**South Carolina General Assembly**

125th Session, 2023-2024

**S. 994**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Alexander, Hutto, Verdin, Grooms, Kimbrell, Gambrell, Shealy, Hembree, McElveen, Davis, Young, Loftis, K. Johnson, McLeod, Martin, Senn, Garrett, Fanning, Cromer, Devine, Williams and Setzler

Document Path: SR-0525KM24.docx

Introduced in the Senate on January 25, 2024

Introduced in the House on April 9, 2024

Last Amended on April 2, 2024

Currently residing in the House Committee on **Judiciary**

Summary: Vapor products

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 1/25/2024 Senate Introduced and read first time (Senate Journal‑page 4)

 1/25/2024 Senate Referred to Committee on **Medical Affairs** (Senate Journal‑page 4)

 3/5/2024 Senate Committee report: Favorable with amendment **Medical Affairs** (Senate Journal‑page 9)

 3/6/2024 Scrivener's error corrected

 3/19/2024 Senate Committee Amendment Adopted (Senate Journal‑page 35)

 3/27/2024 Senate Amended (Senate Journal‑page 35)

 3/27/2024 Senate Read second time (Senate Journal‑page 35)

 4/2/2024 Senate Amended (Senate Journal‑page 55)

 4/2/2024 Senate Read third time and sent to House (Senate Journal‑page 55)

 4/2/2024 Senate Roll call Ayes-45 Nays-0 (Senate Journal‑page 55)

 4/3/2024 Scrivener's error corrected

 4/9/2024 House Introduced and read first time (House Journal‑page 20)

 4/9/2024 House Referred to Committee on **Judiciary** (House Journal‑page 20)

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**VERSIONS OF THIS BILL**

[01/25/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/994_20240125.docx)

[03/05/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/994_20240305.docx)

[03/06/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/994_20240306.docx)

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[04/03/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/994_20240403.docx)

Indicates Matter Stricken

Indicates New Matter

As Passed By The Senate

April 02, 2024

S. 994

Introduced by Senators Alexander, Hutto, Verdin, Grooms, Kimbrell, Gambrell, Shealy, Hembree, McElveen, Davis, Young, Loftis, K. Johnson, McLeod, Martin, Senn, Garrett, Fanning, Cromer, Devine, Williams and Setzler

S. Printed 04/02/24--S. [SEC 4/3/2024 1:02 PM]

Read the first time January 25, 2024

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 44‑95‑65 SO AS TO PROVIDE REGULATIONS FOR THE SALE OF ELECTRONIC NICOTINE DELIVERY SYSTEMS AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS SECTION.

 Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 95, Title 44 of the S.C. Code is amended by adding:

 Section 44‑95‑65. (A) As used in this section:

 (1) “ENDS product” means an electronic nicotine delivery system intended for eventual retail sale in this State that is a non‑combustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size to produce vapor from nicotine in a solution. ENDS product include a consumable nicotine liquid solution suitable for use in an electronic nicotine delivery system, whether sold with the ENDS product or separately, but does not include any product regulated as a drug or device under Chapter V of the federal Food, Drug, and Cosmetic Act.

 (2) “FDA” means the Federal Food and Drug Administration.

 (3) “Advertise” means the publication or dissemination of an advertisement.

 (4) “Advertisement” includes any written or verbal statement, illustration, or depiction which is calculated to induce sales of ENDS products, including any written, printed, graphic, or other material, billboard sign, or other outdoor display, public transit card, other periodical literature, publication, in a radio or television broadcast, or in any other media.

 (5) “Marketing” means any act or process of promoting or selling of ENDS products including, but not limited to, sponsorship of sporting events, and promotion of products specifically designed to appeal to certain demographics.

 (6) “Minor” means an individual under the age of eighteen years of age.

 (7) “Packaging” means any receptacle that contains a ENDS product.

