

Senate Amendments to House Bill No. 1660

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

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

97 SECTION 1. As used in Sections 1 through 9 of this act, the
98 following words and phrases have the meanings ascribed in this
99 section unless the context clearly requires otherwise:

100 (a) "Brand family" means all styles of cigarettes sold
101 under the same trademark and differentiated from one another by
102 means of additional modifiers or descriptors, including, but not
103 limited to, "menthol," "lights," "kings" and "100s," and includes
104 any brand name (alone or in conjunction with any other word),
105 trademark, logo, symbol, motto, selling message, recognizable
106 pattern of colors or any other indicia of product identification
107 identical or similar to, or identifiable with, a previously known
108 brand of cigarettes.

109 (b) "Cigarette" means a product that contains nicotine,
110 is intended to be burned or heated under ordinary conditions of
111 use, and consists of or contains any of the following:

112 (i) Any roll of tobacco wrapped in paper or in any
113 substance not containing tobacco;

114 (ii) Tobacco, in any form, that is functional in
115 the product, which, because of its appearance, the type of tobacco
116 used in the filler, or its packaging and labeling, is likely to be
117 offered to, or purchased by, consumers as a cigarette; or

118 (iii) Any roll of tobacco wrapped in any substance
119 containing tobacco which, because of its appearance, the type of
120 tobacco used in the filler, or its packaging and labeling, is
121 likely to be offered to, or purchased by, consumers as a
122 cigarette.

123 The term "cigarette" includes roll-your-own tobacco, meaning
124 tobacco which, because of its appearance, type, packaging or
125 labeling, is suitable for use and likely to be offered to, or
126 purchased by, consumers as tobacco for making cigarettes. For
127 purposes of this definition of the term "cigarette," nine
128 one-hundredths (0.09) ounces of roll-your-own tobacco constitute
129 one (1) individual cigarette.

130 (c) "Cigarette manufacturer" or "manufacturer" means an
131 entity that does any of the following:

132 (i) Manufactures cigarettes anywhere that the
133 manufacturer intends to be sold in the United States, including
134 cigarettes intended to be sold in the United States through an
135 importer;

136 (ii) Is the first purchaser anywhere, for resale
137 in the United States, of cigarettes manufactured anywhere that the
138 manufacturer does not intend to be sold in the United States; or

139 (iii) Becomes a successor of an entity described
140 in subparagraph (i) or (ii).

141 (d) "Commissioner" means the Commissioner of Revenue of
142 the Department of Revenue.

143 (e) "Department" means the Department of Revenue.

144 (f) "Directory" means the state cigarette directory
145 created and maintained by the Commissioner of Revenue under
146 Section 3 of this act.

147 (g) "Distributor" means a person, other than a
148 retailer, who manufactures or produces cigarettes, or who ships,
149 transports or imports cigarettes into this state, or who in any
150 manner acquires or possesses cigarettes and makes a first sale of
151 the cigarettes in the state.

152 (h) "Importer" means a person, firm, corporation,
153 association or other business entity who imports cigarettes from
154 any state or foreign country for distribution, sale, use or
155 consumption in the state.

156 (i) "Retailer" means a person, other than a wholesaler,
157 whose business is that of selling merchandise at retail and who
158 sells, or offers for sale, cigarettes to a consumer in this state.

159 (j) "Wholesaler" means a person, firm, corporation,
160 association or other business entity who sells cigarettes to
161 retailers in this state for the purpose of resale.

162 **SECTION 2.** (1) Before September 1 of each year, beginning
163 in 2024, each cigarette manufacturer whose cigarettes are sold in
164 this state, whether directly or through an importer, wholesaler,

165 distributor, retailer or similar intermediary, shall execute and
166 deliver a certification to the Commissioner of Revenue, on a form
167 and in a manner prescribed by the commissioner, certifying that
168 the manufacturer is in compliance with Sections 1 through 9 of
169 this act. Each certification must include the following
170 information:

171 (a) A list of the manufacturer's brand families that
172 are sold in Mississippi, which must be updated by executing and
173 delivering to the commissioner a supplemental certification no
174 later than thirty (30) days before any addition to or modification
175 of the list is to take effect;

176 (b) Verification that the manufacturer possesses all
177 orders required by the United States Food and Drug Administration,
178 which must be current, for the manufacture and sale of the
179 cigarettes included in the manufacturer's brand families;

180 (c) Verification that the manufacturer is registered to
181 do business in this state or has a resident agent for service of
182 process, as required under Section 6 of this act; and

183 (d) All other information and materials specifically
184 requested by the commissioner in the course of enforcing this
185 section.

186 (2) A cigarette manufacturer that is not listed in the
187 directory maintained by the commissioner pursuant to Section 3 of
188 this act must submit an initial certification subject to the same
189 requirements and review process required under this section for
190 annual certifications.

191 (3) If the certification required under subsection (1) of
192 this section is rejected due to incompleteness or incorrectness,
193 the cigarette manufacturer may not submit supplemental
194 documentation to try to cure the rejection but must execute and
195 deliver an entirely new certification to the commissioner.

196 (4) Each annual certification form must be accompanied by a
197 fee in such amount as may be prescribed by the Commissioner of
198 Revenue.

199 (5) A manufacturer required to submit a certification form
200 under this section must notify the commissioner of any material
201 change to the certification form within thirty (30) days of the
202 change. A material change includes, but is not limited to, any
203 order or action by the Food and Drug Administration or any court
204 which affects the ability of the manufacturer's cigarettes to be
205 distributed for commercial distribution or sale in the United
206 States.

207 (6) A manufacturer that falsely represents any information
208 required by a certification form is guilty of a misdemeanor for
209 each false representation.

