



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number:	S. 0994	Introduced on January 25, 2024
Author:	Alexander	
Subject:	Vapor Products	
Requestor:	Senate Medical Affairs	
RFA Analyst(s):	Gardner	
Impact Date:	March 5, 2024 - Updated for Revised Analysis and Fiscal Impact	

Fiscal Impact Summary

This bill creates provisions regulating the sale of electronic nicotine delivery systems, known as ENDS products. The bill requires ENDS products manufacturers to provide an annual written certification to the Attorney General, whose office shall develop and maintain an ENDS directory. The bill makes it unlawful for retailers, wholesalers, or distributors of ENDS products to sell, offer for sale, or distribute unauthorized ENDS products; prohibits retailers from purchasing resale ENDS products from unlicensed entities; prohibits ENDS product manufacturers from offering for sale any ENDS product not on the directory; and makes it unlawful for an ENDS manufacturer to misrepresent or present false information related to an ENDS product.

In addition, the bill provides that a determination by the Attorney General as to a manufacturer's ENDS product's inclusion in or removal from the directory may be reviewed by the Administrative Law Court (ALC). The Attorney General, the State Law Enforcement Division (SLED), and the Department of Revenue (DOR) are authorized to seize and destroy non-compliant ENDS products possessed by a distributor or retailer at the expense of those entities. The bill also establishes associated penalties and certification fee schedules. The revenue from these penalties and fees must be remitted to the General Fund. The Office of the Attorney General and SLED must be appropriated state funds to be used by those agencies in performing their duties related to the bill.

SLED reports that it will need to hire eight additional agents and one supervisor to perform the duties required by the bill. Recurring General Fund costs for personnel total \$957,818 (\$665,156 in salary and \$292,662 in fringe), recurring General Fund operating expenses total \$240,300, and non-recurring equipment expenses total \$653,400. Therefore, the FY 2024-25 General Fund expenditure impact of the bill will be \$1,851,518, and \$1,198,118 each year thereafter. The agency will request General Fund appropriations for these expenses.

The Office of the Attorney General reports that it will need to hire an additional Attorney III. Recurring General Fund costs for this position total \$250,000 (includes both salary and fringe). Therefore, the expenditure impact of the bill will be \$250,000 beginning in FY 2024-25. The agency will request General Fund appropriations for these expenses.

The Department of Revenue reports the bill requires the agency to perform duties in the normal course of agency business. As a result, the bill has no expenditure impact on DOR.

The bill will increase General Fund revenue from certification fees imposed by the bill. Louisiana's definition of a vapor product is substantially similar to the definition of ENDS products provided in this bill, and the Louisiana Vape Directory¹ provides a list of all certified vape products approved for sale in Louisiana, including those that have a market order, are currently under review by the FDA, or are marketed under a stay order. According to the directory as of March 1, 2024, there are 320 vapor products on the market in Louisiana, including 184 products under review, 118 products available under a stay order, and 18 products that have a marketing order. Assuming South Carolina's ENDS product market is similar to Louisiana's, this bill will increase General Fund revenue by up to \$640,000 in FY 2024-25 for the initial \$2,000 application fee and \$160,000 each year thereafter for the \$500 annual renewal fee. Further, the bill will also increase General Fund revenue from penalties and General Fund, Other Funds, and local revenues from court fines and fees that may be assessed for violations of the provisions. However, the number of violations that may occur is unknown. Therefore, the total amount of General Fund, Other Funds, and local revenue that may be generated beginning in FY 2024-25 is undetermined.

This fiscal impact statement has been updated to provide a revised revenue impact for potential revenue from ENDS product registrations.

Explanation of Fiscal Impact

Updated for Revised Analysis and Fiscal Impact on March 5, 2024

Introduced on January 25, 2024

State Expenditure

This bill creates provisions regulating the sale of ENDS products by requiring manufacturers selling such products in South Carolina, either directly or through a third party, to annually execute and deliver to the Attorney General, under penalty of perjury, a written certification containing specific information and documentation. This requirement will go into effect July 1, 2024. Manufacturers must also notify the Attorney General within 30 days of any material change to the certification.

The bill also requires the Attorney General's office to operate a directory listing all ENDS manufacturers providing certifications and denoting their respective ENDS products by September 1, 2024, or on the date that it is first made available, whichever is later. This directory must be made publicly available on the agency's website and updated monthly. The bill also establishes the means by which corrections to the directory may be made by a manufacturer, as well as the means by which the Attorney General may remove a manufacturer or its ENDS product(s) from the directory. A determination by the Attorney General to include or to remove from the directory a manufacturer or its ENDS product(s) is subject to review by the ALC.

¹ <https://atc.louisiana.gov/media/51qow4ja/vape-directory-1-3-24.xlsx>, Content retrieved March 1, 2024

To offset costs incurred by the Attorney General for processing certifications and maintaining the ENDS directory, an ENDS manufacturer must pay a non-refundable fee of \$2,000 for each ENDS product the first time the manufacturer submits a certification form. Thereafter, the Attorney General must charge the manufacturer an annual renewal fee of \$500 for each ENDS product. Fees received for this purpose, as well as any penalties collected, must be deposited into the General Fund. The bill also specifies the Office of the Attorney General and SLED must be appropriated sufficient to process the manufacturer certifications, maintain the associated online directory, and initiate enforcement actions. SLED's responsibilities include enforcing the provisions of the bill, including performing inspections and conducting hazardous waste disposal.

