
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
5 manufacturers; certification; directory; penalties. (a) By
6 August 1, 2025, and annually thereafter, every manufacturer of
7 an electronic smoking device or e-liquid containing nicotine,
8 sold for retail sale or to a consumer in the State, whether
9 directly or through a dealer, distributor, wholesaler, retailer,
10 or similar intermediary or intermediaries, shall certify under
11 penalty of perjury on a form and in the manner prescribed by the
12 department, that the manufacturer agrees to comply with this
13 chapter and that:

14 (1) The manufacturer has received a marketing granted
15 order for the electronic smoking device or e-liquid
16 from the FDA pursuant to title 21 United States Code
17 section 387j;



1 (2) The manufacturer submitted a timely filed premarket
2 tobacco product application for the electronic smoking
3 device or e-liquid to the FDA pursuant to title 21
4 United States Code section 387j, and the application
5 either remains under review by the FDA or has received
6 a denial order that has been and remains stayed by the
7 FDA or court order, rescinded by the FDA, or vacated
8 by a court; or

9 (3) The manufacturer is not required to submit an
10 additional marketing granted order or premarket
11 tobacco product application for the electronic smoking
12 device or e-liquid solely because of changes to the
13 name, brand style, or packaging of an electronic
14 smoking device or e-liquid that is covered under
15 paragraph (1) or (2).

16 (b) The certification form shall separately list each
17 brand name; product name; category, including disposable
18 electronic cigarette, power unit, device, and e-liquid
19 cartridge; and flavor for each electronic smoking device and
20 e-liquid containing nicotine that is sold in the State.



1 (c) Each annual certification form shall be accompanied
2 by:

3 (1) A copy of:

4 (A) The marketing granted order issued by the FDA
5 pursuant to title 21 United States Code section
6 387j;

7 (B) A copy of the acceptance letter issued by the FDA
8 pursuant to title 21 United States Code section
9 387j for a timely filed premarket tobacco product
10 application; or

11 (C)) A document issued by FDA or by a court confirming
12 that the premarket tobacco product application
13 has received a denial order that has been and
14 remains stayed by FDA or court order, rescinded
15 by the FDA, or vacated by a court; and

16 (2) A payment of \$250 for each electronic smoking device
17 and e-liquid containing nicotine each time a
18 manufacturer submits a certification form for that
19 product.

20 (d) The information submitted by the manufacturer pursuant
21 to subsection (c) (1) shall be considered confidential business



1 or commercial information and shall not be disclosed pursuant to
2 sections 92F-13 and 92F-19(b). The manufacturer may redact
3 certain confidential commercial or financial information under
4 subsection (c)(1).

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

15 (f) Beginning October 1, 2025, the department shall
16 maintain and make publicly available on the department's
17 official website a directory that lists all manufacturers of
18 electronic smoking devices and e-liquids containing nicotine and
19 all electronic smoking devices and e-liquids containing
20 nicotine, including brand names, product names, categories, and
21 flavors, for which certification forms have been submitted and



1 approved by the department. The department shall update the
2 directory at least monthly to ensure accuracy, and shall
3 establish a process to provide licensed retailers, dealers,
4 distributors, and wholesalers and other relevant parties notice
5 of the initial publication of the directory and changes made to
6 the directory in the prior month.

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

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

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

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

20 (4) The manufacturer sells products in the State required
21 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 contains material
6 misrepresentations or omissions.

7 (h) The department shall provide manufacturers of
8 electronic smoking devices or e-liquids containing nicotine
9 notice and an opportunity to cure deficiencies before removing
10 manufacturers or products from the directory; provided that:

11 (1) The department shall not remove the manufacturer or
12 the manufacturer's electronic smoking devices or e-
13 liquids containing nicotine from the directory until
14 at least thirty days after the manufacturer has been
15 given notice of an intended action setting forth the
16 reasons for the removal. Notice shall be sufficient
17 and be deemed immediately received by a manufacturer
18 if the notice is sent either electronically or by
19 facsimile to an electronic mail address or facsimile
20 number, as the case may be, provided by the