210 **SECTION 3.** (1) Beginning on October 1, 2024, the
211 commissioner shall maintain and make publicly available on the
212 department's website a state cigarette directory listing all
213 cigarette manufacturers that have provided current and accurate
214 certification forms conforming to the requirements of Section 2 of
215 this act and all brand families that are listed in each
216 manufacturer's certification. The commissioner shall update the

217 directory at least monthly to ensure accuracy. The commissioner
218 shall establish a process to provide retailers, distributors,
219 wholesalers and importers notice of the initial publication of the
220 directory and subsequently, of changes made to the directory in
221 the prior month.

222 (2) Neither a manufacturer nor its brand family may be
223 included or retained in the directory if the commissioner
224 determines that:

225 (a) The manufacturer failed to provide a complete and
226 accurate certification as required by subsection (1) of this
227 section;

228 (b) The manufacturer submitted a certification that
229 does not comply with the requirements of Section 2 of this act;

230 (c) The manufacturer failed to include with its
231 certification the payment required by subsection (4) of Section 2;

232 (d) The manufacturer sold cigarettes in Mississippi
233 required to be certified under Sections 1 through 9 of this act
234 during a period when either the manufacturer or the cigarettes
235 were not certified and listed on the directory; or

236 (e) The information provided by the manufacturer in its
237 certification is determined by the commissioner to contain false
238 information or material misrepresentations or omissions.

239 (3) The commissioner shall provide a manufacturer notice and
240 an opportunity to cure deficiencies before removing a manufacturer
241 or its brand family of cigarettes from the directory.

242 (4) The commissioner may not remove a manufacturer or its
243 brand family from the directory before the manufacturer has
244 received notice of the intended removal from the commissioner
245 setting forth the reasons for the action. Notice is sufficient
246 and deemed to be immediately received by a manufacturer if the
247 notice is sent either electronically or by facsimile to an
248 electronic mail address or facsimile number, as the case may be,
249 provided by the manufacturer in its most recent certification
250 filed under Section 2 of this act.

251 (5) Upon receipt of the notice required under subsection (4)
252 of this section, the manufacturer, no later than fifteen (15)
253 business days from the date of service of the notice, must cure
254 the deficiencies or otherwise establish that the manufacturer or
255 its brand family should be included in the directory.

256 (6) The commissioner shall update the directory as necessary
257 in order to correct mistakes and to add or remove a manufacturer
258 or brand family to keep the directory in conformity with the
259 requirements of Sections 1 through 9 of this act.

260 **SECTION 4.** (1) Except as provided in subsections (2) and
261 (3) of this section, beginning October 1, 2024, or on the date
262 that the commissioner first makes the directory available for
263 public inspection on the department's website, whichever is later,
264 cigarettes not included in the directory may not be sold for
265 retail sale in Mississippi, either directly or through an
266 importer, distributor, wholesaler, retailer or similar
267 intermediary.

268 (2) (a) Each retailer has sixty (60) days from the date
269 that the commissioner first makes the directory available for
270 inspection on the department's website to either sell cigarettes
271 in the retailer's inventory which are not included in the
272 directory or remove those cigarettes from inventory.

273 (b) Upon the expiration of the initial sixty (60) days
274 after the first date the directory is available on the
275 department's website, a retailer has thirty (30) days following
276 the date of removal of a manufacturer or its brand family from the
277 directory to either sell the cigarettes in the retailer's
278 inventory on the date of removal from the directory or remove
279 those cigarettes from inventory.

280 (3) (a) Each importer, distributor or wholesaler has sixty
281 (60) days from the date that the commissioner first makes the
282 directory available for inspection on the department's website to
283 remove those cigarettes intended for sale in the state from its
284 inventory.

285 (b) Upon the expiration of the initial sixty (60) days
286 after the first date the directory is available on the
287 department's website, an importer, distributor or wholesaler has
288 thirty (30) days following the date of removal of a manufacturer
289 or its brand family from the directory to remove those cigarettes
290 intended for sale in the state from its inventory.

291 (4) Cigarettes that must be sold or removed from inventory
292 under subsections (2) and (3) of this section because those
293 cigarettes are not included in, or are removed from, the directory

294 may not be purchased or sold for retail sale in Mississippi,
295 either directly or through an importer, distributor, wholesaler,
296 retailer or similar intermediary, and are subject to seizure,
297 forfeiture and destruction. The cost of the seizure, forfeiture
298 and destruction must be borne by the person from whom the
299 cigarettes are confiscated. The commissioner may store and
300 dispose of the seized cigarettes as appropriate in accordance with
301 applicable federal, state and local laws pertaining to storage and
302 disposal of such products.

303 (5) Cigarettes in the possession of a consumer who has made
304 a bona fide purchase of the cigarettes subject to being seized
305 under this section may not be seized.

306 **SECTION 5.** (1) In addition to the seizure and destruction
307 of cigarettes being made available for sale in violation of
308 Section 4 of this act, the following penalties apply:

309 (a) A retailer, distributor, wholesaler or importer who
310 sells or offers for sale cigarettes in Mississippi which are not
311 included in the directory is subject to a civil penalty in an
312 amount not more than Five Hundred Dollars (\$500.00) per day for
313 each style of cigarette in a brand family which is offered for
314 sale in violation of Sections 1 through 9 of this act until the
315 offending product is removed from the market or properly listed on
316 the directory.

317 (b) For a second violation, whether involving the same
318 or a different style of cigarettes in a brand family, by the same
319 retailer, distributor, wholesaler or importer occurring within a

320 period of twelve (12) months, the civil penalty must be an amount
321 not less than Seven Hundred Fifty Dollars (\$750.00) nor more than
322 One Thousand Dollars (\$1,000.00) per day for each style of
323 cigarette in a brand family which is offered for sale in violation
324 of Sections 1 through 9 of this act until the offending product is
325 removed from the market or properly listed on the directory.

326 (c) For a third violation, whether involving the same
327 or a different style of cigarettes in a brand family, by the same
328 retailer, distributor, wholesaler or importer occurring within a
329 period of twelve (12) months after the initial violation, the
330 civil penalty must be an amount not less than One Thousand Dollars
331 (\$1,000.00) nor more than One Thousand Five Hundred Dollars
332 (\$1,500.00) per day for each style of cigarette in a brand family
333 which is offered for sale in violation of Sections 1 through 9 of
334 this act until the offending product is removed from the market or
335 properly listed on the directory.

