

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 1660

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.

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

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, a manufacturer not
352 registered to do business in the state must appoint and
353 continually engage, without interruption, a registered agent in
354 Mississippi for service of process on whom all process and any
355 action or proceeding arising out of the enforcement of Sections 1
356 through 9 of this act may be served. The manufacturer shall
357 provide to the commissioner the name, address and telephone number
358 of its agent for service of process and any other information
359 relating to its agent which may be requested by the commissioner.

360 (2) As a condition precedent to having its name or its
361 cigarettes listed and retained in the directory maintained by the
362 commissioner pursuant to Section 3, a manufacturer located outside
363 of the United States shall cause each of its importers of any of



364 its cigarettes to be sold in Mississippi to appoint and
365 continually engage, without interruption, the services of an agent
366 in the state in accordance with this section. All obligations of
367 a manufacturer imposed by this section with respect to appointment
368 of its agent also apply to importers with respect to appointment
369 of their agents.

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

383 **SECTION 7.** Each retailer, distributor and wholesaler that
384 sells or distributes cigarettes in this state is subject to no
385 less than two (2) unannounced compliance checks annually by the
386 department for purposes of enforcing Sections 1 through 9 of this
387 act. Unannounced follow-up compliance checks of all noncompliant
388 retailers, distributors and wholesalers must be conducted no later



389 than thirty (30) days after a violation of Sections 1 through 9 of
390 this act. The department shall publish the results of all
391 compliance checks at least annually and make the results available
392 to the public on request.

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

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

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

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

408 27-69-53. Any cigarettes found at any point within this
409 state, in the possession of a dealer or any person for a period of
410 time longer than specified by Section 27-69-27 and not having
411 affixed to the package, the stamps as required, and any tobacco
412 subject to the tax found in the possession of any wholesaler,
413 distributor or dealer required by this chapter to obtain a permit,



414 who has not procured a permit, or whose permit has been revoked
415 and not reinstated, are hereby declared to be contraband goods,
416 and the same may be seized by the commissioner, or his agents, or
417 employees, or by any peace officer of this state, when directed by
418 the commissioner so to do, without a warrant, and the said goods
419 shall be offered by the commissioner for sale at public auction to
420 the highest bidder after due advertisement, but the commissioner
421 before delivering any of said goods so seized shall require the
422 purchaser to affix the proper amount of stamps to the cigarettes
423 or pay the excise tax on other tobacco as required by this
424 chapter. The proceeds of sale for any goods sold shall be paid to
425 the State Treasurer by the commissioner as are other funds
426 collected. Provided, that the cost of confiscation and sale shall
427 be paid out of the proceeds derived from such sale before making
428 remittance to the State Treasurer. The time limit herein
429 specified for affixing said stamps shall not apply to any person
430 who, within said time limits, shall offer for sale, either at
431 wholesale or retail, any cigarettes, and all cigarettes when
432 offered for sale either at wholesale or retail without the stamps
433 having been first affixed, shall be subject to confiscation.
434 Provided further, that any vehicle, not a common carrier, which
435 may be used in transporting for the purpose of sale any unstamped
436 cigarettes, shall likewise be subject to confiscation and sale in
437 the same manner as above provided.



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

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

451 27-69-55. In all cases of seizures of any tobacco, or other
452 property hereafter made as being subject to forfeiture under the
453 provisions of this chapter, which in the opinion of the officer or
454 person making the seizure, is of the appraised value of
455 Twenty-five Dollars (\$25.00) or more, the said officer or person
456 shall proceed as follows:

457 First: He shall cause a list containing a particular
458 description of the tobacco or other property seized to be prepared
459 in duplicate, and an appraisalment thereof to be made by three (3)
460 sworn appraisers to be selected by him, who shall be respectable
461 and disinterested citizens of this state, residing within the
462 county wherein the seizure was made. Said list and appraisalment



463 shall be properly attested by said officer, or person, and the
464 said appraisers, for which service each of said appraisers shall
465 be allowed the sum of One Dollar (\$1.00) per day for not exceeding
466 two (2) days, to be paid as other costs.

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

470 Third: The officer or person making the seizure shall
471 proceed to give notice thereof for five (5) days, in writing, at
472 three (3) places in the county where the seizure is made. One (1)
473 of the notices shall be posted at the county courthouse; another
474 at the place where the goods were seized; and the other at some
475 public place. The notice shall describe the property seized, and
476 state the time and place and cause of seizure, and give the name
477 and place of residence, if known, of the person from whom the
478 property was seized, and shall require any person claiming it to
479 appear and make such claims in writing, within five (5) days from
480 the date of the first posting of such notice. Such officer or
481 person making the seizure shall also deliver to the person from
482 whom the property was seized, and also to the owner, if known, a
483 copy of said notice.

