

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Hager offered the following:

2
3 **Substitute Amendment for Amendment (579035) (with title**
4 **amendment)**

5 Remove lines 106-291 and insert:

6 (c) "Self-service merchandising" means the open display of
7 nicotine products or nicotine dispensing devices, whether
8 packaged or otherwise, for direct retail customer access and
9 handling before purchase without the intervention or assistance
10 of the retailer or the retailer's owner, employee, or agent. An
11 open display of such products and devices includes the use of an
12 open display unit.

13 (2) PROHIBITIONS ON SALE TO MINORS.-It is unlawful to
14 sell, deliver, barter, furnish, or give, directly or indirectly,

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15 to any person who is under 18 years of age, any nicotine product
16 or a nicotine dispensing device.

17 (3) PROHIBITIONS ON GIFTING SAMPLES TO MINORS.—The gift of
18 a sample nicotine product or nicotine dispensing device to any
19 person under the age of 18 by a retailer of nicotine products or
20 nicotine dispensing devices, or by an employee of such retailer,
21 is prohibited.

22 (4) PENALTIES.—Any person who violates subsection (2) or
23 subsection (3) commits a misdemeanor of the second degree,
24 punishable as provided in s. 775.082 or s. 775.083. However, any
25 person who violates subsection (2) or subsection (3) for a
26 second or subsequent time within 1 year of the first violation,
27 commits a misdemeanor of the first degree, punishable as
28 provided in s. 775.082 or s. 775.083.

29 (5) AFFIRMATIVE DEFENSES.—A person charged with a
30 violation of subsection (2) or subsection (3) has a complete
31 defense if, at the time the nicotine product or nicotine
32 dispensing device was sold, delivered, bartered, furnished, or
33 given:

34 (a) The buyer or recipient falsely evidenced that she or
35 he was 18 years of age or older;

36 (b) The appearance of the buyer or recipient was such that
37 a prudent person would believe the buyer or recipient to be 18
38 years of age or older; and

39 (c) Such person carefully checked a driver license or an
40 identification card issued by this state or another state of the

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41 United States, a passport, or a United States armed services
42 identification card presented by the buyer or recipient and
43 acted in good faith and in reliance upon the representation and
44 appearance of the buyer or recipient in the belief that the
45 buyer or recipient was 18 years of age or older.

46 (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR
47 NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any
48 person under 18 years of age to knowingly possess any nicotine
49 product or a nicotine dispensing device. Any person under 18
50 years of age who violates this subsection commits a noncriminal
51 violation as defined in s. 775.08(3), punishable by:

52 (a) For a first violation, 16 hours of community service
53 or, instead of community service, a \$25 fine. In addition, the
54 person must attend a school-approved anti-tobacco and nicotine
55 program, if locally available;

56 (b) For a second violation within 12 weeks of the first
57 violation, a \$25 fine; or

58 (c) For a third or subsequent violation within 12 weeks of
59 the first violation, the court must direct the Department of
60 Highway Safety and Motor Vehicles to withhold issuance of or
61 suspend or revoke the person's driver license or driving
62 privilege, as provided in s. 322.056.

63
64 Any second or subsequent violation not within the 12-week time
65 period after the first violation is punishable as provided for a
66 first violation.

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67 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for
68 any person under 18 years of age to misrepresent his or her age
69 or military service for the purpose of inducing a retailer of
70 nicotine products or nicotine dispensing devices or an agent or
71 employee of such retailer to sell, give, barter, furnish, or
72 deliver any nicotine product or nicotine dispensing device, or
73 to purchase, or attempt to purchase, any nicotine product or
74 nicotine dispensing device from a person or a vending machine.
75 Any person under 18 years of age who violates this subsection
76 commits a noncriminal violation as defined in s. 775.08(3),
77 punishable by:

78 (a) For a first violation, 16 hours of community service
79 or, instead of community service, a \$25 fine and, in addition,
80 the person must attend a school-approved anti-tobacco and
81 nicotine program, if available;

82 (b) For a second violation within 12 weeks of the first
83 violation, a \$25 fine; or

84 (c) For a third or subsequent violation within 12 weeks of
85 the first violation, the court must direct the Department of
86 Highway Safety and Motor Vehicles to withhold issuance of or
87 suspend or revoke the person's driver license or driving
88 privilege, as provided in s. 322.056.

89
90 Any second or subsequent violation not within the 12-week time
91 period after the first violation is punishable as provided for a
92 first violation.

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(8) PENALTIES FOR MINORS.—

(a) A person under 18 years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco and nicotine program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(b) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (6) or subsection (7). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(c) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (6) (a) or paragraph (7) (a), or attend a school-approved anti-tobacco and nicotine program, if locally available, the court must direct

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119 the Department of Highway Safety and Motor Vehicles to withhold
120 issuance of or suspend the driver license or driving privilege
121 of that person for 30 consecutive days.