336 (2) A manufacturer whose cigarettes are not listed in the
337 directory and who causes the products that are not listed to be
338 sold for retail sale in Mississippi, whether directly or through
339 an importer, distributor, wholesaler, retailer or similar
340 intermediary, is subject to a civil penalty of Ten Thousand
341 Dollars (\$10,000.00) per day for each style of cigarette in a
342 brand family which is offered for sale in violation of Sections 1
343 through 9 of this act until the offending product is removed from
344 the market or properly listed on the directory.

345 (3) In an action to enforce Sections 1 through 9 of this
346 act, the state is entitled to recover costs, including the costs
347 of investigation, expert witness fees and reasonable attorney
348 fees.

349 **SECTION 6.** (1) As a condition precedent to having its name
350 or its cigarettes listed and retained in the directory maintained
351 by the commissioner pursuant to Section 3 of this act, a
352 manufacturer not registered to do business in the state must
353 appoint and continually engage, without interruption, a registered
354 agent in Mississippi for service of process on whom all process
355 and any action or proceeding arising out of the enforcement of
356 Sections 1 through 9 of this act may be served. The manufacturer
357 shall provide to the commissioner the name, address and telephone
358 number of its agent for service of process and any other
359 information relating to its agent which may be requested by the
360 commissioner.

361 (2) As a condition precedent to having its name or its
362 cigarettes listed and retained in the directory maintained by the
363 commissioner pursuant to Section 3 of this act, a manufacturer
364 located outside of the United States shall cause each of its
365 importers of any of its cigarettes to be sold in Mississippi to
366 appoint and continually engage, without interruption, the services
367 of an agent in the state in accordance with this section. All
368 obligations of a manufacturer imposed by this section with respect
369 to appointment of its agent also apply to importers with respect
370 to appointment of their agents.

371 (3) A manufacturer shall provide written notice to the
372 commissioner no later than thirty (30) calendar days before the
373 termination of the authority of an agent appointed pursuant to
374 subsection (1) or (2) of this section. No less than five (5)
375 calendar days before the termination of an existing agent
376 appointment, a manufacturer shall provide to the commissioner the
377 name, address and telephone number of its newly appointed agent
378 for service of process and any other information relating to the
379 new appointment which may be requested by the commissioner. If an
380 agent terminates an agency appointment, the manufacturer must
381 notify the commissioner of the termination within five (5)
382 calendar days and include proof to the satisfaction of the
383 commissioner of the appointment of a new agent.

384 **SECTION 7.** Each retailer, distributor and wholesaler that
385 sells or distributes cigarettes in this state is subject to no
386 less than two (2) unannounced compliance checks annually by the
387 department for purposes of enforcing Sections 1 through 9 of this
388 act. Unannounced follow-up compliance checks of all noncompliant
389 retailers, distributors and wholesalers must be conducted no later
390 than thirty (30) days after a violation of Sections 1 through 9 of
391 this act. The department shall publish the results of all
392 compliance checks at least annually and make the results available
393 to the public on request.

394 **SECTION 8.** (1) The Commissioner of Revenue, acting through
395 the Department of Revenue, may promulgate rules and regulations
396 necessary to effectuate the purposes of this act.

397 (2) All fees and penalties collected by the commissioner
398 pursuant to Sections 1 through 9 of this act must be used for the
399 administration and enforcement of Sections 1 through 9 of this
400 act.

401 **SECTION 9.** Before January 1, 2025, and annually thereafter,
402 the commissioner shall provide a report to the Legislature on the
403 status of the directory, manufacturers and cigarettes included in
404 the directory, revenue and expenditures related to administration
405 of Sections 1 through 9 of this act, and enforcement activities
406 undertaken pursuant to Sections 1 through 9 of this act.

407 **SECTION 10.** Section 27-69-53, Mississippi Code of 1972, is
408 brought forward as follows:

409 27-69-53. Any cigarettes found at any point within this
410 state, in the possession of a dealer or any person for a period of
411 time longer than specified by Section 27-69-27 and not having
412 affixed to the package, the stamps as required, and any tobacco
413 subject to the tax found in the possession of any wholesaler,
414 distributor or dealer required by this chapter to obtain a permit,
415 who has not procured a permit, or whose permit has been revoked
416 and not reinstated, are hereby declared to be contraband goods,
417 and the same may be seized by the commissioner, or his agents, or
418 employees, or by any peace officer of this state, when directed by
419 the commissioner so to do, without a warrant, and the said goods
420 shall be offered by the commissioner for sale at public auction to
421 the highest bidder after due advertisement, but the commissioner
422 before delivering any of said goods so seized shall require the

423 purchaser to affix the proper amount of stamps to the cigarettes
424 or pay the excise tax on other tobacco as required by this
425 chapter. The proceeds of sale for any goods sold shall be paid to
426 the State Treasurer by the commissioner as are other funds
427 collected. Provided, that the cost of confiscation and sale shall
428 be paid out of the proceeds derived from such sale before making
429 remittance to the State Treasurer. The time limit herein
430 specified for affixing said stamps shall not apply to any person
431 who, within said time limits, shall offer for sale, either at
432 wholesale or retail, any cigarettes, and all cigarettes when
433 offered for sale either at wholesale or retail without the stamps
434 having been first affixed, shall be subject to confiscation.
435 Provided further, that any vehicle, not a common carrier, which
436 may be used in transporting for the purpose of sale any unstamped
437 cigarettes, shall likewise be subject to confiscation and sale in
438 the same manner as above provided.

