND ACCURATE CERTIFICATION AND PROVIDE PAYMENT;
23 TO PROVIDE THAT AFTER THIRTY CALENDAR DAYS FOLLOWING REMOVAL FROM
24 THE DIRECTORY, THE ENDS PRODUCT OF A MANUFACTURER IDENTIFIED IN
25 THE NOTICE OF REMOVAL AND INTENDED FOR SALE IN MISSISSIPPI ARE
26 SUBJECT TO SEIZURE, FORFEITURE, AND DESTRUCTION, AND SHALL NOT BE
27 PURCHASED OR SOLD FOR RETAIL SALE IN MISSISSIPPI; BEGINNING ON
28 OCTOBER 1, 2024, OR ON THE DATE THAT THE DEPARTMENT OF REVENUE
29 FIRST MAKES THE DIRECTORY AVAILABLE FOR PUBLIC INSPECTION ON ITS
30 OFFICIAL WEBSITE, WHICHEVER IS LATER, ENDS PRODUCTS NOT INCLUDED
31 IN THE DIRECTORY, SHALL NOT BE SOLD FOR RETAIL SALE IN
32 MISSISSIPPI, EITHER DIRECTLY OR THROUGH AN IMPORTER, DISTRIBUTOR,
33 WHOLESALER, RETAILER, OR SIMILAR INTERMEDIARY OR INTERMEDIARIES;
34 TO PROVIDE THAT EACH RETAILER SHALL HAVE SIXTY DAYS FROM THE DATE



35 THAT THE DEPARTMENT OF REVENUE FIRST MAKES THE DIRECTORY AVAILABLE
36 FOR INSPECTION ON ITS PUBLIC WEBSITE TO SELL PRODUCTS THAT WERE IN
37 ITS INVENTORY AND NOT INCLUDED IN THE DIRECTORY OR REMOVE THOSE
38 PRODUCTS FROM INVENTORY; TO PROVIDE THAT AFTER SIXTY CALENDAR DAYS
39 FOLLOWING PUBLICATION OF THE DIRECTORY, ENDS PRODUCTS NOT LISTED
40 IN THE DIRECTORY AND INTENDED FOR RETAIL SALE IN MISSISSIPPI ARE
41 SUBJECT TO SEIZURE, FORFEITURE, AND DESTRUCTION, AND MAY NOT BE
42 PURCHASED OR SOLD FOR RETAIL SALE IN MISSISSIPPI EXCEPT AS
43 OTHERWISE PROVIDED IN THIS ACT; TO PROVIDE THAT A RETAILER,
44 DISTRIBUTOR, WHOLESALER, OR IMPORTER WHO SELLS OR OFFERS FOR SALE
45 AN ENDS PRODUCT FOR RETAIL SALE IN MISSISSIPPI THAT IS NOT
46 INCLUDED IN THE DIRECTORY SHALL BE SUBJECT TO A CIVIL PENALTY OF
47 NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH INDIVIDUAL ENDS
48 PRODUCT OFFERED FOR SALE IN VIOLATION OF THIS ACT; TO PROVIDE THAT
49 A MANUFACTURER WHOSE ENDS PRODUCTS ARE NOT LISTED IN THE DIRECTORY
50 AND WHO CAUSES THE PRODUCTS THAT ARE NOT LISTED TO BE SOLD FOR
51 RETAIL SALE IN MISSISSIPPI, IS SUBJECT TO A CIVIL PENALTY OF TEN
52 THOUSAND DOLLARS FOR EACH INDIVIDUAL ENDS PRODUCT OFFERED FOR SALE
53 IN VIOLATION OF THIS ACT; TO REQUIRE A MANUFACTURER LOCATED
54 OUTSIDE OF THE UNITED STATES TO CAUSE EACH OF ITS IMPORTERS OF ANY
55 OF ITS PRODUCTS TO BE SOLD IN MISSISSIPPI TO APPOINT, AND
56 CONTINUALLY ENGAGE WITHOUT INTERRUPTION, THE SERVICES OF AN AGENT
57 IN THE STATE; TO REQUIRE A MANUFACTURER TO PROVIDE WRITTEN NOTICE
58 TO THE DIVISION THIRTY CALENDAR DAYS PRIOR TO THE TERMINATION OF
59 THE AUTHORITY OF AN AGENT; TO PROVIDE THAT EACH RETAILER,
60 DISTRIBUTOR, AND WHOLESALER THAT SELLS OR DISTRIBUTES ELECTRONIC
61 NICOTINE DELIVERY SYSTEMS OR NICOTINE LIQUIDS IN THIS STATE SHALL
62 BE SUBJECT TO AT LEAST TWO UNANNOUNCED COMPLIANCE CHECKS; TO
63 PROVIDE THAT BEGINNING ON JANUARY 31, 2025, AND ANNUALLY
64 THEREAFTER, THE DEPARTMENT OF REVENUE SHALL PROVIDE A REPORT TO
65 THE LEGISLATURE THAT CONTAINS CERTAIN INFORMATION RELATED TO THE
66 REGISTRY; AND FOR RELATED PURPOSES.

