

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 Section 3. This act shall take effect July 1, 2014.  
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276 **T I T L E A M E N D M E N T**

277 Remove everything before the enacting clause and insert:

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

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297 self-service merchandising where a retailer sells  
298 nicotine products or nicotine dispensing devices;  
299 providing an exception; prohibiting the sale or  
300 delivery of nicotine products or nicotine dispensing  
301 devices except when such products are under the direct  
302 control or line of sight of a retailer; prohibiting  
303 sales from a vending machine unless it is equipped  
304 with certain devices; providing an effective date.

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