

---

# A BILL FOR AN ACT

---

RELATING TO HEALTH.

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

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**"§28-        Electronic smoking device and e-liquid manufacturers; certification; directory; penalties.    (a)    No later than October 1, 2026, and annually thereafter, every manufacturer of an electronic smoking device or e-liquid sold in the State, whether directly or through a dealer, a distributor, an importer, a retailer, a wholesaler, or similar intermediary or intermediaries, shall certify under penalty of perjury on a form and in the manner prescribed by the department, that:**

**(1)    The manufacturer has received a marketing granted order for the electronic smoking device or e-liquid from the United States Food and Drug Administration pursuant to title 21 United States Code section 387j;**



1       (2) The manufacturer is in compliance with state laws,  
2       including this chapter, chapter 245, and chapter 486P;  
3       and

4       (3) The manufacturer is in compliance with federal laws,  
5       including title 15 United States Code section 376,  
6       title 15 United States Code section 376a, title 18  
7       United States Code section 1716, and title 21 United  
8       States Code section 331.

9       (b) The certification form shall separately list each  
10      brand name; product name; category, including disposable  
11      electronic smoking device, power unit, device, and e-liquid; and  
12      flavor for each electronic smoking device and e-liquid that is  
13      sold in the State.

14      (c) Each annual certification form shall be accompanied  
15      by:

16      (1) A copy of the marketing granted order issued by the  
17      United States Food and Drug Administration pursuant to  
18      title 21 United States Code section 387j; and

19      (2) A payment of \$1,000 for each electronic smoking device  
20      and e-liquid each time a manufacturer submits a  
21      certification form for that product.



1       (d) A manufacturer required to submit a certification form  
2 pursuant to this section shall notify the department within  
3 thirty days of any material change to the certification form,  
4 including the denial of a marketing authorization or other order  
5 by the United States Food and Drug Administration pursuant to  
6 title 21 United States Code section 387j, or any other order or  
7 action by the United States Food and Drug Administration or any  
8 court that affects the ability of the electronic smoking device  
9 or e-liquid to be introduced or delivered into interstate  
10 commerce for commercial distribution in the United States.

11       (e) Beginning January 1, 2027, the department shall  
12 maintain and make publicly available on the department's  
13 official website a directory that lists all manufacturers of  
14 electronic smoking devices and e-liquids and all electronic  
15 smoking devices and e-liquids, including brand names, product  
16 names, categories, and flavors, for which certification forms  
17 have been submitted and approved by the department. The  
18 department shall update the directory to ensure accuracy, and  
19 shall establish a process to provide dealers, distributors,  
20 importers, retailers, wholesalers, and other relevant parties



1 notice of the initial publication of the directory and changes  
2 made to the directory.

3 (f) No manufacturer of electronic smoking devices or e-  
4 liquids shall be included or retained in the directory if the  
5 department determines that any of the following apply:

6 (1) The manufacturer fails to provide a complete and  
7 accurate certification as required by subsection (a);

8 (2) The manufacturer submits a certification that does not  
9 comply with the requirements of subsections (b) and  
10 (c) (1);

11 (3) The manufacturer fails to include with its  
12 certification the payment required by subsection  
13 (c) (2);

14 (4) The manufacturer sells products in the State required  
15 to be certified under this section during a period  
16 when either the manufacturer or the product has not  
17 been certified and listed on the directory; or

18 (5) The information provided by the manufacturer in its  
19 certification contains false information or contain  
20 material misrepresentations or omissions.



1        (g) Beginning January 1, 2027, or on the date that the  
2        department makes the directory described in subsection (e)  
3        available for public inspection on the department's official  
4        website, whichever is later, electronic smoking devices and e-  
5        liquids not included in the directory shall not be sold for  
6        retail sale in the State or to a consumer in the State, either  
7        directly or through a dealer, a distributor, an importer, a  
8        retailer, a wholesaler, or similar intermediary or  
9        intermediaries. After publication of the directory, electronic  
10       smoking devices and e-liquids not listed in the directory and  
11       intended for retail sale in the State or to a consumer in the  
12       State shall be subject to seizure, forfeiture, and destruction  
13       or disposal, and shall not be purchased or sold for retail sale  
14       in the State or to a consumer in the State except as provided in  
15       this subsection; provided that the cost of the seizure,  
16       forfeiture, and destruction or disposal shall be borne by the  
17       person from whom the products are confiscated.

18       (h) The following penalties shall apply to violations of  
19       this section:

20       (1) A dealer, a distributor, an importer, a retailer, or a  
21       wholesaler who sells or offers for sale an electronic



1 smoking device or e-liquid for retail sale in the  
2 State or to a consumer in the State that is not  
3 included in the directory described in subsection (e)  
4 shall be subject to a civil penalty of \$500 for each  
5 individual electronic smoking device or e-liquid  
6 offered for sale in violation of this section;  
7 provided that:

8 (A) For a second violation under this paragraph  
9 within a twelve-month period, the civil penalty  
10 shall be no less than \$750 and no more than  
11 \$1,000 per product;

12 (B) For a third violation under this paragraph within  
13 a twelve-month period, the civil penalty shall be  
14 no less than \$1,000 and no more than \$1,500 per  
15 product; and

