

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Rodríguez, J. offered the following:

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

5 Remove lines 78-291 and insert:

6 569.24 Preemption.—This chapter does not preempt or  
7 supersede any municipal or county ordinance regulating the sale  
8 of nicotine products or nicotine dispensing devices that does  
9 not directly conflict with this chapter.

10 Section 3. Section 877.112, Florida Statutes, is created  
11 to read:

12 877.112 Nicotine products and nicotine dispensing devices;  
13 prohibitions for minors; penalties; civil fines; signage  
14 requirements; preemption.—

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15 (1) DEFINITIONS.—As used in this section, the term:

16 (a) "Nicotine dispensing device" means any product that  
17 employs an electronic, chemical or mechanical means to produce  
18 vapor from a nicotine product, including, but not limited to, an  
19 electronic cigarette, electronic cigar, electronic cigarillo,  
20 electronic pipe, or other similar device or product, any  
21 replacement cartridge for such device, and any other container  
22 of nicotine in a solution or other form intended to be used with  
23 or within an electronic cigarette, electronic cigar, electronic  
24 cigarillo, electronic pipe, or other similar device or product.

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

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

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

33 3. Product that contains incidental nicotine.

34 (c) "Self-service merchandising" means the open display of  
35 nicotine products or nicotine dispensing devices, whether  
36 packaged or otherwise, for direct retail customer access and  
37 handling before purchase without the intervention or assistance  
38 of the retailer or the retailer's owner, employee, or agent. An  
39 open display of such products and devices includes the use of an  
40 open display unit.

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

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

50 (4) PENALTIES.—Any person who violates subsection (2) or  
51 (3) commits a misdemeanor of the second degree, punishable as  
52 provided in s. 775.082 or s. 775.083. However, any person who  
53 violates subsection (2) or (3) for a second or subsequent time  
54 within 1 year of the first violation, commits a misdemeanor of  
55 the first degree, punishable as provided in s. 775.082 or s.  
56 775.083.

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

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

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

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66 (c) Such person carefully checked a driver license or an  
67 identification card issued by this state or another state of the  
68 United States, a passport, or a United States armed services  
69 identification card presented by the buyer or recipient and  
70 acted in good faith and in reliance upon the representation and  
71 appearance of the buyer or recipient in the belief that the  
72 buyer or recipient was 18 years of age or older.

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

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

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

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

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

94 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for  
95 any person under 18 years of age to misrepresent his or her age  
96 or military service for the purpose of inducing a retailer of  
97 nicotine products or nicotine dispensing devices or an agent or  
98 employee of such retailer to sell, give, barter, furnish, or  
99 deliver any nicotine product or nicotine dispensing device, or  
100 to purchase, or attempt to purchase, any nicotine product or  
101 nicotine dispensing device from a person or a vending machine.  
102 Any person under 18 years of age who violates this subsection  
103 commits a noncriminal violation as defined in s. 775.08(3),  
104 punishable by:

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

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

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

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117 Any second or subsequent violation not within the 12-week time  
118 period after the first violation is punishable as provided for a  
119 first violation.

120 (8) PENALTIES FOR MINORS.—

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

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

140 (c) If a person under 18 years of age is found by the  
141 court to have committed a noncriminal violation under this  
142 section and that person has failed to complete community

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143 service, pay the fine as required by paragraph (6) (a) or  
144 paragraph (7) (a), or attend a school-approved anti-tobacco and  
145 nicotine program, if locally available, the court must direct  
146 the Department of Highway Safety and Motor Vehicles to withhold  
147 issuance of or suspend the driver license or driving privilege  
148 of that person for 30 consecutive days.

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

156 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all  
157 civil penalties received by a county court pursuant to  
158 subsections (6) and (7) shall be remitted by the clerk of the  
159 court to the Department of Revenue for transfer to the  
160 Department of Education to provide for teacher training and for  
161 research and evaluation to reduce and prevent the use of tobacco  
162 products, nicotine products, or nicotine dispensing devices by  
163 children. The remaining 20 percent of civil penalties received  
164 by a county court pursuant to this section shall remain with the  
165 clerk of the county court to cover administrative costs.

166 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE  
167 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

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

172  
173 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO  
174 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE  
175 IS REQUIRED FOR PURCHASE.

