

**Adopted  
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

**Senate Bill No. 2886**

**BY: Committee**

**Amend by striking all after the enacting clause and inserting  
in lieu thereof the following:**

26        **SECTION 1.**   **Definitions.**   For purpose of this chapter only,  
27   the following terms shall have the meanings ascribed herein:  
28                (a)   "ENDS product" means any noncombustible product  
29   that employs a heating element, power source, electronic circuit,  
30   or other electronic, chemical, or mechanical means, regardless of  
31   shape or size, to produce vapor from nicotine in a solution.   Such  
32   definition includes a consumable nicotine liquid solution suitable  
33   for use in an ENDS product, whether sold with the product or  
34   separately; but does not include any product regulated as a drug



35 or device under Chapter V of the Federal Food, Drug, and Cosmetic  
36 Act (21 USC Section 351 et seq.).

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

43 (c) "FDA" means United States Food and Drug  
44 Administration.

45 (d) "Department" means the Mississippi Department of  
46 Revenue.

47 **SECTION 2. ENDS product directory.** (1) By August 1, 2024,  
48 and annually thereafter, every manufacturer of an ENDS product  
49 that is sold for retail sale in Mississippi, whether directly or  
50 through an importer, wholesaler, distributor, retailer or similar  
51 intermediary or intermediaries, shall execute and deliver to the  
52 Mississippi Department of Revenue a certification, under penalty  
53 of perjury on a form and in a manner prescribed by the Department  
54 of Revenue, that the manufacturer is compliant with this chapter  
55 and that, for each ENDS product sold in Mississippi:

56 (a) The manufacturer has received a marketing granted  
57 order for the ENDS product from the FDA pursuant to 21 USC Section  
58 387j; or



59 (b) The manufacturer submitted a timely filed premarket  
60 tobacco product application for the ENDS product to the FDA  
61 pursuant to 21 USC Section 387j, and the application either  
62 remains under review by the FDA or has received a denial order  
63 that has been and remains stayed by the FDA or court order,  
64 rescinded by the FDA, or vacated by a court.

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

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

70 (a) A copy of the following:

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

73 (ii) The acceptance letter issued by the FDA  
74 pursuant to 21 USC Section 387j for a timely filed premarket  
75 tobacco product application; or

76 (iii) A document issued by the FDA or by a court  
77 confirming that the premarket tobacco product application has  
78 received a denial order that has been and remains stayed by FDA or  
79 court order, rescinded by FDA, or vacated by a court; and

80 (b) A payment of One Thousand Dollars (\$1,000.00) for  
81 each ENDS product each time a manufacturer submits an annual  
82 certification form for that ENDS product.



83 (4) The information submitted by the manufacturer pursuant  
84 to subsection (3)(a) of this section shall be considered  
85 confidential commercial or financial information for purposes of  
86 the Mississippi Public Records Act of 1983. The manufacturer may  
87 redact certain confidential commercial or financial information  
88 provided under subsection (3)(a) of this section. The department  
89 shall not disclose such information except as required or  
90 authorized by law.

91 (5) A manufacturer required to submit a certification form  
92 pursuant to this section shall notify the department within thirty  
93 (30) calendar days of any material change to the certification  
94 form, including the issuance or denial of a marketing  
95 authorization or other order by the FDA pursuant to 21 USC Section  
96 387j, or any other order or action by the FDA or any court that  
97 affects the ability of the ENDS product to be introduced or  
98 delivered into interstate commerce for commercial distribution in  
99 the United States.

100 (6) Starting October 1, 2024, the department shall maintain  
101 and make publicly available on the department's official website a  
102 directory that lists all ENDS product manufacturers, brand names,  
103 categories (e.g., e-liquid, e-liquid cartridge, e-liquid pod,  
104 disposable), product names, flavors for which certification forms  
105 have been submitted and approved by the department and shall  
106 update the directory at least monthly to ensure accuracy. The  
107 department shall establish a process to provide licensed



108 retailers, distributors, and wholesalers notice of the initial  
109 publication of the directory and changes made to the directory in  
110 the prior month.

111 (7) Neither a manufacturer nor its ENDS products shall be  
112 included or retained in the directory if the department determines  
113 that any of the following apply:

114 (a) The manufacturer failed to provide a complete and  
115 accurate certification as required by subsection (1) of this  
116 section;

117 (b) The manufacturer submitted a certification that  
118 does not comply with the requirements of subsections (2) and (3)  
119 of this section;

120 (c) The manufacturer failed to include with its  
121 certification the payment required by subsection (3)(b) of this  
122 section;

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

127 (e) The information provided by the manufacturer in its  
128 certification is determined by the department to contain false  
129 information or contains material misrepresentations or omissions.

130 (8) The department shall provide manufacturers notice and an  
131 opportunity to cure deficiencies before removing manufacturers or  
132 products from the directory.



133           (a) The department may not remove the manufacturer or  
134 its products from the directory until at least thirty (30)  
135 business days after the manufacturer has been given notice of an  
136 intended action setting forth the reasons therefor. Notice shall  
137 be sufficient and be deemed immediately received by a manufacturer  
138 if the notice is sent either electronically or by facsimile to an  
139 electronic mail address or facsimile number, as the case may be,  
140 provided by the manufacturer in its most recent certification  
141 filed under subsections (2) and (3) of this section.