67 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

68 **SECTION 1.** For purposes of this act, the following words and
69 phrases shall have the meanings as defined in this section, unless
70 the context clearly indicates otherwise:

71 (a) "ENDS product":

72 (i) Means any noncombustible product that employs
73 a heating element, power source, electronic circuit, or other
74 electronic, chemical, or mechanical means, regardless of shape or
75 size, to produce vapor from nicotine in a solution;



76 (ii) Includes a consumable nicotine liquid
77 solution suitable for use in an ENDS product, whether sold with
78 the product or separately; and

79 (iii) Does not include any product regulated as a
80 drug or device under Chapter V of the Federal Food, Drug, and
81 Cosmetic Act (21 USC Section 351 et seq.).

82 (b) "Timely filed premarket tobacco product
83 application" means an application pursuant to 21 USC Section 387j
84 for an ENDS product containing nicotine derived from tobacco
85 marketed in the United States as of August 8, 2016, that was
86 submitted to the United States Food and Drug Administration on or
87 before September 9, 2020, and accepted for filing.

88 (c) "FDA" means the United States Food and Drug
89 Administration.

90 **SECTION 2.** (1) No later than August 1, 2024, and annually
91 thereafter, every manufacturer of an ENDS product that is sold for
92 retail sale in Mississippi, whether directly or through an
93 importer, wholesaler, distributor, retailer, or similar
94 intermediary or intermediaries, shall execute and deliver to the
95 Department of Revenue a certification, under penalty of perjury on
96 a form and in a manner prescribed by the Department of Revenue,
97 that the manufacturer is compliant with this act and that, for
98 each ENDS product sold in Mississippi:



99 (a) The manufacturer has received a marketing granted
100 order for the ENDS product from the FDA pursuant to 21 USC Section
101 387j; or

102 (b) The manufacturer submitted a timely filed premarket
103 tobacco product application for the ENDS product to the FDA
104 pursuant to 21 USC Section 387j, and the application either
105 remains under review by the FDA or has received a denial order
106 that has been and remains stayed by the FDA or court order,
107 rescinded by the FDA, or vacated by a court.

108 (2) The certification form shall separately list each brand
109 name, category (e.g., e-liquid, power unit, device, e-liquid
110 cartridge, e-liquid pod, disposable), product name, and flavor for
111 each ENDS product that is sold in Mississippi.

112 (3) Each annual certification form shall be accompanied by:

113 (a) A copy of:

114 (i) The marketing granted order issued by the FDA
115 pursuant to 21 USC Section 387j;

116 (ii) A copy of the acceptance letter issued by the
117 FDA pursuant to 21 USC Section 387j for a timely filed premarket
118 tobacco product application; or

119 (iii) A document issued by FDA or by a court
120 confirming that the premarket tobacco product application has
121 received a denial order that has been and remains stayed by FDA or
122 court order, rescinded by FDA, or vacated by a court; and



123 (b) A payment of Five Hundred Dollars (\$500.00) for
124 each ENDS product each time a manufacturer submits an annual
125 certification form for that ENDS product.

126 (4) The information submitted by the manufacturer pursuant
127 to subsection (3)(a) of this section is considered confidential
128 commercial or financial information for purposes of the
129 Mississippi Public Records Act of 1983 (Section 25-61-1, et al).
130 The manufacturer may redact certain confidential commercial or
131 financial information provided under subsection (3)(a) of this
132 section. The Department of Revenue shall not disclose such
133 information except as required or authorized by law.

134 (5) A manufacturer required to submit a certification form
135 pursuant to this section shall notify the Department of Revenue
136 within thirty (30) calendar days of any material change to the
137 certification form, including the issuance or denial of a
138 marketing authorization or other order by the FDA pursuant to 21
139 USC Section 387j, or any other order or action by the FDA or any
140 court that affects the ability of the ENDS product to be
141 introduced or delivered into interstate commerce for commercial
142 distribution in the United States.