1 manufacturer in its most recent certification filed
2 under subsections (b) and (c);

3 (2) The manufacturer shall have fifteen days from the date
4 of service of the notice of the department's intended
5 action to cure the deficiencies or otherwise establish
6 that the manufacturer or its electronic smoking
7 devices or e-liquids containing nicotine should be
8 included in the directory;

9 (3) Retailers shall have thirty days following the removal
10 of a manufacturer or its electronic smoking devices or
11 e-liquids containing nicotine from the directory to
12 sell the products that were in the retailer's
13 inventory as of the date of removal; and

14 (4) Thirty days after the removal of a manufacturer or its
15 products from the directory, the electronic smoking
16 devices and e-liquids containing nicotine of a
17 manufacturer identified in the notice of removal and
18 intended for retail sale in the State or to a consumer
19 in the State shall be subject to seizure from dealers,
20 distributors, and retailers; forfeiture from dealers,
21 distributors, and retailers; and destruction or



1 disposal, and shall not be purchased or sold for
2 retail sale or to a consumer in the State; provided
3 further that the cost of the seizure, forfeiture, and
4 destruction or disposal shall be borne by the person
5 from whom the electronic smoking devices or e-liquids
6 containing nicotine are confiscated.

7 (i) Beginning October 1, 2025, 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 e-
11 liquids containing nicotine not included in the directory shall
12 not be sold for retail sale in the State or to a consumer in the
13 State, either directly or through an importer, dealer,
14 distributor, wholesaler, retailer, or similar intermediary or
15 intermediaries; provided that:

16 (1) Each retailer shall have sixty days from the date that
17 the department makes the directory available for
18 inspection on the department's official website to
19 sell electronic smoking devices and e-liquids
20 containing nicotine that were in the retailer's



1 inventory and not included in the directory or remove
2 those products from inventory;

3 (2) Each dealer, distributor, or wholesaler shall have
4 sixty days from the date that the department makes the
5 directory available for inspection on the department's
6 official website to remove electronic smoking devices
7 and e-liquids containing nicotine intended for sale in
8 the State from the dealer, distributor, or
9 wholesaler's inventory; and

10 (3) Sixty days after publication of the directory,
11 electronic smoking devices and e-liquids containing
12 nicotine not listed in the directory and intended for
13 retail sale in the State or to a consumer in the State
14 shall be subject to seizure, forfeiture, and
15 destruction or disposal, and shall not be purchased or
16 sold for retail sale in the State or to a consumer in
17 the State except as provided in this subsection and
18 subsection (h); provided that the cost of the seizure,
19 forfeiture, and destruction or disposal shall be borne
20 by the person from whom the products are confiscated.



1 (j) The following penalties shall apply to violations of
2 this section:

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

12 (A) For a second violation under this paragraph
13 within a twelve-month period, the civil penalty
14 shall be at least \$750 but no more than \$1,000
15 per product and the licensee's license shall be
16 suspended for fourteen days;

17 (B) For a third violation of under this paragraph
18 within a twelve-month period, the civil penalty
19 shall be at least \$1,000 but no more than \$1,500
20 per product and the licensee's license shall be
21 suspended for 60 days; and



1 (C) For a fourth violation under this paragraph
2 within a twelve-month period, the civil penalty
3 shall be at least \$1,000 but no more than \$1,500
4 per product and the licensee's license shall be
5 suspended for one year;

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

20 (3) In an action to enforce this section, the State shall
21 be entitled to recover costs, including the costs of



1 investigation, expert witness fees, and reasonable
2 attorney fees; and

3 (4) Any second or subsequent violation of this section
4 shall constitute an unfair method of competition and
5 unfair and deceptive acts or practices in the conduct
6 of any trade of commerce under section 480-2.

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



1 manufacture shall provide the name, address, phone number, and
2 proof of the appointment and availability of the agent to, and
3 to the satisfaction of, the department.

