



Government Operations Appropriations Subcommittee

**Tuesday, March 11, 2014
12:30 PM – 2:30 PM
Morris Hall (17 HOB)**

MEETING PACKET



The Florida House of Representatives
Appropriations Committee
Government Operations Appropriations Subcommittee

Will Weatherford
Speaker

Clay Ingram
Chair

March 11, 2014

AGENDA
12:30 PM – 2:30 PM
Morris Hall

- I. Call to Order/Roll Call
- II. Consideration of Bills
CS/HB 169 Nicotine Dispensing Devices by Rep. Artiles and Rep. Renuart
HB 725 Public Accountancy by Rep. Boyd
- III. Department of Management Services
Florida Broadband and E-Rate Maps
Ed Peters, Director of the Division of Telecommunications
- IV. Florida Information Resource Network/District Bandwidth – Staff Update
- V. Closing Remarks/Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 169 Nicotine Dispensing Devices
SPONSOR(S): Business & Professional Regulation Subcommittee; Artiles and others
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Butler	Luczynski
2) Government Operations Appropriations Subcommittee		Topp	Topp BDT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Electronic cigarettes (e-cigarettes) are small devices, usually shaped like cigarettes, cigars or pipes that allow users to inhale vaporized nicotine, flavor, and other chemicals, without fire, smoke, ash, or carbon dioxide.

The Center for Disease Control & Prevention estimates that the number of middle and high school students using e-cigarettes has more than doubled from 2011 to 2012. Several states have passed regulations banning the sale of e-cigarettes to minors under the age of 18.

The bill amends the current tobacco law to define "nicotine dispensing devices" to include electronic cigarettes, electronic cigars, and other devices that could be used to deliver nicotine to an individual by inhaling vaporized nicotine and any replacement nicotine cartridge. The sale or giving of "nicotine dispensing devices" to minors under the age of 18 is a violation and is prohibited and is punishable as a second degree misdemeanor. It creates a noncriminal violation for persons under 18 years to possess, purchase, or misrepresent their age or military service to obtain nicotine dispensing devices in certain circumstances.

Because the bill does not require a permit to sell nicotine dispensing devices, certain bill provisions that apply to a tobacco permit holder (dealer) will not apply to a non-permitted e-cigarette retailer (a retailer who sells e-cigarettes, but not tobacco products).

The bill requires that holders of a retail tobacco products dealer permit issued by the Department of Business and Professional Regulation (DBPR) update their signage with signs that inform employees and the public that sale of "nicotine dispensing devices" is prohibited to minors under the age of 18.

The bill will have an insignificant fiscal impact on the DBPR.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Electronic Cigarettes

Electronic cigarettes, also known as e-cigarettes, are electronic products that allow users to inhale vaporized nicotine, flavor, and other chemicals, without fire, smoke, ash, or carbon dioxide. Electronic cigarettes are manufactured to resemble cigarettes, cigars, or pipes, but some are manufactured to resemble pens and USB memory sticks.¹

E-Cigarette vendors include retailers who also sell tobacco products, retailers who do not sell tobacco products, and Internet retailers. According to the Department of Business and Professional Regulation (DBPR or Department), there are 27,039 tobacco permit holders² in Florida; however, the number that also sell e-cigarettes is unknown. Additionally, there is no data on the number of retailers with physical or Internet stores that sell e-cigarettes, but not tobacco products.

Tobacco Regulation in Florida

DBPR licenses and regulates businesses and professionals in Florida. It is structured to include separate divisions and various professional boards responsible for carrying out DBPR's mission to license efficiently and regulate fairly. The Division of Alcoholic Beverage and Tobacco (Division) within DBPR is responsible for the enforcement of ch. 569, F.S., regulating tobacco products.

Definitions and Licensing

Section 569.002, F.S., states that the terms "dealer" and "retail tobacco products dealer" are synonymous terms that refer to "the holder of a retail tobacco products dealer permit (tobacco permit)."

Section 569.002(6), F.S., defines the term "tobacco products" to include:

[L]oose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term "tobacco products" to mean:

[L]oose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1)[F.S.], or cigars.

Section 569.003, F.S., requires:

Each person, firm, association, or corporation that seeks to deal, at retail, in tobacco products within this state, or to allow a tobacco products vending machine to be located on its premises in this state, must obtain a retail tobacco

¹ *Sottera, Inc. v. Food & Drug Admin.*, 627 F.3d 891 (D.C. Cir. 2010); see also U.S. Food & Drug Administration, News & Events, What are Electronic Cigarettes?, available at <http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm> (Last visited January 23, 2014).

² Florida Department of Business and Professional Regulation, 2014 Agency Legislative Bill Analysis for SB 224 (Oct. 30, 2013) (on file with the Business & Professional Regulation Subcommittee).

products dealer permit for each place of business or the premises where tobacco products are sold.

Section 569.0075, F.S., prohibits a dealer from giving sample tobacco products to persons under the age of 18.

General Provisions, Prohibitions, and Penalties Related to Minors

Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing or giving of tobacco products to persons under the age of 18. A violation of this prohibition is a second degree misdemeanor.³ A second or subsequent violation within one year of the first violation is a first degree misdemeanor.⁴

Section 569.101(3), F.S., provides a complete defense to a person charged with a violation of this section if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification⁵ upon which the person relied upon in good faith.

Section 569.11, F.S., prohibits persons under the age of 18 from possessing, directly or indirectly, any tobacco products. A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco program, if locally available. A second violation within 12 weeks of the first violation is punishable with a \$25 fine. A third or subsequent violation within 12 weeks of the first violation requires that the person must be punished with the suspension or revocation of his or her driver's license or driving privilege, as provided in s. 322.056, F.S.

In FY 2012-13, the Department of Highway Safety and Motor Vehicles revoked the driver's license for one person and suspended the driver's license for 561 persons for underage possession of tobacco products, and suspended the driver's license for one underage person for misrepresenting the age to purchase tobacco products.⁶

Section 569.14, F.S., requires that dealers must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The Division is required to make the signs available to retail tobacco products dealers. Retail tobacco products dealers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.

It is not clear whether the tobacco prohibitions for minors in current law include e-cigarettes as tobacco products. In an attempt to restrict minors' access to e-cigarettes, the Division's Internet site advises:

Electronic cigarettes containing nicotine from tobacco leaves are tobacco products regulated in the state, and that it is unlawful to sell tobacco products, including electronic cigarettes, to a person under 18 years of age.⁷

Currently, the Division's sworn law enforcement officers, as well as the non-sworn inspectors, routinely inspect tobacco permit holders for compliance with ch. 569, F.S. The Division's sworn law enforcement officers also perform what is termed "surveys," which are undercover operations with underage operatives, as a means of enforcing the prohibitions on the sale of tobacco products to persons less

³ Sections 775.082 and 775.083, F.S. (providing penalties for a misdemeanor of the second degree).

