H.B. NO. ¹⁸⁹⁵ H.D. 1 S.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO HEALTH.

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

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PART I

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

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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 centers and other health care facilities under the purview of 5 the department of health, including the hiring of necessary 6 7 staff. 8 The sum appropriated shall be expended by the department of 9 health for the purposes of this part. 10 PART II SECTION 4. Chapter 28, Hawaii Revised Statutes, is amended 11 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, safety, or welfare of consumers of electronic smoking devices 18 and for the enforcement of the laws that regulate the sale of 19 20 electronic smoking devices. 21 §28-B Definitions. As used in this part:

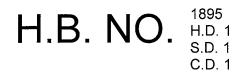


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"Business location" or "place of business" means the entire premises occupied by a retailer of electronic smoking devices and shall include but is not limited to any store, stand, outlet, vehicle, cart, location, vending machine, or structure from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

"Entity" means one or more individuals, a company,
corporation, a partnership, an association, or any other type of
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.

§28-D Registration. (a) Every entity with a place of
business in the State that engages in the retail sale of
electronic smoking devices shall register with the unit by
providing all of the information required by this section.
Registration shall not be approved unless all of the applicable
provisions of this section have been met to the satisfaction of
the unit.

10 (b) Registration information required by this section11 shall include:

- 12 (1) The name or names under which the entity conducts or13 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,

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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 the Federal Food, Drug, and Cosmetic Act, as amended 4 by the Family Smoking Prevention and Tobacco Control 5 Act and its regulations, or has not received a warning 6 letter from the United States Food and Drug 7 8 Administration based on a compliance check inspection within thirty days of applying for registration. 9 10 **§28-E Certificate.** (a) Upon approval of an entity's

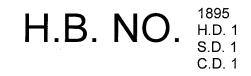
11 registration, the unit shall issue a certificate to the entity 12 for each place of business where the entity will engage in 13 electronic smoking device retailing.

14 (b) The unit may charge a registration fee not to exceed15 \$500 for each entity that registers.

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

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

3 (d) The entity shall display the registration certificate4 in a conspicuous location in each place of business.

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

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person's agents and employees, are directed and required to give
 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.

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

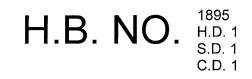
10 §28-H Civil penalty for failure to register. An entity 11 that fails to register with the unit within thirty days of 12 engaging in the retail sale of electronic smoking devices shall 13 be subject to a civil penalty of \$100 for each day that the 14 violation of this section continues, plus the costs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



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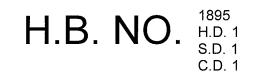
1	<u>connectio</u>	on with a delivery sale to any person under the age of
2	twenty-or	ne.
3	<u>(b)</u>	A person who makes delivery sales shall not accept a
4	purchase	or order from any person without first obtaining the
5	full name	e, birth date, and address of that person and verifying
6	the purch	aser's 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	<u>(c)</u>	The purchaser shall certify their age before
16	completin	g the purchaser's order.
17	<u>(d)</u>	Any person who violates this section shall be fined
18	\$500 for	the first offense. Any subsequent offenses shall
19	subject t	he person to a fine of no less than \$500 but no more
20	than \$2,0	00. Any person under twenty-one years of age who
21	violates	this section shall be fined \$10 for the first offense;

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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.

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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."



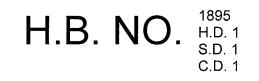
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1	SECTION 7. Section 328J-18, Hawaii Revised Statutes, is
2	amended to read as follows:
3	"[+]§328J-18[+] Placement of cigarettes and tobacco
4	products. (a) Except as otherwise provided under this section,
5	a retailer may sell cigarettes, smokeless 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)] <u>(c)</u> 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

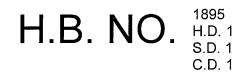
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1	(2) Retail tobacco stores, bars, or any other
2	establishment for which the minimum age for admission
3	is eighteen."
4	SECTION 8. Section 712-1258, Hawaii Revised Statutes, is
5	amended to read as follows:
6	"[[]§712-1258[]] Tobacco products and 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

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1 at least twenty-one years of age prior to selling the person a tobacco product or an electronic smoking device. The failure of 2 a seller to request and examine photographic identification from 3 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 $\left[\frac{(2)}{(4)}\right]$ (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

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

4 $\left[\frac{4}{2}\right]$ (6) Any person who violates subsection (1) or $\left[\frac{2}{2}\right]$ 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.

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1	$\left[\frac{(5)}{(7)}\right]$ 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."

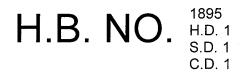
19 SECTION 9. This part does not affect rights and duties 20 that matured, penalties that were incurred, and proceedings that 21 were begun before its effective date.





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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