

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Articles offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 569.14, Florida Statutes, is amended to
6 read:

7 569.14 Posting of a sign stating that the sale of tobacco
8 products to persons under 18 years of age is unlawful;
9 enforcement; penalty.—

10 (1) A ~~Any~~ dealer that sells tobacco products shall post a
11 clear and conspicuous sign in each place of business where such
12 products are sold which substantially states the following:

13 THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS
14 AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

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15 (2) A dealer that sells tobacco products and nicotine
16 products or nicotine dispensing devices, as defined in s.
17 877.112, may use a sign that substantially states the following:
18 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE
19 DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST
20 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

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

23 ~~(3)~~(2) The division shall make available to dealers of
24 tobacco products signs that meet the requirements of subsection
25 (1) or subsection (2).

26 ~~(4)~~(3) Any dealer that sells tobacco products shall
27 provide at the checkout counter in a location clearly visible to
28 the dealer, the dealer's agent or employee, instructional
29 material in a calendar format or similar format to assist in
30 determining whether a person is of legal age to purchase tobacco
31 products. This point of sale material must contain substantially
32 the following language:

33 IF YOU WERE NOT BORN BEFORE THIS DATE

34 (insert date and applicable year)

35 YOU CANNOT BUY TOBACCO PRODUCTS.

36 Upon approval by the division, in lieu of a calendar a dealer
37 may use card readers, scanners, or other electronic or automated
38 systems that can verify whether a person is of legal age to
39 purchase tobacco products. Failure to comply with the provisions

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40 contained in this subsection shall result in imposition of
41 administrative penalties as provided in s. 569.006.

42 ~~(5)-(4)~~ The division, through its agents and inspectors,
43 shall enforce this section.

44 ~~(6)-(5)~~ Any person who fails to comply with subsection (1)
45 is guilty of a misdemeanor of the second degree, punishable as
46 provided in s. 775.082 or s. 775.083.

47 Section 2. Section 877.112, Florida Statutes, is created
48 to read:

49 877.112 Nicotine products and nicotine dispensing devices;
50 prohibitions for minors; penalties; civil fines; signage
51 requirements; preemption.-

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

53 (a) "Nicotine dispensing device" means any product that
54 employs an electronic, chemical or mechanical means to produce
55 vapor from a nicotine product, including, but not limited to, an
56 electronic cigarette, electronic cigar, electronic cigarillo,
57 electronic pipe, or other similar device or product, any
58 replacement cartridge for such device, and any other container
59 of nicotine in a solution or other form intended to be used with
60 or within an electronic cigarette, electronic cigar, electronic
61 cigarillo, electronic pipe, or other similar device or product.

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

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

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

70 3. Product that contains incidental nicotine.

71 (c) "Self-service merchandising" means the open display of
72 nicotine products or nicotine dispensing devices, whether
73 packaged or otherwise, for direct retail customer access and
74 handling before purchase without the intervention or assistance
75 of the retailer or the retailer's owner, employee, or agent. An
76 open display of such products and devices includes the use of an
77 open display unit.

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

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

87 (4) PENALTIES.—Any person who violates subsection (2) or
88 subsection (3) commits a misdemeanor of the second degree,
89 punishable as provided in s. 775.082 or s. 775.083. However, any
90 person who violates subsection (2) or subsection (3) for a
91 second or subsequent time within 1 year of the first violation,

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92 commits a misdemeanor of the first degree, punishable as
93 provided in s. 775.082 or s. 775.083.

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

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

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

104 (c) Such person carefully checked a driver license or an
105 identification card issued by this state or another state of the
106 United States, a passport, or a United States armed services
107 identification card presented by the buyer or recipient and
108 acted in good faith and in reliance upon the representation and
109 appearance of the buyer or recipient in the belief that the
110 buyer or recipient was 18 years of age or older.

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

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

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

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

128
129 Any second or subsequent violation not within the 12-week time
130 period after the first violation is punishable as provided for a
131 first violation.

132 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for
133 any person under 18 years of age to misrepresent his or her age
134 or military service for the purpose of inducing a retailer of
135 nicotine products or nicotine dispensing devices or an agent or
136 employee of such retailer to sell, give, barter, furnish, or
137 deliver any nicotine product or nicotine dispensing device, or
138 to purchase, or attempt to purchase, any nicotine product or
139 nicotine dispensing device from a person or a vending machine.
140 Any person under 18 years of age who violates this subsection
141 commits a noncriminal violation as defined in s. 775.08(3),
142 punishable by:

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

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

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

154
155 Any second or subsequent violation not within the 12-week time
156 period after the first violation is punishable as provided for a
157 first violation.

