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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 PART I

2 SECTION 1. The department of health shall establish two  
3 full-time equivalent (2.0 FTE) permanent surveyor positions and  
4 one full-time equivalent (1.0 FTE) permanent supervisor position  
5 to review, certify, and recertify dialysis centers and other  
6 health care facilities under the purview of the department of  
7 health.

8 SECTION 2. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$157,500 or so much  
10 thereof as may be necessary for fiscal year 2018-2019 to assist  
11 in the review, certification, and recertification of dialysis  
12 centers and other health care facilities under the purview of  
13 the department of health, including the hiring of necessary  
14 staff.

15 The sum appropriated shall be expended by the department of  
16 health for the purposes of this part.



1 SECTION 3. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$150,000 or so much  
3 thereof as may be necessary for fiscal year 2018-2019 to assist  
4 in the review, certification, and recertification of dialysis  
5 centers and other health care facilities under the purview of  
6 the department of health, including the hiring of necessary  
7 staff.

8 The sum appropriated shall be expended by the department of  
9 health for the purposes of this part.

10 PART II

11 SECTION 4. Chapter 28, Hawaii Revised Statutes, is amended  
12 by adding a new part to be appropriately designated and to read  
13 as follows:

14 "PART XII. ELECTRONIC SMOKING DEVICE RETAILER

15 REGISTRATION UNIT

16 §28-A Policy. The registration of electronic smoking  
17 device retailers is reasonably necessary to protect the health,  
18 safety, or welfare of consumers of electronic smoking devices  
19 and for the enforcement of the laws that regulate the sale of  
20 electronic smoking devices.

21 §28-B Definitions. As used in this part:



1 "Business location" or "place of business" means the entire  
2 premises occupied by a retailer of electronic smoking devices  
3 and shall include but is not limited to any store, stand,  
4 outlet, vehicle, cart, location, vending machine, or structure  
5 from which electronic smoking devices are sold or distributed to  
6 a consumer.

7 "Electronic smoking device" means any electronic product  
8 that can be used to aerosolize and deliver nicotine or other  
9 substances to the person inhaling from the device, including but  
10 not limited to an electronic cigarette, electronic cigar,  
11 electronic cigarillo, or electronic pipe, and any cartridge or  
12 other component of the device or related product.

13 "Entity" means one or more individuals, a company,  
14 corporation, a partnership, an association, or any other type of  
15 legal entity.

16 "Retail sale" or "electronic smoking device retailing"  
17 means the practice of selling electronic smoking devices to  
18 consumers.

19 **§28-C Electronic smoking device retailer registration**  
20 **unit.** There is established in the department of the attorney



1 general the electronic smoking device retailer registration  
2 unit.

3       **§28-D Registration.** (a) Every entity with a place of  
4 business in the State that engages in the retail sale of  
5 electronic smoking devices shall register with the unit by  
6 providing all of the information required by this section.

7 Registration shall not be approved unless all of the applicable  
8 provisions of this section have been met to the satisfaction of  
9 the unit.

10       (b) Registration information required by this section  
11 shall include:

12       (1) The name or names under which the entity conducts or  
13 will conduct business;

14       (2) The address of the principal place of business of the  
15 entity and the address of each place of business the  
16 entity maintains in the State;

17       (3) The entity's general excise tax number;

18       (4) A statement of ownership that shall include the name  
19 of each person who, individually or acting in concert  
20 with any other person or persons, owns or controls,



1 directly or indirectly, twenty-five per cent or more  
2 of the equity interests of the entity; and  
3 (5) An attestation that the entity is not in violation of  
4 the Federal Food, Drug, and Cosmetic Act, as amended  
5 by the Family Smoking Prevention and Tobacco Control  
6 Act and its regulations, or has not received a warning  
7 letter from the United States Food and Drug  
8 Administration based on a compliance check inspection  
9 within thirty days of applying for registration.

10 **§28-E Certificate.** (a) Upon approval of an entity's  
11 registration, the unit shall issue a certificate to the entity  
12 for each place of business where the entity will engage in  
13 electronic smoking device retailing.

