

1 A bill to be entitled

2 An act relating to tobacco and nicotine product
3 regulation; amending s. 569.14, F.S.; allowing
4 alternate signage requirements where a dealer that
5 sells tobacco products also sells nicotine products or
6 nicotine dispensing devices; creating s. 569.24, F.S.;
7 preempting regulation of the sale of tobacco products
8 to the state; creating s. 877.112, F.S.; defining the
9 terms "nicotine dispensing device" and "nicotine
10 product"; prohibiting the selling, delivering,
11 bartering, furnishing, or giving of nicotine products
12 or nicotine dispensing devices to persons under 18
13 years of age; prohibiting the gift of sample nicotine
14 products or nicotine dispensing devices to persons
15 under 18 years of age; providing penalties; providing
16 affirmative defenses for a person charged with certain
17 violations; prohibiting a person under 18 years of age
18 from possessing, purchasing, or misrepresenting his or
19 her age or military service to purchase nicotine
20 products or nicotine dispensing devices; providing for
21 use of civil fines; requiring certain signage where a
22 retailer sells nicotine products or nicotine
23 dispensing devices; prohibiting the sale or delivery
24 of nicotine products or nicotine dispensing devices
25 except when such products are under the direct control
26 or line of sight of a retailer; prohibiting sales from

Page 1 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0169-03-c3

27 a vending machine unless it is equipped with certain
 28 devices; preempting regulation of the sale of nicotine
 29 products and nicotine dispensing devices to the state;
 30 providing an effective date.

31

32 Be It Enacted by the Legislature of the State of Florida:

33

34 Section 1. Section 569.14, Florida Statutes, is amended to
 35 read:

36 569.14 Posting of a sign stating that the sale of tobacco
 37 products to persons under 18 years of age is unlawful;
 38 enforcement; penalty.—

39 (1) A ~~Any~~ dealer that sells tobacco products shall post a
 40 clear and conspicuous sign in each place of business where such
 41 products are sold which substantially states the following:
 42 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS
 43 AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

44 (2) A dealer that sells tobacco products and nicotine
 45 products or nicotine dispensing devices, as defined in s.
 46 877.112, may use a sign that substantially states the following:
 47 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE
 48 DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST
 49 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

50 A dealer that uses a sign as described in this subsection meets
 51 the signage requirements of ss. 569.14(1) and 877.112.

52 (3) ~~(2)~~ The division shall make available to dealers of

53 tobacco products signs that meet the requirements of subsection
 54 (1) or subsection (2).

55 (4)~~(3)~~ Any dealer that sells tobacco products shall
 56 provide at the checkout counter in a location clearly visible to
 57 the dealer, the dealer's agent or employee, instructional
 58 material in a calendar format or similar format to assist in
 59 determining whether a person is of legal age to purchase tobacco
 60 products. This point of sale material must contain substantially
 61 the following language:

62 IF YOU WERE NOT BORN BEFORE THIS DATE
 63 (insert date and applicable year)
 64 YOU CANNOT BUY TOBACCO PRODUCTS.

65 Upon approval by the division, in lieu of a calendar a dealer
 66 may use card readers, scanners, or other electronic or automated
 67 systems that can verify whether a person is of legal age to
 68 purchase tobacco products. Failure to comply with the provisions
 69 contained in this subsection shall result in imposition of
 70 administrative penalties as provided in s. 569.006.

71 (5)~~(4)~~ The division, through its agents and inspectors,
 72 shall enforce this section.

73 (6)~~(5)~~ Any person who fails to comply with subsection (1)
 74 is guilty of a misdemeanor of the second degree, punishable as
 75 provided in s. 775.082 or s. 775.083.

76 Section 2. Section 569.24, Florida Statutes, is created to
 77 read:

78 569.24 Preemption of tobacco products.—This section

79 expressly preempts to the state the regulation of the sale of
80 products under this chapter and supersedes any municipal or
81 county ordinance on the subject.

82 Section 3. Section 877.112, Florida Statutes, is created
83 to read:

84 877.112 Nicotine products and nicotine dispensing devices;
85 prohibitions for minors; penalties; civil fines; signage
86 requirements; preemption.-

87 (1) DEFINITIONS.-As used in this section, the term:

88 (a) "Nicotine dispensing device" means any product that
89 employs an electronic, chemical or mechanical means to produce
90 vapor from a nicotine product, including, but not limited to, an
91 electronic cigarette, electronic cigar, electronic cigarillo,
92 electronic pipe, or other similar device or product, any
93 replacement cartridge for such device, and any other container
94 of nicotine in a solution or other form intended to be used with
95 or within an electronic cigarette, electronic cigar, electronic
96 cigarillo, electronic pipe, or other similar device or product.

97 (b) "Nicotine product" means any product that contains
98 nicotine, including liquid nicotine, that is intended for human
99 consumption, whether inhaled, chewed, absorbed, dissolved, or
100 ingested by any means, but does not include a:

101 1. Tobacco product, as defined in s. 569.002;

102 2. Product regulated as a drug or device by the United
103 States Food and Drug Administration under Chapter V of the
104 federal Food, Drug, and Cosmetic Act; or

105 3. Product that contains incidental nicotine.

106 (2) PROHIBITIONS ON SALE TO MINORS.—It is unlawful to
107 sell, deliver, barter, furnish, or give, directly or indirectly,
108 to any person who is under 18 years of age, any nicotine product
109 or a nicotine dispensing device.