⁴ *Id.* (providing penalties for a misdemeanor of the first degree).

⁵ See s. 569.101(2)(c), F.S., (requiring carefully checking the identification presented by the buyer or recipient and acting in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older).

⁶ Florida Department of Highway Safety and Motor Vehicles, 2014 Agency Legislative Analysis for SB 224 (Oct. 4, 2013) (on file with the Business & Professional Regulation Subcommittee).

⁷ See Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, <http://www.myfloridalicense.com/dbpr/abt/index.html> (Last visited Jan. 24, 2013).

than 18 years of age; and the prohibition on possession of tobacco products by persons less than 18 years of age.⁸

According to the Department, for the period of January 1, 2012 through December 28, 2012, the Division performed 2,805 visits of retail tobacco dealers to determine compliance with ch. 569, F.S. These inspections resulted in 270 arrests for selling, delivering, furnishing, or giving tobacco products to persons under the age of 18. These visits also found three violations for failure to hold a valid tobacco permit.

According to the Division, 29 administrative cases were initiated against licensees for selling tobacco products to underage persons and 28 civil penalties were collected. Section 569.008(5), F.S., requires a pattern of three or more violations by the employees of the tobacco permit holder during a 180 period before a permit holder can be sanctioned for sales made by his or her employee. During this same period, the Division also cited 136 persons under the age of 18 for possession of tobacco products.

Federal Regulation of E-Cigarettes

The Federal U.S. Food and Drug Administration (FDA) is a federal agency within the Department of Health and Human Services. The FDA's organization consists of the Office of the Commissioner and four directorates overseeing the core functions of the agency: Medical Products and Tobacco; Foods; Global Regulatory Operations and Policy; and Operations.⁹ The Office of Medical Products and Tobacco provides advice and regulatory oversight to the FDA Commissioner through the centers for drug, biologics, medical devices, and tobacco products. The office also oversees the agency's special medical programs.¹⁰

Electronic cigarettes that are marketed for therapeutic purposes are regulated by the FDA Center for Drug Evaluation and Research (CDER).¹¹ The FDA Center for Tobacco Products regulates cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco.

The authority of the FDA to regulate e-cigarettes is based on the Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act).¹² Enacted on June 22, 2009, this act amended the Federal Food, Drug, and Cosmetic Act (FDCA) to authorize the FDA to regulate "tobacco products." The Tobacco Control Act defines the term "tobacco product," in part, as any product "made or derived from tobacco" that is not a "drug," "device," or combination product under the FDCA.

The Food and Drug Administration initially determined that certain e-cigarettes were both a drug and a device under the FDCA.¹³ Products that fall under the authority of the FDCA as drugs or devices must go through a preapproval process before they can be marketed or sold to the consumer. Tobacco products do not have to go through a preapproval process.

The regulatory classification of e-cigarettes as tobacco products was resolved by the United States Court of Appeals for the District of Columbia Circuit, in *Sottera, Inc. v. Food & Drug Administration*.¹⁴

⁸ Florida Department of Business and Professional Regulation, 2014 Agency Legislative Bill Analysis for SB 224 (Oct. 30, 2013) (on file with the Business & Professional Regulation Subcommittee).

⁹ See U.S. Food & Drug Administration, FDA Organization, available at <http://www.fda.gov/AboutFDA/CentersOffices/default.htm>. (Last visited Jan. 24, 2014).

¹⁰ See U.S. Food & Drug Administration, Office of Medical Products and Tobacco, available at <http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/default.htm>. (Last visited Jan. 24, 2014).

¹¹ See U.S. Food & Drug Administration, News & Events, FDA Regulation of e-Cigarettes, available at <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm> (Last visited Jan. 24, 2014).

¹² Federal Food, Drug, and Cosmetic Act, 21 USC s. 351 et seq.

¹³ See Department of Health & Human Service, Food and Drug Administration, Letter to Matt Salmon, President of Electronic Cigarette Association, dated September 8, 2010, available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/UCM225263.pdf> (Last visited October 10, 2013).

¹⁴ *Sottera, Inc. v. Food & Drug Administration*, 627 F.3d 891 (D.C. Cir. 2010).

The court determined that the FDA has the authority to regulate e-cigarettes as "tobacco products" under the Family Smoking and Tobacco Control Act of 2009¹⁵ not as drugs/devices under the FDCA.

The case involved Sottera, Inc., an importer and distributor of e-cigarettes, whose shipment of e-cigarettes had been denied entry by the FDA because, the FDA asserted, they appeared to be adulterated, misbranded, or unapproved drug-device combinations under the FDCA. The company sought an injunction to bar the FDA from denying their e-cigarettes entry into the United States and from regulating e-cigarettes under the drug-device combinations under the FDCA. The United States District Court for the District of Columbia granted the injunction and agreed that e-cigarettes were subject to regulation as tobacco products and were not subject to regulation as drugs/devices under FDCA.

On appeal, the United States Court of Appeals for the District of Columbia Circuit held that e-cigarettes and other products made or derived from tobacco should be regulated as "tobacco products," and not regulated as drugs/devices unless they are marketed for therapeutic purposes. The FDA did not appeal this decision. The FDA has stated its intent to issue a proposed rule that would extend FDA's tobacco product regulatory authority to products that meet the statutory definition of "tobacco product."¹⁶

The National Association of Attorneys General issued a letter to the commissioner of the FDA urging the FDA to immediately regulate the sale and advertising of e-cigarettes as "tobacco products." The letter was signed by 42 attorneys general, including Florida Attorney General Pam Bondi. The letter noted that e-cigarettes with fruit and candy flavors that appeal to youth and advertising have led consumers to believe that e-cigarettes are a safe alternative to cigarettes. The letter asserted that e-cigarettes are addictive, and regulatory oversight was needed to ensure the safety of e-cigarette ingredients.¹⁷

Some e-cigarettes specifically note in their marketing that e-cigarettes have not been evaluated by the Food and Drug Administration, are not intended to help people to stop smoking, and are not intended to treat, prevent or cure any disease or condition. Some retailers also assert that they voluntarily restrict sales to persons who are 18 years of age or older.

The Centers for Disease Control and Prevention reported that the number of middle school and high school students in the United States who used electronic cigarettes doubled in 2012 compared to the previous year. According to the report, nearly 1.78 million students tried e-cigarettes in 2012 nationwide.¹⁸ In Florida, 4.3 percent of middle school students and 12.1 percent of high school students have tried e-cigarettes in 2013. The number of Florida high school students who have tried e-cigarettes has increased from 6 percent in 2011 to 12.1 percent in 2013.¹⁹

¹⁵ The Family Smoking and Tobacco Control Act of 2009, Pub.L. 111-31, 123 Stat. 1776.

