

THE FLORIDA SENATE
2024 SUMMARY OF LEGISLATION PASSED
Committee on Regulated Industries

CS/CS/HB 1007 — Nicotine Dispensing Devices

by Commerce Committee; Appropriations Committee; and Rep. Overdorf and others (CS/CS/SB 1006 by Appropriations Committee on Agriculture, Environment, and General Government; Regulated Industries Committee; and Senator Perry)

The bill authorizes the Attorney General to adopt rules to create a directory of nicotine dispensing devices that the Attorney General has determined to be “attractive to minors,” thereby removing those products from the market. Under the bill, the term “nicotine dispensing devices” includes e-cigarettes, vapes, and other similar products. Each individual stock keeping unit is considered a separate nicotine dispensing device. Open systems in which a consumer fills a vial or other containers with a nicotine solution are exempted from the provisions of the bill.

To determine that a product is “attractive to minors,” the Attorney General must consider several factors, including:

- Surveys or other data sources indicating that a nicotine dispensing device is being used by minors at a higher rate than other nicotine dispensing devices.
- Complaints, reports, or other information related to the use of a nicotine dispensing device by minors from other minors, from parents, teachers, school employees, school boards, and law enforcement officers, retailers, and other industry officials as compared to other nicotine dispensing devices.
- The extent to which the product is designed and marketed to be attractive to minors (e.g., use of bright colors or cartoon characters, ease of use for minors, resemblance to a food product, and uniquely marketed to minors).
- Use of actual intellectual property that resemble consumer food products that are popular with minors.
- Any reports of physical harm to minors from using the nicotine dispensing device or evidence that the nicotine dispensing device presents unique risks to minors.
- Whether the manufacturer of the nicotine dispensing device submitted a timely filed premarket tobacco product application for the nicotine dispensing device pursuant to 21 U.S.C. s. 387j.
- Decisions by the U.S. Food and Drug Administration (FDA) regarding the product, including the extent to which the FDA’s decision was predicated, in whole or part, on the risks to minors outweighing other benefits of the nicotine dispensing device.

21 U.S.C. s. 387j requires tobacco products that were on the market as of August 8, 2016, to submit a premarket application (PMTA) to the FDA and by September 9, 2020, in order to be authorized to continue to legally market the product. Nicotine dispensing devices that contain nicotine not made or derived from tobacco, such as synthetic nicotine, must also receive a marketing order from the FDA. This market authorization does not apply to “pre-existing tobacco product,” i.e., “grandfathered tobacco products” that were commercially marketed in the United States as of February 15, 2007.

After review of a PMTA for a nicotine dispensing device, the FDA may issue a marketing order to permit the continued marketing of the nicotine dispensing device, or it may deny the PMTA to prohibit continued marketing of the nicotine dispensing device. The provisions of the bill do not apply to nicotine dispensing devices that have received a marketing order from the FDA.

The Department of Legal Affairs (department) is directed to develop and maintain a directory listing all of the nicotine product manufacturers that sell nicotine dispensing devices in Florida which the Attorney General has deemed attractive to minors. The department must make the directory available January 1, 2025 for public inspection on its website.

The Attorney General's decision to include a product in the directory is subject to review under the Administrative Procedure Act. After a product is included in the directory, retailers and wholesale dealers have 60 days from the date the directory is made public to sell or otherwise discard the products.

A person who knowingly sells, ships, or receives for retail sale a prohibited device commits a first degree misdemeanor. Other violations are enforced by the Attorney General as a deceptive trade practice and are also subject to a civil penalty of \$1,000 per prohibited device sold. There is no private right of action under the bill.

Under the bill, products that are listed on the directory are declared to be contraband and are subject to seizure under the Florida Contraband Forfeiture Act. A court having jurisdiction must order contraband nicotine dispensing devices forfeited upon a showing that, by a preponderance of the evidence, the devices were sold, delivered, possessed, or distributed contrary to any provision of ch. 569, F.S., relating to tobacco and nicotine products. Once any administrative proceedings under ch. 120, F.S., related to such devices have been completed, the court must order seized nicotine dispensing devices to be destroyed, except as provided by applicable court orders. The department is required to keep specified records of all nicotine dispensing devices seized under the act.

The bill increases the criminal penalty for a third or subsequent violation of the prohibition against selling or giving a nicotine product to a person under 21 years of age from a misdemeanor of the first degree to a felony of the third degree. Under current law, a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000, and a felony of the third degree is punishable by a term of imprisonment not to exceed five years and a fine not to exceed \$5,000.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect October 1, 2024.

Vote: Senate 39-0; House 105-5