

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Regulatory Affairs
 2 Committee

3 Representative Artiles offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 569.14, Florida Statutes, is amended to
 8 read:

9 569.14 Posting of a sign stating that the sale of tobacco
 10 products to persons under 18 years of age is unlawful;
 11 enforcement; penalty.-

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

17 (2) A dealer that sells tobacco products and nicotine

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18 products or nicotine dispensing devices, as defined in s.
19 877.112, may use a sign that substantially states the following:
20 THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE
21 DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST
22 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.
23 A dealer that uses a sign as described in this subsection meets
24 the signage requirements of ss. 569.14(1) and 877.112.

25 ~~(3)~~(2) The division shall make available to dealers of
26 tobacco products signs that meet the requirements of subsection
27 (1) or subsection (2).

28 ~~(4)~~(3) Any dealer that sells tobacco products shall
29 provide at the checkout counter in a location clearly visible to
30 the dealer, the dealer's agent or employee, instructional
31 material in a calendar format or similar format to assist in
32 determining whether a person is of legal age to purchase tobacco
33 products. This point of sale material must contain substantially
34 the following language:

35 IF YOU WERE NOT BORN BEFORE THIS DATE
36 (insert date and applicable year)
37 YOU CANNOT BUY TOBACCO PRODUCTS.

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

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44 ~~(5)(4)~~ The division, through its agents and inspectors,
45 shall enforce this section.

46 ~~(6)(5)~~ Any person who fails to comply with subsection (1)
47 is guilty of a misdemeanor of the second degree, punishable as
48 provided in s. 775.082 or s. 775.083.

49 Section 2. Section 569.24, Florida Statutes, is created to
50 read:

51 569.24 Preemption of Tobacco Products.- This section
52 expressly preempts to the state the regulation of the sale of
53 products under this chapter and supersedes any municipal or
54 county ordinance on the subject.

55 Section 3. Section 877.112, Florida Statutes, is created
56 to read:

57 877.112 Nicotine products and nicotine dispensing devices;
58 prohibitions for minors; penalties; civil fines; signage
59 requirements; preemption.-

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

61 (a) "Nicotine Dispensing Device" means any product that
62 employs an electronic, chemical or mechanical means to produce
63 vapor from a nicotine product, including, but not limited to, an
64 electronic cigarette, electronic cigar, electronic cigarillo,
65 electronic pipe, or other similar device or product, any
66 replacement cartridge for such device, and any other container
67 of nicotine in a solution or other form intended to be used with
68 or within an electronic cigarette, electronic cigar, electronic
69 cigarillo, electronic pipe, or other similar device or product.

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

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

75 2. Product regulated as a drug or device by the United
76 States Food and Drug Administration under Chapter V of the Food,
77 Drug and Cosmetic Act; or,

78 3. Product that contains incidental nicotine.

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

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

88 (4) PENALTIES.—Any person who violates subsection (2) or
89 (3) commits a misdemeanor of the second degree, punishable as
90 provided in s. 775.082 or s. 775.083. However, any person who
91 violates subsection (2) or (3) for a second or subsequent time
92 within 1 year of the first violation, commits a misdemeanor of
93 the first degree, punishable as provided in s. 775.082 or s.
94 775.083.

95 (5) AFFIRMATIVE DEFENSES.—A person charged with a

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112 violation of subsection (2) or (3) has a complete defense if, at
113 the time the nicotine product or nicotine dispensing device was
114 sold, delivered, bartered, furnished, or given:

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

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

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

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

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

137 (b) For a second violation within 12 weeks of the first

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122 violation, a \$25 fine; or

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

128
129 Any second or subsequent violation not within the 12-week time
130 period after the first violation is punishable as provided for a
131 first violation.

132 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for
133 any person under 18 years of age to misrepresent his or her age
134 or military service for the purpose of inducing a retailer of
135 nicotine products or nicotine dispensing devices or an agent or
136 employee of such retailer to sell, give, barter, furnish, or
137 deliver any nicotine product or nicotine dispensing device, or
138 to purchase, or attempt to purchase, any nicotine product or
139 nicotine dispensing device from a person or a vending machine.
140 Any person under 18 years of age who violates this subsection
141 commits a noncriminal violation as defined in s. 775.08(3),
142 punishable by:

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

147 (b) For a second violation within 12 weeks of the first

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148 violation, a \$25 fine; or

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

154
155 Any second or subsequent violation not within the 12-week time
156 period after the first violation is punishable as provided for a
157 first violation.

158 (8) PENALTIES FOR MINORS.—

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

168 (b) A person charged with a noncriminal violation under
169 this section must appear before the county court or comply with
170 the requirement for paying the fine. The court, after a hearing,
171 shall make a determination as to whether the noncriminal
172 violation was committed. If the court finds the violation was
173 committed, it shall impose an appropriate penalty as specified

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174 in subsection (6) or subsection (7). A person who participates
175 in community service shall be considered an employee of the
176 state for the purpose of chapter 440, for the duration of such
177 service.