142           (b) The ENDS product manufacturer shall have fifteen  
143 (15) business days from the date of service of the notice of the  
144 department's intended action to cure the deficiencies or otherwise  
145 establish that the ENDS product manufacturer or its products  
146 should be included in the directory.

147           (c) Retailers shall have 30 days following the removal  
148 of a manufacturer or its products from the directory to sell such  
149 products that were in the retailer's inventory as of the date of  
150 removal.

151           (d) After thirty (30) calendar days following removal  
152 from the directory, the ENDS product of a manufacturer identified  
153 in the notice of removal and intended for sale in Mississippi are  
154 subject to seizure, forfeiture, and destruction, and may not be  
155 purchased or sold for retail sale in the Mississippi. The cost of  
156 such seizure, forfeiture, and destruction shall be borne by the  
157 person from whom the products are confiscated, except that no



158 products may be seized from a consumer who has made a bona fide  
159 purchase of such product. The department may store and dispose of  
160 the seized products as appropriate, in accordance with federal,  
161 state and local laws pertaining to storage and disposal of such  
162 products.

163 (9) (a) Except as provided in paragraphs (b) and (c) of  
164 this subsection, beginning October 1, 2024, or on the date that  
165 the department first makes the directory available for public  
166 inspection on its official website, whichever is later, ENDS  
167 products not included in the directory, may not be sold for retail  
168 sale in Mississippi, either directly or through an importer,  
169 distributor, wholesaler, retailer, or similar intermediary or  
170 intermediaries.

171 (b) Each retailer shall have ninety (90) days from the  
172 date that the department first makes the directory available for  
173 inspection on its public website to sell products that were in its  
174 inventory and not included in the directory or remove those  
175 products from inventory.

176 (c) Each distributor or wholesaler shall have ninety  
177 (90) days from the date that the department first makes the  
178 directory available for inspection on its public website to remove  
179 those products intended for sale in the state from its inventory.

180 (d) After ninety (90) calendar days following  
181 publication of the directory, ENDS products not listed in the  
182 directory and intended for retail sale in Mississippi are subject



183 to seizure, forfeiture, and destruction, and may not be purchased  
184 or sold for retail sale in Mississippi except as provided in  
185 subsection (8) of this section. The cost of such seizure,  
186 forfeiture and destruction shall be borne by the person from whom  
187 the products are confiscated, except that no products may be  
188 seized from a consumer who has made a bona fide purchase of such  
189 product. The department may store and dispose of the seized  
190 products as appropriate, in accordance with federal, state, and  
191 local laws pertaining to storage and disposal of such products.

192 (10) The following penalties shall apply to violations of  
193 this section:

194 (a) A retailer, distributor, wholesaler, or importer  
195 who sells or offers for sale an ENDS product for retail sale in  
196 Mississippi that is not included in the directory shall be subject  
197 to a civil penalty of up to Five Hundred Dollars (\$500.00) for  
198 each individual ENDS product offered for sale in violation of this  
199 section until the offending product is removed from the market or  
200 until the offending product is properly listed on the directory.

201 (i) For a second violation of this type within a  
202 twelve-month period, the civil penalty shall be at least Seven  
203 Hundred Fifty Dollars (\$750.00) but not more than One Thousand  
204 Dollars (\$1,000.00) per product.

205 (ii) For a third violation of this type within a  
206 twelve-month period, the civil penalty shall be at least One





207 Thousand Dollars (\$1,000.00) but not more than One Thousand Five  
208 Hundred Dollars (\$1,500.00) per product.

209 (b) A manufacturer whose ENDS products are not listed  
210 in the directory and who causes the products that are not listed  
211 to be sold for retail sale in Mississippi, whether directly or  
212 through an importer, distributor, wholesaler, retailer, or similar  
213 intermediary or intermediaries, is subject to a civil penalty of  
214 Ten Thousand Dollars (\$10,000.00) for each individual ENDS product  
215 offered for sale in violation of this section until the offending  
216 product is removed from the market or until the offending product  
217 is properly listed on the directory. In addition, any  
218 manufacturer that falsely represents any information required by a  
219 certification form shall be guilty of a misdemeanor for each false  
220 representation.

221 (11) In an action to enforce this act, the state shall be  
222 entitled to recover costs, including the costs of investigation,  
223 expert witness fees and reasonable attorney fees. A repeated  
224 violation of this section shall constitute a deceptive trade  
225 practice under Section 75-24-5.

226 (12) **Agent for service of process.**

227 (a) A manufacturer not registered to do business in the  
228 state shall, as a condition precedent to having its name or its  
229 products listed and retained in the directory, appoint and  
230 continually engage without interruption a registered agent in  
231 Mississippi for service of process on whom all process and any



232 action or proceeding arising out of the enforcement of this  
233 section may be served. The manufacturer shall provide to the  
234 division the name, address, and telephone number of its agent for  
235 service of process and shall provide any other information  
236 relating to its agent as may be requested by the division.