439 The seizure, forfeiture and sale of contraband goods under
440 this section and Section 27-69-55 is supplemental and in addition
441 to the seizure, forfeiture and sale of contraband tobacco provided
442 for in Section 27-69-56. Where a basis exists under both this
443 section and Section 27-69-55 and under Section 27-69-56 for the
444 seizure, forfeiture and sale of the same contraband goods, such
445 actions can proceed simultaneously. Where such simultaneous
446 seizure, forfeiture and sale is undertaken and there is a conflict
447 between the procedures contained in this section and Section

448 27-69-55 and those contained in Section 27-69-56, the procedures
449 contained in Section 27-69-56 shall control and be followed.

450 **SECTION 11.** Section 27-69-55, Mississippi Code of 1972, is
451 brought forward as follows:

452 27-69-55. In all cases of seizures of any tobacco, or other
453 property hereafter made as being subject to forfeiture under the
454 provisions of this chapter, which in the opinion of the officer or
455 person making the seizure, is of the appraised value of
456 Twenty-five Dollars (\$25.00) or more, the said officer or person
457 shall proceed as follows:

458 First: He shall cause a list containing a particular
459 description of the tobacco or other property seized to be prepared
460 in duplicate, and an appraisement thereof to be made by three (3)
461 sworn appraisers to be selected by him, who shall be respectable
462 and disinterested citizens of this state, residing within the
463 county wherein the seizure was made. Said list and appraisement
464 shall be properly attested by said officer, or person, and the
465 said appraisers, for which service each of said appraisers shall
466 be allowed the sum of One Dollar (\$1.00) per day for not exceeding
467 two (2) days, to be paid as other costs.

468 Second: If the said tobacco, or other property seized, is
469 believed by the officer making the seizure to be of less value
470 than Twenty-five Dollars (\$25.00), no appraisement shall be made.

471 Third: The officer or person making the seizure shall
472 proceed to give notice thereof for five (5) days, in writing, at
473 three (3) places in the county where the seizure is made. One (1)

474 of the notices shall be posted at the county courthouse; another
475 at the place where the goods were seized; and the other at some
476 public place. The notice shall describe the property seized, and
477 state the time and place and cause of seizure, and give the name
478 and place of residence, if known, of the person from whom the
479 property was seized, and shall require any person claiming it to
480 appear and make such claims in writing, within five (5) days from
481 the date of the first posting of such notice. Such officer or
482 person making the seizure shall also deliver to the person from
483 whom the property was seized, and also to the owner, if known, a
484 copy of said notice.

485 Fourth: Any person claiming the said property so seized as
486 contraband within the time specified in the notice, may file with
487 the commissioner a claim, in writing, stating his interest in the
488 property seized, and may execute a bond to the State of
489 Mississippi in a penal sum equal to double the value of said
490 property so seized, but in no case shall said bond be less than
491 the sum of One Hundred Dollars (\$100.00), with securities to be
492 approved by the clerk of the circuit court in the county in which
493 the property is seized, conditioned that in the case of
494 condemnation of the property so seized, the obligor shall pay to
495 the State of Mississippi the full value of the property so seized,
496 and all costs and expenses of the proceedings to obtain such
497 condemnation, including a reasonable attorney's fee. And upon the
498 delivery of such bond to the commissioner, he shall transmit the
499 same with the duplicate list or description of the property seized

500 to the county attorney of the county, or the district attorney of
501 the district in which such seizure was made, and the said county
502 attorney, or district attorney, as the case may be, shall
503 prosecute the case to secure the forfeiture of said property in
504 the court having jurisdiction. Upon the filing of the bond
505 aforesaid, the said property shall be delivered to the claimant
506 pending the outcome of the case, provided he shall at once affix
507 the required stamps on cigarettes or pay the tax due on other
508 tobacco products.

509 Fifth: If no claim is interposed, and no bond given within
510 the time above specified, such property shall be forfeited without
511 further proceedings, and the same shall be sold as herein
512 provided, and the proceeds of the sale, when received by the
513 commissioner, shall be paid into the State Treasury as are other
514 funds collected, provided, that in seizures of property of less
515 value than Twenty-five Dollars (\$25.00), the same may be
516 advertised with other quantities at Jackson by the commissioner
517 and disposed of as hereinabove provided.

518 Sixth: In proceedings to secure a confiscation of the
519 property hereinbefore mentioned, where the value of the goods
520 seized at one time does not exceed the amount provided in Section
521 9-11-9, the justice court judge of the county where the property
522 is seized shall have jurisdiction to try the cause. Where the
523 value of the property seized at one time is in excess of the
524 amount provided in Section 9-11-9, then the circuit court of the
525 county where the property is seized shall have jurisdiction to try

526 the cause; provided, that in counties having a county court, the
527 county court shall have jurisdiction concurrent with the circuit
528 court, and with the justice court where the value of the property
529 seized does not exceed One Thousand Dollars (\$1,000.00).

530 The proceedings against property seized according to the
531 provisions of this chapter shall be considered a proceeding in rem
532 unless otherwise herein provided.

533 Within ten (10) days after filing the bond provided for in
534 paragraph fourth hereof, the claimant shall file a petition in the
535 court having jurisdiction of said cause, which shall stand for a
536 declaration, and the commissioner, or other party authorized to
537 prosecute the confiscation of said property, shall plead to it as
538 if it were an ordinary action at law, and the same rules of
539 pleading and proceeding applicable to actions in the circuit court
540 shall be observed in this action, and all issues made by the
541 pleadings shall be tried and disposed of as other actions in the
542 circuit court, and the judgment of the circuit court shall be
543 framed to meet the circumstances of the case and the cost shall be
544 adjudged as in other actions; provided, however, neither the
545 state, nor the commissioner, nor any other person representing the
546 state, shall be liable for the cost in the event the court shall
547 not confiscate the property in controversy.