¹⁶ See Department of Health & Human Services, Food & Drug Administration, Unified Entry, "Tobacco Products" Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act, (Dec. 2013) available at <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201310&RIN=0910-AG38> (Last visited Jan. 24, 2014).

¹⁷ National Association of Attorneys General, Letter to The Honorable Margaret Hamburg, Commissioner of the U.S. Food and Drug Administration (Oct. 23, 2013) available at [http://www.naag.org/assets/files/pdf/signons/E Cigarette Final Letter w Florida.pdf](http://www.naag.org/assets/files/pdf/signons/E%20Cigarette%20Final%20Letter%20w%20Florida.pdf) (Last visited Jan. 24, 2014).

¹⁸ See Centers for Disease Control & Prevention, Press Release, E-cigarette use more than doubles among U.S. middle and high school students from 2011-2012, (Sept. 5, 2012), available at <http://www.cdc.gov/media/releases/2013/p0905-ecigarette-use.html> (Last visited Jan. 24, 2013).

¹⁹ See Florida Department of Health, Press Release, New CDC Report: E-Cigarette Use Among Teens in the U.S. Doubles, available at <http://newsroom.doh.state.fl.us/wp-content/uploads/newsroom/2013/05/090613-E-Cigarette-Use-Among-Teens-Doubles.pdf> (Last visited Jan. 24, 2014).

Effect of the Bill

This bill makes amendments to ch. 569, F.S., to include e-cigarettes, labeled as "nicotine dispensing devices," in the tobacco product prohibitions for persons under the age of 18.

Dealer versus Non-permitted E-Cigarette Retailer

A "dealer" is a defined term in ch. 569, F.S., referring to a person who holds a tobacco permit; whereas, a retailer that only sells nicotine dispensing devices or e-cigarettes and does not sell any other tobacco products does not fall under the definition of dealer. Thus the bill provisions related to "nicotine dispensing devices" that apply based on a person's status as a "dealer" will not apply to persons who sell nicotine dispensing devices, but do not also sell tobacco products (non-permitted e-cigarette retailer).

The bill amends s. 569.002(3), F.S., to define "nicotine dispensing devices" as:

[A] ny product that can be used to deliver nicotine to an individual by inhaling vaporized nicotine from the product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product and any replacement nicotine cartridge for the device or product.

Samples of Nicotine Dispensing Devices

The bill amends s. 569.0075, F.S., to prohibit a tobacco products dealer from giving sample nicotine dispensing devices to persons under the age of 18. This provision will not apply to a non-permitted e-cigarette retailer.

Sale of Nicotine Dispensing Devices

The bill amends s. 569.101(1), F.S., to prohibit the sale, delivery, bartering, furnishing or giving of nicotine dispensing devices by a person to a minor under the age of 18. The prohibition against selling nicotine dispensing devices to a minor may be enforced administratively or criminally against a dealer, which could result in the revocation of the dealer's permit or criminal penalties. Violations of this provision can be enforced criminally against an employee of a non-permitted e-cigarette retailer, but not administratively.

Minor's Possession of Nicotine Dispensing Device or Misrepresentation of Age to a Dealer

The bill amends s. 569.11, F.S., to prohibit minors under the age of 18 from possessing an "nicotine dispensing device," and makes it unlawful for a minor to misrepresent his or her age to a tobacco dealer in order to induce the dealer, or an agent or employee of the dealer, into selling the minor a "nicotine dispensing device." This provision will not prohibit a minor from misrepresenting his or her age to a non-permitted e-cigarette retailer.

Eighty percent of all civil penalties received by s. 569.11, F.S., shall be used to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products or nicotine dispensing devices by children.

Posting Signs

The bill amends s. 569.14, F.S., to require tobacco dealers to post signs stating:

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

The bill also requires dealers to provide point of sale materials to assist in determining whether a person is of legal age to purchase tobacco products or nicotine dispensing devices that state:

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

These provisions related to posting signs and point of sale materials will not apply to a non-permitted e-cigarette retailer.

Annual Report

The bill amends s. 569.19, F.S., to require DBPR to include the number of violations for selling "nicotine dispensing devices" to person under age 18 in its annual report. The annual report may not accurately reflect the violations by non-permitted e-cigarette retailers because they are not required to be permitted or otherwise registered with DBPR; therefore, they are not under DBPR's administrative jurisdiction and would not have an identifying record or location information in DBPR's licensing system. Consequently, enforcement of violations of the bill provisions that apply to non-permitted e-cigarette retailers should generally be handled by local law enforcement who may, but are not required to, report violations to DBPR.

Enforcement

A "dealer" will be subject to administrative or criminal enforcement for violations of any provisions of ch. 569, F.S. A non-permitted e-cigarette retailer will be subject to criminal but not administrative enforcement for violations. Additionally, a retail tobacco products dealer whose permit is suspended or revoked is not prohibited from continuing to sell nicotine dispensing devices.

B. SECTION DIRECTORY:

Section 1 amends s. 569.002(3), F.S., to define "nicotine dispensing devices."

Section 2 amends s. 569.0075, F.S., prohibiting the gift of sample nicotine dispensing devices to persons younger than 18 years of age.

Section 3 amends s. 569.101, F.S., prohibiting the sale, delivery, bartering, furnishing, or giving of nicotine dispensing devices to persons younger than 18 years of age.

Section 4 amends s. 569.11, F.S., prohibiting a person who is younger than 18 years of age from buying, possessing, or misrepresenting his or her age to a dealer in order to buy nicotine dispensing devices.

Section 5 amends s. 569.14, F.S., revising the contents of signs that a dealer must display at locations where nicotine dispensing devices are available for purchase.

Section 6 amending s. 569.19, F.S., requiring the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to submit the number of violations for selling nicotine dispensing devices in its annual report.

Section 7 reenacts and amends s. 322.056, F.S., relating to mandatory driver license revocation or suspension for persons younger than 18 years of age who commit certain offenses, to incorporate changes made by the act to s. 569.11, F.S., in a reference thereto.

Section 8 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have an insignificant fiscal impact on the DBPR. Specifically, the bill requires DBPR to provide new signage for all tobacco products dealers at an estimated one-time cost of \$23,000.²⁰ Any expenditures related to updated signage will be handled within existing resources.

The bill does not require DBPR to perform additional surveys to enforce the prohibitions against the sale of e-cigarettes to minors. DBPR has indicated that one or more additional survey teams would be required to conduct surveys to help deter the sale of e-cigarettes to minors if the current level of tobacco product surveys is to be maintained. A new survey team, which consists of two law enforcement officers and one underage operative, can complete an average of 1,192 surveys per year. The estimated cost of a survey team is \$273,259 for the first year and \$176,415 for subsequent years.²¹

The Office of State Courts Administrator indicates that any fiscal impact on expenditures of the State Courts System because of the bill is anticipated to be insignificant.²²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Tobacco permit holders would be required to replace their point of sale calendars that indicate the date that a person is of legal age to purchase tobacco products to new calendars that reference nicotine dispensing devices, unless the permit holders are using readers, scanners, or other electronic or automated systems. They would also be required to replace signage that gives notice that the sale of tobacco products to persons under the age of 18 is prohibited with signage that also references nicotine dispensing devices. DBPR will print and provide the required signs to all tobacco dealers at no cost to the dealer.

