

---

---

# A BILL FOR AN ACT

RELATING TO HEALTH.

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

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

4           "§28-        Electronic smoking device and e-liquid  
5 manufacturers; certification; directory; penalties. (a) No  
6 later than October 1, 2026, and annually thereafter, every  
7 manufacturer of an electronic smoking device or e-liquid sold in  
8 the State, whether directly or through a dealer, a distributor,  
9 an importer, a retailer, a wholesaler, or similar intermediary  
10 or intermediaries, shall certify under penalty of perjury on a  
11 form and in the manner prescribed by the department, that:

12           (1) The manufacturer has received a marketing granted  
13           order for the electronic smoking device or e-liquid  
14           from the United States Food and Drug Administration  
15           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 contains  
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 acquired,  
6 possessed, transported, kept, sold, or offered for sale in the  
7 State or to a consumer in the State, either directly or through  
8 a dealer, a distributor, an importer, a retailer, a wholesaler,  
9 or similar intermediary or intermediaries. After publication of  
10 the directory, electronic smoking devices and e-liquids not  
11 listed in the directory and intended to be acquired, possessed,  
12 transported, kept, sold, or offered for sale in the State or to  
13 a consumer in the State shall be subject to seizure, forfeiture,  
14 and destruction or disposal, and shall not be acquired,  
15 possessed, transported, kept, sold, or offered for sale in the  
16 State or to a consumer in the State; provided that the cost of  
17 the seizure, forfeiture, and destruction or disposal shall be  
18 borne by the person from whom the products are confiscated.

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



- 1       (1) A dealer, a distributor, an importer, a retailer, a  
2       wholesaler, or similar intermediary or intermediaries  
3       who acquires, possesses, transports, keeps, sells, or  
4       offers for sale an electronic smoking device or e-  
5       liquid in the State or to a consumer in the State that  
6       is not included in the directory described in  
7       subsection (e) shall be subject to a civil penalty of  
8       \$500 for each individual electronic smoking device or  
9       e-liquid acquired, possessed, transported, kept, sold,  
10       or offered for sale in violation of this section;  
11       provided that:
- 12       (A) For a second violation under this paragraph  
13       within a twelve-month period, the civil penalty  
14       shall be no less than \$750 and no more than  
15       \$1,000 per product;
- 16       (B) For a third violation under this paragraph within  
17       a twelve-month period, the civil penalty shall be  
18       no less than \$1,000 and no more than \$1,500 per  
19       product; and
- 20       (C) For a fourth and any subsequent violation under  
21       this paragraph within a twelve-month period, the



1 civil penalty shall be no less than \$1,500 and no  
2 more than \$2,000 per product;

3 (2) A manufacturer whose electronic smoking devices or e-  
4 liquids are not listed in the directory and who causes  
5 the products that are not listed to be acquired,  
6 possessed, transported, kept, sold, or offered for  
7 sale in the State or to a consumer in the State,  
8 whether directly or through a dealer, a distributor,  
9 an importer, a retailer, a wholesaler, or similar  
10 intermediary or intermediaries, shall be subject to a  
11 civil penalty of \$10,000 for each individual  
12 electronic smoking device or e-liquid acquired,  
13 possessed, transported, kept, sold, or offered for  
14 sale in violation of this section. In addition, any  
15 manufacturer that falsely represents any information  
16 required by a certification form shall be guilty of a  
17 misdemeanor for each false representation;

18 (3) In an action to enforce this section, the State shall  
19 be entitled to recover costs, including the costs of  
20 investigation, seizure, forfeiture, destruction,



1           disposal, expert witness fees, and reasonable  
2           attorney's fees; and  
3           (4) Any violation of this section shall constitute an  
4           unfair method of competition and an unfair or  
5           deceptive act or practice in the conduct of any trade  
6           or commerce under section 480-2.

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



1 proof of the appointment and availability of the agent to, and  
2 to the satisfaction of, the department.

3 (j) The department may examine all records, including tax  
4 returns and reports under chapter 245, required to be kept or  
5 filed under this chapter and chapter 245, and books, papers, and  
6 records of any dealer, distributor, importer, retailer,  
7 wholesaler, or similar intermediary or intermediaries of  
8 electronic smoking devices and e-liquids in the State for the  
9 purpose of determining compliance with this section. Every  
10 person in possession of any books, papers, and records, and the  
11 person's agents and employees, shall be directed and required to  
12 give the department the means, facilities, and opportunities for  
13 the examinations.

14 (k) The department may inspect the operations, premises,  
15 and storage areas of any entity engaged in the acquisition,  
16 possession, transportation, keeping, storage, or sale of  
17 electronic smoking devices or e-liquids, or the contents of a  
18 specific vending machine, during regular business hours. This  
19 inspection shall include inspection of all statements, books,  
20 papers, and records in whatever format, including electronic  
21 format, contents of cartons, and shipping or storage containers,



1 pertaining to the acquisition, possession, transportation,  
2 keeping, storage, or sale of electronic smoking devices or e-  
3 liquids, to verify compliance with this section. Every entity  
4 in possession of any books, papers, and records, and the  
5 entity's agents and employees, shall be directed and required to  
6 give the department the means, facilities, and opportunities for  
7 the examinations.

8 (1) If the department has reasonable cause to believe and  
9 does believe that electronic smoking devices or e-liquids are  
10 being acquired, possessed, transported, kept, sold, or offered  
11 for sale in violation of this section, the department may  
12 investigate or search the vehicle, premises, or vending machine  
13 in which the electronic smoking devices or e-liquids are  
14 believed to be located. If electronic smoking devices or e-  
15 liquids are found in a vehicle, premises, or vending machine in  
16 violation of this section, the electronic smoking devices or e-  
17 liquids, vending machine, vehicle, or other tangible personal  
18 property containing those electronic smoking devices or e-  
19 liquids and any books and records in possession of the entity in  
20 control or possession of the electronic smoking devices or e-



1 liquids may be seized by the department and shall be subject to  
2 forfeiture as provided in this section.

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

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

11 (o) As used in this section:

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

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

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

16 "Electronic smoking device" has the same meaning as in  
17 section 245-1.

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

19 "Entity" means one or more individuals, a company, a  
20 corporation, a partnership, an association, or any other type of  
21 legal entity.



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

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

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

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

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

7       SECTION 2. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

10       SECTION 3. New statutory material is underscored.

11       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 acquire, possess, transport, keep, sell, or offer for sale products that are not in the directory. Effective 7/1/3000. (HD3)

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