548 The seizure, forfeiture and sale of contraband goods under
549 this section and Section 27-69-53 is supplemental and in addition
550 to the seizure, forfeiture and sale of contraband tobacco provided
551 for in Section 27-69-56. Where a basis exists under both this

552 section and Section 27-69-53 and under Section 27-69-56 for the
553 seizure, forfeiture and sale of the same contraband goods, such
554 actions can proceed simultaneously. Where such simultaneous
555 seizure, forfeiture and sale is undertaken and there is a conflict
556 between the procedures contained in this section and Section
557 27-69-53 and those contained in Section 27-69-56, the procedures
558 contained in Section 27-69-56 shall control and be followed.

559 **SECTION 12.** Section 27-69-59, Mississippi Code of 1972, is
560 brought forward as follows:

561 27-69-59. When the commissioner has good reason to believe
562 that tobacco is being kept, sold, offered for sale, or given away
563 in violation of this chapter, or regulations issued under
564 authority hereof, he may make affidavit of such fact, describing
565 the place or thing to be searched, before any justice of the
566 peace, mayor of any city, town or village, or county or circuit
567 judge of any county in this state, and such justice of the peace,
568 mayor or county or circuit judge shall issue a search warrant
569 directed to the sheriff or any constable or any police officer in
570 any city, town or village, commanding him to proceed in the day
571 time, or in the night time, to enter by breaking, if necessary,
572 and to diligently search any building, room in a building,
573 outhouses, place, wagon, cart, buggy, motorcycle, motor truck,
574 automobile, water or air craft, or other vehicle as may be
575 designated in the affidavit and search warrant, and to seize such
576 tobacco so possessed and to hold the same until disposed of by

577 law, and to arrest the person or persons in possession or control
578 of the same.

579 Such writ shall be returnable instanter, or on a day to be
580 stated, and a copy shall be served on the owner or person in
581 possession, if such person be present or readily found.

582 If upon hearing, or the return of such search warrant, it
583 shall appear that any tobacco unlawfully possessed were seized,
584 the same shall be declared forfeited to this state, and shall be
585 sold as provided in Section 27-69-55 of this chapter.

586 **SECTION 13.** For purposes of this section and Section 14 of
587 this act, the following words and phrases shall have the meanings
588 as defined in this section, unless the context clearly indicates
589 otherwise:

590 (a) "Commissioner" means the Commissioner of Revenue of
591 the Department of Revenue.

592 (b) "Department" means the Department of Revenue.

593 (c) "ENDS product":

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

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

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

604 (d) "Timely filed premarket tobacco product
605 application" means an application pursuant to 21 USC Section 387j
606 for an ENDS product containing nicotine derived from tobacco
607 marketed in the United States as of August 8, 2016, that was
608 submitted to the United States Food and Drug Administration on or
609 before September 9, 2020, and accepted for filing.

610 (e) "FDA" means the United States Food and Drug
611 Administration.

612 **SECTION 14.** (1) Before September 1, 2024, and annually
613 thereafter, every manufacturer of an ENDS product that is sold for
614 retail sale in Mississippi, whether directly or through an
615 importer, wholesaler, distributor, retailer, or similar
616 intermediary or intermediaries, shall execute and deliver to the
617 Commissioner of Revenue a certification, under penalty of perjury
618 on a form and in a manner prescribed by the commissioner, that the
619 manufacturer is compliant with this section and that, for each
620 ENDS product sold in Mississippi:

621 (a) The manufacturer has received a marketing granted
622 order for the ENDS product from the FDA pursuant to 21 USC Section
623 387j; or

624 (b) The manufacturer submitted a timely filed premarket
625 tobacco product application for the ENDS product to the FDA
626 pursuant to 21 USC Section 387j, and the application either

627 remains under review by the FDA or has received a denial order
628 that has been and remains stayed by the FDA or court order,
629 rescinded by the FDA, or vacated by a court.

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

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

635 (a) A copy of:

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

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

641 (iii) A document issued by FDA or by a court
642 confirming that the premarket tobacco product application has
643 received a denial order that has been and remains stayed by FDA or
644 court order, rescinded by FDA, or vacated by a court; and

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

648 (4) The information submitted by the manufacturer pursuant
649 to subsection (3)(a) of this section is considered confidential
650 commercial or financial information for purposes of the
651 Mississippi Public Records Act of 1983 (Section 25-61-1, et al).
652 The manufacturer may redact certain confidential commercial or

653 financial information provided under subsection (3)(a) of this
654 section. The commissioner shall not disclose such information
655 except as required or authorized by law.

656 (5) A manufacturer required to submit a certification form
657 pursuant to this section shall notify the commissioner within
658 thirty (30) calendar days of any material change to the
659 certification form, including the issuance or denial of a
660 marketing authorization or other order by the FDA pursuant to 21
661 USC Section 387j, or any other order or action by the FDA or any
662 court that affects the ability of the ENDS product to be
663 introduced or delivered into interstate commerce for commercial
664 distribution in the United States.

665 (6) Beginning on October 1, 2024, the commissioner shall
666 maintain and make publicly available on the Department of
667 Revenue's official website a directory that lists all ENDS product
668 manufacturers, brand names, categories (e.g., e-liquid, e-liquid
669 cartridge, e-liquid pod, disposable), product names, and flavors
670 for which certification forms have been submitted and approved by
671 the commissioner and shall update the directory at least monthly
672 to ensure accuracy. The commissioner shall establish a process to
673 provide licensed retailers, distributors, and wholesalers notice
674 of the initial publication of the directory and changes made to
675 the directory in the prior month.

676 (7) Neither a manufacturer nor its ENDS products shall be
677 included or retained in the directory if the commissioner
678 determines that any of the following apply:

679 (a) The manufacturer failed to provide a complete and
680 accurate certification as required by subsection (1) of this
681 section;

682 (b) The manufacturer submitted a certification that
683 does not comply with the requirements of subsections (2) and (3)
684 of this section;

685 (c) The manufacturer failed to include with its
686 certification the payment required by subsection (3)(b) of this
687 section;

688 (d) The manufacturer sold products in Mississippi
689 required to be certified under this section during a period when
690 either the manufacturer or the product had not been certified and
691 listed on the directory; or

692 (e) The information provided by the manufacturer in its
693 certification is determined by the commissioner to contain false
694 information or contains material misrepresentations or omissions.

