



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:	H. 3728	Introduced on January 15, 2025
Subject:	Vapor Products	
Requestor:	House Judiciary	
RFA Analyst(s):	Vesely	
Impact Date:	April 4, 2025	

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 that they meet the bill's requirements 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. The Attorney General, the State Law Enforcement Division (SLED), the Department of Revenue (DOR), and local authorities 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.

Judicial reports that the number of civil actions in circuit court may increase as a result of this bill. However, Judicial anticipates handling the potential increase in civil actions with existing appropriations.

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 for enforcement. Personnel costs for these 9.0 FTEs will be \$984,412, of which \$665,146 is salary and \$319,266 is fringe. Additionally, equipment and operating expenses are expected to be \$245,300 annually, and non-recurring equipment expenses are expected to total \$657,504. Therefore, SLED anticipates an increase in expenses of \$1,887,216 in FY 2025-26 and \$1,229,712 each year thereafter due to this bill. SLED anticipates requesting General Fund appropriations to cover these expenses.

The Office of the Attorney General reports that it will need to hire 1.0 FTE, an additional Attorney III, to manage the additional responsibilities required by this bill. The office anticipates expenses to total \$250,000 for salary and fringe for this FTE beginning in FY 2025-26. The office will request General Fund appropriations for these expenses.

DOR reports the bill will require the agency to update forms and applications, modify and update online systems, and potentially rent secure storage. Additionally, DOR anticipates hiring 1.0 FTE

at a total cost of \$90,000 for salary and fringe. However, DOR anticipates covering these costs with current appropriations. As a result, the bill will have no expenditure impact on DOR.

The bill will increase General Fund revenue from the new certification fees. Louisiana's definition of a vapor product is substantially similar to the definition of ENDS products provided in this bill, and the Louisiana Vape Directory 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.¹ According to the directory as of March 2025, there are 524 vapor products on the market in Louisiana. Assuming South Carolina's ENDS product market is similar to Louisiana's, this bill will increase General Fund revenue by up to \$1,048,000 in FY 2025-26 for the initial \$2,000 application fee and \$262,000 each year thereafter for the \$500 annual renewal fee. Also, this bill may increase Other Funds and local fund revenue for fines and penalties resulting from violations of the provisions of this bill that may be retained by the state or local agency bringing the action. 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 of this bill. 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 2025-26 is undetermined.

Explanation of Fiscal Impact

Introduced on January 15, 2025

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 August 1, 2025. Manufacturers must also notify the Attorney General within 30 days of any material change to the certification.

The bill also requires the Office of the Attorney General to operate a directory listing all ENDS manufacturers providing certifications and denoting their respective ENDS products by October 1, 2025, 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 as necessary. 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 Administrative Law Court.

Each ENDS manufacturer must pay a non-refundable fee of \$2,000 to the Attorney General's Office for each ENDS product the first time the manufacturer submits a certification form.

¹Louisiana Office of Alcohol and Tobacco Control, *VAPE Directory & Information*, Retrieved April 3, 2025, <https://atc.louisiana.gov/media/51qow4ja/vape-directory-march-2025.xlsx>

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.

Manufacturers who offer for sale any ENDS product not listed in the directory are subject to a fine of \$1,000 per day the 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 remove the product from their respective inventories and return it to the manufacturer for disposal within a prescribed timeframe. 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. SLED's responsibilities also include performing inspections and conducting hazardous waste disposal among other enforcement activities.

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	
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.

Judicial. This bill may increase the number of actions brought in circuit court. Judicial anticipates any increase in the caseload in circuit court can be managed within existing appropriations.

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 costs for personnel are expected to total \$984,412, of which \$665,146 is salary and \$319,266 is fringe; recurring operating expenses (e.g. gas, phones with hotspots, mobile/portable 800 radio service, uniform replacement, training/travel, technology licenses, evidence storage & destruction, and deferred vehicle maintenance) are expected to total \$245,300, and non-recurring equipment expenses (e.g., vehicles, vests, firearms, holsters/duty belts, uniforms, and computer equipment) are expected to total \$657,504. Therefore, SLED anticipates expenses due to the bill will be \$1,887,216 in FY 2025-26 and \$1,229,712 each year thereafter. SLED anticipates requesting General Fund appropriations 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. The office anticipates a total salary and fringe expense for the new FTE will be \$250,000 beginning in FY 2025-26. The office anticipates requesting General Fund appropriations to cover the increase in expenses.

Department of Revenue. DOR reports the bill will require the agency to update forms and applications, modify and update online systems, and potentially rent secure storage. Additionally, DOR anticipates hiring 1.0 FTE at a total compensation cost of \$90,000, of which \$60,000 is salary and \$30,000 is fringe. However, DOR anticipates covering these costs with current appropriations. As a result, the bill will have no expenditure impact on DOR.

State Revenue

This bill establishes an initial certification fee of \$2,000 for each ENDS product for which a manufacturer submits a certification form and a \$500 annual renewal fee. This revenue will be deposited in the General Fund. Louisiana's definition of a vapor product is substantially similar to the definition of ENDS products provided in this bill, and the Louisiana Vape Directory 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 2025, there are 524 vapor products on the market in Louisiana. Assuming South Carolina's ENDS product market is similar to Louisiana's, this bill will increase General Fund revenue by up to \$1,048,000 in FY 2025-26 for the initial \$2,000 application fee and \$262,000 each year thereafter for the \$500 annual renewal fee.

Further, this bill specifies that fines and penalties resulting from a violation of the provisions of the act will be retained by the state or local agency bringing the action. This bill may increase Other Funds revenue, depending upon the fines and penalties paid due to an action brought by a state agency. Additionally, this bill may increase General Fund and Other Fund revenue due to the increase in fines and fees for the new offenses brought in circuit court. However, as the number of such offenses that might occur in a given year is unknown, the revenue impact is undetermined.

Local Expenditure

This bill specifies that local law enforcement agencies have the authority to enforce the provisions of this bill. We anticipate this bill may have a local expenditure impact, depending upon local law enforcement's workload for enforcement of this bill.

Local Revenue

This bill specifies that fines and penalties resulting from a violation of the provisions of the act will be retained by the state or local agency bringing the action. This bill may increase local revenue, depending upon the fines and penalties paid due to an action brought by a local agency. Additionally, this bill may increase local revenue due to the increase in fines and fees for the new offenses brought in circuit court. 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