14 (b) The unit may charge a registration fee not to exceed  
15 \$500 for each entity that registers.

16 (c) Registration under this section shall expire on June  
17 30 of each even-numbered year. Before June 30 of each even-  
18 numbered year, the unit shall mail a renewal application for  
19 registration to the address on record of the registrant. In  
20 connection with renewal of registration, a holder of a  
21 certificate shall provide all of the information required by



1 section 28-D. Failure to renew a registration shall result in a  
2 civil penalty under section 28-H.

3 (d) The entity shall display the registration certificate  
4 in a conspicuous location in each place of business.

5 (e) The entity shall notify the unit within five days of  
6 receiving notice from the United States Food and Drug  
7 Administration that it is in violation of the Federal Food,  
8 Drug, and Cosmetic Act, as amended by the Family Smoking  
9 Prevention and Tobacco Control Act and its regulations, and  
10 provide the unit with all material details related to the  
11 violation.

12 (f) The unit shall publish on the website of the  
13 department of the attorney general a list of all entities that  
14 hold a certificate.

15 **§28-F Inspection.** (a) The unit may examine all records  
16 of any entity engaged in the business of electronic smoking  
17 device retailing to verify the accuracy of the information  
18 provided for registration or to verify that an entity is selling  
19 electronic smoking devices without being registered. Every  
20 person in possession of any books, papers, and records, and the



1 person's agents and employees, are directed and required to give  
2 the unit opportunities for examination of applicable records.

3 (b) The unit may inspect the operations, premises, and  
4 storage areas of any entity engaged in the retail sale of  
5 electronic smoking devices as necessary.

6 **§28-G Personnel.** The unit shall employ any attorneys,  
7 auditors, investigators, and other personnel as necessary to  
8 promote the effective and efficient conduct of the unit's  
9 activities.

10 **§28-H Civil penalty for failure to register.** An entity  
11 that fails to register with the unit within thirty days of  
12 engaging in the retail sale of electronic smoking devices shall  
13 be subject to a civil penalty of \$100 for each day that the  
14 violation of this section continues, plus the costs of any  
15 investigations conducted by the unit."

16 SECTION 5. Chapter 245, Hawaii Revised Statutes, is  
17 amended by adding a new section to be appropriately designated  
18 and to read as follows:

19 "**§245- Delivery sales.** (a) No person shall conduct a  
20 delivery sale or otherwise ship or transport, or cause to be  
21 shipped or transported, any electronic smoking device in



1 connection with a delivery sale to any person under the age of  
2 twenty-one.

3 (b) A person who makes delivery sales shall not accept a  
4 purchase or order from any person without first obtaining the  
5 full name, birth date, and address of that person and verifying  
6 the purchaser's age by:

7 (1) An independently operated third-party database or  
8 aggregate of databases that are regularly used by  
9 government and businesses for the purpose of age and  
10 identity verification and authentication;

11 (2) Receiving a copy of a government issued identification  
12 card from the purchaser; or

13 (3) Requiring age and signature verification in the  
14 shipment process and upon and before actual delivery.

15 (c) The purchaser shall certify their age before  
16 completing the purchaser's order.

17 (d) Any person who violates this section shall be fined  
18 \$500 for the first offense. Any subsequent offenses shall  
19 subject the person to a fine of no less than \$500 but no more  
20 than \$2,000. Any person under twenty-one years of age who  
21 violates this section shall be fined \$10 for the first offense;



1 provided that any subsequent offense shall subject the person to  
2 a fine of \$50, no part of which shall be suspended, or the  
3 person shall be required to perform no less than forty-eight  
4 hours but no more than seventy-two hours of community service  
5 during hours when the person is not employed or attending  
6 school.

7 (e) The department shall not adopt rules prohibiting  
8 delivery sales.

9 (f) For the purposes of this section:

10 "Delivery sale" means any sale of an electronic smoking  
11 device to a purchaser in the State where either:

12 (1) The purchaser submits the order for sale by means of a  
13 telephonic or other method of voice transmission, the  
14 mail or any other delivery service, or the internet or  
15 other online service; or

16 (2) The electronic smoking device is delivered by use of  
17 the mail or any other delivery service.

