

1 A bill to be entitled

2 An act relating to nicotine products and nicotine  
3 dispensing devices; 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; preempting regulation of  
7 certain products and activities to the state; creating  
8 s. 877.112, F.S.; defining the terms "nicotine  
9 dispensing device" and "nicotine product"; prohibiting  
10 the selling, delivering, bartering, furnishing, or  
11 giving of nicotine products or nicotine dispensing  
12 devices to persons under 18 years of age; prohibiting  
13 the gift of sample nicotine products or nicotine  
14 dispensing devices to persons under 18 years of age;  
15 providing penalties; providing affirmative defenses  
16 for a person charged with certain violations;  
17 prohibiting a person under 18 years of age from  
18 possessing, purchasing, or misrepresenting his or her  
19 age or military service to purchase nicotine products  
20 or nicotine dispensing devices; providing for use of  
21 civil fines; requiring certain signage where a  
22 retailer sells nicotine products or nicotine  
23 dispensing devices; preempting regulation of certain  
24 products and activities to the state; providing an  
25 effective date.  
26

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

28

29 Section 1. Section 569.14, Florida Statutes, is amended to  
30 read:

31 569.14 Posting of a sign stating that the sale of tobacco  
32 products to persons under 18 years of age is unlawful;  
33 enforcement; penalty; preemption.—

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

39 (2) A dealer that sells tobacco products and nicotine  
40 products or nicotine dispensing devices, as defined in s.  
41 877.112, may use a sign that substantially states the following:  
42 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE  
43 DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST  
44 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

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

47 (3)~~(2)~~ The division shall make available to dealers of  
48 tobacco products signs that meet the requirements of subsection  
49 (1) or subsection (2).

50 (4)~~(3)~~ Any dealer that sells tobacco products shall  
51 provide at the checkout counter in a location clearly visible to  
52 the dealer, the dealer's agent or employee, instructional

53 material in a calendar format or similar format to assist in  
 54 determining whether a person is of legal age to purchase tobacco  
 55 products. This point of sale material must contain substantially  
 56 the following language:

57 IF YOU WERE NOT BORN BEFORE THIS DATE  
 58 (insert date and applicable year)  
 59 YOU CANNOT BUY TOBACCO PRODUCTS.

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

66 (5)~~(4)~~ The division, through its agents and inspectors,  
 67 shall enforce this section.

68 (6)~~(5)~~ Any person who fails to comply with subsection (1)  
 69 is guilty of a misdemeanor of the second degree, punishable as  
 70 provided in s. 775.082 or s. 775.083.

71 (7) This subsection expressly preempts to the state the  
 72 regulation of products and activities under this chapter and  
 73 supersedes any municipal or county ordinance on the subject.

74 Section 2. Section 877.112, Florida Statutes, is created  
 75 to read:

76 877.112 Nicotine products and nicotine dispensing devices;  
 77 prohibitions for minors; penalties; civil fines; signage  
 78 requirements; preemption.-

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

80 (a) "Nicotine dispensing device" means any product that  
 81 can be used to deliver nicotine to an individual by inhaling  
 82 vaporized nicotine from the product, including, but not limited  
 83 to, an electronic cigarette, electronic cigar, electronic  
 84 cigarillo, electronic pipe, or other similar device or product  
 85 and any replacement nicotine cartridge for the device or  
 86 product.

87 (b) "Nicotine product" means any product that is not a  
 88 tobacco product, as defined in chapter 569, that contains  
 89 nicotine, including liquid nicotine, and that can be used for  
 90 smoking, sniffing, inhaling, ingesting, or chewing. The term  
 91 "nicotine product" includes only products containing nicotine  
 92 derived from the tobacco plant. The term does not include  
 93 products containing incidental nicotine derived from other  
 94 natural sources.

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

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

104 (4) PENALTIES.—Any person who violates subsection (2) or

105 (3) commits a misdemeanor of the second degree, punishable as  
106 provided in s. 775.082 or s. 775.083. However, any person who  
107 violates subsection (2) or (3) for a second or subsequent time  
108 within 1 year of the first violation, commits a misdemeanor of  
109 the first degree, punishable as provided in s. 775.082 or s.  
110 775.083.

