

1 A bill to be entitled

2 An act relating to alternative nicotine products;
3 amending s. 569.002, F.S.; providing and revising
4 definitions; amending s. 569.0075, F.S.; prohibiting
5 the gift of sample alternative nicotine products to
6 persons younger than 18 years of age; amending s.
7 569.101, F.S.; prohibiting the sale, delivery,
8 bartering, furnishing, or giving of alternative
9 nicotine products to persons younger than 18 years of
10 age; amending s. 569.11, F.S.; prohibiting a person
11 who is younger than 18 years of age from buying,
12 possessing, or misrepresenting his or her age in order
13 to buy alternative nicotine products; amending s.
14 569.14, F.S.; revising the contents of signs that must
15 be displayed at locations where alternative nicotine
16 products are available for purchase; reenacting s.
17 322.056(2) and (3), F.S., relating to mandatory driver
18 license revocation or suspension for persons younger
19 than 18 years of age who commit certain offenses, to
20 incorporate changes made by the act to s. 569.11,
21 F.S., in a reference thereto; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 569.002, Florida Statutes, is amended

27 to read:

28 569.002 Definitions.—

29 (1) As used in this chapter, the term:

30 (a) "Alternative nicotine product" means a product that
 31 consists of or contains nicotine that can be ingested into the
 32 body by any means, including, but not limited to, chewing,
 33 smoking, absorbing, dissolving, and inhaling. The term includes
 34 an electronic cigarette, but does not include any of the
 35 following:

36 1. Tobacco products.

37 2. A product that is a drug as defined in 21 U.S.C. s.
 38 321(g) (1) .

39 3. A product that is a device as defined in 21 U.S.C. s.
 40 321(h) .

41 4. A combination product that is a device regulated under
 42 21 U.S.C. s. 353(g) .

43 ~~(1) "Dealer" is synonymous with the term "retail tobacco~~
 44 ~~products dealer."~~

45 (b)(2) "Division" means the Division of Alcoholic
 46 Beverages and Tobacco of the Department of Business and
 47 Professional Regulation.

48 (c) "Electronic cigarette" means a device or product that
 49 produces a vapor that delivers nicotine or other substances to a
 50 person inhaling from the device to simulate smoking and that is
 51 offered to or purchased by consumers as an electronic cigarette,
 52 electronic cigar, electronic cigarillo, electronic pipe, or

53 other similar device or product.

54 ~~(3) "Permit" is synonymous with the term "retail tobacco~~
 55 ~~products dealer permit."~~

56 (d)(4) "Retail tobacco products dealer" or "dealer" means
 57 the holder of a retail tobacco products dealer permit.

58 (e)(5) "Retail tobacco products dealer permit" or "permit"
 59 means a permit issued by the division pursuant to s. 569.003.

60 (f)(6) "Tobacco products" includes loose tobacco leaves,
 61 and products made from tobacco leaves, in whole or in part, and
 62 cigarette wrappers, which can be used for smoking, sniffing, or
 63 chewing.

64 (2)(7) The term "Any person under the age of 18" does not
 65 include a ~~any~~ person under the age of 18 who:

66 (a) Has had his or her disability of nonage removed under
 67 chapter 743;

68 (b) Is in the military reserve or on active duty in the
 69 Armed Forces of the United States;

70 (c) Is otherwise emancipated by a court of competent
 71 jurisdiction and released from parental care and responsibility;
 72 or

73 (d) Is acting in his or her scope of lawful employment
 74 with an entity licensed under the provisions of chapter 210 or
 75 this chapter.

76 Section 2. Section 569.0075, Florida Statutes, is amended
 77 to read:

78 569.0075 Sample gifts of ~~Gift of sample~~ tobacco products

79 or alternative nicotine products prohibited.—The gift of sample
80 tobacco products or alternative nicotine products to a ~~any~~
81 person under the age of 18 by an entity licensed or permitted
82 under ~~the provisions of~~ chapter 210 or this chapter, or by an
83 employee of such entity, is prohibited and is punishable as
84 provided in s. 569.101.

85 Section 3. Section 569.101, Florida Statutes, is amended
86 to read:

87 569.101 Selling, delivering, bartering, furnishing, or
88 giving tobacco products or alternative nicotine products to
89 persons under 18 years of age; criminal penalties; defense.—

90 (1) It is unlawful to sell, deliver, barter, furnish, or
91 give, directly or indirectly, to a ~~any~~ person who is under 18
92 years of age, any tobacco product or alternative nicotine
93 product.

94 (2) A ~~Any~~ person who violates subsection (1) commits a
95 misdemeanor of the second degree, punishable as provided in s.
96 775.082 or s. 775.083. However, a ~~any~~ person who violates
97 subsection (1) for a second or subsequent time within 1 year of
98 the first violation, commits a misdemeanor of the first degree,
99 punishable as provided in s. 775.082 or s. 775.083.