Manufacturers who offer for sale any ENDS product not listed in the directory are subject to a fine of \$1,000 per day each product is offered for sale until the unauthorized ENDS product is either removed from the market or properly listed in the directory. Upon notification that there is a material change to the status of an ENDS product requiring it to be removed from the directory, distributors and retailers must, within a prescribed timeframe, remove the product from their respective inventories and return it to the manufacturer for disposal. The Attorney General, SLED, and DOR are authorized to seize and destroy any non-compliant ENDS products in possession of a distributor or retailer at the expense of those parties.

The bill prohibits retailers, wholesalers, or distributors of ENDS products to sell, offer for sale, or distribute ENDS products not listed on the directory. A violation of the latter constitutes an unfair and deceptive trade practice and is punishable as follows:

Sale, Offer of Sale, or Distribution of Unauthorized ENDS Products by Retailer, Wholesaler, or Distributor	
1st Violation	Civil Penalty of \leq \$500
2nd Violation Within 36-Month Period	Civil Penalty of \geq \$750 but \leq \$1,000
3rd Violation Within 36-Month Period	Civil Penalty of \geq \$1,000 but \leq \$1,500
4th or Subsequent Violation Within 36-Month Period	Civil Penalty of \geq \$1,500 but \leq \$3,000

Other violations involving ENDS products are punishable as follows:

Other Violations Involving ENDS Products	
Offer for sale by ENDS product manufacturer any ENDS product not listed on directory	Daily fine of \$1,000 until product removed from market or properly placed on directory
Purchase of resale ENDS products by retailer from unlicensed entities	Fine of \$500 per offense
False representation/misinformation provided by ENDS manufacturer	Misdemeanor for each false representation; fine of \$500 per offense

The Attorney General may recover costs of investigation, expert witness fees, costs of the action, and reasonable attorney's fees for actions brought to enforce these provisions. Retailers, wholesalers, and distributors are subject to unannounced compliance checks, the results of which will be made public upon request.

State Law Enforcement Division. This bill requires SLED to conduct enforcement activities, including performing inspections of manufacturers, retailers, wholesalers, and distributors of ENDS products and disposing of hazardous waste. SLED reports that it will need to hire two new agents per region (for a total of eight statewide), as well as one supervisor to manage the investigative work. Recurring General Fund costs for personnel total \$957,818 (\$665,156 in salary and \$292,662 in fringe); recurring General Fund operating expenses (e.g., gas, iPhones with hotspots, mobile/portable 800 radio service, uniform replacement, training/travel, technology licenses, and deferred vehicle maintenance) total \$240,300, and non-recurring equipment expenses (e.g., vehicles, vests, guns/duty belts, uniforms, and computer equipment) total \$653,400. Therefore, the FY 2024-25 General Fund expenditure impact of the bill will be \$1,851,518 and \$1,198,118 each year thereafter. SLED anticipates requesting General Fund appropriations increase to cover these expenses.

Attorney General. The Office of the Attorney General reports that it will need to hire an additional Attorney III to review ENDS products certifications. Recurring General Fund costs for this position total \$250,000 (includes both salary and fringe). Therefore, this bill will increase General Fund expenditures by \$250,000 beginning in FY 2024-25.

Department of Revenue. The department reports the bill requires the agency to perform duties in the normal course of agency business. As a result, the bill has no expenditure impact on DOR.

State Revenue

The bill will increase General Fund revenue from certification fees imposed by the bill. An ENDS manufacturer must pay a non-refundable fee of \$2,000 for each ENDS product the first time the manufacturer submits a certification form. Thereafter, the Attorney General must charge the manufacturer an annual renewal fee of \$500 for each ENDS product. Fees received for this purpose, as well as any penalties collected, must be deposited into the General Fund. This bill specifies that ENDS products that are make include items that are under review by the FDA, items that the FDA has issued a marketing denial order (MDO) but the agency or a federal court has issued a stay order, and items that have received a marketing order from the FDA.

Louisiana's definition of a vapor product is substantially similar to the definition of ENDS products provided in this bill, and the Louisiana Vape Directory² provides a list of all certified vape products approved for sale in Louisiana, including those that have a market order, are currently under review by the FDA, or are marketed under a stay order. According to the directory as of March 1, 2024, there are 320 vapor products on the market in Louisiana, including 184 products under review, 118 products available under a stay order, and 18 products that have a marketing order. Assuming South Carolina's ENDS product market is similar to

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Louisiana's, this bill will increase General Fund revenue by up to \$640,000 in FY 2024-25 for the initial \$2,000 application fee and \$160,000 each year thereafter for the \$500 annual renewal fee.

Also, this bill may increase General Fund revenue from penalties for violations and court fines, as well as Other Funds revenue, due to the increase in fines and fees for the new offenses brought in general sessions courts. However, as the number of such offenses that might occur in a given year is unknown, the revenue impact is undetermined.

