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1 A bill to be entitled
2 An act relating to tobacco and nicotine product
3 regulation; 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; creating s. 877.112,
7 F.S.; defining terms; prohibiting the selling,
8 delivering, bartering, furnishing, or giving of
9 nicotine products or nicotine dispensing devices to
10 persons under 18 years of age; prohibiting the gift of
11 sample nicotine products or nicotine dispensing
12 devices to persons under 18 years of age; providing
13 penalties; providing affirmative defenses for a person
14 charged with certain violations; prohibiting a person
15 under 18 years of age from possessing, purchasing, or
16 misrepresenting his or her age or military service to
17 purchase nicotine products or nicotine dispensing
18 devices; providing for use of civil fines; requiring
19 certain signage where a retailer sells nicotine
20 products or nicotine dispensing devices; prohibiting
21 self-service merchandising where a retailer sells
22 nicotine products or nicotine dispensing devices;
23 providing an exception; prohibiting the sale or
24 delivery of nicotine products or nicotine dispensing
25 devices except when such products are under the direct
26 control or line of sight of a retailer; prohibiting
27 sales from a vending machine unless it is equipped
28 with certain devices; amending s. 322.056, F.S.;

29 conforming provisions to changes made by the act;

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30 providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Section 569.14, Florida Statutes, is amended to
35 read:

36 569.14 Posting of a sign stating that the sale of tobacco
37 products to persons under 18 years of age is unlawful;
38 enforcement; penalty.—

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

44 (2) A dealer that sells tobacco products and nicotine
45 products or nicotine dispensing devices, as defined in s.
46 877.112, may use a sign that substantially states the following:
47 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE
48 DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST
49 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

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

52 (3) ~~(2)~~ The division shall make available to dealers of
53 tobacco products signs that meet the requirements of subsection
54 (1) or subsection (2).

55 (4) ~~(3)~~ Any dealer that sells tobacco products shall provide
56 at the checkout counter in a location clearly visible to the
57 dealer, the dealer's agent or employee, instructional material
58 in a calendar format or similar format to assist in determining

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59 whether a person is of legal age to purchase tobacco products.
60 This point of sale material must contain substantially the
61 following language:

62 IF YOU WERE NOT BORN BEFORE THIS DATE
63 (insert date and applicable year)
64 YOU CANNOT BUY TOBACCO PRODUCTS.

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

71 ~~(5)(4)~~ The division, through its agents and inspectors,
72 shall enforce this section.

73 ~~(6)(5)~~ Any person who fails to comply with subsection (1)
74 is guilty of a misdemeanor of the second degree, punishable as
75 provided in s. 775.082 or s. 775.083.

76 Section 2. Section 877.112, Florida Statutes, is created to
77 read:

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

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

82 (a) "Nicotine dispensing device" means any product that
83 employs an electronic, chemical or mechanical means to produce
84 vapor from a nicotine product, including, but not limited to, an
85 electronic cigarette, electronic cigar, electronic cigarillo,
86 electronic pipe, or other similar device or product, any
87 replacement cartridge for such device, and any other container

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88 of nicotine in a solution or other form intended to be used with
89 or within an electronic cigarette, electronic cigar, electronic
90 cigarillo, electronic pipe, or other similar device or product.

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

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

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

99 3. Product that contains incidental nicotine.

100 (c) "Self-service merchandising" means the open display of
101 nicotine products or nicotine dispensing devices, whether
102 packaged or otherwise, for direct retail customer access and
103 handling before purchase without the intervention or assistance
104 of the retailer or the retailer's owner, employee, or agent. An
105 open display of such products and devices includes the use of an
106 open display unit.

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

111 (3) PROHIBITIONS ON GIFTING SAMPLES TO MINORS.—The gift of
112 a sample nicotine product or nicotine dispensing device to any
113 person under the age of 18 by a retailer of nicotine products or
114 nicotine dispensing devices, or by an employee of such retailer,
115 is prohibited.

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

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117 subsection (3) commits a misdemeanor of the second degree,
118 punishable as provided in s. 775.082 or s. 775.083. However, any
119 person who violates subsection (2) or subsection (3) for a
120 second or subsequent time within 1 year of the first violation,
121 commits a misdemeanor of the first degree, punishable as
122 provided in s. 775.082 or s. 775.083.

