

By: Representative Yancey

To: Judiciary B

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 ATTORNEY GENERAL A
4 CERTIFICATION THAT THE MANUFACTURER IS COMPLIANT WITH THIS ACT; TO
5 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 ATTORNEY GENERAL SHALL MAINTAIN
10 AND MAKE PUBLICLY AVAILABLE ON THE ATTORNEY GENERAL'S OFFICIAL
11 WEBSITE A DIRECTORY THAT LISTS ALL ENDS PRODUCT MANUFACTURERS,
12 BRAND NAMES, CATEGORIES, PRODUCT NAMES, AND FLAVORS FOR WHICH
13 CERTIFICATION FORMS HAVE BEEN SUBMITTED AND APPROVED BY THE
14 ATTORNEY GENERAL AND SHALL UPDATE THE DIRECTORY AT LEAST MONTHLY
15 TO ENSURE ACCURACY; TO REQUIRE THE ATTORNEY GENERAL TO ESTABLISH A
16 PROCESS TO PROVIDE LICENSED RETAILERS, DISTRIBUTORS, AND
17 WHOLESALERS NOTICE OF THE INITIAL PUBLICATION OF THE DIRECTORY AND
18 CHANGES MADE TO THE DIRECTORY IN THE PRIOR MONTH; TO PROVIDE THAT
19 NEITHER A MANUFACTURER NOR ITS ENDS PRODUCTS SHALL BE INCLUDED OR
20 RETAINED IN THE DIRECTORY IF THE ATTORNEY GENERAL DETERMINES THAT
21 THE MANUFACTURER FAILED TO PROVIDE A COMPLETE AND ACCURATE
22 CERTIFICATION AND PROVIDE PAYMENT; TO PROVIDE THAT AFTER THIRTY
23 CALENDAR DAYS FOLLOWING REMOVAL FROM THE DIRECTORY, THE ENDS
24 PRODUCT OF A MANUFACTURER IDENTIFIED IN THE NOTICE OF REMOVAL AND
25 INTENDED FOR SALE IN MISSISSIPPI ARE SUBJECT TO SEIZURE,
26 FORFEITURE, AND DESTRUCTION, AND SHALL NOT BE PURCHASED OR SOLD
27 FOR RETAIL SALE IN MISSISSIPPI; BEGINNING ON OCTOBER 1, 2024, OR
28 ON THE DATE THAT THE ATTORNEY GENERAL FIRST MAKES THE DIRECTORY
29 AVAILABLE FOR PUBLIC INSPECTION ON ITS OFFICIAL WEBSITE, WHICHEVER
30 IS LATER, ENDS PRODUCTS NOT INCLUDED IN THE DIRECTORY, SHALL NOT
31 BE SOLD FOR RETAIL SALE IN MISSISSIPPI, EITHER DIRECTLY OR THROUGH
32 AN IMPORTER, DISTRIBUTOR, WHOLESALER, RETAILER, OR SIMILAR
33 INTERMEDIARY OR INTERMEDIARIES; TO PROVIDE THAT EACH RETAILER
34 SHALL HAVE SIXTY DAYS FROM THE DATE THAT THE ATTORNEY GENERAL



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

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

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

70 (a) "ENDS product":

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



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

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

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

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

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



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

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

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

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

112 (a) A copy of:

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

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

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



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

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

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

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



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

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

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

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

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

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

166 (e) The information provided by the manufacturer in its
167 certification is determined by the Attorney General to contain
168 false information or contains material misrepresentations or
169 omissions.



170 (8) The Attorney General shall provide manufacturers notice
171 and an opportunity to cure deficiencies before removing
172 manufacturers or products from the directory.

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

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

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

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



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

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

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

216 (c) Each distributor or wholesaler shall have sixty
217 (60) days from the date that the Attorney General first makes the
218 directory available for inspection on its public website to remove
219 those products intended for sale in the state from its inventory.



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

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

239 (i) For a second violation of this type within a
240 12-month period, the civil penalty shall be at least Seven Hundred
241 and Fifty Dollars (\$750.00), but not more than One Thousand
242 Dollars (\$1,000.00) per product.

243 (ii) For a third violation of this type within a
244 12-month period, the civil penalty shall be at least One Thousand



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

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

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

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

264 (11) (a) A manufacturer not registered to do business in
265 the state shall, as a condition precedent to having its name or
266 its products listed and retained in the directory, appoint and
267 continually engage without interruption a registered agent in
268 Mississippi for service of process on whom all process and any
269 action or proceeding arising out of the enforcement of this



270 section may be served. The manufacturer shall provide to the
271 division the name, address, and telephone number of its agent for
272 service of process and shall provide any other information
273 relating to its agent as may be requested by the division.

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

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



294 days and shall include proof to the satisfaction of the division
295 of the appointment of a new agent.

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

306 (13) The Attorney General may promulgate rules necessary to
307 effect the purposes of this act.

308 (14) All fees and penalties collected by the Attorney
309 General pursuant to this section shall be used for administration
310 and enforcement of this act.

311 (15) Beginning on January 31, 2025, and annually thereafter,
312 the Attorney General shall provide a report to the Legislature
313 regarding the status of the directory, manufacturers and products
314 included in the directory, revenue and expenditures related to
315 administration of this section, and enforcement activities
316 undertaken pursuant to this act.

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

