

By Senator Flores

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1 A bill to be entitled
2 An act relating to nicotine products; amending s.
3 386.212, F.S.; revising the punishment for certain
4 civil infractions; amending s. 877.112, F.S.; defining
5 the terms "characterizing flavor" and "flavored liquid
6 nicotine"; prohibiting the sale, delivery, bartering,
7 furnishing, or giving of flavored liquid nicotine to
8 any person; prohibiting a person from engaging in
9 certain activities relating to the promotion of
10 nicotine dispensing devices and nicotine products for
11 unlawful use; providing a civil penalty; requiring
12 retailers of electronic nicotine delivery systems to
13 take certain actions when selling the devices;
14 revising punishments for certain violations;
15 conforming cross-references; providing an effective
16 date.

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

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20 Section 1. Subsection (3) of section 386.212, Florida
21 Statutes, is amended to read:

22 386.212 Smoking and vaping prohibited near school property;
23 penalty.—

24 (3) Any person issued a citation pursuant to this section
25 shall be deemed to be charged with a civil infraction punishable
26 by a maximum civil penalty not to exceed \$25, or 50 hours of
27 community service and ~~or, where available,~~ successful completion
28 of a school-approved anti-tobacco or anti-vaping "alternative to
29 suspension" program.

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30 Section 2. Section 877.112, Florida Statutes, is amended to
31 read:

32 877.112 Nicotine products and nicotine dispensing devices;
33 flavored liquid nicotine; prohibitions for minors; penalties;
34 civil fines; signage requirements; preemption.—

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

36 (a) “Characterizing flavor” means a distinguishable taste
37 or aroma other than tobacco or menthol, including, but not
38 limited to, fruit, chocolate, vanilla, honey, candy, cocoa, a
39 dessert, an alcoholic beverage, a herb or spice, or any
40 combination thereof.

41 (b) “Flavored liquid nicotine” means a nicotine product
42 that is in liquid form; is composed of nicotine and other
43 chemicals; is sold in, or for use with, a nicotine dispensing
44 device; and that contains a natural or artificial constituent or
45 additive that causes the liquid or its vapor to have a
46 characterizing flavor.

47 (c) ~~(a)~~ “Nicotine dispensing device” means any product that
48 employs an electronic, chemical, or mechanical means to produce
49 vapor from a nicotine product, including, but not limited to, an
50 electronic cigarette, electronic cigar, electronic cigarillo,
51 electronic pipe, or other similar device or product, any
52 replacement cartridge for such device, and any other container
53 of nicotine in a solution or other form intended to be used with
54 or within an electronic cigarette, electronic cigar, electronic
55 cigarillo, electronic pipe, or other similar device or product.

56 (d) ~~(b)~~ “Nicotine product” means any product that contains
57 nicotine, including liquid nicotine, that is intended for human
58 consumption, whether inhaled, chewed, absorbed, dissolved, or

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59 ingested by any means, but does not include a:

- 60 1. Tobacco product, as defined in s. 569.002;
- 61 2. Product regulated as a drug or device by the United
- 62 States Food and Drug Administration under Chapter V of the
- 63 federal Food, Drug, and Cosmetic Act; or
- 64 3. Product that contains incidental nicotine.

65 (e)~~(e)~~ "Self-service merchandising" means the open display

66 of nicotine products or nicotine dispensing devices, whether

67 packaged or otherwise, for direct retail customer access and

68 handling before purchase without the intervention or assistance

69 of the retailer or the retailer's owner, employee, or agent. An

70 open display of such products and devices includes the use of an

71 open display unit.

72 (2) PROHIBITIONS ON SALE TO MINORS.—It is unlawful to sell,

73 deliver, barter, furnish, or give, directly or indirectly, to

74 any person who is under 18 years of age, any nicotine product or

75 a nicotine dispensing device.

76 (3) PROHIBITIONS ON GIFTING SAMPLES TO MINORS.—The gift of

77 a sample nicotine product or nicotine dispensing device to any

78 person under the age of 18 by a retailer of nicotine products or

79 nicotine dispensing devices, or by an employee of such retailer,

80 is prohibited.

