

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Articles offered the following:

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

4 Remove lines 106-291 and insert:

5 (c) "Self-service merchandising" means the open display of
6 nicotine products or nicotine dispensing devices, whether
7 packaged or otherwise, for direct retail customer access and
8 handling before purchase without the intervention or assistance
9 of the retailer or the retailer's owner, employee, or agent. An
10 open display of such products and devices includes the use of an
11 open display unit.

12 (2) PROHIBITIONS ON SALE TO MINORS.-It is unlawful to
13 sell, deliver, barter, furnish, or give, directly or indirectly,

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14 to any person who is under 18 years of age, any nicotine product
15 or a nicotine dispensing device.

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

21 (4) PENALTIES.—Any person who violates subsection (2) or
22 (3) commits a misdemeanor of the second degree, punishable as
23 provided in s. 775.082 or s. 775.083. However, any person who
24 violates subsection (2) or (3) for a second or subsequent time
25 within 1 year of the first violation, commits a misdemeanor of
26 the first degree, punishable as provided in s. 775.082 or s.
27 775.083.

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

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

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

37 (c) Such person carefully checked a driver license or an
38 identification card issued by this state or another state of the
39 United States, a passport, or a United States armed services

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40 identification card presented by the buyer or recipient and
41 acted in good faith and in reliance upon the representation and
42 appearance of the buyer or recipient in the belief that the
43 buyer or recipient was 18 years of age or older.

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

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

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

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

61
62 Any second or subsequent violation not within the 12-week time
63 period after the first violation is punishable as provided for a
64 first violation.

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65 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for
66 any person under 18 years of age to misrepresent his or her age
67 or military service for the purpose of inducing a retailer of
68 nicotine products or nicotine dispensing devices or an agent or
69 employee of such retailer to sell, give, barter, furnish, or
70 deliver any nicotine product or nicotine dispensing device, or
71 to purchase, or attempt to purchase, any nicotine product or
72 nicotine dispensing device from a person or a vending machine.
73 Any person under 18 years of age who violates this subsection
74 commits a noncriminal violation as defined in s. 775.08(3),
75 punishable by:

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

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(8) PENALTIES FOR MINORS.—

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

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

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

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117 the Department of Highway Safety and Motor Vehicles to withhold
118 issuance of or suspend the driver license or driving privilege
119 of that person for 30 consecutive days.

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

127 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all
128 civil penalties received by a county court pursuant to
129 subsections (6) and (7) shall be remitted by the clerk of the
130 court to the Department of Revenue for transfer to the
131 Department of Education to provide for teacher training and for
132 research and evaluation to reduce and prevent the use of tobacco
133 products, nicotine products, or nicotine dispensing devices by
134 children. The remaining 20 percent of civil penalties received
135 by a county court pursuant to this section shall remain with the
136 clerk of the county court to cover administrative costs.

137 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE
138 PRODUCTS AND NICOTINE DISPENSING DEVICES.—

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

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143
144 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO
145 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE
146 IS REQUIRED FOR PURCHASE.

147
148 (b) A retailer that sells nicotine products or nicotine
149 dispensing devices shall provide at the checkout counter in a
150 location clearly visible to the retailer, the retailer's agent
151 or employee, instructional material in a calendar format or
152 similar format to assist in determining whether a person is of
153 legal age to purchase nicotine products or nicotine dispensing
154 devices. This point of sale material must contain substantially
155 the following language:

156
157 IF YOU WERE NOT BORN BEFORE THIS DATE
158 (insert date and applicable year)
159 YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

160
161 In lieu of a calendar a retailer may use card readers, scanners,
162 or other electronic or automated systems that can verify whether
163 a person is of legal age to purchase nicotine products or
164 nicotine dispensing devices.

165 (11) SELF-SERVICE MERCHANDISING PROHIBITED.-

166 (a) A retailer that sells nicotine products or nicotine
167 dispensing devices may not sell, permit to be sold, offer for

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168 sale, or display for sale such products or devices by means of
169 self-service merchandising.

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

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

177 (12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS
178 OR NICOTINE DISPENSING DEVICES.—

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

183 1. When under the direct control, or line of sight where
184 effective control may be reasonably maintained, of the retailer
185 of nicotine products or nicotine dispensing devices or such
186 retailer's agent or employee; or

187 2. Sales from a vending machine are prohibited under
188 subparagraph (a)1. and are only permissible from a machine that
189 is equipped with an operational lockout device which is under
190 the control of the retailer of nicotine products or nicotine
191 dispensing devices or such retailer's agent or employee who
192 directly regulates the sale of items through the machine by
193 triggering the lockout device to allow the dispensing of one

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194 nicotine product or nicotine dispensing device. The lockout
195 device must include a mechanism to prevent the machine from
196 functioning, if the power source for the lockout device fails or
197 if the lockout device is disabled, and a mechanism to ensure
198 that only one nicotine product or nicotine dispensing device is
199 dispensed at a time.

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

202 (c) A retailer of nicotine products or nicotine dispensing
203 devices or such retailer's agent or employee may require proof
204 of age of a purchaser of such products or devices before selling
205 the product or device to that person.

206 (13) PREEMPTION.—This subsection expressly preempts to the
207 state the regulation of the sale of products under this section
208 and supersedes any municipal or county ordinance on the subject
209 enacted after December 31, 2013.

210

211

212

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

213

Remove lines 8-23 and insert:

214

to the state; creating s. 877.112, F.S.; defining

215

terms; prohibiting the selling, delivering, bartering,

216

furnishing, or giving of nicotine products or nicotine

217

dispensing devices to persons under 18 years of age;

218

prohibiting the gift of sample nicotine products or

219

nicotine dispensing devices to persons under 18 years

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220 of age; providing penalties; providing affirmative
221 defenses for a person charged with certain violations;
222 prohibiting a person under 18 years of age from
223 possessing, purchasing, or misrepresenting his or her
224 age or military service to purchase nicotine products
225 or nicotine dispensing devices; providing for use of
226 civil fines; requiring certain signage where a
227 retailer sells nicotine products or nicotine
228 dispensing devices; prohibiting self-service
229 merchandising where a retailer sells nicotine products
230 or nicotine dispensing devices; providing an
231 exception; prohibiting the sale or delivery

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