This section has been updated to provide a revised revenue impact for the registration fees from ENDS Products.

Local Expenditure

N/A

Local Revenue

This bill may increase local revenue due to the increase in fines and fees for the new offenses brought in general sessions courts. However, as the number of such offenses that might occur in a given year is unknown, the revenue impact is undetermined.

Introduced on January 25, 2024

State Expenditure

This bill creates provisions regulating the sale of ENDS products by requiring manufacturers selling such products in South Carolina, either directly or through a third party, to annually execute and deliver to the Attorney General, under penalty of perjury, a written certification containing specific information and documentation. This requirement will go into effect July 1, 2024. Manufacturers must also notify the Attorney General within 30 days of any material change to the certification.

The bill also requires the Attorney General's office to operate a directory listing all ENDS manufacturers providing certifications and denoting their respective ENDS products by September 1, 2024, or on the date that it is first made available, whichever is later. This directory must be made publicly available on the agency's website and updated monthly. The bill also establishes the means by which corrections to the directory may be made by a manufacturer, as well as the means by which the Attorney General may remove a manufacturer or its ENDS product(s) from the directory. A determination by the Attorney General to include or to remove from the directory a manufacturer or its ENDS product(s) is subject to review by the ALC.

To offset costs incurred by the Attorney General for processing certifications and maintaining the ENDS directory, an ENDS manufacturer must pay a non-refundable fee of \$2,000 for each ENDS product the first time the manufacturer submits a certification form. Thereafter, the Attorney General must charge the manufacturer an annual renewal fee of \$500 for each ENDS product. Fees received for this purpose, as well as any penalties collected, must be deposited into the General Fund. The bill also specifies the Office of the Attorney General and SLED must

be appropriated sufficient to process the manufacturer certifications, maintain the associated online directory, and initiate enforcement actions. SLED’s responsibilities include enforcing the provisions of the bill, including performing inspections and conducting hazardous waste disposal.

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Other violations involving ENDS products are punishable as follows:

Other Violations Involving ENDS Products	
Offer for sale by ENDS product manufacturer any ENDS product not listed on directory	Daily fine of \$1,000 until product removed from market or properly placed on directory
Purchase of resale ENDS products by retailer from unlicensed entities	Fine of \$500 per offense
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The Attorney General may recover costs of investigation, expert witness fees, costs of the action, and reasonable attorney’s fees for actions brought to enforce these provisions. Retailers, wholesalers, and distributors are subject to unannounced compliance checks, the results of which will be made public upon request.

State Law Enforcement Division. This bill requires SLED to conduct enforcement activities, including performing inspections of manufacturers, retailers, wholesalers, and distributors of

ENDS products and disposing of hazardous waste. SLED reports that it will need to hire two new agents per region (for a total of eight statewide), as well as one supervisor to manage the investigative work. Recurring General Fund costs for personnel total \$957,818 (\$665,156 in salary and \$292,662 in fringe); recurring General Fund operating expenses (e.g., gas, iPhones with hotspots, mobile/portable 800 radio service, uniform replacement, training/travel, technology licenses, and deferred vehicle maintenance) total \$240,300, and non-recurring equipment expenses (e.g., vehicles, vests, guns/duty belts, uniforms, and computer equipment) total \$653,400. Therefore, the FY 2024-25 General Fund expenditure impact of the bill will be \$1,851,518 and \$1,198,118 each year thereafter. SLED anticipates requesting General Fund appropriations increase to cover these expenses.

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Department of Revenue. The Department reports the bill requires the agency to perform duties in the normal course of agency business. As a result, the bill has no expenditure impact on DOR.

State Revenue

The bill will increase General Fund revenue from certification fees imposed by the bill. An ENDS manufacturer must pay a non-refundable fee of \$2,000 for each ENDS product the first time the manufacturer submits a certification form. Thereafter, the Attorney General must charge the manufacturer an annual renewal fee of \$500 for each ENDS product. Fees received for this purpose, as well as any penalties collected, must be deposited into the General Fund. To legally market a new tobacco product in the United States, a company must receive a written marketing order from the FDA. As of January 9, 2024, the FDA had authorized marketing of 23 products since 2015³. Based on 23 products that may be registered with the state, the initial fees for certification for these products at \$2,000 per product would total approximately \$46,000 in FY 2024-25. Renewals at a fee of \$500 per product would total approximately \$11,500. However, actual revenues may vary depending on how many products are actually registered and any products that receive approval in 2024.

Also, this bill may increase General Fund revenue from penalties for violations and court fines, as well as Other Funds revenue, due to the increase in fines and fees for the new offenses brought in general sessions courts. However, as the number of such offenses that might occur in a given year is unknown, the revenue impact is undetermined.

Local Expenditure

N/A

³ <https://www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders>, Content current as of January 9, 2024, Retrieved February 22, 2024

Local Revenue

This bill may increase local revenue due to the increase in fines and fees for the new offenses brought in general sessions courts. However, as the number of such offenses that might occur in a given year is unknown, the revenue impact is undetermined.



Frank A. Rainwater, Executive Director