

By: Senator(s) Boyd

To: Public Health and
Welfare; Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2886

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

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

26 **SECTION 1. Definitions.** For purpose of this chapter only,
27 the following terms shall have the meanings ascribed herein:

28 (a) "ENDS product" means any noncombustible product
29 that employs a heating element, power source, electronic circuit,



30 or other electronic, chemical, or mechanical means, regardless of
31 shape or size, to produce vapor from nicotine in a solution. Such
32 definition includes a consumable nicotine liquid solution suitable
33 for use in an ENDS product, whether sold with the product or
34 separately; but does not include any product regulated as a drug
35 or device under Chapter V of the Federal Food, Drug, and Cosmetic
36 Act (21 USC Section 351 et seq.).

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

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

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

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



54 of Revenue, that the manufacturer is compliant with this chapter
55 and that, for each ENDS product sold in Mississippi:

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

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

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

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

70 (a) A copy of the following:

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

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

76 (iii) A document issued by the FDA or by a court
77 confirming that the premarket tobacco product application has



78 received a denial order that has been and remains stayed by FDA or
79 court order, rescinded by FDA, or vacated by a court; and

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

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

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

100 (6) Starting October 1, 2024, the department shall maintain
101 and make publicly available on the department's official website a
102 directory that lists all ENDS product manufacturers, brand names,



103 categories (e.g., e-liquid, e-liquid cartridge, e-liquid pod,
104 disposable), product names, flavors for which certification forms
105 have been submitted and approved by the department and shall
106 update the directory at least monthly to ensure accuracy. The
107 department shall establish a process to provide licensed
108 retailers, distributors, and wholesalers notice of the initial
109 publication of the directory and changes made to the directory in
110 the prior month.

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

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

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

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

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



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

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

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

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

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



151 (d) After thirty (30) calendar days following removal
152 from the directory, the ENDS product of a manufacturer identified
153 in the notice of removal and intended for sale in Mississippi are
154 subject to seizure, forfeiture, and destruction, and may not be
155 purchased or sold for retail sale in the Mississippi. The cost of
156 such seizure, forfeiture, and destruction shall be borne by the
157 person from whom the products are confiscated, except that no
158 products may be seized from a consumer who has made a bona fide
159 purchase of such product. The department may store and dispose of
160 the seized products as appropriate, in accordance with federal,
161 state and local laws pertaining to storage and disposal of such
162 products.

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

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



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

180 (d) After ninety (90) calendar days following
181 publication of the directory, ENDS products not listed in the
182 directory and intended for retail sale in Mississippi are subject
183 to seizure, forfeiture, and destruction, and may not be purchased
184 or sold for retail sale in Mississippi except as provided in
185 subsection (8) of this section. The cost of such seizure,
186 forfeiture and destruction shall be borne by the person from whom
187 the products are confiscated, except that no products may be
188 seized from a consumer who has made a bona fide purchase of such
189 product. The department may store and dispose of the seized
190 products as appropriate, in accordance with federal, state, and
191 local laws pertaining to storage and disposal of such products.

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

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



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

205 (ii) For a third violation of this type within a
206 twelve-month period, the civil penalty shall be at least One
207 Thousand Dollars (\$1,000.00) but not more than One Thousand Five
208 Hundred Dollars (\$1,500.00) per product.

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

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



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

227 (a) A manufacturer not registered to do business in the
228 state shall, as a condition precedent to having its name or its
229 products listed and retained in the directory, appoint and
230 continually engage without interruption a registered agent in
231 Mississippi for service of process on whom all process and any
232 action or proceeding arising out of the enforcement of this
233 section may be served. The manufacturer shall provide to the
234 division the name, address, and telephone number of its agent for
235 service of process and shall provide any other information
236 relating to its agent as may be requested by the division.

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

246 (c) A manufacturer shall provide written notice to the
247 division thirty (30) calendar days prior to the termination of the
248 authority of an agent appointed pursuant to paragraphs (a) and (b)
249 of this subsection. No less than five (5) calendar days prior to
250 the termination of an existing agent appointment, a manufacturer



251 shall provide to the division the name, address and telephone
252 number of its newly appointed agent for service of process and
253 shall provide any other information relating to the new
254 appointment as may be requested by the division. In the event an
255 agent terminates an agency appointment, the manufacturer shall
256 notify the division of the termination within five (5) calendar
257 days and shall include proof to the satisfaction of the division
258 of the appointment of a new agent.

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

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

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

274 (16) Starting January 31, 2025, and annually thereafter, the
275 department shall provide a report to the Legislature regarding the



276 status of the directory, manufacturers and products included in
277 the directory, revenue and expenditures related to administration
278 of this section, and enforcement activities undertaken pursuant to
279 this section.

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