81 (4) PROHIBITION ON SELLING FLAVORED LIQUID NICOTINE.—It is

82 unlawful to sell, deliver, barter, furnish, or give, directly or

83 indirectly, flavored liquid nicotine to any person.

84 (5) PROHIBITION ON PROMOTING NICOTINE DISPENSING DEVICES OR

85 NICOTINE PRODUCTS FOR UNLAWFUL USE.—A person may not engage in

86 any advertisement, marketing, promotion, or any other activity

87 the person knows or should know is likely to cause or lead to

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88 the unlawful use of nicotine dispensing devices or nicotine
89 products. A violation of this subsection constitutes an unlawful
90 trade practice under part II of chapter 501.

91 (6)-(4) PENALTIES.—Any person who violates subsection (2) or
92 subsection (3) commits a misdemeanor of the second degree,
93 punishable as provided in s. 775.082 or s. 775.083. However, any
94 person who violates subsection (2) or subsection (3) for a
95 second or subsequent time within 1 year of the first violation
96 commits a misdemeanor of the first degree, punishable as
97 provided in s. 775.082 or s. 775.083. Any person who violates
98 subsection (4) is subject to a fine of up to \$500 per violation.

99 (7) AGE VERIFICATION IN SALES OF NICOTINE DISPENSING
100 DEVICES AND NICOTINE PRODUCTS.—

101 (a) A retailer of nicotine dispensing devices, before
102 accepting an order for delivery, must verify that the purchaser
103 is at least 18 years of age.

104 (b) A retailer must verify every order for delivery with a
105 commercially available database or an aggregate of databases
106 which is regularly used for the purpose of age and identity
107 verification. Additionally, the seller must employ a second-step
108 verification to secure delivery for every order in the form of:

109 1. Requiring the signature of an adult upon delivery; and
110 2. Verifying that the credit card or debit card used for
111 the purchase has been issued in the purchaser's name and that
112 the delivery address is associated with the purchaser's credit
113 card or debit card.

114 (8)-(5) AFFIRMATIVE DEFENSES.—A person charged with a
115 violation of subsection (2) or subsection (3) has a complete
116 defense if, at the time the nicotine product or nicotine

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117 dispensing device was sold, delivered, bartered, furnished, or
118 given:

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

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

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

131 (9)~~(6)~~ PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR
132 NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any
133 person under 18 years of age to knowingly possess any nicotine
134 product or a nicotine dispensing device. Any person under 18
135 years of age who violates this subsection commits a noncriminal
136 violation as defined in s. 775.08(3), punishable by:

137 (a) For a first violation, 16 hours of community service
138 or, instead of community service, a \$25 fine. In addition, the
139 person must attend a school-approved anti-vaping ~~anti-tobacco~~
140 ~~and nicotine~~ program, ~~if locally available~~; or

141 (b) For a second or subsequent violation within 12 weeks
142 after the first violation, a \$25 fine.

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

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146 first violation.

147 (10)~~(7)~~ PROHIBITION ON MISREPRESENTING AGE.—It is unlawful
148 for any person under 18 years of age to misrepresent his or her
149 age or military service for the purpose of inducing a retailer
150 of nicotine products or nicotine dispensing devices or an agent
151 or employee of such retailer to sell, give, barter, furnish, or
152 deliver any nicotine product or nicotine dispensing device, or
153 to purchase, or attempt to purchase, any nicotine product or
154 nicotine dispensing device from a person or a vending machine.
155 Any person under 18 years of age who violates this subsection
156 commits a noncriminal violation as defined in s. 775.08(3),
157 punishable by:

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

162 (b) For a second violation within 12 weeks after the first
163 violation, a \$25 fine.

164
165 Any second or subsequent violation not within the 12-week time
166 period after the first violation is punishable as provided for a
167 first violation.

168 (11)~~(8)~~ PENALTIES FOR MINORS.—

169 (a) A person under 18 years of age cited for committing a
170 noncriminal violation under this section must sign and accept a
171 civil citation indicating a promise to appear before the county
172 court or comply with the requirement for paying the fine and
173 must attend a school-approved anti-vaping ~~anti-tobacco and~~
174 ~~nicotine~~ program, ~~if locally available~~. If a fine is assessed

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175 for a violation of this section, the fine must be paid within 30
176 days after the date of the citation or, if a court appearance is
177 mandatory, within 30 days after the date of the hearing.