237 (b) A manufacturer located outside of the United States  
238 shall, as an additional condition precedent to having its products  
239 listed or retained in the directory, cause each of its importers  
240 of any of its products to be sold in Mississippi to appoint, and  
241 continually engage without interruption, the services of an agent  
242 in the state in accordance with the provisions of this section.  
243 All obligations of a manufacturer imposed by this section with  
244 respect to appointment of its agent shall also apply to the  
245 importers with respect to appointment of their agents.

246 (c) A manufacturer shall provide written notice to the  
247 division thirty (30) calendar days prior to the termination of the  
248 authority of an agent appointed pursuant to paragraphs (a) and (b)  
249 of this subsection. No less than five (5) calendar days prior to  
250 the termination of an existing agent appointment, a manufacturer  
251 shall provide to the division the name, address and telephone  
252 number of its newly appointed agent for service of process and  
253 shall provide any other information relating to the new  
254 appointment as may be requested by the division. In the event an  
255 agent terminates an agency appointment, the manufacturer shall  
256 notify the division of the termination within five (5) calendar



257 days and shall include proof to the satisfaction of the division  
258 of the appointment of a new agent.

259 (13) Each retailer, distributor and wholesaler that sells or  
260 distributes electronic nicotine delivery systems or nicotine  
261 liquids in this state shall be subject to at least two (2)  
262 unannounced compliance checks annually for purposes of enforcing  
263 this section. Unannounced follow-up compliance checks of all  
264 noncompliant retailers, distributors, and wholesalers shall be  
265 conducted within thirty (30) days after any violation of this act.  
266 The division shall publish the results of all compliance checks at  
267 least annually and shall make the results available to the public  
268 on request.

269 (14) The department may promulgate rules necessary to effect  
270 the purposes of this section.

271 (15) All fees and penalties collected by the department  
272 pursuant to this section shall be used for administration and  
273 enforcement of this section.

274 (16) Starting January 31, 2025, and annually thereafter, the  
275 department shall provide a report to the Legislature regarding the  
276 status of the directory, manufacturers and products included in  
277 the directory, revenue and expenditures related to administration  
278 of this section, and enforcement activities undertaken pursuant to  
279 this section.

280 **SECTION 3.** This act shall take effect and be in force from  
281 and after July 1, 2024, and shall stand repealed on June 30, 2024.



**Further, amend by striking the title in its entirety and inserting in lieu thereof the following:**

1 AN ACT TO PROVIDE DEFINITIONS RELATED TO NICOTINE VAPOR  
2 NONCOMBUSTIBLE PRODUCTS OR "ENDS PRODUCT" AND THEIR ASSOCIATED  
3 USES; TO REQUIRE MANUFACTURERS OF ENDS PRODUCTS TO PROVIDE THE  
4 DEPARTMENT OF REVENUE WITH A CERTIFICATION THAT THE MANUFACTURER  
5 IS COMPLIANT WITH CERTAIN FEDERAL RESTRICTIONS AND PROVISIONS OF  
6 THE ACT; TO REQUIRE MANUFACTURERS TO PAY A FEE FOR EACH PRODUCT  
7 FOR EACH ANNUAL CERTIFICATION; TO REQUIRE SUCH CERTIFICATION TO  
8 LIST ALL BRAND NAMES, CATEGORIES, CARTRIDGE TYPE, AND FLAVORS OF  
9 EACH ENDS PRODUCT SOLD IN THE STATE; TO PROVIDE THAT THE  
10 INFORMATION PROVIDED IN THE CERTIFICATION SHALL BE CONSIDERED  
11 CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION; TO REQUIRE THE  
12 MANUFACTURER TO PROVIDE CERTAIN NOTICES; TO REQUIRE THE DEPARTMENT  
13 OF REVENUE TO MAINTAIN A PUBLICLY AVAILABLE LIST OF ALL ENDS  
14 PRODUCT MANUFACTURERS AND THEIR RESPECTIVE PRODUCTS; TO ESTABLISH  
15 CERTAIN VIOLATIONS AND FINES RELATED TO THE ACT; TO SET THE  
16 PROCEDURE BY WHICH A MANUFACTURER MAY BE FINED; TO SET CERTAIN  
17 TIMELINES RELATIVE TO THE ACT; TO REQUIRE SUCH MANUFACTURERS TO  
18 HAVE AN AGENT FOR SERVICE OF PROCESS; TO PROVIDE THAT THE  
19 DEPARTMENT OF REVENUE MAY PROMULGATE RULES NECESSARY TO THE ACT;  
20 TO PROVIDE THAT ALL FEES AND PENALTIES COLLECTED BY THE DEPARTMENT  
21 OF REVENUE MAY BE USED FOR ADMINISTRATION AND ENFORCEMENT OF THE  
22 ACT; TO PROVIDE THAT THE DEPARTMENT OF REVENUE SHALL PROVIDE A  
23 REPORT TO THE LEGISLATURE STARTING JANUARY 31, 2025, AND ANNUALLY  
24 THEREAFTER; AND FOR RELATED PURPOSES.