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

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

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

132 (c) Such person carefully checked a driver license or an
133 identification card issued by this state or another state of the
134 United States, a passport, or a United States armed services
135 identification card presented by the buyer or recipient and
136 acted in good faith and in reliance upon the representation and
137 appearance of the buyer or recipient in the belief that the
138 buyer or recipient was 18 years of age or older.

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

145 (a) For a first violation, 16 hours of community service

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146 or, instead of community service, a \$25 fine. In addition, the
147 person must attend a school-approved anti-tobacco and nicotine
148 program, if locally available;

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

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

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

160 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for
161 any person under 18 years of age to misrepresent his or her age
162 or military service for the purpose of inducing a retailer of
163 nicotine products or nicotine dispensing devices or an agent or
164 employee of such retailer to sell, give, barter, furnish, or
165 deliver any nicotine product or nicotine dispensing device, or
166 to purchase, or attempt to purchase, any nicotine product or
167 nicotine dispensing device from a person or a vending machine.
168 Any person under 18 years of age who violates this subsection
169 commits a noncriminal violation as defined in s. 775.08(3),
170 punishable by:

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

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

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

182
183 Any second or subsequent violation not within the 12-week time
184 period after the first violation is punishable as provided for a
185 first violation.

186 (8) PENALTIES FOR MINORS.—

187 (a) A person under 18 years of age cited for committing a
188 noncriminal violation under this section must sign and accept a
189 civil citation indicating a promise to appear before the county
190 court or comply with the requirement for paying the fine and
191 must attend a school-approved anti-tobacco and nicotine program,
192 if locally available. If a fine is assessed for a violation of
193 this section, the fine must be paid within 30 days after the
194 date of the citation or, if a court appearance is mandatory,
195 within 30 days after the date of the hearing.

196 (b) A person charged with a noncriminal violation under
197 this section must appear before the county court or comply with
198 the requirement for paying the fine. The court, after a hearing,
199 shall make a determination as to whether the noncriminal
200 violation was committed. If the court finds the violation was
201 committed, it shall impose an appropriate penalty as specified
202 in subsection (6) or subsection (7). A person who participates
203 in community service shall be considered an employee of the

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204 state for the purpose of chapter 440, for the duration of such
205 service.

206 (c) If a person under 18 years of age is found by the court
207 to have committed a noncriminal violation under this section and
208 that person has failed to complete community service, pay the
209 fine as required by paragraph (6) (a) or paragraph (7) (a), or
210 attend a school-approved anti-tobacco and nicotine program, if
211 locally available, the court must direct the Department of
212 Highway Safety and Motor Vehicles to withhold issuance of or
213 suspend the driver license or driving privilege of that person
214 for 30 consecutive days.

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

222 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all
223 civil penalties received by a county court pursuant to
224 subsections (6) and (7) shall be remitted by the clerk of the
225 court to the Department of Revenue for transfer to the
226 Department of Education to provide for teacher training and for
227 research and evaluation to reduce and prevent the use of tobacco
228 products, nicotine products, or nicotine dispensing devices by
229 children. The remaining 20 percent of civil penalties received
230 by a county court pursuant to this section shall remain with the
231 clerk of the county court to cover administrative costs.

232 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE

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233 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

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

238
239 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO
240 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE
241 IS REQUIRED FOR PURCHASE.

242
243 (b) A retailer that sells nicotine products or nicotine
244 dispensing devices shall provide at the checkout counter in a
245 location clearly visible to the retailer, the retailer's agent
246 or employee, instructional material in a calendar format or
247 similar format to assist in determining whether a person is of
248 legal age to purchase nicotine products or nicotine dispensing
249 devices. This point of sale material must contain substantially
250 the following language:

251
252 IF YOU WERE NOT BORN BEFORE THIS DATE

253 (insert date and applicable year)

254 YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

255
256 In lieu of a calendar a retailer may use card readers, scanners,
257 or other electronic or automated systems that can verify whether
258 a person is of legal age to purchase nicotine products or
259 nicotine dispensing devices.