18 The foregoing sales of electronic smoking devices shall  
19 constitute a delivery sale regardless of whether the seller is  
20 located within or without the State.



1       "Electronic smoking device" means any electronic product  
2       that can be used to aerosolize and deliver nicotine or other  
3       substances to the person inhaling from the device, including but  
4       not limited to an electronic cigarette, electronic cigar,  
5       electronic cigarillo, or electronic pipe, and any cartridge or  
6       other component of the device or related product."

7       SECTION 6. Chapter 328J, Hawaii Revised Statutes, is  
8       amended by adding a new section to be appropriately designated  
9       and to read as follows:

10       "§328J-       **Statewide concern.** (a) Sales of cigarettes,  
11       tobacco products, and electronic smoking devices are a statewide  
12       concern. It is the intent of the legislature to regulate the  
13       sale of cigarettes, tobacco products, and electronic smoking  
14       devices in a uniform and exclusive manner.

15       (b) All local ordinances or regulations that regulate the  
16       sale of cigarettes, tobacco products, and electronic smoking  
17       devices are preempted, and existing local laws and regulations  
18       conflicting with this chapter are null and void.

19       (c) Nothing in this chapter shall be construed to limit a  
20       county's authority under section 328J-15."



1 SECTION 7. Section 328J-18, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " ~~[+]§328J-18[+]~~ **Placement of cigarettes and tobacco**  
4 **products.** (a) Except as otherwise provided under this section,  
5 a retailer may sell cigarettes, smokeless tobacco, and all other  
6 tobacco products only in a direct, face-to-face exchange between  
7 the retailer and the consumer. Examples of methods of sale that  
8 are not permitted include vending machines and self-service  
9 displays.

10 (b) A retailer may only display or store cigarettes and  
11 tobacco products:

12 (1) Behind a sales counter or in any other area of the  
13 establishment that is inaccessible to the public; or

14 (2) In a locked container.

15 ~~[(b)]~~ (c) This section shall not apply to:

16 (1) A duty-free sales enterprise selling duty-free  
17 merchandise in accordance with the provisions of title  
18 19 United States Code section 1555(b), and any  
19 implementing regulations; and



1 (2) Retail tobacco stores, bars, or any other  
2 establishment for which the minimum age for admission  
3 is eighteen."

4 SECTION 8. Section 712-1258, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[+]§712-1258[+] **Tobacco products and electronic smoking**  
7 **devices; persons under twenty-one years of age.** (1) It shall  
8 be unlawful to sell or furnish a tobacco product in any shape or  
9 form or an electronic smoking device to a person under twenty-  
10 one years of age.

11 (2) All persons engaged in the retail sale of tobacco  
12 products or electronic smoking devices shall check the  
13 identification of tobacco product or electronic smoking device  
14 purchasers to establish the age of the purchaser if the  
15 purchaser reasonably appears to be under twenty-seven years of  
16 age.

17 (3) It shall be an affirmative defense that the seller of  
18 a tobacco product or an electronic smoking device to a person  
19 under twenty-one years of age in violation of this section had  
20 requested, examined, and reasonably relied upon a photographic  
21 identification from the person establishing that person's age as



1 at least twenty-one years of age prior to selling the person a  
2 tobacco product or an electronic smoking device. The failure of  
3 a seller to request and examine photographic identification from  
4 a person under twenty-one years of age prior to the sale of a  
5 tobacco product or an electronic smoking device to the person  
6 shall be construed against the seller and form a conclusive  
7 basis for the seller's violation of this section.

8       ~~[(2)]~~ (4) Signs using the statement, "The sale of tobacco  
9 products or electronic smoking devices to persons under twenty-  
10 one is prohibited", shall be posted on or near any vending  
11 machine in letters at least one-half inch high and at or near  
12 the point of sale of any other location where tobacco products  
13 or electronic smoking devices are sold in letters at least one-  
14 half inch high.