695 (8) The commissioner shall provide manufacturers notice and
696 an opportunity to cure deficiencies before removing manufacturers
697 or products from the directory.

698 (a) The commissioner may not remove the manufacturer or
699 its products from the directory until at least thirty (30)
700 business days after the manufacturer has been given notice of an
701 intended action setting forth the reasons therefor. Notice shall
702 be sufficient and be deemed immediately received by a manufacturer
703 if the notice is sent either electronically or by facsimile to an
704 electronic mail address or facsimile number, as the case may be,

705 provided by the manufacturer in its most recent certification
706 filed under subsections (2) and (3) of this section.

707 (b) The ENDS product manufacturer shall have fifteen
708 (15) business days from the date of service of the notice of the
709 commissioner's intended action to cure the deficiencies or
710 otherwise establish that the ENDS product manufacturer or its
711 products should be included in the directory.

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

716 (d) After thirty (30) calendar days following removal
717 from the directory, the ENDS product of a manufacturer identified
718 in the notice of removal and intended for sale in Mississippi is
719 subject to seizure, forfeiture, and destruction, and may not be
720 purchased or sold for retail sale in Mississippi. The cost of
721 such seizure, forfeiture, and destruction shall be borne by the
722 person from whom the products are confiscated, except that no
723 products may be seized from a consumer who has made a bona fide
724 purchase of such product. The commissioner may store and dispose
725 of the seized products as appropriate, in accordance with federal,
726 state and local laws pertaining to storage and disposal of such
727 products.

728 (9) (a) Except as provided in paragraphs (b) and (c) of
729 this subsection (9), beginning on October 1, 2024, or on the date
730 that the commissioner first makes the directory available for

731 public inspection on the Department of Revenue's official website,
732 whichever is later, ENDS products not included in the directory,
733 shall not be sold for retail sale in Mississippi, either directly
734 or through an importer, distributor, wholesaler, retailer, or
735 similar intermediary or intermediaries.

736 (b) Each retailer shall have sixty (60) days from the
737 date that the commissioner first makes the directory available for
738 inspection on its the department's website to sell products that
739 were in its inventory and not included in the directory or remove
740 those products from inventory.

741 (c) Each distributor or wholesaler shall have sixty
742 (60) days from the date that the commissioner first makes the
743 directory available for inspection on the department's website to
744 remove those products intended for sale in the state from its
745 inventory.

746 (d) After sixty (60) calendar days following
747 publication of the directory, ENDS products not listed in the
748 directory and intended for retail sale in Mississippi are subject
749 to seizure, forfeiture, and destruction, and may not be purchased
750 or sold for retail sale in Mississippi except as provided in
751 subsection (8) of this section. The cost of such seizure,
752 forfeiture, and destruction shall be paid by the person from whom
753 the products are confiscated, except that no products may be
754 seized from a consumer who has made a bona fide purchase of such
755 product. The commissioner may store and dispose of the seized

756 products as appropriate, in accordance with federal, state, and
757 local laws pertaining to storage and disposal of such products.

758 (10) (a) A retailer, distributor, wholesaler, or importer
759 who sells or offers for sale an ENDS product for retail sale in
760 Mississippi that is not included in the directory shall be subject
761 to a civil penalty of not more than Five Hundred Dollars (\$500.00)
762 per day for each individual ENDS product offered for sale in
763 violation of this section until the offending product is removed
764 from the market or until the offending product is properly listed
765 on the directory.

766 (i) For a second violation of this type within a
767 12-month period, the civil penalty shall be at least Seven Hundred
768 and Fifty Dollars (\$750.00), but not more than One Thousand
769 Dollars (\$1,000.00), per product per day.

770 (ii) For a third violation of this type within a
771 12-month period after the initial violation, the civil penalty
772 shall be at least One Thousand Dollars (\$1,000.00), but not more
773 than One Thousand Five Hundred Dollars (\$1,500.00), per product
774 per day.

775 (b) A manufacturer whose ENDS products are not listed
776 in the directory and who causes the products that are not listed
777 to be sold for retail sale in Mississippi, whether directly or
778 through an importer, distributor, wholesaler, retailer, or similar
779 intermediary or intermediaries, is subject to a civil penalty of
780 Ten Thousand Dollars (\$10,000.00) per day for each individual ENDS
781 product offered for sale in violation of this section until the

782 offending product is removed from the market or until the
783 offending product is properly listed on the directory. In
784 addition, any manufacturer that falsely represents any information
785 required by a certification form shall be guilty of a misdemeanor
786 for each false representation.

787 (c) In an action to enforce this section, the state
788 shall be entitled to recover costs, including the costs of
789 investigation, expert witness fees and reasonable attorney fees.

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

792 (11) (a) A manufacturer not registered to do business in
793 the state shall, as a condition precedent to having its name or
794 its products listed and retained in the directory, appoint and
795 continually engage without interruption a registered agent in
796 Mississippi for service of process on whom all process and any
797 action or proceeding arising out of the enforcement of this
798 section may be served. The manufacturer shall provide to the
799 commissioner the name, address, and telephone number of its agent
800 for service of process and shall provide any other information
801 relating to its agent as may be requested by the commissioner.

802 (b) A manufacturer located outside of the United States
803 shall, as an additional condition precedent to having its products
804 listed or retained in the directory, cause each of its importers
805 of any of its products to be sold in Mississippi to appoint, and
806 continually engage without interruption, the services of an agent
807 in the state in accordance with the provisions of this section.

808 All obligations of a manufacturer imposed by this section with
809 respect to appointment of its agent shall also apply to the
810 importers with respect to appointment of their agents.

