

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Articles offered the following:

2  
3 **Substitute Amendment for Amendment (544549) (with title**  
4 **amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 877.112, Florida Statutes, is created  
7 to read:

8 877.112 Nicotine products and nicotine dispensing devices;  
9 prohibitions for minors; penalties; civil fines; signage  
10 requirements; preemption.-

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

12 (a) "Nicotine dispensing device" means any product that  
13 employs an electronic, chemical or mechanical means to produce  
14 vapor from a nicotine product, including, but not limited to, an

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15 electronic cigarette, electronic cigar, electronic cigarillo,  
16 electronic pipe, or other similar device or product, any  
17 replacement cartridge for such device, and any other container  
18 of nicotine in a solution or other form intended to be used with  
19 or within an electronic cigarette, electronic cigar, electronic  
20 cigarillo, electronic pipe, or other similar device or product.

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

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

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

29 3. Product that contains incidental nicotine.

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

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

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

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

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

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

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

63 (c) Such person carefully checked a driver license or an  
64 identification card issued by this state or another state of the  
65 United States, a passport, or a United States armed services  
66 identification card presented by the buyer or recipient and

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67 acted in good faith and in reliance upon the representation and  
68 appearance of the buyer or recipient in the belief that the  
69 buyer or recipient was 18 years of age or older.

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

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

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

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

87  
88 Any second or subsequent violation not within the 12-week time  
89 period after the first violation is punishable as provided for a  
90 first violation.

91 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for  
92 any person under 18 years of age to misrepresent his or her age

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

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

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

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

113  
114 Any second or subsequent violation not within the 12-week time  
115 period after the first violation is punishable as provided for a  
116 first violation.

117 (8) PENALTIES FOR MINORS.—

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

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

137 (c) If a person under 18 years of age is found by the  
138 court to have committed a noncriminal violation under this  
139 section and that person has failed to complete community  
140 service, pay the fine as required by paragraph (6) (a) or  
141 paragraph (7) (a), or attend a school-approved anti-tobacco and  
142 nicotine program, if locally available, the court must direct  
143 the Department of Highway Safety and Motor Vehicles to withhold

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144 issuance of or suspend the driver license or driving privilege  
145 of that person for 30 consecutive days.

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

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

163 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE  
164 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

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

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

173  
174 (b) A retailer that sells nicotine products or nicotine  
175 dispensing devices shall provide at the checkout counter in a  
176 location clearly visible to the retailer, the retailer's agent  
177 or employee, instructional material in a calendar format or  
178 similar format to assist in determining whether a person is of  
179 legal age to purchase nicotine products or nicotine dispensing  
180 devices. This point of sale material must contain substantially  
181 the following language:

182  
183 IF YOU WERE NOT BORN BEFORE THIS DATE  
184 (insert date and applicable year)  
185 YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

186  
187 In lieu of a calendar a retailer may use card readers, scanners,  
188 or other electronic or automated systems that can verify whether  
189 a person is of legal age to purchase nicotine products or  
190 nicotine dispensing devices.

191 (11) SELF-SERVICE MERCHANDISING PROHIBITED.—

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

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

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

203 (12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS  
204 OR NICOTINE DISPENSING DEVICES.—

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

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

213 2. Sales from a vending machine are prohibited under  
214 subparagraph (a)1. and are only permissible from a machine that  
215 is equipped with an operational lockout device which is under  
216 the control of the retailer of nicotine products or nicotine  
217 dispensing devices or such retailer's agent or employee who  
218 directly regulates the sale of items through the machine by  
219 triggering the lockout device to allow the dispensing of one  
220 nicotine product or nicotine dispensing device. The lockout  
221 device must include a mechanism to prevent the machine from

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222 functioning, if the power source for the lockout device fails or  
223 if the lockout device is disabled, and a mechanism to ensure  
224 that only one nicotine product or nicotine dispensing device is  
225 dispensed at a time.

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

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

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

236 Section 2. This act shall take effect July 1, 2014.

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

240 Remove everything before the enacting clause and insert:

241 A bill to be entitled

242 An act relating to nicotine products and nicotine  
243 dispensing devices; creating s. 877.112, F.S.;

244 defining terms; prohibiting the selling, delivering,  
245 bartering, furnishing, or giving of nicotine products  
246 or nicotine dispensing devices to persons under 18  
247 years of age; prohibiting the gift of sample nicotine

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248 products or nicotine dispensing devices to persons  
249 under 18 years of age; providing penalties; providing  
250 affirmative defenses for a person charged with certain  
251 violations; prohibiting a person under 18 years of age  
252 from possessing, purchasing, or misrepresenting his or  
253 her age or military service to purchase nicotine  
254 products or nicotine dispensing devices; providing for  
255 use of civil fines; requiring certain signage where a  
256 retailer sells nicotine products or nicotine  
257 dispensing devices; prohibiting self-service  
258 merchandising where a retailer sells nicotine products  
259 or nicotine dispensing devices; providing an  
260 exception; prohibiting the sale or delivery of  
261 nicotine products or nicotine dispensing devices  
262 except when such products are under the direct control  
263 or line of sight of a retailer; prohibiting sales from  
264 a vending machine unless it is equipped with certain  
265 devices; preempting regulation of the sale of nicotine  
266 products and nicotine dispensing devices to the state;  
267 providing an effective date.

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