15       ~~[(3)]~~ (5) It shall be unlawful for a person under twenty-  
16 one years of age to purchase or possess any tobacco product or  
17 electronic smoking device, as those terms are defined in  
18 subsection ~~[(5)-]~~ (7). This provision does not apply if a  
19 person under the age of twenty-one, with parental authorization,  
20 is participating in a controlled purchase as part of a law  
21 enforcement activity or a study authorized by the department of



1 health under the supervision of law enforcement to determine the  
2 level of incidence of tobacco or electronic smoking devices  
3 sales to persons under twenty-one years of age.

4 ~~[(4)]~~ (6) Any person who violates subsection (1) or ~~[(2)]~~  
5 (4), or both, shall be fined \$500 for the first offense. Any  
6 subsequent offenses shall subject the person to a fine not less  
7 than \$500 nor more than \$2,000. Any person under twenty-one  
8 years of age who violates subsection ~~[(3)]~~ (5) shall be fined  
9 \$10 for the first offense. Any subsequent offense shall subject  
10 the violator to a fine of \$50, no part of which shall be  
11 suspended, or the person shall be required to perform not less  
12 than forty-eight hours nor more than seventy-two hours of  
13 community service during hours when the person is not employed  
14 and is not attending school. Any tobacco product or electronic  
15 smoking device, as those terms are defined in subsection (7), in  
16 the person's possession at the time of violation of subsection  
17 (5) shall be seized, summarily forfeited to the State, and  
18 destroyed by law enforcement following the conclusion of an  
19 administrative or judicial proceeding finding that a violation  
20 of subsection (5) has been committed. The procedures set forth  
21 in chapter 712A shall not apply to this subsection.



1           ~~(+5)~~ (7) For the purposes of this section:

2           "Electronic smoking device" means any electronic product  
3 that can be used to aerosolize and deliver nicotine or other  
4 substances to the person inhaling from the device, including but  
5 not limited to an electronic cigarette, electronic cigar,  
6 electronic cigarillo, or electronic pipe, and any cartridge or  
7 other component of the device or related product.

8           "Tobacco product" means any product made or derived from  
9 tobacco that contains nicotine or other substances and is  
10 intended for human consumption or is likely to be consumed,  
11 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or  
12 ingested by other means. "Tobacco product" includes but is not  
13 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,  
14 snuff, snus, or an electronic smoking device. "Tobacco product"  
15 does not include drugs, devices, or combination products  
16 approved for sale by the United States Food and Drug  
17 Administration, as those terms are defined in the Federal Food,  
18 Drug, and Cosmetic Act."

19           SECTION 9. This part does not affect rights and duties  
20 that matured, penalties that were incurred, and proceedings that  
21 were begun before its effective date.



1 PART III

2 SECTION 10. Statutory material to be repealed is bracketed  
3 and stricken. New statutory material is underscored.

4 SECTION 11. This Act shall take effect on July 1, 2018.



**Report Title:**

DOH; Dialysis Centers; Certification; Health Care Facilities; Appropriation; AG; Electronic Smoking Device Retailer Registration Unit; Tobacco Products; Electronic Smoking Devices; Registration; Displays; Minors; Forfeiture; Delivery Sales

**Description:**

Establishes positions and appropriates funds to assist in the review, certification, and recertification of dialysis centers and other health care facilities under the purview of the Department of Health. Establishes the Electronic Smoking Device Retailer Registration Unit within the Department of the Attorney General. Requires retailers of electronic smoking devices to register with the unit. Declares that sales of cigarettes, tobacco products, and electronic smoking devices are a statewide concern. Restricts locations where retailers may display cigarettes and tobacco products. Requires that retailers of tobacco products and electronic smoking devices check the identification of tobacco or electronic smoking device purchasers. Makes it unlawful for a person under the age of 21 to possess any tobacco product or electronic smoking device. Establishes procedures for the forfeiture and destruction of tobacco products and electronic smoking devices under certain circumstances. Extends restrictions on the sale of electronic smoking devices to delivery sales of electronic smoking devices. Effective 7/1/2018. (CD1)

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