D. FISCAL COMMENTS:

None.

²⁰ Email from Department of Business and Professional Regulation to House staff on February 26, 2014 (on file with the Government Operations Appropriations Subcommittee).

²¹ Florida Department of Business and Professional Regulation, 2014 Agency Legislative Bill Analysis for SB 224 (Oct. 30, 2013) (on file with the Business & Professional Regulation Subcommittee).

²² Office of the State Courts Administrator, 2014 Judicial Impact Statement, December 30, 2013 (on file with the Government Operations Appropriations Subcommittee).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Business & Professional Regulation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute.

The strike-all amendment made the following changes to the filed version of the bill:

- Changed references from "alternative nicotine products" to "nicotine dispensing devices."
- Removed the definition of "electronic cigarette," and merged the products it covered into "nicotine dispensing devices."
- Requires DBPR provide the number of violations of the bill in its annual report.

The staff analysis is drafted to reflect the committee substitute.

1 A bill to be entitled
2 An act relating to nicotine dispensing devices;
3 amending s. 569.002, F.S.; defining the term "nicotine
4 dispensing devices"; amending s. 569.0075, F.S.;
5 prohibiting the gift of sample nicotine dispensing
6 devices to persons under 18 years of age; amending s.
7 569.101, F.S.; prohibiting the selling, delivering,
8 bartering, furnishing, or giving of nicotine
9 dispensing devices to persons under 18 years of age,
10 to which penalties apply; amending s. 569.11, F.S.;
11 prohibiting a person under 18 years of age from
12 possessing, purchasing, or misrepresenting his or her
13 age or military service to purchase nicotine
14 dispensing devices; providing civil penalties;
15 amending s. 569.14, F.S.; requiring certain signage
16 where a dealer sells nicotine dispensing devices;
17 amending s. 569.19, F.S.; requiring the Division of
18 Alcoholic Beverages and Tobacco of the Department of
19 Business and Professional Regulation to submit the
20 number of violations for selling nicotine dispensing
21 devices in its annual report; reenacting and amending
22 s. 322.056(2) and (3), F.S., relating to mandatory
23 driver license revocation or suspension for persons
24 younger than 18 years of age who commit certain
25 offenses, to incorporate the changes made by s.
26 569.11, F.S., in a reference thereto; making editorial

27 changes; providing an effective date.

28

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

30

31 Section 1. Subsections (3) through (7) of section 569.002,
 32 Florida Statutes, are renumbered as subsections (4) through (8),
 33 respectively, and a new subsection (3) is added to that section,
 34 to read:

35 569.002 Definitions.—As used in this chapter, the term:

36 (3) "Nicotine dispensing devices" means any product that
 37 can be used to deliver nicotine to an individual by inhaling
 38 vaporized nicotine from the product, including, but not limited
 39 to, an electronic cigarette, electronic cigar, electronic
 40 cigarillo, electronic pipe, or other similar device or product,
 41 and any replacement nicotine cartridge for the device or
 42 product.

43 Section 2. Section 569.0075, Florida Statutes, is amended
 44 to read:

45 569.0075 Gift of sample tobacco products or sample
 46 nicotine dispensing devices prohibited.—The gift of sample
 47 tobacco products or sample nicotine dispensing devices to any
 48 person under the age of 18 by an entity licensed or permitted
 49 under the provisions of chapter 210 or this chapter, or by an
 50 employee of such entity, is prohibited and is punishable as
 51 provided in s. 569.101.

52 Section 3. Subsections (1) and (3) of section 569.101,

53 Florida Statutes, are amended to read:

54 569.101 Selling, delivering, bartering, furnishing, or
 55 giving tobacco products or nicotine dispensing devices to
 56 persons under 18 years of age; criminal penalties; defense.—

57 (1) It is unlawful to sell, deliver, barter, furnish, or
 58 give, directly or indirectly, to any person who is under 18
 59 years of age, any tobacco product or nicotine dispensing device.

60 (3) A person charged with a violation of subsection (1)
 61 has a complete defense if, at the time the tobacco product or
 62 nicotine dispensing device was sold, delivered, bartered,
 63 furnished, or given:

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

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

69 (c) Such person carefully checked a driver ~~driver's~~
 70 license or an identification card issued by this state or
 71 another state of the United States, a passport, or a United
 72 States armed services identification card presented by the buyer
 73 or recipient and acted in good faith and in reliance upon the
 74 representation and appearance of the buyer or recipient in the
 75 belief that the buyer or recipient was 18 years of age or older.

76 Section 4. Subsections (1), (2), (5), and (6) of section
 77 569.11, Florida Statutes, are amended to read:

78 569.11 Possession, misrepresenting age or military service

79 | to purchase, and purchase of tobacco products or nicotine
 80 | dispensing devices by persons under 18 years of age prohibited;
 81 | penalties; jurisdiction; disposition of fines.—

82 | (1) It is unlawful for any person under 18 years of age to
 83 | knowingly possess any tobacco product or nicotine dispensing
 84 | device. Any person under 18 years of age who violates the
 85 | provisions of this subsection commits a noncriminal violation as
 86 | provided in s. 775.08(3), punishable by:

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

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

93 | (c) For a third or subsequent violation within 12 weeks of
 94 | the first violation, the court must direct the Department of
 95 | Highway Safety and Motor Vehicles to withhold issuance of or
 96 | suspend or revoke the person's driver ~~driver's~~ license or
 97 | driving privilege, as provided in s. 322.056.

98 |
 99 | Any second or subsequent violation not within the 12-week time
 100 | period after the first violation is punishable as provided for a
 101 | first violation.

102 | (2) It is unlawful for any person under 18 years of age to
 103 | misrepresent his or her age or military service for the purpose
 104 | of inducing a dealer or an agent or employee of the dealer to

105 | sell, give, barter, furnish, or deliver any tobacco product or
 106 | nicotine dispensing device, or to purchase, or attempt to
 107 | purchase, any tobacco product or nicotine dispensing device from
 108 | a person or a vending machine. Any person under 18 years of age
 109 | who violates a provision of this subsection commits a
 110 | noncriminal violation as provided in s. 775.08(3), punishable
 111 | by:

112 | (a) For a first violation, 16 hours of community service
 113 | or, instead of community service, a \$25 fine and, in addition,
 114 | the person must attend a school-approved anti-tobacco and
 115 | nicotine program, if available;

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

118 | (c) For a third or subsequent violation within 12 weeks of
 119 | the first violation, the court must direct the Department of
 120 | Highway Safety and Motor Vehicles to withhold issuance of or
 121 | suspend or revoke the person's driver ~~driver's~~ license or
 122 | driving privilege, as provided in s. 322.056.