16 (C) For a fourth and any subsequent violation under  
17 this paragraph within a twelve-month period, the  
18 civil penalty shall be no less than \$1,500 and no  
19 more than \$2,000 per product;

20 (2) A manufacturer whose electronic smoking devices or e-  
21 liquids are not listed in the directory and who causes



1       the products that are not listed to be sold for retail  
2       sale in the State or to a consumer in the State,  
3       whether directly or through a dealer, a distributor,  
4       an importer, a retailer, a wholesaler, or similar  
5       intermediary or intermediaries, shall be subject to a  
6       civil penalty of \$10,000 for each individual  
7       electronic smoking device or e-liquid offered for sale  
8       in violation of this section. In addition, any  
9       manufacturer that falsely represents any information  
10       required by a certification form shall be guilty of a  
11       misdemeanor for each false representation;

12       (3) In an action to enforce this section, the State shall  
13       be entitled to recover costs, including the costs of  
14       investigation, seizure, forfeiture, destruction,  
15       disposal, expert witness fees, and reasonable  
16       attorney's fees; and

17       (4) Any violation of this section shall constitute an  
18       unfair method of competition and an unfair or  
19       deceptive act or practice in the conduct of any trade  
20       or commerce under section 480-2.



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

18       (j) The department may examine all records, including tax  
19 returns and reports under chapter 245, required to be kept or  
20 filed under this chapter and chapter 245, and books, papers, and  
21 records of any dealer, distributor, importer, retailer, or





1 wholesaler of electronic smoking devices and e-liquids in the  
2 State for the purpose of determining compliance with this  
3 section. Every person in possession of any books, papers, and  
4 records, and the person's agents and employees, shall be  
5 directed and required to give the department the means,  
6 facilities, and opportunities for the examinations.

7 (k) The department may inspect the operations, premises,  
8 and storage areas of any entity engaged in the sale of  
9 electronic smoking devices or e-liquids, or the contents of a  
10 specific vending machine, during regular business hours. This  
11 inspection shall include inspection of all statements, books,  
12 papers, and records in whatever format, including electronic  
13 format, contents of cartons, and shipping or storage containers,  
14 pertaining to the acquisition, possession, transportation, sale,  
15 or use of electronic smoking devices or e-liquids, to verify  
16 compliance with this section. Every entity in possession of any  
17 books, papers, and records, and the entity's agents and  
18 employees, shall be directed and required to give the department  
19 the means, facilities, and opportunities for the examinations.

20 (l) If the department has reasonable cause to believe and  
21 does believe that electronic smoking devices or e-liquids are



being acquired, possessed, transported, kept, sold, or offered for sale in violation of this section, the department may investigate or search the vehicle or premises in which the electronic smoking devices or e-liquids are believed to be located. If electronic smoking devices or e-liquids are found in a vehicle, premises, or vending machine in violation of this section, the electronic smoking devices or e-liquids, vending machine, vehicle, or other tangible personal property containing those electronic smoking devices or e-liquids and any books and records in possession of the entity in control or possession of the electronic smoking devices or e-liquids may be seized by the department and shall be subject to forfeiture as provided in this section.

(m) The department may adopt rules pursuant to chapter 91 necessary for the purpose of this section. Rules adopted to implement this section shall be exempt from the public notice and public hearing requirements of chapter 91.

(n) All payments, fees, and penalties collected pursuant to this section shall be deposited to the credit of the tobacco enforcement special fund, established pursuant to section 28-15, for administration and enforcement of this section.



1       (o) As used in this section:

2       "Dealer" has the same meaning as in section 245-1.

3       "Department" means the department of the attorney general.

4       "Distribute", "distributes", or "distribution" has the same  
5 meaning as in section 245-1.

6       "Electronic smoking device" has the same meaning as in  
7 section 245-1.

8       "E-liquid" has the same meaning as in section 245-1.

9       "Entity" means one or more individuals, a company,  
10 corporation, a partnership, an association, or any other type of  
11 legal entity.

12       "Retailer" has the same meaning as in section 245-1.

13       "Sale" or "sold" has the same meaning as in section 245-1.

14       "Sell" has the same meaning as in section 245-1.

15       "Vehicle" means an automobile, airplane, motorcycle,  
16 motorboat, or other motor-propelled vehicle.

17       "Wholesaler" has the same meaning as in section 245-1."

18       SECTION 2. This Act does not affect rights and duties that  
19 matured, penalties that were incurred, and proceedings that were  
20 begun before its effective date.

21       SECTION 3. New statutory material is underscored.



**1** SECTION 4. This Act shall take effect on July 1, 3000.



**Report Title:**

AG; Electronic Smoking Devices; E-Liquids; Marketing Granted Order; Directory; Penalties

**Description:**

Requires electronic smoking device and e-liquid manufacturers to certify to the Department of Attorney General annually that the manufacturer received a Marketing Granted Order from the federal Food and Drug Administration and that the manufacturer is in compliance with federal regulations and state laws. Requires the Department to compile and make public a directory of all electronic smoking device and e-liquid manufacturers and products duly certified. Establishes penalties for manufacturers that fail to comply with the certification requirements and for other parties that sell products that are not in the directory. Effective 7/1/3000. (HD1)

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