176  
177 (b) A retailer that sells nicotine products or nicotine  
178 dispensing devices shall provide at the checkout counter in a  
179 location clearly visible to the retailer, the retailer's agent  
180 or employee, instructional material in a calendar format or  
181 similar format to assist in determining whether a person is of  
182 legal age to purchase nicotine products or nicotine dispensing  
183 devices. This point of sale material must contain substantially  
184 the following language:

185  
186 IF YOU WERE NOT BORN BEFORE THIS DATE

187 (insert date and applicable year)

188 YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

189  
190 In lieu of a calendar a retailer may use card readers, scanners,  
191 or other electronic or automated systems that can verify whether  
192 a person is of legal age to purchase nicotine products or  
193 nicotine dispensing devices.

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194 (11) SELF-SERVICE MERCHANDISING PROHIBITED.—

195 (a) A retailer that sells nicotine products or nicotine  
196 dispensing devices may not sell, permit to be sold, offer for  
197 sale, or display for sale such products or devices by means of  
198 self-service merchandising.

199 (b) A retailer that sells nicotine products or nicotine  
200 dispensing devices may not place such products or devices in an  
201 open display unit unless the unit is located in an area that is  
202 inaccessible to customers.

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

206 (12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS  
207 OR NICOTINE DISPENSING DEVICES.—

208 (a) In order to prevent persons under 18 years of age from  
209 purchasing or receiving nicotine products or nicotine dispensing  
210 devices, the sale or delivery of such products or devices is  
211 prohibited, except:

212 1. When under the direct control, or line of sight where  
213 effective control may be reasonably maintained, of the retailer  
214 of nicotine products or nicotine dispensing devices or such  
215 retailer's agent or employee; or

216 2. Sales from a vending machine are prohibited under  
217 subparagraph (a)1. and are only permissible from a machine that  
218 is equipped with an operational lockout device which is under  
219 the control of the retailer of nicotine products or nicotine

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220 dispensing devices or such retailer's agent or employee who  
221 directly regulates the sale of items through the machine by  
222 triggering the lockout device to allow the dispensing of one  
223 nicotine product or nicotine dispensing device. The lockout  
224 device must include a mechanism to prevent the machine from  
225 functioning, if the power source for the lockout device fails or  
226 if the lockout device is disabled, and a mechanism to ensure  
227 that only one nicotine product or nicotine dispensing device is  
228 dispensed at a time.

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

231 (c) A retailer of nicotine products or nicotine dispensing  
232 devices or such retailer's agent or employee may require proof  
233 of age of a purchaser of such products or devices before selling  
234 the product or device to that person.

235 (13) PREEMPTION.—This section does not preempt or  
236 supersede any municipal or county ordinance regulating the sale  
237 of nicotine products or nicotine dispensing devices that does  
238 not directly conflict with this section.

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

242 Remove lines 7-29 and insert:

243 providing applicability of municipal or county  
244 ordinances regulating the sale of nicotine dispensing  
245 devices; creating s. 877.112, F.S.; defining terms;

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246 prohibiting the selling, delivering, bartering,  
247 furnishing, or giving of nicotine products or nicotine  
248 dispensing devices to persons under 18 years of age;  
249 prohibiting the gift of sample nicotine products or  
250 nicotine dispensing devices to persons under 18 years  
251 of age; providing penalties; providing affirmative  
252 defenses for a person charged with certain violations;  
253 prohibiting a person under 18 years of age from  
254 possessing, purchasing, or misrepresenting his or her  
255 age or military service to purchase nicotine products  
256 or nicotine dispensing devices; providing for use of  
257 civil fines; requiring certain signage where a  
258 retailer sells nicotine products or nicotine  
259 dispensing devices; prohibiting self-service  
260 merchandising where a retailer sells nicotine products  
261 or nicotine dispensing devices; providing an  
262 exception; prohibiting the sale or delivery of  
263 nicotine products or nicotine dispensing devices  
264 except when such products are under the direct control  
265 or line of sight of a retailer; prohibiting sales from  
266 a vending machine unless it is equipped with certain  
267 devices; providing applicability of municipal or  
268 county ordinances regulating the sale of nicotine  
269 dispensing devices;

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