100 (3) A person charged with a violation of subsection (1)
101 has a complete defense if, at the time the tobacco product or
102 alternative nicotine product was sold, delivered, bartered,
103 furnished, or given:

104 (a) The buyer or recipient falsely evidenced that she or

105 he was 18 years of age or older;

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

109 (c) Such person carefully checked a driver ~~driver's~~
110 license or an identification card issued by this state or
111 another state of the United States, a passport, or a United
112 States armed services identification card presented by the buyer
113 or recipient and acted in good faith and in reliance upon the
114 representation and appearance of the buyer or recipient in the
115 belief that the buyer or recipient was 18 years of age or older.

116 Section 4. Section 569.11, Florida Statutes, is amended to
117 read:

118 569.11 Possession, misrepresenting age or military service
119 to purchase, and purchase of tobacco products or alternative
120 nicotine products by persons under 18 years of age prohibited;
121 ~~penalties; jurisdiction; disposition of fines.-~~

122 (1) It is unlawful for a any person under 18 years of age
123 to knowingly possess any tobacco product or alternative nicotine
124 product. ~~A~~ Any person under 18 years of age who violates ~~the~~
125 ~~provisions of~~ this subsection commits a noncriminal violation as
126 provided in s. 775.08(3), punishable by:

127 (a) For a first violation, 16 hours of community service
128 ~~or, instead of community service,~~ a \$25 fine. ~~In addition,~~ The
129 person must also attend a school-approved anti-tobacco program,
130 if locally available;

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

133 (c) For a third or subsequent violation within 12 weeks of
 134 the first violation, the court must direct the Department of
 135 Highway Safety and Motor Vehicles to withhold issuance of or
 136 suspend or revoke the person's driver ~~driver's~~ license or
 137 driving privilege, as provided in s. 322.056.

138
 139 A ~~Any~~ second or subsequent violation not within the 12-week time
 140 period after the first violation is punishable as provided for a
 141 first violation.

142 (2) It is unlawful for a ~~any~~ person under 18 years of age
 143 to misrepresent his or her age or military service for the
 144 purpose of inducing a dealer or an agent or employee of the
 145 dealer to sell, give, barter, furnish, or deliver any tobacco
 146 product or alternative nicotine product, or to purchase, or
 147 attempt to purchase, any tobacco product or alternative nicotine
 148 product from a person or a vending machine. A ~~Any~~ person under
 149 18 years of age who violates ~~a provision of~~ this subsection
 150 commits a noncriminal violation as provided in s. 775.08(3),
 151 punishable by:

152 (a) For a first violation, 16 hours of community service
 153 ~~or, instead of community service,~~ a \$25 fine. ~~and, in addition,~~
 154 The person must also attend a school-approved anti-tobacco
 155 program, if available;

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

157 violation, a \$25 fine; or

158 (c) For a third or subsequent violation within 12 weeks of
 159 the first violation, the court must direct the Department of
 160 Highway Safety and Motor Vehicles to withhold issuance of or
 161 suspend or revoke the person's driver ~~driver's~~ license or
 162 driving privilege, as provided in s. 322.056.

163
 164 A ~~Any~~ second or subsequent violation not within the 12-week time
 165 period after the first violation is punishable as provided for a
 166 first violation.

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

176 (4) A person charged with a noncriminal violation under
 177 this section must appear before the county court or pay ~~comply~~
 178 ~~with the requirement for paying~~ the fine. The court, after a
 179 hearing, shall determine ~~make a determination as to~~ whether the
 180 noncriminal violation was committed. If the court finds the
 181 violation was committed, it shall impose an appropriate penalty
 182 as specified in subsection (1) or subsection (2). A person who

183 participates in community service is ~~shall be~~ considered an
184 employee of the state for the purpose of chapter 440~~7~~, for the
185 duration of such service.

186 (5)~~(a)~~ If a person ~~under 18 years of age~~ is found by the
187 court to have committed a noncriminal violation under this
188 section and that person has failed to:

189 (a) Complete community service, pay the fine as required
190 by paragraph (1)(a) or paragraph (2)(a), or attend a school-
191 approved anti-tobacco program, if locally available, the court
192 must direct the Department of Highway Safety and Motor Vehicles
193 to withhold issuance of or suspend the driver ~~driver's~~ license
194 or driving privilege of that person for ~~a period of~~ 30
195 consecutive days.

196 ~~(b) If a person under 18 years of age is found by the~~
197 ~~court to have committed a noncriminal violation under this~~
198 ~~section and that person has failed to~~ Pay the applicable fine as
199 required by paragraph (1)(b) or paragraph (2)(b), the court must
200 direct the Department of Highway Safety and Motor Vehicles to
201 withhold issuance of or suspend the driver ~~driver's~~ license or
202 driving privilege of that person for ~~a period of~~ 45 consecutive
203 days.