4 (1) In addition to the requirements of subsection (k), any
5 nonresident manufacturer or foreign manufacturer of electronic
6 smoking devices or e-liquids containing nicotine that has not
7 registered to do business in the State as a foreign corporation
8 or business entity shall, as a condition precedent to having the
9 manufacturer's name or manufacturer's electronic smoking devices
10 and e-liquids containing nicotine listed and retained in the
11 directory described in subsection (f), submit to the department
12 a surety bond or other cash security payable to the State in the
13 amount of \$25,000. The bond shall be posted by a corporate
14 surety located within the United States. The bond shall be
15 conditioned on the performance by the manufacturer of all
16 requirements and obligations imposed by this section. A surety
17 on a manufacturer's bond shall be liable up to the amount of the
18 bond, and the State may execute on the surety bond, for the
19 payment of fines and penalties imposed on the manufacturer under
20 this section and for the costs of seizure, forfeiture, and
21 destruction or disposal of products sold in violation of this



1 section. If the State executes on the surety bond, the State
2 may require the manufacturer to provide an additional bond as a
3 condition precedent for retaining the manufacturer or its
4 products in the directory.

5 (m) A surety on a bond furnished by a manufacturer as
6 provided in subsection (l) shall be released and discharged from
7 liability to the State accruing on the bond after expiration of
8 sixty days from the date upon which the surety shall have lodged
9 with the department a written request to be released and
10 discharged. This subsection shall not operate to relieve,
11 release, or discharge the surety from liability already accrued
12 or which shall accrue before the expiration of the sixty-day
13 period. The department shall, upon receiving any request,
14 notify the manufacturer who furnished a bond pursuant to
15 subsection (l) that, unless the manufacturer, on or before the
16 expiration of the sixty-day period, files with the department a
17 new bond as required under this section, with the surety
18 approved by and acceptable to the department, the department
19 shall remove the manufacturer and the manufacturer's products
20 from the directory.



1 (n) Each retailer, wholesaler, and dealer that sells or
2 distributes electronic smoking devices or e-liquids containing
3 nicotine in the State shall be subject to at least two
4 unannounced compliance checks annually for purposes of enforcing
5 this section. Unannounced follow-up compliance checks of all
6 noncompliant retailers and wholesalers or dealers shall be
7 conducted within thirty days after any violation of this
8 section. The department may examine the books, papers, and
9 records of any dealer, distributor, wholesaler, or retailer in
10 the State for the purpose of determining compliance with this
11 section. The department shall publish the results of all
12 compliance checks at least annually and shall make the results
13 available to the public on request.

14 (o) 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 (p) All fees and penalties collected pursuant to this
18 section shall be used for administration and enforcement of this
19 section.

20 (q) Beginning January 31, 2026, and annually thereafter,
21 the department shall provide a report to the legislature



1 regarding the status of the directory, manufacturers and
2 electronic smoking devices and e-liquids containing nicotine
3 included in the directory, revenue and expenditures related to
4 administration of this section, and enforcement activities
5 undertaken pursuant to this section.

6 (r) As used in this section:

7 "FDA" means the United States Food and Drug Administration.

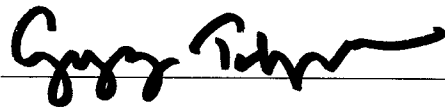
8 "Timely filed premarket tobacco product application" means
9 an application pursuant to title 21 United States Code section
10 387j for an electronic smoking device or e-liquid containing
11 nicotine derived from tobacco marketed in the United States as
12 of August 8, 2016, that was submitted to the FDA on or before
13 September 9, 2020, and accepted for filing."

14 SECTION 2. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on July 1, 2025.

19
INTRODUCED BY:



JAN 22 2025



H.B. NO. 1289

Report Title:

Department of Taxation; Cigarette and Tobacco Tax; Electronic Smoking Devices; E-liquids; Directory; Penalties

Description:

Requires electronic smoking device and e-liquid manufacturers to submit certifications with the Department of Taxation annually, stating that the manufacturer's products comply with federal regulations. Requires the Department of Taxation to maintain a directory of manufacturers of electronic smoking devices and e-liquids whose certifications the Department approved. 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.

