
A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. Chapter 245, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§245- Electronic smoking device and e-liquid directory.

5 (a) By August 1, 2024, and annually thereafter, every
6 manufacturer of electronic smoking devices or e-liquid
7 containing nicotine that is sold in the State, whether directly
8 or through a distributor, wholesaler, retailer, or similar
9 intermediary or intermediaries, shall certify under penalty of
10 perjury on a form and in the manner prescribed by the
11 department, that the manufacturer agrees to comply with this
12 chapter and that:

13 (1) The manufacturer has received a marketing
14 authorization or similar order for the electronic
15 smoking device or e-liquid from the United States Food
16 and Drug Administration pursuant to title 21 United
17 States Code section 387j; or



1 (2) The electronic smoking device or e-liquid was marketed
2 in the United States as of August 8, 2016; the
3 manufacturer submitted a premarket tobacco product
4 application for the electronic smoking device or
5 e-liquid to the United States Food and Drug
6 Administration pursuant to title 21 United States Code
7 section 387j on or before September 9, 2020; and the
8 application either remains under review by the United
9 States Food and Drug Administration or a final
10 decision on the application is not otherwise in
11 effect.

12 (b) A manufacturer shall submit a certification form that
13 separately lists each electronic smoking device and e-liquid
14 that is sold in the State.

15 (c) Each annual certification form required by subsections
16 (a) and (b) shall be accompanied by:

17 (1) A copy of the marketing authorization or other order
18 for the electronic smoking device or e-liquid issued
19 by the United States Food and Drug Administration
20 pursuant to title 21 United States Code section 387j,
21 or evidence that the premarket tobacco product



1 application for the electronic smoking device or
2 e-liquid was submitted to and received by the United
3 States Food and Drug Administration and a final
4 authorization or order has not yet taken effect; and
5 (2) A payment of \$500 for each electronic smoking device
6 and e-liquid the first time a manufacturer submits a
7 certification form for that product and a payment of
8 \$250 annually thereafter for each electronic smoking
9 device and e-liquid.

10 (d) A manufacturer required to submit a certification form
11 pursuant to subsections (a) and (b) shall notify the department
12 within thirty days of any material change to the certification
13 form, including the issuance or denial of a marketing
14 authorization or other order by the United States Food and Drug
15 Administration pursuant to title 21 United States Code section
16 387j, or any other order or action by the United States Food and
17 Drug Administration that affects the ability of the electronic
18 smoking device or e-liquid to be introduced or delivered into
19 interstate commerce for commercial distribution in the United
20 States.



1 (e) The department shall maintain and make publicly
2 available on the department's website a directory that lists all
3 electronic smoking device and e-liquid manufacturers and
4 electronic smoking devices and e-liquid for which certification
5 forms have been submitted and shall update the directory as
6 necessary to ensure accuracy.

7 (f) The department shall provide manufacturers notice and
8 an opportunity to cure deficiencies before removing
9 manufacturers or products from the directory; provided that:

10 (1) The department may not remove the manufacturer or its
11 products from the directory until at least fifteen
12 days after the manufacturer has been given notice of
13 an intended action. Notice shall be sufficient and be
14 deemed immediately received by a manufacturer if the
15 notice is sent either electronically or by facsimile
16 to an electronic mail address or facsimile number, as
17 the case may be, provided by the manufacturer in its
18 most recent certification filed under subsections (a)
19 and (b); and

20 (2) The electronic smoking device or e-liquid manufacturer
21 shall have fifteen business days from the date of



1 service of the notice of the department's intended
2 action to establish that the electronic smoking device
3 or e-liquid manufacturer or its products should be
4 included in the directory.

5 (g) If a product is removed from the directory, the
6 department shall publish notice of the removal on the
7 department's website. Each retailer and distributor or
8 wholesaler shall have thirty days from the date of publication
9 of the notice of removal to remove the product intended to be
10 sold in the State from its inventory and return the product to
11 the manufacturer for disposal. After thirty days following
12 publication of the notice of removal from the directory, the
13 electronic smoking devices and e-liquid of a manufacturer
14 identified in the notice of removal and intended for sale in the
15 State shall be considered contraband and shall be subject to
16 seizure, forfeiture, and destruction, and shall not be purchased
17 or sold in the State.

18 (h) Beginning October 1, 2024, a person shall not sell or
19 offer for sale an electronic smoking device or e-liquid in the
20 State that is not included in the directory described by
21 subsection (e), and an electronic smoking device or e-liquid



1 manufacturer shall not sell, either directly or through a
2 distributor or wholesaler, retailer, or similar intermediary or
3 intermediaries, an electronic smoking device or e-liquid in the
4 State that is not included in the directory described by
5 subsection (e).

6 (i) A retailer may purchase electronic smoking devices and
7 e-liquid for resale only from a licensed wholesaler or dealer
8 with a valid license issued pursuant to this chapter.