811 (c) A manufacturer shall provide written notice to the
812 commissioner thirty (30) calendar days prior to the termination of
813 the authority of an agent appointed under paragraphs (a) and (b)
814 of this subsection (11). No less than five (5) calendar days
815 prior to the termination of an existing agent appointment, a
816 manufacturer shall provide to the commissioner the name, address
817 and telephone number of its newly appointed agent for service of
818 process and shall provide any other information relating to the
819 new appointment as may be requested by the commissioner. In the
820 event an agent terminates an agency appointment, the manufacturer
821 shall notify the commissioner of the termination within five (5)
822 calendar days and shall include proof to the satisfaction of the
823 commissioner of the appointment of a new agent.

824 (12) Each retailer, distributor, and wholesaler that sells
825 or distributes electronic nicotine delivery systems or nicotine
826 liquids in this state shall be subject to at least two (2)
827 unannounced compliance checks annually by the department for
828 purposes of enforcing this section. Unannounced follow-up
829 compliance checks of all noncompliant retailers, distributors, and
830 wholesalers shall be conducted within thirty (30) days after any
831 violation of this article. The department shall publish the
832 results of all compliance checks annually and shall make the
833 results available to the public upon request.

834 (13) The commissioner may promulgate rules necessary to
835 effect the purposes of this section.

836 (14) All fees and penalties collected by the commissioner
837 pursuant to this section shall be used for administration and
838 enforcement of this section.

839 (15) Before January 1, 2025, and annually thereafter, the
840 commissioner shall provide a report to the Legislature regarding
841 the status of the directory, manufacturers and products included
842 in the directory, revenue and expenditures related to
843 administration of this section, and enforcement activities
844 undertaken pursuant to this section of this act.

845 **SECTION 15.** This act shall take effect and be in force from
846 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 RELATING TO THE SALE OF CIGARETTES IN MISSISSIPPI; TO
2 DEFINE CERTAIN TERMS; TO REQUIRE EACH CIGARETTE MANUFACTURER WHOSE
3 CIGARETTES ARE SOLD IN MISSISSIPPI TO FILE AN ANNUAL CERTIFICATION
4 WITH THE COMMISSIONER OF REVENUE CONTAINING SPECIFIED INFORMATION
5 ABOUT THE MANUFACTURER AND ITS CIGARETTES; TO REQUIRE THE
6 COMMISSIONER TO MAINTAIN A STATE CIGARETTE DIRECTORY AVAILABLE TO
7 THE PUBLIC ON THE DEPARTMENT OF REVENUE'S WEBSITE; TO PROHIBIT THE
8 SALE OF A MANUFACTURER'S CIGARETTES IF THE MANUFACTURER IS NOT
9 LISTED ON THE DIRECTORY; TO GIVE RETAILERS AND IMPORTERS,
10 DISTRIBUTORS AND WHOLESALERS AN OPPORTUNITY TO DISPOSE OF THEIR
11 CIGARETTE INVENTORY THAT IS NOT AUTHORIZED TO BE SOLD IN THE
12 DIRECTORY BEFORE THE INVENTORY IS SEIZED; TO ESTABLISH CIVIL
13 PENALTIES FOR RETAILERS AND OTHER ENTITIES SELLING CIGARETTES THAT
14 ARE NOT INCLUDED IN THE DIRECTORY; TO REQUIRE MANUFACTURERS TO
15 HAVE A REGISTERED AGENT IN THE STATE FOR SERVICE OF PROCESS; TO
16 REQUIRE UNANNOUNCED COMPLIANCE CHECKS BY THE DEPARTMENT OF
17 REVENUE; TO AUTHORIZE THE COMMISSIONER OF REVENUE TO PROMULGATE
18 RULES AND REGULATIONS, AND TO USE FEES AND PENALTIES COLLECTED,
19 FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ACT; TO REQUIRE
20 ANNUAL REPORTS TO THE LEGISLATURE ON THE STATUS OF THE STATE