 (B) Every manufacturer of ENDS products that are sold in this State, whether directly or through a distributor, retailer, or similar intermediary, shall annually execute and deliver under penalty of perjury to the Attorney General on a form prescribed by the Attorney General a certification verifying either:

 (1) the ENDS product was on the market in the United States as of August 8, 2016, and the manufacturer has applied for a marketing order pursuant to 21 U.S.C. Section 387j for the ENDS product by submitting a premarket tobacco product application on or before September 9, 2020, to the FDA and either the premarket tobacco product application for the product remains under review by the FDA or the FDA has issued a marketing denial order for the product from the FDA but the agency or a federal court has issued a stay order or injunction; or

 (2) the manufacturer has received a marketing authorization under 21 U.S.C. Section 387j for the product from the FDA.

 (C) In addition to the requirements in subsection (B) of this section, each manufacturer shall provide a copy of the premarket tobacco application with evidence of receipt of the application by the FDA or a copy of the marketing authorization issued pursuant to 21 U.S.C. Section 387j, whichever is applicable.

 (D) Any manufacturer submitting a certification pursuant to subsection (B) shall notify the Attorney General within thirty days of any material change to the certification, including issuance by the FDA of:

 (1) a marketing authorization pursuant to 21 U.S.C. Section 387j;

 (2) an order revoking a marketing authorization with respect to a manufacturer or an ENDS product; or

 (3) any notice of action taken by the FDA affecting the ability of the new ENDS product to be introduced or delivered into interstate commerce for commercial distribution.

 (E) The Attorney General shall develop and maintain a directory listing all manufacturers of ENDS products that have provided certifications that comply with this section and all ENDS products that are listed in those certifications.

 (F) The Attorney General shall:

 (1) make the directory available for public inspection on its website;

 (2) update the directory as necessary to correct mistakes and to add or remove manufacturers of ENDS products manufactured by those manufacturers on a monthly basis; and

 (3) send monthly notifications to each wholesaler, retailer, or manufacturer of ENDS products that have registered with the Attorney General by electronic communication containing a list of all changes that have been made to the directory in the previous month. In lieu of sending monthly notifications, the Attorney General may make the information available in a prominent place on the Attorney General's public website.

 (G) The Attorney General shall provide manufacturers of ENDS products notice and an opportunity to cure deficiencies before removing manufacturers or ENDS products from the directory.

 (1) The Attorney General may not remove the manufacturer or its ENDS products from the directory until at least fourteen days after the manufacturer has been given notice of an intended action. Notice shall be sufficient and be deemed immediately received by a manufacturer if the notice is sent electronically to an electronic mail address provided by the manufacturer in its most recent certification filed under subsection (B).

 (2) The manufacturer of an ENDS product shall have fourteen business days from the date of service of the notice of the Attorney General’s intended action to establish that the manufacturer or its ENDS products should be included in the directory.

 (3) A determination by the Attorney General to not include or to remove from the directory a manufacturer or a manufacturer’s ENDS product shall be subject to review in the manner provided by Article 3, Chapter 23 of Title 1.

 (H) A non‑refundable fee of two thousand dollars for each ENDS product shall be paid the first time a manufacturer submits a certification form to offset the costs incurred by the Attorney General for processing the certifications and operating the directory. The Attorney General shall thereafter collect an annual renewal fee of five hundred dollars for each ENDS product to offset the costs associated with maintaining the directory and satisfying the requirements of this section. The fees received under this subsection, and any penalties collected under subsections (N) or (P), by the Attorney General shall be deposited into the general fund of the State.

 (I) A manufacturer of an ENDS product who offers for sale an ENDS product not listed on the directory is subject to a one thousand dollar daily fine for each product offered for sale in violation of this section until the offending ENDS product is removed from the market or until the offending ENDS product is properly listed on the directory.

 (J) If there is a material change to the status of an ENDS product requiring it to be removed from the directory, then each distributor shall have twenty‑one days, and each retailer shall have forty‑two days from the day the ENDS product is removed from the directory to remove the ENDS product from its inventory and return the ENDS product to the ENDS product’s manufacturer for disposal.

 (K) The Attorney General, the South Carolina Law Enforcement Division, or the South Carolina Department of Revenue shall have the power to seize and destroy any ENDS products that are not listed on the directory and which are in possession of a distributor or retailer. The cost of seizure and destruction shall be borne by the distributor or retailer from whom the ENDS products are seized.

 (L) No retailer shall purchase ENDS products for resale except from a person licensed pursuant to Section 12‑21‑660.

