

---

---

# 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 the brand  
10       name; product name; category, including disposable electronic  
11       smoking device, power unit, device, and e-liquid; and flavor for  
12       each electronic smoking device and e-liquid that is sold in the  
13       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) The information submitted by the manufacturer pursuant  
2 to subsection (c)(1) shall be considered confidential business  
3 or commercial information and shall not be disclosed pursuant to  
4 section 92F-13 or 92F-19(b). The manufacturer may redact  
5 certain confidential commercial or financial information under  
6 subsection (c)(1).

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

17        (f) Beginning January 1, 2027, the department shall  
18 maintain and make publicly available on the department's  
19 official website a directory that lists all manufacturers of  
20 electronic smoking devices and e-liquids and all electronic  
21 smoking devices and e-liquids, including brand names, product



1 names, categories, and flavors, for which certification forms  
2 have been submitted and approved by the department. The  
3 department shall update the directory to ensure accuracy and  
4 shall establish a process to provide dealers, distributors,  
5 importers, retailers, wholesalers, and other relevant parties  
6 notice of the initial publication of the directory and changes  
7 made to the directory.

8 (g) No manufacturer of electronic smoking devices or e-  
9 liquids shall be included or retained in the directory if the  
10 department determines that any of the following apply:

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

13 (2) The manufacturer submits a certification that does not  
14 comply with the requirements of subsections (b) and  
15 (c) (1);

16 (3) The manufacturer fails to include with its  
17 certification the payment required by subsection  
18 (c) (2);

19 (4) The manufacturer sells products in the State required  
20 to be certified under this section during a period



1           when either the manufacturer or the product has not  
2           been certified and listed on the directory; or

3           (5) The information provided by the manufacturer in its  
4           certification is determined by the department to  
5           contain false information or contain material  
6           misrepresentations or omissions.

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



1 forfeiture, and destruction or disposal shall be borne by the  
2 person from whom the products are confiscated.

3 (i) The following penalties shall apply to violations of  
4 this section:

5 (1) A dealer, a distributor, an importer, a retailer, or a  
6 wholesaler who sells or offers for sale an electronic  
7 smoking device or e-liquid for retail sale in the  
8 State or to a consumer in the State that is not  
9 included in the directory described in subsection (f)  
10 shall be subject to a civil penalty of \$500 for each  
11 individual electronic smoking device or e-liquid  
12 offered for sale in violation of this section;  
13 provided that:

14 (A) For a second violation under this paragraph  
15 within a twelve-month period, the civil penalty  
16 shall be not less than \$750 and no more than  
17 \$1,000 per product;

18 (B) For a third violation under this paragraph within  
19 a twelve-month period, the civil penalty shall be  
20 not less than \$1,000 and not more than \$1,500 per  
21 product; and



1           (C) For a fourth violation under this paragraph  
2           within a twelve-month period, the civil penalty  
3           shall be not less than \$1,500 and not more than  
4           \$2,000 per product;

5           (2) A manufacturer whose electronic smoking devices or  
6           e-liquids are not listed in the directory and who  
7           causes the products that are not listed to be sold for  
8           retail sale in the State or to a consumer in the  
9           State, whether directly or through a dealer, a  
10           distributor, an importer, a retailer, a wholesaler, or  
11           similar intermediary or intermediaries, shall be  
12           subject to a civil penalty of \$10,000 for each  
13           individual electronic smoking device or e-liquid  
14           offered for sale in violation of this section. In  
15           addition, any manufacturer that falsely represents any  
16           information required by a certification form shall be  
17           guilty of a 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 and  
5           deceptive act or practice in the conduct of any trade  
6           of commerce under section 480-2.

7           (j) 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 (f), appoint and continually engage  
14 without interruption the services of an agent in the United  
15 States to act as an agent for the service of process upon whom  
16 all process, and any action or proceeding against it concerning  
17 or arising out of the enforcement of this section, may be served  
18 in any manner authorized by law. Service under this section  
19 shall 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 (k) 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, or  
7 wholesaler of electronic smoking devices and e-liquids in the  
8 State for the purpose of determining compliance with this  
9 section. Every person in possession of any books, papers, and  
10 records, and the person's agents and employees, shall be  
11 directed and required to give the department the means,  
12 facilities, and opportunities for the examinations.

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



1 compliance with this section. Every entity in possession of any  
2 books, papers, and records, and the entity's agents and  
3 employees, shall be directed and required to give the department  
4 the means, facilities, and opportunities for the examinations.

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

20 (n) The department may adopt rules pursuant to chapter 91  
21 necessary for the purpose of this section. Rules adopted to



1 implement this section shall be exempt from the public notice  
2 and public hearing requirements of chapter 91.

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

7 (p) For the purposes of this section:

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

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

10 "Distribute", "distributes", or "distribution" has the same  
11 meaning as defined in section 245-1.

12 "Electronic smoking device" has the same meaning as defined  
13 in section 245-1.

14 "E-liquid" has the same meaning as defined in section  
15 245-1.

16 "Entity" means one or more individuals, a company,  
17 corporation, a partnership, an association, or any other type of  
18 legal entity.

19 "Retailer" has the same meaning as defined in section  
20 245-1.



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

3       "Sell" has the same meaning as defined 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 defined in section  
7 245-1."

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

11       SECTION 3. New statutory material is underscored.

12       SECTION 4. This Act shall take effect on January 30, 2050.



**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 1/30/2050. (SD1)

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