9 (j) The following penalties shall apply to violations of
10 this section:

11 (1) A retailer who sells or offers for sale an electronic
12 smoking device or e-liquid in the State that is not
13 included in the directory or a retailer who sells or
14 offers for sale in the State an electronic smoking
15 device or e-liquid after thirty days following
16 publication of the notice of removal of the product
17 from the directory and intended for sale in the State
18 shall be subject to a civil penalty of \$250 per day
19 for each product offered for sale in violation of this
20 section until the offending product is removed from



1 the market or until the offending product is properly
2 listed on the directory; provided that:

3 (A) For a second violation within a twenty-four-month
4 period, the department also shall suspend the
5 permit of the permittee for at least fourteen
6 days;

7 (B) For a third violation within a twenty-four-month
8 period, the department shall suspend the permit
9 of the permittee for at least sixty days; and

10 (C) For a fourth or subsequent violation within a
11 twenty-four-month period, the department shall
12 suspend the permit of the permittee for at least
13 one year;

14 (2) A electronic smoking device or e-liquid manufacturer
15 whose electronic smoking devices or e-liquid products
16 are not listed in the directory and are sold in the
17 State, whether directly or through a distributor or
18 wholesaler, retailer, or similar intermediary or
19 intermediaries, shall be subject to a civil penalty of
20 \$500 per day for each product offered for sale in
21 violation of this section until the offending product



1 is removed from the market or until the offending
2 product is properly listed on the directory. In
3 addition, any manufacturer that falsely represents any
4 the information required shall be guilty of a
5 misdemeanor for each false representation;

6 (3) Any violation of this section shall constitute an
7 unfair method of competition and unfair and deceptive
8 acts or practices in the conduct of any trade of
9 commerce under section 480-2; and

10 (4) In any action brought by the State to enforce this
11 section, the State shall be entitled to recover the
12 costs of investigation and prosecution, expert witness
13 fees, court costs, and reasonable attorney fees.

14 (k) The department shall have authority to enforce
15 compliance with this section, and may adopt rules necessary to
16 effectuate the purposes of this section.

17 (1) The department may examine the books, papers, and
18 records of any distributor, wholesaler, or retailer in the
19 State, for the purpose of determining compliance with this
20 section. The department may make the inspections and
21 examinations at any time during ordinary business hours, and may



1 inspect at the times the premises and all desks, safes, vaults,
2 and other fixtures and furniture contained in or upon the
3 premises for the purpose of ascertaining whether electronic
4 smoking devices and e-liquid products are held or possessed in
5 violation of this section.

6 (m) Any electronic smoking devices or e-liquid offered for
7 sale in the State in violation of this section shall be declared
8 to be contraband goods and may be seized by the department, the
9 department's agents, or employees, or by any law enforcement
10 officer of the State if directed by the department to do so,
11 without a warrant.

12 (n) Each retailer and wholesaler or dealer that sells or
13 distributes electronic smoking devices or e-liquid in the State
14 shall be subject to at least two unannounced compliance checks
15 annually for purposes of enforcing this section. Unannounced
16 follow-up compliance checks of all noncompliant retailers and
17 wholesalers or dealers shall be conducted within thirty days
18 after any violation of this section. The department shall
19 publish the results of all compliance checks at least annually
20 and shall make the results available to the public on request.



1 (o) Any nonresident or foreign manufacturer that has not
2 registered to do business in the State as a foreign corporation
3 or business entity shall, as a condition precedent to having its
4 electronic smoking devices or e-liquid listed or retained in the
5 directory, appoint and continually engage without interruption
6 the services of an agent in the United States to act as agent
7 for the service of process upon whom all process, and any action
8 or proceeding against it concerning or arising out of the
9 enforcement of this section may be served in any manner
10 authorized by law. Service under this section shall constitute
11 legal and valid service of process on the manufacturer. The
12 manufacturer shall provide the name, address, phone number, and
13 proof of the appointment and availability of the agent to, and
14 to the satisfaction of, the department.

15 (p) Beginning January 31, 2025, and annually thereafter,
16 the department shall provide a report to the legislature
17 regarding the status of the directory, manufacturers and
18 products included in the directory, revenue and expenditures
19 related to administration of this section, and enforcement
20 activities undertaken pursuant to this section.



1 (g) All fees and penalties collected pursuant to this
2 section shall be used for administration and enforcement of this
3 section."

4 SECTION 2. New statutory material is underscored.

5 SECTION 3. This Act shall take effect on July 1, 2024.

6

INTRODUCED BY: *Nella A. Zelatti*

JAN 24 2024



H.B. NO. 2794

Report Title:

DOTAX; Cigarette and Tobacco Tax; Electronic Smoking Devices;
E-Liquids; Health; Directory; Penalties

Description:

Requires electronic smoking device of e-liquid manufacturers to submit certifications with the Department of Taxation annually, stating that products comply with federal regulations. Requires the Department of Taxation to maintain a directory. Imposes penalties.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