 (M) No retailer, wholesaler, or distributor of ENDS products may sell, offer for sale, or otherwise distribute an ENDS product not listed on the directory.

 (N) If a retailer, wholesaler, or distributor violates subsections (M), (T), or (U), the retailer, wholesaler, or distributor is subject to a civil penalty of:

 (1) not more than five hundred dollars for a first violation;

 (2) at least seven hundred fifty dollars but not more than one thousand dollars for a second violation within a thirty‑six‑month period;

 (3) at least one thousand dollars but not more than one thousand five hundred dollars for a third violation within a thirty‑six‑month period; or

 (4) at least one thousand five hundred dollars but not more than three thousand dollars for a fourth or any subsequent violation within a thirty‑six‑month period.

 (O) Any manufacturer of ENDS products that falsely represents any the information required by subsection (B) or (C) shall be guilty of a misdemeanor for each false representation.

 (P) Any other violation of this section shall result in a fine of five hundred dollars per offense.

 (Q) In any action brought by the Attorney General to enforce this section, the Attorney General shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney’s fees.

 (R) A person who violates the provisions of subsection (M) engages in an unfair and deceptive trade practice in violation of Title 39, Chapter 5 – Unfair Trade Practices.

 (S) Each retailer, wholesaler, and distributor may be subject to unannounced compliance checks for purposes of enforcing this section. Unannounced follow‑up compliance checks of all noncompliant retailers, wholesalers, and distributors are required within thirty days after any violation of this section. The Attorney General shall make the results of all compliance checks available to the public on request.

 (T) No manufacturer, distributor, or retailer of ENDS products may sell, offer for sale, advertise, or otherwise distribute ENDS products that:

 (1) uses, in the labeling of the product, its packaging, its advertisement, or in its marketing materials:

 (a) the terms “candy”, “candies”, or variants in spelling;

 (b) the terms “bubble gum”, “cotton candy”, “gummy bear”, “lollipop”, or other variants of these words;

 (c) the terms “cake”, “cupcake”, “pie” or any other variation of these words;

 (d) the terms “ice cream,” “sherbert,” “popsicle,” “bomb pop,” or any other variation of these words.

 (2) uses, in the labeling or design of the product, its packaging, its advertisement, or in its marketing materials, images of or references to cartoons, cartoon characters, superheroes, television shows, video games and movies, or other similar characters or references, that have been commonly used to market products to minors;

 (3) uses, in the labeling or design of the product, its packaging, its advertisement, or in its marketing materials, trade dress, trademarks, or other related imagery that imitate or replicate trade dress, trademarks, or other imagery of food brands or products that have been commonly marketed to minors;

 (4) uses, in the labeling or design of the product, or its packaging, or its marketing materials, trade dress, trademarks, or other related imagery that imitate or replicate trade dress, trademarks, or other imagery of school supplies.

 (U) A manufacturer, distributor, or retailer of ENDS products shall not advertise or market any ENDS except in the following manner:

 (1) any advertisement placed in or on broadcast or cable television, radio, print, and digital communications, shall only be made where at least eighty-five percent of the intended audience is reasonably expected to be eighteen years of age or older, as determined by reliable, up-to-date audience composition demographic data or event organizer restrictions;

 (2) advertisements may not be materially false or untrue and any statement contained therein must be consistent with the ENDS product’s labeling;

 (3) advertisements may not contain any health or therapeutic claims; and

 (4) advertisements on billboard signs must not be within 1,000 feet of a primary or secondary school, playground, or youth center.

 (V) The Attorney General may promulgate regulations for the implementation and enforcement of this section.

SECTION 2. (A) The first certification required pursuant to Section 44‑95‑65(B) shall be required July 1, 2024.

 (B) The directory established pursuant to Section 44‑95‑65(E) shall be operational by September 1, 2024, or on the date that the Attorney General first makes the directory available, whichever is later. The Attorney General shall notify retailers, wholesalers, and distributors of ENDS products when the directory is operational.

 (C) The provisions contained in Section 44‑95‑65(I) and (M) shall be effective on the date that the directory established pursuant to Section 44‑95‑65(E) is operational.

SECTION 3. This act takes effect upon approval by the Governor.

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