123 |
 124 | Any second or subsequent violation not within the 12-week time
 125 | period after the first violation is punishable as provided for a
 126 | first violation.

127 | (5) (a) If a person under 18 years of age is found by the
 128 | court to have committed a noncriminal violation under this
 129 | section and that person has failed to complete community
 130 | service, pay the fine as required by paragraph (1) (a) or

131 paragraph (2) (a), or attend a school-approved anti-tobacco
 132 program, if locally available, the court must direct the
 133 Department of Highway Safety and Motor Vehicles to withhold
 134 issuance of or suspend the driver ~~driver's~~ license or driving
 135 privilege of that person for ~~a period of~~ 30 consecutive days.

136 (b) If a person under 18 years of age is found by the
 137 court to have committed a noncriminal violation under this
 138 section and that person has failed to pay the applicable fine as
 139 required by paragraph (1) (b) or paragraph (2) (b), the court must
 140 direct the Department of Highway Safety and Motor Vehicles to
 141 withhold issuance of or suspend the driver ~~driver's~~ license or
 142 driving privilege of that person for ~~a period of~~ 45 consecutive
 143 days.

144 (6) Eighty percent of all civil penalties received by a
 145 county court pursuant to this section shall be remitted by the
 146 clerk of the court to the Department of Revenue for transfer to
 147 the Department of Education to provide for teacher training and
 148 for research and evaluation to reduce and prevent the use of
 149 tobacco products or nicotine dispensing devices by children. The
 150 remaining 20 percent of civil penalties received by a county
 151 court pursuant to this section shall remain with the clerk of
 152 the county court to cover administrative costs.

153 Section 5. Subsections (1), (2), and (3) of section
 154 569.14, Florida Statutes, are amended to read:

155 569.14 Posting of a sign stating that the sale of tobacco
 156 products or nicotine dispensing devices to persons under 18

157 years of age is unlawful; enforcement; penalty.-

158 (1) Any dealer that sells tobacco products or nicotine
 159 dispensing devices shall post a clear and conspicuous sign in
 160 each place of business where such products are sold which
 161 substantially states the following:

162
 163 THE SALE OF TOBACCO PRODUCTS OR NICOTINE DISPENSING DEVICES TO
 164 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE
 165 IS REQUIRED FOR PURCHASE.

166
 167 (2) The division shall make available to dealers of
 168 tobacco products or nicotine dispensing devices signs that meet
 169 the requirements of subsection (1).

170 (3) Any dealer that sells tobacco products or nicotine
 171 dispensing devices shall provide at the checkout counter in a
 172 location clearly visible to the dealer, the dealer's agent or
 173 employee, instructional material in a calendar format or similar
 174 format to assist in determining whether a person is of legal age
 175 to purchase tobacco products or nicotine dispensing devices.
 176 This point of sale material must contain substantially the
 177 following language:

178
 179 IF YOU WERE NOT BORN BEFORE THIS DATE

180 (insert date and applicable year)

181 YOU CANNOT BUY TOBACCO PRODUCTS OR NICOTINE DISPENSING DEVICES.
 182

183 Upon approval by the division, in lieu of a calendar a dealer
 184 may use card readers, scanners, or other electronic or automated
 185 systems that can verify whether a person is of legal age to
 186 purchase tobacco products or nicotine dispensing devices.
 187 Failure to comply with the provisions contained in this
 188 subsection shall result in imposition of administrative
 189 penalties as provided in s. 569.006.

190 Section 6. Subsection (3) of section 569.19, Florida
 191 Statutes, is amended to read:

192 569.19 Annual report.—The division shall report annually
 193 with written findings to the Legislature and the Governor by
 194 December 31, on the progress of implementing the enforcement
 195 provisions of this chapter. This must include, but is not
 196 limited to:

197 (3) The number of violations for selling tobacco products
 198 or nicotine dispensing devices to persons under age 18, and the
 199 results of administrative hearings on the above and related
 200 issues.

201 Section 7. For the purpose of incorporating the amendments
 202 made by this act to section 569.11, Florida Statutes, in a
 203 reference thereto, subsections (2) and (3) of section 322.056,
 204 Florida Statutes, are reenacted and amended to read:

205 322.056 Mandatory revocation or suspension of, or delay of
 206 eligibility for, driver ~~driver's~~ license for persons under age
 207 18 found guilty of certain alcohol, drug, or tobacco offenses;
 208 prohibition.—

209 (2) If a person under 18 years of age is found by the
 210 court to have committed a noncriminal violation under s. 569.11
 211 and that person has failed to comply with the procedures
 212 established in that section by failing to fulfill community
 213 service requirements, failing to pay the applicable fine, or
 214 failing to attend a locally available school-approved anti-
 215 tobacco program, and:

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

- 220 1. For the first violation, for 30 days.
- 221 2. For the second violation within 12 weeks of the first
 222 violation, for 45 days.

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

- 227 1. For the first violation, for 30 days.
- 228 2. For the second violation within 12 weeks of the first
 229 violation, for 45 days.

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

- 234 1. For the first violation, for 30 days.

235 2. For the second violation within 12 weeks of the first
 236 violation, for 45 days.

237

238 Any second violation of s. 569.11 not within the 12-week period
 239 after the first violation will be treated as a first violation
 240 and in the same manner as provided in this subsection.

241 (3) If a person under 18 years of age is found by the
 242 court to have committed a third violation of s. 569.11 within 12
 243 weeks of the first violation, the court must direct the
 244 Department of Highway Safety and Motor Vehicles to suspend or
 245 withhold issuance of his or her driver ~~driver's~~ license or
 246 driving privilege for 60 consecutive days. Any third violation
 247 of s. 569.11 not within the 12-week period after the first
 248 violation will be treated as a first violation and in the same
 249 manner as provided in subsection (2).

250 Section 8. This act shall take effect July 1, 2014.

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations
 2 Appropriations Subcommittee

3 Representative Renuart 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.

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17 (2) A dealer that sells tobacco products and nicotine
18 dispensing devices or nicotine products, as defined in s.
19 877.112, may use a sign that substantially states the following:

20 THE SALE OF TOBACCO PRODUCTS, NICTOINE 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 substantially the same as described in
24 this subsection meets the signage requirements of both ss.
25 569.14(1) and 877.112.

26 (3)(2) The division shall make available to dealers of
27 tobacco products signs that meet the requirements of subsection
28 (1). Alternatively, the division may make available to dealers
29 of tobacco products signs that meet the requirements of
30 subsection (2).