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

115 (4) PENALTIES.—Any person who violates subsection (2) or
116 (3) commits a misdemeanor of the second degree, punishable as
117 provided in s. 775.082 or s. 775.083. However, any person who
118 violates subsection (2) or (3) for a second or subsequent time
119 within 1 year of the first violation, commits a misdemeanor of
120 the first degree, punishable as provided in s. 775.082 or s.
121 775.083.

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

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

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

131 (c) Such person carefully checked a driver license or an
132 identification card issued by this state or another state of the
133 United States, a passport, or a United States armed services
134 identification card presented by the buyer or recipient and
135 acted in good faith and in reliance upon the representation and
136 appearance of the buyer or recipient in the belief that the
137 buyer or recipient was 18 years of age or older.

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

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

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

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

155
156 Any second or subsequent violation not within the 12-week time

157 period after the first violation is punishable as provided for a
158 first violation.

159 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for
160 any person under 18 years of age to misrepresent his or her age
161 or military service for the purpose of inducing a retailer of
162 nicotine products or nicotine dispensing devices or an agent or
163 employee of such retailer to sell, give, barter, furnish, or
164 deliver any nicotine product or nicotine dispensing device, or
165 to purchase, or attempt to purchase, any nicotine product or
166 nicotine dispensing device from a person or a vending machine.
167 Any person under 18 years of age who violates this subsection
168 commits a noncriminal violation as defined in s. 775.08(3),
169 punishable by:

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

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

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

181
182 Any second or subsequent violation not within the 12-week time

183 period after the first violation is punishable as provided for a
184 first violation.

185 (8) PENALTIES FOR MINORS.—

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

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

205 (c) If a person under 18 years of age is found by the
206 court to have committed a noncriminal violation under this
207 section and that person has failed to complete community
208 service, pay the fine as required by paragraph (6) (a) or

209 paragraph (7) (a), or attend a school-approved anti-tobacco and
210 nicotine program, if locally available, the court must direct
211 the Department of Highway Safety and Motor Vehicles to withhold
212 issuance of or suspend the driver license or driving privilege
213 of that person for 30 consecutive days.

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

221 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all
222 civil penalties received by a county court pursuant to
223 subsections (6) and (7) shall be remitted by the clerk of the
224 court to the Department of Revenue for transfer to the
225 Department of Education to provide for teacher training and for
226 research and evaluation to reduce and prevent the use of tobacco
227 products, nicotine products, or nicotine dispensing devices by
228 children. The remaining 20 percent of civil penalties received
229 by a county court pursuant to this section shall remain with the
230 clerk of the county court to cover administrative costs.

231 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE
232 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

233 (a) Any retailer that sells nicotine products or nicotine
234 dispensing devices shall post a clear and conspicuous sign in

235 each place of business where such products are sold which
 236 substantially states the following:

237
 238 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO
 239 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE
 240 IS REQUIRED FOR PURCHASE.

241
 242 (b) A retailer that sells nicotine products or nicotine
 243 dispensing devices shall provide at the checkout counter in a
 244 location clearly visible to the retailer, the retailer's agent
 245 or employee, instructional material in a calendar format or
 246 similar format to assist in determining whether a person is of
 247 legal age to purchase nicotine products or nicotine dispensing
 248 devices. This point of sale material must contain substantially
 249 the following language:

250
 251 IF YOU WERE NOT BORN BEFORE THIS DATE
 252 (insert date and applicable year)
 253 YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

254
 255 In lieu of a calendar a retailer may use card readers, scanners,
 256 or other electronic or automated systems that can verify whether
 257 a person is of legal age to purchase nicotine products or
 258 nicotine dispensing devices.

259 (11) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS
 260 OR NICOTINE DISPENSING DEVICES.—

261 (a) In order to prevent persons under 18 years of age from
262 purchasing or receiving nicotine products or nicotine dispensing
263 devices, the sale or delivery of such products or devices is
264 prohibited, except:

265 1. When under the direct control, or line of sight where
266 effective control may be reasonably maintained, of the retailer
267 of nicotine products or nicotine dispensing devices or such
268 retailer's agent or employee; or

269 2. Sales from a vending machine are prohibited under the
270 provisions of subparagraph (a)1. and are only permissible from a
271 machine that is equipped with an operational lockout device
272 which is under the control of the retailer of nicotine products
273 or nicotine dispensing devices or such retailer's agent or
274 employee who directly regulates the sale of items through the
275 machine by triggering the lockout device to allow the dispensing
276 of one nicotine product or nicotine dispensing device. The
277 lockout device must include a mechanism to prevent the machine
278 from functioning, if the power source for the lockout device
279 fails or if the lockout device is disabled, and a mechanism to
280 ensure that only one nicotine product or nicotine dispensing
281 device is dispensed at a time.

282 (b) The provisions of paragraph (a) shall not apply to an
283 establishment that prohibits persons under 18 years of age on
284 the premises.

285 (c) A retailer of nicotine products or nicotine dispensing
286 devices or such retailer's agent or employee may require proof

287 of age of a purchaser of such products or devices before selling
288 the product or device to that person.

289 (12) PREEMPTION.—This subsection expressly preempts to the
290 state the regulation of the sale of products under this section
291 and supersedes any municipal or county ordinance on the subject.

292 Section 4. This act shall take effect July 1, 2014.