260 (11) SELF-SERVICE MERCHANDISING PROHIBITED.—

261 (a) A retailer that sells nicotine products or nicotine

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262 dispensing devices may not sell, permit to be sold, offer for
263 sale, or display for sale such products or devices by means of
264 self-service merchandising.

265 (b) A retailer that sells nicotine products or nicotine
266 dispensing devices may not place such products or devices in an
267 open display unit unless the unit is located in an area that is
268 inaccessible to customers.

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

271 (12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS
272 OR NICOTINE DISPENSING DEVICES.—

273 (a) In order to prevent persons under 18 years of age from
274 purchasing or receiving nicotine products or nicotine dispensing
275 devices, the sale or delivery of such products or devices is
276 prohibited, except:

277 1. When under the direct control, or line of sight where
278 effective control may be reasonably maintained, of the retailer
279 of nicotine products or nicotine dispensing devices or such
280 retailer's agent or employee; or

281 2. Sales from a vending machine are prohibited under
282 subparagraph (a)1. and are only permissible from a machine that
283 is equipped with an operational lockout device which is under
284 the control of the retailer of nicotine products or nicotine
285 dispensing devices or such retailer's agent or employee who
286 directly regulates the sale of items through the machine by
287 triggering the lockout device to allow the dispensing of one
288 nicotine product or nicotine dispensing device. The lockout
289 device must include a mechanism to prevent the machine from
290 functioning, if the power source for the lockout device fails or

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291 if the lockout device is disabled, and a mechanism to ensure
292 that only one nicotine product or nicotine dispensing device is
293 dispensed at a time.

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

296 (c) A retailer of nicotine products or nicotine dispensing
297 devices or such retailer's agent or employee may require proof
298 of age of a purchaser of such products or devices before selling
299 the product or device to that person.

300 Section 3. Subsections (2) and (3) of section 322.056,
301 Florida Statutes, are amended to read:

302 322.056 Mandatory revocation or suspension of, or delay of
303 eligibility for, driver ~~driver's~~ license for persons under age
304 18 found guilty of certain alcohol, drug, or tobacco offenses;
305 prohibition.-

306 (2) If a person under 18 years of age is found by the court
307 to have committed a noncriminal violation under s. 569.11 or s.
308 877.112(6) or (7) and that person has failed to comply with the
309 procedures established in that section by failing to fulfill
310 community service requirements, failing to pay the applicable
311 fine, or failing to attend a locally available school-approved
312 anti-tobacco program, and:

313 (a) The person is eligible by reason of age for a driver
314 ~~driver's~~ license or driving privilege, the court shall direct
315 the department to revoke or to withhold issuance of his or her
316 driver ~~driver's~~ license or driving privilege as follows:

- 317 1. For the first violation, for 30 days.
- 318 2. For the second violation within 12 weeks of the first
319 violation, for 45 days.

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320 (b) The person's driver ~~driver's~~ license or driving
321 privilege is under suspension or revocation for any reason, the
322 court shall direct the department to extend the period of
323 suspension or revocation by an additional period as follows:

324 1. For the first violation, for 30 days.

325 2. For the second violation within 12 weeks of the first
326 violation, for 45 days.

327 (c) The person is ineligible by reason of age for a driver
328 ~~driver's~~ license or driving privilege, the court shall direct
329 the department to withhold issuance of his or her driver
330 ~~driver's~~ license or driving privilege as follows:

331 1. For the first violation, for 30 days.

332 2. For the second violation within 12 weeks of the first
333 violation, for 45 days.

334

335 Any second violation of s. 569.11 or s. 877.112(6) or (7) not
336 within the 12-week period after the first violation will be
337 treated as a first violation and in the same manner as provided
338 in this subsection.

339 (3) If a person under 18 years of age is found by the court
340 to have committed a third violation of s. 569.11 or s.

341 877.112(6) or (7) within 12 weeks of the first violation, the

342 court must direct the Department of Highway Safety and Motor
343 Vehicles to suspend or withhold issuance of his or her driver
344 ~~driver's~~ license or driving privilege for 60 consecutive days.

345 Any third violation of s. 569.11 or s. 877.112(6) or (7) not
346 within the 12-week period after the first violation will be
347 treated as a first violation and in the same manner as provided
348 in subsection (2).

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Section 4. This act shall take effect July 1, 2014.