

JAN 24 2024

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# 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        (q) 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.

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INTRODUCED BY: Carol Johnson



# S.B. NO. 3385

**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.*