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

38 IF YOU WERE NOT BORN BEFORE THIS DATE

39 (insert date and applicable year)

40 YOU CANNOT BUY TOBACCO PRODUCTS.

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

47 ~~(5)(4)~~ The division, through its agents and inspectors,
48 shall enforce this section.

49 ~~(6)(5)~~ Any person who fails to comply with subsection (1)
50 is guilty of a misdemeanor of the second degree, punishable as
51 provided in s. 775.082 or s. 775.083.

52 (7) REGULATION OF TOBACCO PRODUCTS PREEMPTED TO STATE- This
53 part expressly preempts regulation of products and activities,
54 covered by this chapter to the state and supersedes any
55 municipal or county ordinance on the subject.

56 Section 2. Section 877.112, Florida Statutes, is created
57 to read:

58 877.112 Nicotine and Devices for Delivering Nicotine,
59 Definitions, Prohibitions of Sale, Penalties, Sign
60 Requirements.-

61 (1) As used in this section, the term:

62 (a) "Nicotine Product" means any product that is not a
63 tobacco product defined in ch. 569, F.S., which contains
64 nicotine, including liquid nicotine, which can be used for
65 smoking, sniffing, inhaling, ingesting, or chewing. Nicotine
66 products are only products containing nicotine derived from the

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67 tobacco plant, and do not include products that have incidental
68 nicotine in them derived from other natural sources.

69 (b) "Nicotine Dispensing Device" means any product that can
70 be used to deliver nicotine to an individual by inhaling
71 vaporized nicotine from the product, including, but not limited
72 to, an electronic cigarette, electronic cigar, electronic
73 cigarillo, electronic pipe, or other similar device or product
74 and any replacement nicotine cartridge for the device or
75 product.

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

80 (3) PROHIBITIONS ON GIFTING SAMPLES TO MINORS.- The gift of
81 a sample nicotine product or nicotine dispensing device to any
82 person under the age of 18 by a retailer, or by an employee of
83 such retailer, is prohibited.

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

91 (5) AFFIRMATIVE DEFENSES.- A person charged with a
92 violation of subsection (2) or (3) has a complete defense if, at

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93 the time the nicotine product or nicotine dispensing device was
94 sold, delivered, bartered, furnished, or given:

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

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

100 (c) Such person carefully checked a driver license or an
101 identification card issued by this state or another state of the
102 United States, a passport, or a United States armed services
103 identification card presented by the buyer or recipient and
104 acted in good faith and in reliance upon the representation and
105 appearance of the buyer or recipient in the belief that the
106 buyer or recipient was 18 years of age or older.

107 (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR
108 NICOTINE DISPENSING DEVICES BY MINORS.- It is unlawful for any
109 person under 18 years of age to knowingly possess any nicotine
110 product or a nicotine dispensing device. Any person under 18
111 years of age who violates this subsection commits a noncriminal
112 violation as defined in s. 775.08(3), punishable by:

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

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

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

124
125 Any second or subsequent violation not within the 12-week time
126 period after the first violation is punishable as provided for a
127 first violation.

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

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

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

144 (c) For a third or subsequent violation within 12 weeks of

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145 the first violation, the court must direct the Department of
146 Highway Safety and Motor Vehicles to withhold issuance of or
147 suspend or revoke the person's driver license or driving
148 privilege, as provided in s. 322.056.

149
150 Any second or subsequent violation not within the 12-week time
151 period after the first violation is punishable as provided for a
152 first violation.

153 (8) PENALTIES FOR MINORS.-

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

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

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171 state for the purpose of chapter 440, for the duration of such
172 service.

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

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

189 (9) DISTRIBUTION OF CIVIL FINES - Eighty percent of all
190 civil penalties received by a county court pursuant to
191 subsections (6) and (7) shall be remitted by the clerk of the
192 court to the Department of Revenue for transfer to the
193 Department of Education to provide for teacher training and for
194 research and evaluation to reduce and prevent the use of tobacco
195 products, nicotine products, or nicotine dispensing devices by
196 children. The remaining 20 percent of civil penalties received

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197 by a county court pursuant to this section shall remain with the
198 clerk of the county court to cover administrative costs.

199 (10) SIGNAGE REQUIREMENTS FOR NICOTINE PRODUCTS AND
200 NICOTINE DISPENSING DEVICE RETAILERS.-

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

205
206 THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO
207 PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE
208 IS REQUIRED FOR PURCHASE.

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

217
218 IF YOU WERE NOT BORN BEFORE THIS DATE

219 (insert date and applicable year)

220 YOU CANNOT BUY NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.

221
222 In lieu of a calendar a retailer may use card readers, scanners,

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223 or other electronic or automated systems that can verify whether
224 a person is of legal age to purchase nicotine products or
225 nicotine dispensing devices.

226 (11) REGULATION OF NICOTINE PRODUCTS PREEMPTED TO STATE-
227 This part expressly preempts regulation of products and
228 activities, covered by this chapter to the state and supersedes
229 any municipal or county ordinance on the subject.

230 Section 3. This act shall take effect July 1, 2014.

231

232

233

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

235 Remove everything before the enacting clause and insert:

236 A bill to be entitled

237 An act relating to nicotine products and nicotine dispensing
238 devices; amending s. 569.14, F.S.; allowing alternate signage
239 requirements where a tobacco dealer also sells nicotine products
240 or nicotine dispensing devices; creating s. 877.112, F.S.;
241 defining the terms "nicotine products" and "nicotine dispensing
242 devices"; prohibiting the selling, delivering, bartering,
243 furnishing, or giving of nicotine products or nicotine
244 dispensing devices to persons under 18 years of age; prohibiting
245 the gift of sample nicotine products or nicotine dispensing
246 devices to persons under 18 years of age; providing penalties;
247 prohibiting a person under 18 years of age from possessing,
248 purchasing, or misrepresenting his or her age or military

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249 service to purchase nicotine products or nicotine dispensing
250 devices; requiring certain signage where a retailer sells
251 nicotine products or nicotine dispensing devices; providing an
252 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 725 Public Accountancy
SPONSOR(S): Boyd
TIED BILLS: IDEN./SIM. **BILLS:** SB 796

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	13 Y, 0 N	Butler	Luczynski
2) Government Operations Appropriations Subcommittee		Topp	Topp BPT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Before an applicant who has not passed the CPA examination in any state may be licensed in this state as a certified public accountant (CPA), the applicant must pass a licensure exam, complete one year of work experience related to accounting, complete at least 150 semester hours of college education with a concentration in accounting and business, and show that he or she has good moral character.

Currently, an applicant may take the licensure exam after completing 120 semester hours or 160 quarter hours of college education.