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

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

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

120 (c) Such person carefully checked a driver license or an  
121 identification card issued by this state or another state of the  
122 United States, a passport, or a United States armed services  
123 identification card presented by the buyer or recipient and  
124 acted in good faith and in reliance upon the representation and  
125 appearance of the buyer or recipient in the belief that the  
126 buyer or recipient was 18 years of age or older.

127 (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR  
128 NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any  
129 person under 18 years of age to knowingly possess any nicotine  
130 product or a nicotine dispensing device. Any person under 18

131 years of age who violates this subsection commits a noncriminal  
132 violation as defined in s. 775.08(3), punishable by:

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

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

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

144  
145 Any second or subsequent violation not within the 12-week time  
146 period after the first violation is punishable as provided for a  
147 first violation.

148 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for  
149 any person under 18 years of age to misrepresent his or her age  
150 or military service for the purpose of inducing a retailer of  
151 nicotine products or nicotine dispensing devices or an agent or  
152 employee of such retailer to sell, give, barter, furnish, or  
153 deliver any nicotine product or nicotine dispensing device, or  
154 to purchase, or attempt to purchase, any nicotine product or  
155 nicotine dispensing device from a person or a vending machine.  
156 Any person under 18 years of age who violates this subsection

157 commits a noncriminal violation as defined in s. 775.08(3),  
158 punishable by:

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

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

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

170  
171 Any second or subsequent violation not within the 12-week time  
172 period after the first violation is punishable as provided for a  
173 first violation.

174 (8) PENALTIES FOR MINORS.—

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

183 within 30 days after the date of the hearing.

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

194 (c) If a person under 18 years of age is found by the  
195 court to have committed a noncriminal violation under this  
196 section and that person has failed to complete community  
197 service, pay the fine as required by paragraph (6) (a) or  
198 paragraph (7) (a), or attend a school-approved anti-tobacco and  
199 nicotine program, if locally available, the court must direct  
200 the Department of Highway Safety and Motor Vehicles to withhold  
201 issuance of or suspend the driver license or driving privilege  
202 of that person for 30 consecutive days.

203 (d) If a person under 18 years of age is found by the  
204 court to have committed a noncriminal violation under this  
205 section and that person has failed to pay the applicable fine as  
206 required by paragraph (6) (b) or paragraph (7) (b), the court must  
207 direct the Department of Highway Safety and Motor Vehicles to  
208 withhold issuance of or suspend the driver license or driving



209 privilege of that person for 45 consecutive days.

210 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all  
 211 civil penalties received by a county court pursuant to  
 212 subsections (6) and (7) shall be remitted by the clerk of the  
 213 court to the Department of Revenue for transfer to the  
 214 Department of Education to provide for teacher training and for  
 215 research and evaluation to reduce and prevent the use of tobacco  
 216 products, nicotine products, or nicotine dispensing devices by  
 217 children. The remaining 20 percent of civil penalties received  
 218 by a county court pursuant to this section shall remain with the  
 219 clerk of the county court to cover administrative costs.

220 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE  
 221 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

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

226  
 227 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO  
 228 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE  
 229 IS REQUIRED FOR PURCHASE.

230  
 231 (b) A retailer that sells nicotine products or nicotine  
 232 dispensing devices shall provide at the checkout counter in a  
 233 location clearly visible to the retailer, the retailer's agent  
 234 or employee, instructional material in a calendar format or

235 similar format to assist in determining whether a person is of  
 236 legal age to purchase nicotine products or nicotine dispensing  
 237 devices. This point of sale material must contain substantially  
 238 the following language:

240 IF YOU WERE NOT BORN BEFORE THIS DATE  
 241 (insert date and applicable year)

242 YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

243  
 244 In lieu of a calendar a retailer may use card readers, scanners,  
 245 or other electronic or automated systems that can verify whether  
 246 a person is of legal age to purchase nicotine products or  
 247 nicotine dispensing devices.

248 (11) PREEMPTION.—This subsection expressly preempts to the  
 249 state the regulation of products and activities under this  
 250 section and supersedes any municipal or county ordinance on the  
 251 subject.

252 Section 3. This act shall take effect July 1, 2014.