204 (6) Eighty percent of all civil penalties received by a
205 county court pursuant to this section shall be remitted by the
206 clerk of the court to the Department of Revenue for transfer to
207 the Department of Education to provide for teacher training and
208 for research and evaluation to reduce and prevent the use of

209 tobacco products by minors ~~children~~. The remaining 20 percent ~~of~~
 210 ~~civil penalties received by a county court pursuant to this~~
 211 ~~section~~ shall remain with the clerk of the county court to cover
 212 administrative costs.

213 Section 5. Section 569.14, Florida Statutes, is amended to
 214 read:

215 569.14 Posting of a sign stating that the sale of tobacco
 216 products or alternative nicotine products to persons under 18
 217 years of age is unlawful; enforcement; penalty.-

218 (1) A ~~Any~~ dealer that sells tobacco products or
 219 alternative nicotine products shall post a clear and conspicuous
 220 sign in each place of business where such products are sold
 221 which substantially states the following:

222
 223 THE SALE OF TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE
 224 PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST
 225 FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

226
 227 (2) The division shall make signs available to dealers of
 228 tobacco products or alternative nicotine products which ~~signs~~
 229 ~~that~~ meet the requirements of subsection (1).

230 (3) A ~~Any~~ dealer that sells tobacco products or
 231 alternative nicotine products shall provide at the checkout
 232 counter in a location clearly visible to the dealer, the
 233 dealer's agent, or employee, instructional material in a
 234 calendar format or similar format to assist in determining

235 whether a person is of legal age to purchase tobacco products or
 236 alternative nicotine products. This point of sale material must
 237 contain substantially the following language:

238
 239 IF YOU WERE NOT BORN BEFORE THIS DATE
 240 (insert date and applicable year)

241 YOU CANNOT BUY TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE
 242 PRODUCTS.

243
 244 Upon approval by the division, in lieu of a calendar, a dealer
 245 may use card readers, scanners, or other electronic or automated
 246 systems that can verify whether a person is of legal age to
 247 purchase tobacco products or alternative nicotine products.
 248 Failure to comply with ~~the provisions contained in this~~
 249 subsection shall result in ~~imposition of~~ administrative
 250 penalties as provided in s. 569.006.

251 (4) The division, ~~through its agents and inspectors,~~ shall
 252 enforce this section through its agents and inspectors.

253 (5) A ~~Any~~ person who fails to comply with subsection (1)
 254 commits ~~is guilty of~~ a misdemeanor of the second degree,
 255 punishable as provided in s. 775.082 or s. 775.083.

256 Section 6. For the purpose of incorporating the amendments
 257 made by this act to section 569.11, Florida Statutes, in a
 258 reference thereto, subsections (2) and (3) of section 322.056,
 259 Florida Statutes, are reenacted to read:

260 322.056 Mandatory revocation or suspension of, or delay of

261 eligibility for, driver's license for persons under age 18 found
 262 guilty of certain alcohol, drug, or tobacco offenses;
 263 prohibition.—

264 (2) If a person under 18 years of age is found by the
 265 court to have committed a noncriminal violation under s. 569.11
 266 and that person has failed to comply with the procedures
 267 established in that section by failing to fulfill community
 268 service requirements, failing to pay the applicable fine, or
 269 failing to attend a locally available school-approved anti-
 270 tobacco program, and:

271 (a) The person is eligible by reason of age for a driver's
 272 license or driving privilege, the court shall direct the
 273 department to revoke or to withhold issuance of his or her
 274 driver's license or driving privilege as follows:

- 275 1. For the first violation, for 30 days.
- 276 2. For the second violation within 12 weeks of the first
 277 violation, for 45 days.

278 (b) The person's driver's license or driving privilege is
 279 under suspension or revocation for any reason, the court shall
 280 direct the department to extend the period of suspension or
 281 revocation by an additional period as follows:

- 282 1. For the first violation, for 30 days.
- 283 2. For the second violation within 12 weeks of the first
 284 violation, for 45 days.

285 (c) The person is ineligible by reason of age for a
 286 driver's license or driving privilege, the court shall direct

287 the department to withhold issuance of his or her driver's
288 license or driving privilege as follows:

- 289 1. For the first violation, for 30 days.
- 290 2. For the second violation within 12 weeks of the first
291 violation, for 45 days.

292

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

296 (3) If a person under 18 years of age is found by the
297 court to have committed a third violation of s. 569.11 within 12
298 weeks of the first violation, the court must direct the
299 Department of Highway Safety and Motor Vehicles to suspend or
300 withhold issuance of his or her driver's license or driving
301 privilege for 60 consecutive days. Any third violation of s.
302 569.11 not within the 12-week period after the first violation
303 will be treated as a first violation and in the same manner as
304 provided in subsection (2).

305 Section 7. This act shall take effect July 1, 2014.