143 (6) Beginning on October 1, 2024, the Department of Revenue
144 shall maintain and make publicly available on the Department of
145 Revenue's official website a directory that lists all ENDS product
146 manufacturers, brand names, categories (e.g., e-liquid, e-liquid
147 cartridge, e-liquid pod, disposable), product names, and flavors



148 for which certification forms have been submitted and approved by
149 the Department of Revenue and shall update the directory at least
150 monthly to ensure accuracy. The Department of Revenue shall
151 establish a process to provide licensed retailers, distributors,
152 and wholesalers notice of the initial publication of the directory
153 and changes made to the directory in the prior month.

154 (7) Neither a manufacturer nor its ENDS products shall be
155 included or retained in the directory if the Department of Revenue
156 determines that any of the following apply:

157 (a) The manufacturer failed to provide a complete and
158 accurate certification as required by subsection (1);

159 (b) The manufacturer submitted a certification that
160 does not comply with the requirements of subsection (2) and (3);

161 (c) The manufacturer failed to include with its
162 certification the payment required by subsection (3) (b);

163 (d) The manufacturer sold products in Mississippi
164 required to be certified under this act during a period when
165 either the manufacturer or the product had not been certified and
166 listed on the directory; or

167 (e) The information provided by the manufacturer in its
168 certification is determined by the Department of Revenue to
169 contain false information or contains material misrepresentations
170 or omissions.



171 (8) The Department of Revenue shall provide manufacturers
172 notice and an opportunity to cure deficiencies before removing
173 manufacturers or products from the directory.

174 (a) The Department of Revenue may not remove the
175 manufacturer or its products from the directory until at least
176 thirty (30) business days after the manufacturer has been given
177 notice of an intended action setting forth the reasons therefor.
178 Notice shall be sufficient and be deemed immediately received by a
179 manufacturer if the notice is sent either electronically or by
180 facsimile to an electronic mail address or facsimile number, as
181 the case may be, provided by the manufacturer in its most recent
182 certification filed under subsections (2) and (3) of this section.

183 (b) The ENDS product manufacturer shall have fifteen
184 (15) business days from the date of service of the notice of the
185 Department of Revenue's intended action to cure the deficiencies
186 or otherwise establish that the ENDS product manufacturer or its
187 products should be included in the directory.

188 (c) Retailers shall have thirty (30) days following the
189 removal of a manufacturer or its products from the directory to
190 sell such products that were in the retailer's inventory as of the
191 date of removal.

192 (d) After thirty (30) calendar days following removal
193 from the directory, the ENDS product of a manufacturer identified
194 in the notice of removal and intended for sale in Mississippi is
195 subject to seizure, forfeiture, and destruction, and may not be



196 purchased or sold for retail sale in Mississippi. The cost of
197 such seizure, forfeiture, and destruction shall be borne by the
198 person from whom the products are confiscated, except that no
199 products may be seized from a consumer who has made a bona fide
200 purchase of such product. The Department of Revenue may store and
201 dispose of the seized products as appropriate, in accordance with
202 federal, state and local laws pertaining to storage and disposal
203 of such products.

204 (9) (a) Except as provided in paragraphs (b) and (c) of
205 this subsection (9), beginning on October 1, 2024, or on the date
206 that the Department of Revenue first makes the directory available
207 for public inspection on its official website, whichever is later,
208 ENDS products not included in the directory, shall not be sold for
209 retail sale in Mississippi, either directly or through an
210 importer, distributor, wholesaler, retailer, or similar
211 intermediary or intermediaries.

212 (b) Each retailer shall have sixty (60) days from the
213 date that the Department of Revenue first makes the directory
214 available for inspection on its public website to sell products
215 that were in its inventory and not included in the directory or
216 remove those products from inventory.

217 (c) Each distributor or wholesaler shall have sixty
218 (60) days from the date that the Department of Revenue first makes
219 the directory available for inspection on its public website to



220 remove those products intended for sale in the state from its
221 inventory.

222 (d) After sixty (60) calendar days following
223 publication of the directory, ENDS products not listed in the
224 directory and intended for retail sale in Mississippi are subject
225 to seizure, forfeiture, and destruction, and may not be purchased
226 or sold for retail sale in Mississippi except as provided in
227 subsection (8) of this section. The cost of such seizure,
228 forfeiture, and destruction shall be paid by the person from whom
229 the products are confiscated, except that no products may be
230 seized from a consumer who has made a bona fide purchase of such
231 product. The Department of Revenue may store and dispose of the
232 seized products as appropriate, in accordance with federal, state,
233 and local laws pertaining to storage and disposal of such
234 products.