The bill makes two changes to the requirements for licensure. First, the quarter hours requirement to take the licensure exam is increased from 160 quarter hours to 180 quarter hours. This increase is in line with the generally accepted conversion rate between semester hours and quarter hours. Second, an applicant must show that he or she has good moral character before taking the licensure exam.

After passing the licensure examination, the applicant must also complete an education requirement and one year of work experience before he or she may apply for an initial CPA license. Existing law requires that the applicant also show that he or she has good moral character at the time of application for initial licensure.

The bill extends by two years the deadline for licensees with inactive or delinquent licenses to receive partial amnesty related to the continuing education requirements necessary to reactivate their license. Qualified licensees will have to complete 120 hours of continuing education, compared to a possible 280 hours without the amnesty.

The bill may have a positive fiscal impact of \$60,000 to \$81,000 on revenues to the Department of Business and Professional Regulation related to the provisions of the bill allowing inactive and delinquent licensees the opportunity to reactivate their license.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Board of Accountancy (Board) within the Department of Business and Professional Regulation (Department) is the agency charged with regulating the practice of public accountancy. The Division of Certified Public Accounting (Division) performs for the Board all services concerning the enforcement of chapter 473, F.S., including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in chapter 455, F.S., necessary to perform the Board's duties under the chapter. The offices of the Division are located in Gainesville.

Licensure for Certified Public Accountants

An applicant to become a certified public accountant (CPA) must pass the licensure examination as outlined in s. 473.306, F.S., and the rules promulgated by the Board. To be eligible to take the exam, an applicant must complete 120 semester hours or 160 quarter hours of coursework from an accredited college or university with a concentration in accounting and business courses as specified by the Board in rule.¹

In addition to completing the licensure exam successfully, s. 473.308, F.S., requires an applicant complete 150 semester hours² of college education, one year of work experience, and demonstrate "good moral character."

Section 473.308(6), F.S., defines "good moral character" and further allows the Board to deny an applicant licensure should an applicant fail to demonstrate good moral character. Specifically:

- (a) "Good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.
- (b) The board may refuse to certify an applicant for failure to satisfy this requirement if:
 1. The board finds a reasonable relationship between the lack of good moral character of the applicant and the professional responsibilities of a certified public accountant; and
 2. The finding by the board of lack of good moral character is supported by competent substantial evidence.
- (c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish to the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

Currently, the Board determines whether an applicant possesses good moral character only after the applicant has already successfully passed the licensure exam. However, good moral character is an ongoing requirement as s. 473.323, F.S., explicitly permits the Board to discipline for failure to maintain good moral character.

Continuing Education Requirements

Section 473.313(2), F.S., provides that a CPA who holds an inactive or delinquent license on June 30, 2012, may reactivate his or her license by completing 120 hours of continuing education courses, so long as the licensee notifies the Board of Accountancy of his or her intention by December 31, 2012,

¹ Rule 61H1-27.001, F.A.C., defines which accredited colleges and universities meet the criteria for this subsection.

² See Section III, C. Drafting Issues or Other Comments.

and completes the reactivation by June 30, 2014. If the licensee qualifies within the limited amnesty period, he or she will be required to complete 120 hours of continuing education, regardless of how long the license has been inactive or delinquent. After this period of amnesty expires, an inactive licensee may be required to complete up to 280 hours of continuing education before reactivating his or her license.³

Effect of the Bill

Licensure for Certified Public Accountants

The bill makes two alterations to the requirements an applicant must meet before he or she may take the licensure examination and become a certified public accountant.

First, the bill amends s. 473.306, F.S., to raise the requirement from 160 quarter hours to 180 quarter hours of college education required before an applicant may take the licensure exam. This increase is in line with the generally accepted conversion rate of two semester hours to three quarter hours used by many universities.⁴

The bill also amends s. 473.306, F.S., to require an applicant show that she or he has good moral character before the applicant may take the licensure exam. The bill uses the same definition of "good moral character" as s. 473.308, F.S., and applies the same requirements for denial as s. 473.308, F.S., currently requires for applicants who have passed the licensure exam.

The practical effect of this change would move the judgment of whether an applicant demonstrates "good moral character" before taking the licensure exam, rather than after the CPA Exam is successfully completed, but before the Board approves an applicant to be licensed.

However, the bill does not remove the requirement in s. 473.308, F.S., that an applicant demonstrate "good moral character" after successfully completing the licensure exam. It appears that an applicant will have to demonstrate good moral character both before they take the licensure exam and after successfully passing the exam but before being licensed. The earlier requirement to demonstrate good moral character may make the later requirement redundant, or may expedite the second demonstration if it is still necessary.

Continuing Education Requirements

The bill amends s. 473.313(2), F.S., to extend the previous amnesty period by two years. This means that CPA's who hold an inactive or delinquent license on June 30, 2014, have an opportunity to reenter the profession by completing 120 hours of continuing education courses, so long as the licensee notifies the Board of Accountancy of their intention by December 31, 2014, and completes the reactivation by June 30, 2016. If the licensee qualifies within the limited amnesty period, he or she will be required to complete 120 hours of continuing education, regardless of how long the license has been inactive or delinquent.

B. SECTION DIRECTORY:

Section 1 amends s. 473.306, F.S., to increase the quarter hour requirement to take the licensure exam from 160 quarter hours to 180 quarter hours and to require an applicant show that they possess good moral character before they may take the licensure exam.

Section 2 amends s. 473.313, F.S., extends the continuing education amnesty two additional years.

Section 3 provides an effective date of July 1, 2014.

³ Rule 61H1-33.006, F.A.C.

⁴ No Florida statute appears to set an official conversion rate of 2 semester hours to 3 quarter hours; however, at least one Florida statute implies this conversion rate, *see* s. 1005.02, F.S. (stating "at least 60 semester hours or 90 quarter hours of study or the equivalent").

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a positive fiscal impact on revenues to the Department related to the provisions of the bill allowing inactive and delinquent licensees the opportunity to reactivate their license. The last time the amnesty period was extended, approximately 200 inactive licenses were reactivated. The Department expects that if a similar number of licenses are reactivated, the license fees could generate between \$60,000 and \$81,000.⁵

2. Expenditures:

The Department estimates that based on the potential revenues to be received as a result of HB 725, between \$4,800 and \$6,480 will be transferred to the General Revenue Fund, per the eight percent service charge requirement of section 215.20, Florida Statutes.⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate An applicant will have to pay any fees associated with proving their good moral character both at time of application for the licensure exam, and after passing the licensure exam when applying for licensure.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

⁵ Florida Department of Business and Professional Regulation, Agency Analysis of 2014 House Bill 725, p. 2 (Feb. 15, 2014) (on file with the Business & Professional Regulation Subcommittee).