484 Fourth: Any person claiming the said property so seized as
485 contraband within the time specified in the notice, may file with
486 the commissioner a claim, in writing, stating his interest in the
487 property seized, and may execute a bond to the State of



488 Mississippi in a penal sum equal to double the value of said
489 property so seized, but in no case shall said bond be less than
490 the sum of One Hundred Dollars (\$100.00), with securities to be
491 approved by the clerk of the circuit court in the county in which
492 the property is seized, conditioned that in the case of
493 condemnation of the property so seized, the obligor shall pay to
494 the State of Mississippi the full value of the property so seized,
495 and all costs and expenses of the proceedings to obtain such
496 condemnation, including a reasonable attorney's fee. And upon the
497 delivery of such bond to the commissioner, he shall transmit the
498 same with the duplicate list or description of the property seized
499 to the county attorney of the county, or the district attorney of
500 the district in which such seizure was made, and the said county
501 attorney, or district attorney, as the case may be, shall
502 prosecute the case to secure the forfeiture of said property in
503 the court having jurisdiction. Upon the filing of the bond
504 aforesaid, the said property shall be delivered to the claimant
505 pending the outcome of the case, provided he shall at once affix
506 the required stamps on cigarettes or pay the tax due on other
507 tobacco products.

508 Fifth: If no claim is interposed, and no bond given within
509 the time above specified, such property shall be forfeited without
510 further proceedings, and the same shall be sold as herein
511 provided, and the proceeds of the sale, when received by the
512 commissioner, shall be paid into the State Treasury as are other



513 funds collected, provided, that in seizures of property of less
514 value than Twenty-five Dollars (\$25.00), the same may be
515 advertised with other quantities at Jackson by the commissioner
516 and disposed of as hereinabove provided.

517 Sixth: In proceedings to secure a confiscation of the
518 property hereinbefore mentioned, where the value of the goods
519 seized at one time does not exceed the amount provided in Section
520 9-11-9, the justice court judge of the county where the property
521 is seized shall have jurisdiction to try the cause. Where the
522 value of the property seized at one time is in excess of the
523 amount provided in Section 9-11-9, then the circuit court of the
524 county where the property is seized shall have jurisdiction to try
525 the cause; provided, that in counties having a county court, the
526 county court shall have jurisdiction concurrent with the circuit
527 court, and with the justice court where the value of the property
528 seized does not exceed One Thousand Dollars (\$1,000.00).

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

532 Within ten (10) days after filing the bond provided for in
533 paragraph fourth hereof, the claimant shall file a petition in the
534 court having jurisdiction of said cause, which shall stand for a
535 declaration, and the commissioner, or other party authorized to
536 prosecute the confiscation of said property, shall plead to it as
537 if it were an ordinary action at law, and the same rules of



538 pleading and proceeding applicable to actions in the circuit court
539 shall be observed in this action, and all issues made by the
540 pleadings shall be tried and disposed of as other actions in the
541 circuit court, and the judgment of the circuit court shall be
542 framed to meet the circumstances of the case and the cost shall be
543 adjudged as in other actions; provided, however, neither the
544 state, nor the commissioner, nor any other person representing the
545 state, shall be liable for the cost in the event the court shall
546 not confiscate the property in controversy.

547 The seizure, forfeiture and sale of contraband goods under
548 this section and Section 27-69-53 is supplemental and in addition
549 to the seizure, forfeiture and sale of contraband tobacco provided
550 for in Section 27-69-56. Where a basis exists under both this
551 section and Section 27-69-53 and under Section 27-69-56 for the
552 seizure, forfeiture and sale of the same contraband goods, such
553 actions can proceed simultaneously. Where such simultaneous
554 seizure, forfeiture and sale is undertaken and there is a conflict
555 between the procedures contained in this section and Section
556 27-69-53 and those contained in Section 27-69-56, the procedures
557 contained in Section 27-69-56 shall control and be followed.

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

560 27-69-59. When the commissioner has good reason to believe
561 that tobacco is being kept, sold, offered for sale, or given away
562 in violation of this chapter, or regulations issued under



563 authority hereof, he may make affidavit of such fact, describing
564 the place or thing to be searched, before any justice of the
565 peace, mayor of any city, town or village, or county or circuit
566 judge of any county in this state, and such justice of the peace,
567 mayor or county or circuit judge shall issue a search warrant
568 directed to the sheriff or any constable or any police officer in
569 any city, town or village, commanding him to proceed in the day
570 time, or in the night time, to enter by breaking, if necessary,
571 and to diligently search any building, room in a building,
572 outhouses, place, wagon, cart, buggy, motorcycle, motor truck,
573 automobile, water or air craft, or other vehicle as may be
574 designated in the affidavit and search warrant, and to seize such
575 tobacco so possessed and to hold the same until disposed of by
576 law, and to arrest the person or persons in possession or control
577 of the same.

