

ACT 206

H.B. NO. 1895

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

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.

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

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

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

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

PART II

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

“PART XII. ELECTRONIC SMOKING DEVICE RETAILER REGISTRATION UNIT

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

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

“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.

“Electronic smoking device” means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or 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.

“Retail sale” or “electronic smoking device retailing” means the practice of selling electronic smoking devices to consumers.

§28-C Electronic smoking device retailer registration unit. There is established in the department of the attorney general the electronic smoking device retailer registration 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. Regis-

tration shall not be approved unless all of the applicable provisions of this section have been met to the satisfaction of the unit.

- (b) Registration information required by this section shall include:
 - (1) The name or names under which the entity conducts or will conduct business;
 - (2) The address of the principal place of business of the entity and the address of each place of business the entity maintains in the State;
 - (3) The entity's general excise tax number;
 - (4) A statement of ownership that shall include the name of each person who, individually or acting in concert with any other person or persons, owns or controls, directly or indirectly, twenty-five per cent or more of the equity interests of the entity; and
 - (5) An attestation that the entity is not in violation of the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act and its regulations, or has not received a warning letter from the United States Food and Drug Administration based on a compliance check inspection within thirty days of applying for registration.

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

(b) The unit may charge a registration fee not to exceed \$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 even-numbered 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 section 28-D. Failure to renew a registration shall result in a civil penalty under section 28-H.

(d) The entity shall display the registration certificate 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.

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

§28-F Inspection. (a) The unit may examine all records of any entity engaged in the business of electronic smoking device retailing to verify the accuracy of the information provided for registration or to verify that an entity is selling electronic smoking devices without being registered. Every person in possession of any books, papers, and records, and the person's agents and employees, are directed and required to give the unit opportunities for examination of applicable records.

(b) The unit may inspect the operations, premises, and storage areas of any entity engaged in the retail sale of 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.

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

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

“§245- Delivery sales. (a) No person shall conduct a delivery sale or otherwise ship or transport, or cause to be shipped or transported, any electronic smoking device in connection with a delivery sale to any person under the age of twenty-one.

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

- (1) An independently operated third-party database or aggregate of databases that are regularly used by government and businesses for the purpose of age and identity verification and authentication;
- (2) Receiving a copy of a government issued identification card from the purchaser; or
- (3) Requiring age and signature verification in the shipment process and upon and before actual delivery.

(c) The purchaser shall certify their age before completing the purchaser’s order.

(d) Any person who violates this section shall be fined \$500 for the first offense. Any subsequent offenses shall subject the person to a fine of no less than \$500 but no more than \$2,000. Any person under twenty-one years of age who violates this section shall be fined \$10 for the first offense; provided that any subsequent offense shall subject the person to a fine of \$50, no part of which shall be suspended, or the person shall be required to perform no less than forty-eight hours but no more than seventy-two hours of community service during hours when the person is not employed or attending school.

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

(f) For the purposes of this section:

“Delivery sale” means any sale of an electronic smoking device to a purchaser in the State where either:

- (1) The purchaser submits the order for sale by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service; or
- (2) The electronic smoking device is delivered by use of the mail or any other delivery service.

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

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

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

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

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

(c) Nothing in this chapter shall be construed to limit a county’s authority under section 328J-15.”

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

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

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

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

~~(2) In a locked container.~~

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

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

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

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

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

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

~~(3) It shall be an affirmative defense that the seller of a tobacco product or an electronic smoking device to a person under twenty-one years of age in violation of this section had requested, examined, and reasonably relied upon a photographic identification from the person establishing that person’s age as at least twenty-one years of age prior to selling the person a tobacco product or an electronic smoking device. The failure of a seller to request and examine photographic identification from a person under twenty-one years of age prior to the sale of a tobacco product or an electronic smoking device to the person shall be construed against the seller and form a conclusive basis for the seller’s violation of this section.~~

~~[(2)] (4) Signs using the statement, “The sale of tobacco products or electronic smoking devices to persons under twenty-one is prohibited”, shall be posted on or near any vending machine in letters at least one-half inch high and~~

at or near the point of sale of any other location where tobacco products or electronic smoking devices are sold in letters at least one-half inch high.

~~[(3)]~~ (5) It shall be unlawful for a person under twenty-one years of age to purchase or possess any tobacco product or electronic smoking device, as those terms are defined in subsection ~~[(5)]~~ (7). This provision does not apply if a person under the age of twenty-one, with parental authorization, is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of 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)]~~ (6) Any person who violates subsection (1) or ~~[(2)]~~ (4), or both, shall be fined \$500 for the first offense. Any subsequent offenses shall subject the person to a fine not less than \$500 nor more than \$2,000. Any person under twenty-one years of age who violates subsection ~~[(3)]~~ (5) shall be fined \$10 for the first offense. Any subsequent offense shall subject the violator to a fine of \$50, no part of which shall be suspended, or the person shall be required to perform not less than forty-eight hours nor more than seventy-two hours of community service during hours when the person is not employed and is not attending school. Any tobacco product or electronic smoking device, as those terms are defined in subsection (7), in the person's possession at the time of violation of subsection (5) shall be seized, summarily forfeited to the State, and destroyed by law enforcement following the conclusion of an administrative or judicial proceeding finding that a violation of subsection (5) has been committed. The procedures set forth in chapter 712A shall not apply to this subsection.

~~[(5)]~~ (7) For the purposes of this section:

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

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

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

PART III

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved July 10, 2018.)

Note

1. Edited pursuant to HRS §23G-16.5.