235 (10) (a) A retailer, distributor, wholesaler, or importer
236 who sells or offers for sale an ENDS product for retail sale in
237 Mississippi that is not included in the directory shall be subject
238 to a civil penalty of not more than Five Hundred Dollars (\$500.00)
239 for each individual ENDS product offered for sale in violation of
240 this act until the offending product is removed from the market or
241 until the offending product is properly listed on the directory.

242 (i) For a second violation of this type within a
243 12-month period, the civil penalty shall be at least Seven Hundred



244 and Fifty Dollars (\$750.00), but not more than One Thousand
245 Dollars (\$1,000.00) per product.

246 (ii) For a third violation of this type within a
247 12-month period, the civil penalty shall be at least One Thousand
248 Dollars (\$1,000.00), but not more than One Thousand Five Hundred
249 Dollars (\$1,500.00) per product.

250 (b) A manufacturer whose ENDS products are not listed
251 in the directory and who causes the products that are not listed
252 to be sold for retail sale in Mississippi, whether directly or
253 through an importer, distributor, wholesaler, retailer, or similar
254 intermediary or intermediaries, is subject to a civil penalty of
255 Ten Thousand Dollars (\$10,000.00) for each individual ENDS product
256 offered for sale in violation of this act until the offending
257 product is removed from the market or until the offending product
258 is properly listed on the directory. In addition, any
259 manufacturer that falsely represents any information required by a
260 certification form shall be guilty of a misdemeanor for each false
261 representation.

262 (c) In an action to enforce this act, the state shall
263 be entitled to recover costs, including the costs of
264 investigation, expert witness fees and reasonable attorney fees.

265 (d) A repeated violation of this section shall
266 constitute a deceptive trade practice under Section 75-24-5.

267 (11) (a) A manufacturer not registered to do business in
268 the state shall, as a condition precedent to having its name or



269 its products listed and retained in the directory, appoint and
270 continually engage without interruption a registered agent in
271 Mississippi for service of process on whom all process and any
272 action or proceeding arising out of the enforcement of this
273 section may be served. The manufacturer shall provide to the
274 division the name, address, and telephone number of its agent for
275 service of process and shall provide any other information
276 relating to its agent as may be requested by the division.

277 (b) A manufacturer located outside of the United States
278 shall, as an additional condition precedent to having its products
279 listed or retained in the directory, cause each of its importers
280 of any of its products to be sold in Mississippi to appoint, and
281 continually engage without interruption, the services of an agent
282 in the state in accordance with the provisions of this section.
283 All obligations of a manufacturer imposed by this section with
284 respect to appointment of its agent shall also apply to the
285 importers with respect to appointment of their agents.

286 (c) A manufacturer shall provide written notice to the
287 division thirty (30) calendar days prior to the termination of the
288 authority of an agent appointed under paragraphs (a) and (b) of
289 this subsection (11). No less than five (5) calendar days prior
290 to the termination of an existing agent appointment, a
291 manufacturer shall provide to the division the name, address and
292 telephone number of its newly appointed agent for service of
293 process and shall provide any other information relating to the



294 new appointment as may be requested by the division. In the event
295 an agent terminates an agency appointment, the manufacturer shall
296 notify the division of the termination within five (5) calendar
297 days and shall include proof to the satisfaction of the division
298 of the appointment of a new agent.

299 (12) Each retailer, distributor, and wholesaler that sells
300 or distributes electronic nicotine delivery systems or nicotine
301 liquids in this state shall be subject to at least two (2)
302 unannounced compliance checks annually for purposes of enforcing
303 this section. Unannounced follow-up compliance checks of all
304 noncompliant retailers, distributors, and wholesalers shall be
305 conducted within thirty (30) days after any violation of this
306 article. The division shall publish the results of all compliance
307 checks annually and shall make the results available to the public
308 upon request.

309 (13) The Department of Revenue may promulgate rules
310 necessary to effect the purposes of this act.

311 (14) All fees and penalties collected by the Department of
312 Revenue pursuant to this section shall be used for administration
313 and enforcement of this act.

314 (15) Beginning on January 31, 2025, and annually thereafter,
315 the Department of Revenue shall provide a report to the
316 Legislature regarding the status of the directory, manufacturers
317 and products included in the directory, revenue and expenditures



318 related to administration of this section, and enforcement
319 activities undertaken pursuant to this act.

320 **SECTION 3.** This act shall take effect and be in force from
321 and after July 1, 2024.