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

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

585 **SECTION 13.** For purposes of this section and Section 14 of
586 this act, the following words and phrases shall have the meanings



587 as defined in this section, unless the context clearly indicates
588 otherwise:

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

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

592 (c) "ENDS product":

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

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

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

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

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



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

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

623 (b) The manufacturer submitted a timely filed premarket
624 tobacco product application for the ENDS product to the FDA
625 pursuant to 21 USC Section 387j, and the application either
626 remains under review by the FDA or has received a denial order
627 that has been and remains stayed by the FDA or court order,
628 rescinded by the FDA, or vacated by a court.

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

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

634 (a) A copy of:



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

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

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

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

647 (4) The information submitted by the manufacturer pursuant
648 to subsection (3)(a) of this section is considered confidential
649 commercial or financial information for purposes of the
650 Mississippi Public Records Act of 1983 (Section 25-61-1, et al).
651 The manufacturer may redact certain confidential commercial or
652 financial information provided under subsection (3)(a) of this
653 section. The commissioner shall not disclose such information
654 except as required or authorized by law.

655 (5) A manufacturer required to submit a certification form
656 pursuant to this section shall notify the commissioner within
657 thirty (30) calendar days of any material change to the
658 certification form, including the issuance or denial of a
659 marketing authorization or other order by the FDA pursuant to 21



660 USC Section 387j, or any other order or action by the FDA or any
661 court that affects the ability of the ENDS product to be
662 introduced or delivered into interstate commerce for commercial
663 distribution in the United States.

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

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

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

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

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



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

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

691 (8) The commissioner shall provide manufacturers notice and
692 an opportunity to cure deficiencies before removing manufacturers
693 or products from the directory.

694 (a) The commissioner may not remove the manufacturer or
695 its products from the directory until at least thirty (30)
696 business days after the manufacturer has been given notice of an
697 intended action setting forth the reasons therefor. Notice shall
698 be sufficient and be deemed immediately received by a manufacturer
699 if the notice is sent either electronically or by facsimile to an
700 electronic mail address or facsimile number, as the case may be,
701 provided by the manufacturer in its most recent certification
702 filed under subsections (2) and (3) of this section.

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



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

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

724 (9) (a) Except as provided in paragraphs (b) and (c) of
725 this subsection (9), beginning on October 1, 2024, or on the date
726 that the commissioner first makes the directory available for
727 public inspection on the Department of Revenue's official website,
728 whichever is later, ENDS products not included in the directory,
729 shall not be sold for retail sale in Mississippi, either directly
730 or through an importer, distributor, wholesaler, retailer, or
731 similar intermediary or intermediaries.



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

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

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

754 (10) (a) A retailer, distributor, wholesaler, or importer
755 who sells or offers for sale an ENDS product for retail sale in
756 Mississippi that is not included in the directory shall be subject



757 to a civil penalty of not more than Five Hundred Dollars (\$500.00)
758 per day for each individual ENDS product offered for sale in
759 violation of this section until the offending product is removed
760 from the market or until the offending product is properly listed
761 on the directory.

762 (i) For a second violation of this type within a
763 12-month period, the civil penalty shall be at least Seven Hundred
764 and Fifty Dollars (\$750.00), but not more than One Thousand
765 Dollars (\$1,000.00), per product per day.

766 (ii) For a third violation of this type within a
767 12-month period after the initial violation, the civil penalty
768 shall be at least One Thousand Dollars (\$1,000.00), but not more
769 than One Thousand Five Hundred Dollars (\$1,500.00), per product
770 per day.

771 (b) A manufacturer whose ENDS products are not listed
772 in the directory and who causes the products that are not listed
773 to be sold for retail sale in Mississippi, whether directly or
774 through an importer, distributor, wholesaler, retailer, or similar
775 intermediary or intermediaries, is subject to a civil penalty of
776 Ten Thousand Dollars (\$10,000.00) per day for each individual ENDS
777 product offered for sale in violation of this section until the
778 offending product is removed from the market or until the
779 offending product is properly listed on the directory. In
780 addition, any manufacturer that falsely represents any information



781 required by a certification form shall be guilty of a misdemeanor
782 for each false representation.

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

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

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

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



805 respect to appointment of its agent shall also apply to the
806 importers with respect to appointment of their agents.

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

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



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

832 (14) All fees and penalties collected by the commissioner
833 pursuant to this section shall be used for administration and
834 enforcement of this section.

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

841 **SECTION 15.** This act shall take effect and be in force from
842 and after July 1, 2024.