122 (d) If a person under 18 years of age is found by the
123 court to have committed a noncriminal violation under this
124 section and that person has failed to pay the applicable fine as
125 required by paragraph (6) (b) or paragraph (7) (b), the court must
126 direct the Department of Highway Safety and Motor Vehicles to
127 withhold issuance of or suspend the driver license or driving
128 privilege of that person for 45 consecutive days.

129 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all
130 civil penalties received by a county court pursuant to
131 subsections (6) and (7) shall be remitted by the clerk of the
132 court to the Department of Revenue for transfer to the
133 Department of Education to provide for teacher training and for
134 research and evaluation to reduce and prevent the use of tobacco
135 products, nicotine products, or nicotine dispensing devices by
136 children. The remaining 20 percent of civil penalties received
137 by a county court pursuant to this section shall remain with the
138 clerk of the county court to cover administrative costs.

139 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE
140 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

141 (a) Any retailer that sells nicotine products or nicotine
142 dispensing devices shall post a clear and conspicuous sign in
143 each place of business where such products are sold which
144 substantially states the following:

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145
146 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO
147 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE
148 IS REQUIRED FOR PURCHASE.

149
150 (b) A retailer that sells nicotine products or nicotine
151 dispensing devices shall provide at the checkout counter in a
152 location clearly visible to the retailer, the retailer's agent
153 or employee, instructional material in a calendar format, or
154 similar format to assist in determining whether a person is of
155 legal age to purchase nicotine products or nicotine dispensing
156 devices. This point of sale material must contain substantially
157 the following language:

158
159 IF YOU WERE NOT BORN BEFORE THIS DATE
160 (insert date and applicable year)
161 YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

162
163 In lieu of a calendar a retailer may use card readers, scanners,
164 or other electronic or automated systems that can verify whether
165 a person is of legal age to purchase nicotine products or
166 nicotine dispensing devices.

167 (11) SELF-SERVICE MERCHANDISING PROHIBITED.-

168 (a) A retailer that sells nicotine products or nicotine
169 dispensing devices may not sell, permit to be sold, offer for

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170 sale, or display for sale such products or devices by means of
171 self-service merchandising.

172 (b) A retailer that sells nicotine products or nicotine
173 dispensing devices may not place such products or devices in an
174 open display unit unless the unit is located in an area that is
175 inaccessible to customers.

176 (c) Paragraphs (a) and (b) do not apply to an
177 establishment that prohibits persons under 18 years of age on
178 the premises.

179 (12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS
180 OR NICOTINE DISPENSING DEVICES.—

181 (a) In order to prevent persons under 18 years of age from
182 purchasing or receiving nicotine products or nicotine dispensing
183 devices, the sale or delivery of such products or devices is
184 prohibited, except:

185 1. When under the direct control, or line of sight where
186 effective control may be reasonably maintained, of the retailer
187 of nicotine products or nicotine dispensing devices or such
188 retailer's agent or employee; or

189 2. Sales from a vending machine are prohibited under
190 subparagraph (a)1. and are only permissible from a machine that
191 is equipped with an operational lockout device which is under
192 the control of the retailer of nicotine products or nicotine
193 dispensing devices or such retailer's agent or employee who
194 directly regulates the sale of items through the machine by
195 triggering the lockout device to allow the dispensing of one

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196 nicotine product or nicotine dispensing device. The lockout
197 device must include a mechanism to prevent the machine from
198 functioning, if the power source for the lockout device fails or
199 if the lockout device is disabled, and a mechanism to ensure
200 that only one nicotine product or nicotine dispensing device is
201 dispensed at a time.

202 (b) Paragraph (a) does not apply to an establishment that
203 prohibits persons under 18 years of age on the premises.

204 (c) A retailer of nicotine products or nicotine dispensing
205 devices or such retailer's agent or employee may require proof
206 of age of a purchaser of such products or devices before selling
207 the product or device to that person.

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T I T L E A M E N D M E N T

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Remove lines 8-29 and insert:

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to the state; creating s. 877.112, F.S.; defining

213

terms; prohibiting the selling, delivering, bartering,

214

furnishing, or giving of nicotine products or nicotine

215

dispensing devices to persons under 18 years of age;

216

prohibiting the gift of sample nicotine products or

217

nicotine dispensing devices to persons under 18 years

218

of age; providing penalties; providing affirmative

219

defenses for a person charged with certain violations;

220

prohibiting a person under 18 years of age from

221

possessing, purchasing, or misrepresenting his or her

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222 age or military service to purchase nicotine products
223 or nicotine dispensing devices; providing for use of
224 civil fines; requiring certain signage where a
225 retailer sells nicotine products or nicotine
226 dispensing devices; prohibiting self-service
227 merchandising where a retailer sells nicotine products
228 or nicotine dispensing devices; providing an
229 exception; prohibiting the sale or delivery of
230 nicotine products or nicotine dispensing devices
231 except when such products are under the direct control
232 or line of sight of a retailer; prohibiting sales from
233 a vending machine unless it is equipped with certain
234 devices;

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