MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 875

AN ACT TO REQUIRE THE OFFICE OF THE ATTORNEY GENERAL TO DEVELOP A VAPOR PRODUCT DIRECTORY ON OR BEFORE SEPTEMBER 15, 2021, AND INCLUDE SUCH ON ITS WEBSITE; TO DEFINE TERMINOLOGY; TO REQUIRE EVERY MANUFACTURER OF A VAPOR PRODUCT SOLD OR INTENDED TO BE SOLD IN THIS STATE TO EXECUTE AN ATTESTATION TO THE ATTORNEY GENERAL, UNDER THE PENALTY OF PERJURY, THAT ITS PRODUCTS ARE IN COMPLIANCE BY CERTIFYING THE PRODUCTS WERE AVAILABLE ON THE MARKET AS OF AUGUST 16, 2016; TO PROHIBIT THE MANUFACTURE, DISTRIBUTION OR SALE OF VAPOR PRODUCTS NOT LISTED IN THE DIRECTORY; AMEND SECTION 97-32-21, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. As used in this act, the following terms shall have the meaning ascribed in this section, unless context of use clearly requires otherwise:

(a) "Attorney General" means the chief legal officer and advisor for the State of Mississippi, for both civil and criminal matters of litigation.

(b) "Directory" means the Attorney General's list of all manufacturers that have provided attestations that comply with Section 2 of this act and all vapor products that are listed in such certifications.

(c) "E-liquid" means a liquid that may contain nicotine, which may include flavorings or other ingredients that are intended for use in a vapor product.

(d) "Manufacturer" means an entity that manufactures vapor products, anywhere in the world, which are intended for sale in the United States, either directly or through an importer.

(e) "Person" means any natural person, partnership, company, corporation or other entity.

(f) "Vapor products" means an electronic device that delivers nicotine through e-liquid, as defined in this paragraph (c), in aerosol form into the mouth and lungs when inhaled. "Vapor product" includes, but is not limited to:

(i) An electronic cigarette;

(ii) An electronic cigar;

(iii) An electronic cigarillo;

(iv) An electronic pipe;

(v) An electronic hookah;

(vi) A vape pen or vapor product; and

(vii) Any related device and any cartridge or other component of such device, including e-liquid.

"Vapor product" does not include any tobacco or marijuana product or any product that is regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act (21 USCS Section 351 et seq.).

SECTION 2. (1) Beginning July 1, 2021, every manufacturer of a vapor product that is sold or intended to be sold in this state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall execute and deliver an attestation, under the penalty of perjury to the Attorney General certifying that, as of the date of such attestation:

(a) The vapor product was on the United States market as of August 8, 2016, and the manufacturer has applied for a marketing order for the vapor product by submitting a Premarket Tobacco Product Application on or before September 9, 2020, to the United States Food and Drug Administration; or

(b) The manufacturer has received a marketing order or other authorization under the 21 USCS Section 387j for the vapor product from the United States Food and Drug Administration.

(2) The manufacturer shall notify the Attorney General within thirty (30) days of any material change to the attestation, including if the United States Food and Drug Administration has issued a market order or other authorization, issued a no marketing order or has ordered the manufacturer to remove the vapor product, either temporarily or permanently, from the United States market.

(3) The Attorney General shall develop a directory, as defined in subsection (1) of this section, and:

(a) On or before September 15, 2021, the Attorney General shall make the directory available for public inspection on its website; and

(b) Shall update the directory as necessary in order to correct mistakes and to add or remove manufacturers or vapor products to keep the directory in conformity with the requirements of this section.

(4) It shall be unlawful for any person knowingly, directly or indirectly, to manufacture, distribute, sell, barter, or furnish in this state any vapor product that is not included in the directory.

SECTION 3. Section 97-32-21, Mississippi Code of 1972, is amended as follows:

97-32-21. (1) The Office of the Attorney General or local law enforcement agencies shall at least annually conduct random, unannounced inspections at locations where alternative nicotine products, tobacco or tobacco products are sold or distributed to ensure compliance with the Mississippi Juvenile Tobacco Access Prevention Act of 1997. Persons under the age of twenty-one (21) years may be enlisted by the Office of the Attorney General or local law enforcement to test compliance with the Mississippi Juvenile Tobacco Access Prevention Act of 1997, provided that the parent or legal guardian of the person under twenty-one (21) years of age so utilized has given prior written consent for the minor's participation in unannounced inspections. The Office of the

Attorney General must prepare a report of the findings, and report these findings to the Department of Health and Department of Mental Health. The Department of Mental Health shall prepare the annual report required by Section 1926, subpart 1 of Part B, Title XIX of the Federal Public Health Service Act (42 USCS 300X-26). The report shall be approved by the Governor and then promptly transmitted to the Secretary of the United States Department of Health and Human Services.

(2) The Office of the Attorney General shall develop a directory of all manufacturers of vapor products that deliver e-liquids, which have provided attestations that comply with Section 2 of this act.

SECTION 4. This act shall take effect and be in force from and after July 1, 2021.