21 CIGARETTE DIRECTORY AND ENFORCEMENT ACTIVITIES; TO BRING FORWARD
22 SECTION 27-69-53, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZES THE
23 CONFISCATION OF CIGARETTES NOT HAVING STAMPS AFFIXED TO THE
24 PACKAGE AS REQUIRED UNDER THE TOBACCO TAX LAW, FOR PURPOSES OF
25 POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 27-69-55, MISSISSIPPI
26 CODE OF 1972, WHICH ESTABLISHES PROCEDURES FOR THE SEIZURE OF
27 CERTAIN TOBACCO PRODUCTS UNDER THE TOBACCO TAX LAW, FOR PURPOSES
28 OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 27-69-59,
29 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE SEARCH AND
30 SEIZURE OF ILLEGALLY SOLD TOBACCO PRODUCTS, FOR PURPOSES OF
31 POSSIBLE AMENDMENT; TO PROVIDE THAT NO LATER THAN SEPTEMBER 1,
32 2024, EVERY MANUFACTURER OF AN ENDS PRODUCT THAT IS SOLD FOR
33 RETAIL SALE IN MISSISSIPPI SHALL EXECUTE AND DELIVER TO THE
34 COMMISSIONER OF REVENUE A CERTIFICATION THAT THE MANUFACTURER IS
35 COMPLIANT WITH THIS ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE THAT
36 THE INFORMATION SUBMITTED BY THE MANUFACTURER IS CONSIDERED
37 CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION FOR PURPOSES OF
38 THE MISSISSIPPI PUBLIC RECORDS ACT OF 1983; TO PROVIDE THAT
39 BEGINNING ON OCTOBER 1, 2024, THE COMMISSIONER SHALL MAINTAIN AND
40 MAKE PUBLICLY AVAILABLE ON THE DEPARTMENT OF REVENUE'S OFFICIAL
41 WEBSITE A DIRECTORY THAT LISTS ALL ENDS PRODUCT MANUFACTURERS,
42 BRAND NAMES, CATEGORIES, PRODUCT NAMES, AND FLAVORS FOR WHICH
43 CERTIFICATION FORMS HAVE BEEN SUBMITTED AND APPROVED BY THE
44 COMMISSIONER AND SHALL REQUIRE THE UPDATE OF THE DIRECTORY AT
45 LEAST MONTHLY TO ENSURE ACCURACY; TO REQUIRE THE COMMISSIONER TO
46 ESTABLISH A PROCESS TO PROVIDE LICENSED RETAILERS, DISTRIBUTORS,
47 AND WHOLESALERS NOTICE OF THE INITIAL PUBLICATION OF THE DIRECTORY
48 AND CHANGES MADE TO THE DIRECTORY IN THE PRIOR MONTH; TO PROVIDE
49 THAT NEITHER A MANUFACTURER NOR ITS ENDS PRODUCTS SHALL BE
50 INCLUDED OR RETAINED IN THE DIRECTORY IF THE COMMISSIONER
51 DETERMINES THAT THE MANUFACTURER FAILED TO PROVIDE A COMPLETE AND
52 ACCURATE CERTIFICATION AND PROVIDE PAYMENT; TO PROVIDE THAT AFTER
53 THIRTY CALENDAR DAYS FOLLOWING REMOVAL FROM THE DIRECTORY, THE
54 ENDS PRODUCT OF A MANUFACTURER IDENTIFIED IN THE NOTICE OF REMOVAL
55 AND INTENDED FOR SALE IN MISSISSIPPI ARE SUBJECT TO SEIZURE,
56 FORFEITURE, AND DESTRUCTION, AND SHALL NOT BE PURCHASED OR SOLD
57 FOR RETAIL SALE IN MISSISSIPPI; BEGINNING ON OCTOBER 1, 2024, OR
58 ON THE DATE THAT THE COMMISSIONER FIRST MAKES THE DIRECTORY
59 AVAILABLE FOR PUBLIC INSPECTION ON THE DEPARTMENT OF REVENUE'S
60 WEBSITE, WHICHEVER IS LATER, ENDS PRODUCTS NOT INCLUDED IN THE
61 DIRECTORY, SHALL NOT BE SOLD FOR RETAIL SALE IN MISSISSIPPI,
62 EITHER DIRECTLY OR THROUGH AN IMPORTER, DISTRIBUTOR, WHOLESALER,
63 RETAILER, OR SIMILAR INTERMEDIARY OR INTERMEDIARIES; TO PROVIDE
64 THAT EACH RETAILER SHALL HAVE SIXTY DAYS FROM THE DATE THAT THE
65 COMMISSIONER FIRST MAKES THE DIRECTORY AVAILABLE FOR INSPECTION ON
66 THE DEPARTMENT'S WEBSITE TO SELL PRODUCTS THAT WERE IN ITS
67 INVENTORY AND NOT INCLUDED IN THE DIRECTORY OR REMOVE THOSE
68 PRODUCTS FROM INVENTORY; TO PROVIDE THAT AFTER SIXTY CALENDAR DAYS
69 FOLLOWING PUBLICATION OF THE DIRECTORY, ENDS PRODUCTS NOT LISTED
70 IN THE DIRECTORY AND INTENDED FOR RETAIL SALE IN MISSISSIPPI ARE
71 SUBJECT TO SEIZURE, FORFEITURE, AND DESTRUCTION, AND MAY NOT BE
72 PURCHASED OR SOLD FOR RETAIL SALE IN MISSISSIPPI EXCEPT AS

73 OTHERWISE PROVIDED; TO PROVIDE THAT A RETAILER, DISTRIBUTOR,
74 WHOLESALER, OR IMPORTER WHO SELLS OR OFFERS FOR SALE AN ENDS
75 PRODUCT FOR RETAIL SALE IN MISSISSIPPI THAT IS NOT INCLUDED IN THE
76 DIRECTORY SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN
77 FIVE HUNDRED DOLLARS FOR EACH INDIVIDUAL ENDS PRODUCT OFFERED FOR
78 SALE IN VIOLATION OF THIS ACT; TO PROVIDE THAT A MANUFACTURER
79 WHOSE ENDS PRODUCTS ARE NOT LISTED IN THE DIRECTORY AND WHO CAUSES
80 THE PRODUCTS THAT ARE NOT LISTED TO BE SOLD FOR RETAIL SALE IN
81 MISSISSIPPI, IS SUBJECT TO A CIVIL PENALTY OF TEN THOUSAND DOLLARS
82 FOR EACH INDIVIDUAL ENDS PRODUCT OFFERED FOR SALE IN VIOLATION OF
83 THIS ACT; TO REQUIRE A MANUFACTURER LOCATED OUTSIDE OF THE UNITED
84 STATES TO CAUSE EACH OF ITS IMPORTERS OF ANY OF ITS PRODUCTS TO BE
85 SOLD IN MISSISSIPPI TO APPOINT, AND CONTINUALLY ENGAGE WITHOUT
86 INTERRUPTION, THE SERVICES OF AN AGENT IN THE STATE; TO REQUIRE A
87 MANUFACTURER TO PROVIDE WRITTEN NOTICE TO THE COMMISSIONER THIRTY
88 CALENDAR DAYS PRIOR TO THE TERMINATION OF THE AUTHORITY OF AN
89 AGENT; TO PROVIDE THAT EACH RETAILER, DISTRIBUTOR, AND WHOLESALER
90 THAT SELLS OR DISTRIBUTES ELECTRONIC NICOTINE DELIVERY SYSTEMS OR
91 NICOTINE LIQUIDS IN THIS STATE SHALL BE SUBJECT TO AT LEAST TWO
92 UNANNOUNCED COMPLIANCE CHECKS; TO PROVIDE THAT BEGINNING ON
93 JANUARY 31, 2025, AND ANNUALLY THEREAFTER, THE COMMISSIONER SHALL
94 PROVIDE A REPORT TO THE LEGISLATURE THAT CONTAINS CERTAIN
95 INFORMATION RELATED TO THE REGISTRY; AND FOR RELATED PURPOSES.

SS26\HB1660A.J

Amanda White
Secretary of the Senate