⁶ *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 473.308, F.S., requires 150 semester hours for licensure, but does not provide a quarter hours equivalent. Nevertheless, the Board of Accountancy rule sets the quarter hour equivalent for licensure at 200 hours. This licensure requirement is based on a conversion rate of three semester hours to four quarter hours or the same rate currently used for examination purposes in s. 473.306, F.S. This bill changes the conversion rate for examination to two semester hours to three quarter hours. To avoid potential confusion and to support rulemaking, the semester hour to quarter hour conversion rate for chapter 473, F.S., should be clarified or at least the quarter hour equivalent for licensure should be provided for in s. 473.308, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public accountancy; amending s.
 3 473.306, F.S.; revising course requirement for
 4 certified public accountant license applicant to take
 5 the licensure examination; requiring an applicant to
 6 be of good moral character in order to take the
 7 licensure examination; requiring the Board of
 8 Accountancy, when refusing to allow an applicant to
 9 take the examination because of a lack of good moral
 10 character, to make certain findings and furnish
 11 certain evidence and notices to the applicant;
 12 amending s. 473.313, F.S.; revising certain deadlines
 13 for license reactivation; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (2) of section 473.306, Florida
 18 Statutes, is amended to read:

19 473.306 Examinations.—

20 (2) An applicant is entitled to take the licensure
 21 examination to practice in this state as a certified public
 22 accountant if:

23 (a) The applicant has completed 120 semester hours or 180
 24 ~~160~~ quarter hours from an accredited college or university with
 25 a concentration in accounting and business courses as specified
 26 by the board by rule; and

27 (b) The applicant shows that she or he has good moral
 28 character. For purposes of this paragraph, the term "good moral
 29 character" has the same meaning as provided in s. 473.308(6)(a).
 30 The board may refuse to allow an applicant to take the licensure
 31 examination for failure to satisfy this requirement if:

32 1. The board finds a reasonable relationship between the
 33 lack of good moral character of the applicant and the
 34 professional responsibilities of a certified public accountant;
 35 and

36 2. The finding by the board of lack of good moral
 37 character is supported by competent substantial evidence.

38
 39 When an applicant is found pursuant to this paragraph to be
 40 unqualified to take the licensure examination because of a lack
 41 of good moral character, the board shall furnish to the
 42 applicant a statement containing the findings of the board, a
 43 complete record of the evidence upon which the determination was
 44 based, and a notice of the rights of the applicant to a
 45 rehearing and appeal

46 Section 2. Subsection (2) of section 473.313, Florida
 47 Statutes, is amended to read:

48 473.313 Inactive status.—

49 (2) A license that has become inactive under subsection
 50 (1) or for failure to complete the requirements in s. 473.312
 51 may be reactivated under s. 473.311 upon application to the
 52 department. The board may prescribe by rule continuing education

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53 requirements as a condition of reactivating a license. The
54 minimum continuing education requirements for reactivating a
55 license shall be those prescribed by board rule and those of the
56 most recent biennium plus one-half of the requirements in s.
57 473.312. Notwithstanding any other provision of this section,
58 the continuing education requirements are 120 hours, including
59 at least 30 hours in accounting-related and auditing-related
60 subjects, not more than 30 hours in behavioral subjects, and a
61 minimum of 8 hours in ethics subjects approved by the board, for
62 the reactivation of a license that is inactive or delinquent on
63 June 30, 2014 ~~2012~~, if the Florida certified public accountant
64 notifies the Board of Accountancy by December 31, 2014 ~~2012~~, of
65 an intention to reactivate such a license and completes such
66 reactivation by June 30, 2016 ~~2014~~.

67 Section 3. This act shall take effect July 1, 2014.



FLORIDA DEPARTMENT of

management
SERVICES

We serve those who serve Florida

Florida Broadband Initiative
Florida Broadband Map

Craig J. Nichols, Secretary

Division of Telecommunications

- **Within the Department of Management Services**
 - Provides quality and cost-effective telecommunications and radio services statewide to public entities.
 - One telecommunications service is the Internet access and data transport service known as the Florida Information Resource Network or FIRN.
 - Currently 49 school districts buy off of the FIRN contract.
 - Division of Telecommunications is also responsible for the Florida Broadband Initiative.

Florida Broadband Map

- **Broadband Mapping Tool**

- The Florida Broadband Map was developed through a federal grant intended to identify unserved and underserved areas in Florida for stimulus funding to encourage broadband adoption.
- Maps all broadband data submitted by service providers in the State of Florida.
- Displays broadband technology available to schools, federal E-rate funding information by district and the bandwidth subscription in comparison to the state standard by district.

<http://map.broadbandfla.com/>

E-rate

- **What is E-rate?**
 - Subsidy allocated from the Universal Service Fund (USF) administered by the Universal Service Administration Company (USAC)
 - Started in 1997, the USF fee is collected on telephone bills and remitted to USAC by the service provider
- **What does it pay for?**
 - Up to 90% of the cost for eligible technology services provided to qualifying schools and libraries

Functionality of the Florida Broadband Map

map.broadbandfla.com

Data Layers

- Broadband service coverage include cable, DSL, fiber, fixed wireless and mobile wireless
- Number of wireline and wireless providers by location
- Individual provider coverage areas
- Unserved areas by cable, DSL, fiber, fixed wireless, mobile wireless and unserved by both wireline and wireless
- Inadequate broadband service coverage location
- Mapped community anchor institutions (CAIs) which include government and non-government support, libraries, medical and healthcare facilities, public safety, schools and universities
- E-rate information includes requested and committed funding by school district and fiscal year
- Census demographics by county
- County, census block, region and House and Senate district boundaries
- Urban and rural identification

Functionality of the Florida Broadband Map

map.broadbandfla.com

Tools

- Zoom to location by address, push pin, municipality, county or region
- Speed test functionality to test the user's current connection speed
- Bookmarks, search functionality, printing and feedback capabilities
- Streetview widget allows for viewing locations from a street level perspective
- DrawMeasure allows the user to determine distance between points and the area of selected locations

Future Functionality of the Florida Broadband Map

- The map can be customized in various ways to show specific details such as:
 - District and school compliance with state bandwidth*
 - Changes in bandwidth subscription and infrastructure based on state funding*
 - Yearly compliance at the district and school level*
 - Compliance requirements
 - Number of students*
 - Connection speeds*
 - Connection type: fiber, DSL and cable*
 - Infrastructure and components of the connection*
 - Other details as determined*

* Information and data which need to be available to DMS to provide map layers

Services Provided by State Resources

- Per Title 47 U.S. Code 222
- Every telecommunications carrier has a duty to protect the confidentiality of customers including network information such as :
 - Quantity
 - Configuration
 - Type
 - Destination
 - Location
 - Usage Amount
- If network capacity is provided through State of Florida contracts this information be accurately captured, tracked, and displayed on the map with certainty.

Questions?

Education Technology Infrastructure Costs