178 (b) A person charged with a noncriminal violation under
179 this section must appear before the county court or comply with
180 the requirement for paying the fine. The court, after a hearing,
181 shall make a determination as to whether the noncriminal
182 violation was committed. If the court finds the violation was
183 committed, it shall impose an appropriate penalty as specified
184 in subsection (9) ~~(6)~~ or subsection (10) ~~(7)~~. A person who
185 participates in community service shall be considered an
186 employee of the state for the purpose of chapter 440, for the
187 duration of such service.

188 (c) If a person under 18 years of age is found by the court
189 to have committed a noncriminal violation under this section and
190 that person has failed to complete community service, pay the
191 fine as required by paragraph (9) (a) ~~(6) (a)~~ or paragraph (10) (a)
192 ~~(7) (a)~~, or attend a school-approved anti-vaping ~~anti-tobacco and~~
193 ~~nicotine~~ program, ~~if locally available~~, the court may direct the
194 Department of Highway Safety and Motor Vehicles to withhold
195 issuance of or suspend the driver license or driving privilege
196 of that person for 30 consecutive days.

197 (d) If a person under 18 years of age is found by the court
198 to have committed a noncriminal violation under this section and
199 that person has failed to pay the applicable fine as required by
200 paragraph (9) (b) ~~(6) (b)~~ or paragraph (10) (b) ~~(7) (b)~~, the court
201 may direct the Department of Highway Safety and Motor Vehicles
202 to withhold issuance of or suspend the driver license or driving
203 privilege of that person for 45 consecutive days.

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204 (12)~~(9)~~ DISTRIBUTION OF CIVIL FINES.—Eighty percent of all
205 civil penalties received by a county court pursuant to
206 subsections (9) ~~(6)~~ and (10) ~~(7)~~ shall be remitted by the clerk
207 of the court to the Department of Revenue for transfer to the
208 Department of Education to provide for teacher training and for
209 research and evaluation to reduce and prevent the use of tobacco
210 products, nicotine products, or nicotine dispensing devices by
211 children. The remaining 20 percent of civil penalties received
212 by a county court pursuant to this section shall remain with the
213 clerk of the county court to cover administrative costs.

214 (13)~~(10)~~ SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE
215 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

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

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221 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING
222 DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST
223 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

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225 (b) A retailer that sells nicotine products or nicotine
226 dispensing devices shall provide at the checkout counter in a
227 location clearly visible to the retailer or the retailer's agent
228 or employee instructional material in a calendar format or
229 similar format to assist in determining whether a person is of
230 legal age to purchase nicotine products or nicotine dispensing
231 devices. This point of sale material must contain substantially
232 the following language:

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

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

(14)~~(11)~~ SELF-SERVICE MERCHANDISING PROHIBITED.—

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

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

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

(15)~~(12)~~ RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.—

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

1. When under the direct control, or line of sight where effective control may be reasonably maintained, of the retailer

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262 of nicotine products or nicotine dispensing devices or such
263 retailer's agent or employee; or

264 2. Sales from a vending machine are prohibited under
265 subparagraph 1. and are only permissible from a machine that is
266 equipped with an operational lockout device which is under the
267 control of the retailer of nicotine products or nicotine
268 dispensing devices or such retailer's agent or employee who
269 directly regulates the sale of items through the machine by
270 triggering the lockout device to allow the dispensing of one
271 nicotine product or nicotine dispensing device. The lockout
272 device must include a mechanism to prevent the machine from
273 functioning, if the power source for the lockout device fails or
274 if the lockout device is disabled, and a mechanism to ensure
275 that only one nicotine product or nicotine dispensing device is
276 dispensed at a time.

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

279 (c) A retailer of nicotine products or nicotine dispensing
280 devices or such retailer's agent or employee may require proof
281 of age of a purchaser of such products or devices before selling
282 the product or device to that person.

283 Section 3. This act shall take effect July 1, 2020.