178 (c) If a person under 18 years of age is found by the
179 court to have committed a noncriminal violation under this
180 section and that person has failed to complete community
181 service, pay the fine as required by paragraph (6) (a) or
182 paragraph (7) (a), or attend a school-approved anti-tobacco and
183 nicotine program, if locally available, the court must direct
184 the Department of Highway Safety and Motor Vehicles to withhold
185 issuance of or suspend the driver license or driving privilege
186 of that person for 30 consecutive days.

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

194 (9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all
195 civil penalties received by a county court pursuant to
196 subsections (6) and (7) shall be remitted by the clerk of the
197 court to the Department of Revenue for transfer to the
198 Department of Education to provide for teacher training and for
199 research and evaluation to reduce and prevent the use of tobacco

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200 products, nicotine products, or nicotine dispensing devices by
201 children. The remaining 20 percent of civil penalties received
202 by a county court pursuant to this section shall remain with the
203 clerk of the county court to cover administrative costs.

204 (10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE
205 PRODUCTS AND NICOTINE DISPENSING DEVICES.-

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

210
211 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO
212 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE
213 IS REQUIRED FOR PURCHASE.

214
215 (b) A retailer that sells nicotine products or nicotine
216 dispensing devices shall provide at the checkout counter in a
217 location clearly visible to the retailer, the retailer's agent
218 or employee, instructional material in a calendar format or
219 similar format to assist in determining whether a person is of
220 legal age to purchase nicotine products or nicotine dispensing
221 devices. This point of sale material must contain substantially
222 the following language:

223
224 IF YOU WERE NOT BORN BEFORE THIS DATE
225 (insert date and applicable year)

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226 YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

227
228 In lieu of a calendar a retailer may use card readers, scanners,
229 or other electronic or automated systems that can verify whether
230 a person is of legal age to purchase nicotine products or
231 nicotine dispensing devices.

232 (11) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS
233 OR NICOTINE DISPENSING DEVICES.—

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

238 1. When under the direct control, or line of sight where
239 effective control may be reasonably maintained, of the retailer
240 of nicotine products or nicotine dispensing devices or such
241 retailer's agent or employee; or

242 2. Sales from a vending machine are prohibited under the
243 provisions of subparagraph (a)1. and are only permissible from a
244 machine that is equipped with an operational lockout device
245 which is under the control of the retailer of nicotine products
246 or nicotine dispensing devices or such retailer's agent or
247 employee who directly regulates the sale of items through the
248 machine by triggering the lockout device to allow the dispensing
249 of one nicotine product or nicotine dispensing device. The
250 lockout device must include a mechanism to prevent the machine
251 from functioning if the power source for the lockout device

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252 fails or if the lockout device is disabled, and a mechanism to
253 ensure that only one nicotine product or nicotine dispensing
254 device is dispensed at a time.

255 (b) The provisions of paragraph (a) shall not apply to an
256 establishment that prohibits persons under 18 years of age on
257 the premises.

258 (c) A retailer of nicotine products or nicotine dispensing
259 devices or such retailer's agent or employee may require proof
260 of age of a purchaser of a nicotine products or nicotine
261 dispensing devices before selling the product or device to that
262 person.

263 (12) PREEMPTION.—This subsection expressly preempts to the
264 state the regulation of the sale of products under this section
265 and supersedes any municipal or county ordinance on the subject.

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

267
268
269 -----
270 **T I T L E A M E N D M E N T**

271 Remove everything before the enacting clause and insert:

272 A bill to be entitled

273 An act relating to tobacco and nicotine product regulation;
274 amending s. 569.14, F.S.; allowing alternate signage
275 requirements where a dealer that sells tobacco products also
276 sells nicotine products or nicotine dispensing devices; creating
277 s. 569.24, F.S.; preempting regulation of the sale of tobacco

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278 products to the state; creating s. 877.112, F.S.; defining the
279 terms "nicotine dispensing device" and "nicotine product";
280 prohibiting the selling, delivering, bartering, furnishing, or
281 giving of nicotine products or nicotine dispensing devices to
282 persons under 18 years of age; prohibiting the gift of sample
283 nicotine products or nicotine dispensing devices to persons
284 under 18 years of age; providing penalties; providing
285 affirmative defenses for a person charged with certain
286 violations; prohibiting a person under 18 years of age from
287 possessing, purchasing, or misrepresenting his or her age or
288 military service to purchase nicotine products or nicotine
289 dispensing devices; providing for use of civil fines; requiring
290 certain signage where a retailer sells nicotine products or
291 nicotine dispensing devices; requiring direct control or line of
292 sight of products by retailer; preempting regulation of the sale
293 of nicotine products and nicotine dispensing devices to the
294 state; providing an effective date.