158 (8) PENALTIES FOR MINORS.—

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

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

178 (c) If a person under 18 years of age is found by the
179 court to have committed a noncriminal violation under this
180 section and that person has failed to complete community
181 service, pay the fine as required by paragraph (6) (a) or
182 paragraph (7) (a), or attend a school-approved anti-tobacco and
183 nicotine program, if locally available, the court must direct
184 the Department of Highway Safety and Motor Vehicles to withhold
185 issuance of or suspend the driver license or driving privilege
186 of that person for 30 consecutive days.

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

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194 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all
195 civil penalties received by a county court pursuant to
196 subsections (6) and (7) shall be remitted by the clerk of the
197 court to the Department of Revenue for transfer to the
198 Department of Education to provide for teacher training and for
199 research and evaluation to reduce and prevent the use of tobacco
200 products, nicotine products, or nicotine dispensing devices by
201 children. The remaining 20 percent of civil penalties received
202 by a county court pursuant to this section shall remain with the
203 clerk of the county court to cover administrative costs.

204 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE
205 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

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

210
211 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO
212 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE
213 IS REQUIRED FOR PURCHASE.

214
215 (b) A retailer that sells nicotine products or nicotine
216 dispensing devices shall provide at the checkout counter in a
217 location clearly visible to the retailer, the retailer's agent
218 or employee, instructional material in a calendar format or
219 similar format to assist in determining whether a person is of

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220 legal age to purchase nicotine products or nicotine dispensing
221 devices. This point of sale material must contain substantially
222 the following language:

223
224 IF YOU WERE NOT BORN BEFORE THIS DATE

225 (insert date and applicable year)

226 YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

227
228 In lieu of a calendar a retailer may use card readers, scanners,
229 or other electronic or automated systems that can verify whether
230 a person is of legal age to purchase nicotine products or
231 nicotine dispensing devices.

232 (11) SELF-SERVICE MERCHANDISING PROHIBITED.-

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

237 (b) A retailer that sells nicotine products or nicotine
238 dispensing devices may not place such products or devices in an
239 open display unit unless the unit is located in an area that is
240 inaccessible to customers.

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

244 (12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS
245 OR NICOTINE DISPENSING DEVICES.-

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246 (a) In order to prevent persons under 18 years of age from
247 purchasing or receiving nicotine products or nicotine dispensing
248 devices, the sale or delivery of such products or devices is
249 prohibited, except:

250 1. When under the direct control, or line of sight where
251 effective control may be reasonably maintained, of the retailer
252 of nicotine products or nicotine dispensing devices or such
253 retailer's agent or employee; or

254 2. Sales from a vending machine are prohibited under
255 subparagraph (a)1. and are only permissible from a machine that
256 is equipped with an operational lockout device which is under
257 the control of the retailer of nicotine products or nicotine
258 dispensing devices or such retailer's agent or employee who
259 directly regulates the sale of items through the machine by
260 triggering the lockout device to allow the dispensing of one
261 nicotine product or nicotine dispensing device. The lockout
262 device must include a mechanism to prevent the machine from
263 functioning, if the power source for the lockout device fails or
264 if the lockout device is disabled, and a mechanism to ensure
265 that only one nicotine product or nicotine dispensing device is
266 dispensed at a time.

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

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

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

273 (13) PREEMPTION.—This subsection expressly preempts to the
274 state the regulation of the sale of products under this section
275 and supersedes any municipal or county ordinance on the subject
276 enacted on or after July 1, 2014.

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

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279 -----

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

281 Remove everything before the enacting clause and insert:

282 An act relating to tobacco and nicotine product
283 regulation; amending s. 569.14, F.S.; allowing
284 alternate signage requirements where a dealer that
285 sells tobacco products also sells nicotine products or
286 nicotine dispensing devices; creating s. 877.112,
287 F.S.; defining terms; prohibiting the selling,
288 delivering, bartering, furnishing, or giving of
289 nicotine products or nicotine dispensing devices to
290 persons under 18 years of age; prohibiting the gift of
291 sample nicotine products or nicotine dispensing
292 devices to persons under 18 years of age; providing
293 penalties; providing affirmative defenses for a person
294 charged with certain violations; prohibiting a person
295 under 18 years of age from possessing, purchasing, or
296 misrepresenting his or her age or military service to

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297 purchase nicotine products or nicotine dispensing
298 devices; providing for use of civil fines; requiring
299 certain signage where a retailer sells nicotine
300 products or nicotine dispensing devices; prohibiting
301 self-service merchandising where a retailer sells
302 nicotine products or nicotine dispensing devices;
303 providing an exception; prohibiting the sale or
304 delivery of nicotine products or nicotine dispensing
305 devices except when such products are under the direct
306 control or line of sight of a retailer; prohibiting
307 sales from a vending machine unless it is equipped
308 with certain devices; preempting regulation of the
309 sale of nicotine products and nicotine dispensing
310 devices to the state; providing an effective date.

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